

United Kingdom

Appointment

Under the provisions of the Insolvency Act 1986, an individual (where not the Official Receiver) appointed as an insolvency officer to the following types of appointment must be a Licensed Insolvency Practitioner:

- **Corporate insolvency:** Administration, Administrative Receivership, Receivership under a floating charge, Provisional Liquidation, Liquidation, Company Voluntary Arrangement
- **Personal insolvency:** Bankruptcy, Sequestration, Individual Voluntary Arrangement, Trust Deed
- **Partnership insolvency:** Liquidation or Administration of Insolvent Partnership, Partnership Voluntary Arrangement

A Licensed Insolvency Practitioner is required to have in force a general security bond and, in addition, is required to take out specific security in relation to every appointment for which he or she requires an insolvency licence to act equivalent to the assets under his or her control in such appointment.

Whilst an insolvency licence allows an IP to take any appointment, the ethical guidelines and commercial reality dictate that in practice, issues of skills and resources are always given priority. When an IP takes up an appointment, that person would not only be suitably qualified but also have the required skills and experience to deal with that particular type of insolvency. For example where the company in financial difficulty is an insurance company, only practitioners with appropriate experience should act, as this is a highly specialised area of insolvency practice.

Qualifications

The requirements to be satisfied are determined by law and the primary legislation is the Insolvency Act 1986. In addition, fitness and propriety requirements are enforced by the licensing bodies.

To qualify as a Licensed Insolvency Practitioner, the examination set by the Joint Insolvency Examination Board must be passed. The insolvency licence is issued by one of the Recognised Professional Bodies or any one of the relevant competent authorities subject to the individual additionally satisfying the licensing body that he or she is a fit and proper person to hold an insolvency licence, which includes prescribed requirements as to experience and training.

In practice, many practitioners are also accountants (Chartered or Certified) and some are also solicitors.

Selection

Generally an insolvency practitioner can be appointed by the creditors, the debtor, the members (shareholders), the directors, a charge-holder (mortgagee), the court or the Secretary of State for Trade & Industry, although the mechanism available to appoint a practitioner is dependent upon the type of appointment.

Where creditors have not appointed an office-holder, such creditors may, provided that they have sufficient voting power, impose their own selection of practitioner in most types of appointment. Sometimes this may involve creditors petitioning the existing office-holder to convene a meeting of creditors for this purpose. Creditors may also ask the court to consider this issue if necessary.

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The general exception to this is in relation to the appointment of a Receiver, in which the charge-holder or court, as appropriate, controls the appointment.

Supervision

There is provision in law and in professional best practice for a creditors' committee to be formed in relation to the majority of appointments, provided that the creditors agree and subject to a minimum number of three creditors being willing to sit on a committee. The role of the committee is to represent the general body of creditors and to liaise with the office-holder on matters such as legal actions or in relation to fixing the office-holder's remuneration.

If any party has a complaint about the practitioner's conduct they can also ask the practitioner's licensing body to undertake a formal investigation. Commercial disputes between creditors and the office-holder may be dealt with by the courts.

Remuneration

Generally, remuneration can be either on the basis of time costs or as a percentage of realisations and (if available) distributions to creditors. In certain circumstances the fee can be a 'fixed' one or a set amount. In relation to liquidations and bankruptcies, where members' or creditors' agreement, as appropriate, cannot be obtained a statutory scale may be applied.

Dependent upon the type of appointment, remuneration will be fixed by the creditors' committee, the general body of creditors, the court or, in a receivership, by the appointor.

If creditors object to the amount of the office-holder's remuneration they can make an application to the court challenging the payment.

Regulation

The licensing bodies are responsible for regulating practitioners and the Department of Trade & Industry is responsible for overseeing the regulatory regime.

In practice, the licensing bodies are responsible for enforcement of standards of fitness and propriety and professional competence. This is achieved in various ways, including conducting monitoring visits to practitioners to review their work and office systems, and by an analysis of information required to be provided to them by practitioners.

The licensing bodies have in place a structure of licensing, investigation, disciplinary and appeal committees to enforce regulation. However, the powers of the Secretary of State for Trade & Industry, in relation to his or her role as a licensing body, are currently restricted to the ability to withdraw authorisation from a practitioner.

The Insolvency Practices Council represents other stakeholders in insolvency practice.