The article is provided by Devorah Burns of the national organisation The Insolvency Service, based in London. The Insolvency Service operates under a statutory framework – mainly the Insolvency Acts 1986 and 2000, the Company Directors Disqualifications Act 1986 and the Employment Rights Act 1996.

If you have any questions on this article, please send them to the author at Devorah.Burns @insolvency.gsi.gov.uk

or floricasincu@insol-europe.org

We welcome further contributions to this series, so if you would like to inform our readers of the regulations for becoming an IP in your jurisdiction, please contact the editors.

All you need to know about becoming an Insolvency Practitioner: Great Britain

The latest in our series of articles on the legal status and remuneration of insolvency practitioners examines the British rules and regulations

Insolvency Practitioners in England, Wales & Scotland.

The Insolvency Service is responsible for the regulation of insolvency practitioners working in Great Britain (i.e. England, Wales & Scotland) and the Department for Enterprise, Trade & Investment in Northern Ireland is responsible for the regulation of insolvency practitioners who work in Northern Ireland. This article only deals with the requirement for insolvency practitioners in Great Britain; the legislation relating to Northern Ireland is very similar. It should be noted that Scotland has it's own insolvency legislation in relation to individual insolvencies (sequestration) and certain processes in liquidations and receiverships differ from those in England and Wales. In Scotland, bankruptcy is supervised by the Accountant in Bankruptcy, who is an official of the Scottish Government.

Access to the profession

The Secretary of State (SoS) may authorise insolvency practitioners, as may seven professional bodies (the RPBs). The RPBs represent accountants, lawyers and those who only work as insolvency practitioners. Most insolvency practitioners are authorised by one of the RPBs. Each of the RPBs has it's own educational requirements and members of the accountancy bodies and lawyers usually have a university degree. However, all of the authorising bodies require the applicant to have passed the examinations set by the Joint Insolvency Examination Board (JIEB) unless the applicant holds equivalent qualifications obtained in an European Economic Area State (the SoS is also able to recognise equivalent qualifications obtained in other jurisdictions). All of the authorising bodies require the insolvency practitioner to pay an annual fee, which covers the costs associated with authorisation and regulation.

EU Directive 2005/36 provides for the recognition of professional qualifications throughout the relevant states and The European Communities (Recognition of Professional Qualifications) Regulations 2007 (The Regulations) make provision for such recognition.

Applications to the SoS

To be authorised by the SoS on the first application the applicant must have completed at least 7000 hours of insolvency work experience in the past ten years; at least 1400 of which must have been done within the two years prior to the application and at least 1000 hours of which must have involved the management or supervision of the estate on behalf of the office holder. Where the applicant for authorisation has previously been an office holder different criteria relating to the

number of cases and hours worked apply. The insolvency practitioner has to pay an annual fee of £2,500 to the SoS. As well as being "fit and proper" the applicant must have a good command of English.

If an applicant from a relevant state seeks to become established in Britain, The Regulations provide that they will have to sit an aptitude test where there are significant differences in law and practice in the home state.

Prior to taking up any appointment

Once the applicant is authorised to act as an insolvency practitioner they are unable to accept any appointments until they have obtained a bond, which protects the estate from any losses arising from the fraud or dishonesty of the insolvency practitioner. The bond also covers fraud or dishonesty by a member of staff if this occurs with the connivance of the insolvency practitioner. Some of the RPBs and bond providers also require that the insolvency practitioner have professional indemnity insurance.

An insolvency practitioner is required to comply with both an Ethical Code and Statements of Insolvency Practice (SIPs). These professional standards are agreed between all of the authorising bodies, and breaches of them may result in disciplinary action.

Appointment

Depending upon the nature of the insolvency, the appointment (and removal) as office holder may be by the creditors, the Court, the SoS or the members of the company (shareholders). In Scotland, a trustee in sequestration is either appointed by the Court or elected at a meeting of creditors. From 1 April 2008 the Accountant in Bankruptcy will award bankruptcy and appoint the trustee on debtors' applications.

The roles in which an insolvency practitioner may act are:

- provisional liquidator;
- interim liquidator and liquidator;
- administrator;
- administrative receiver;
- provisional trustee or trustee in bankruptcy (in Scotland the roles are interim or permanent trustee);
- nominee or supervisor of a voluntary arrangement (in Scotland, trustee of a protected trust deed).

The insolvency practitioner has to ensure that the appointment will not impair, or reasonably appear to impair, his objectivity. The Ethical Guide provides detailed information about conduct issues, which the insolvency practitioner is obliged to consider.

Release from obligations

The conclusion of the insolvency administration does not automatically release the insolvency practitioner from the duties and liabilities that relate to holding such office. As well as those responsible for the appointment, the Court and the SoS may also provide for the insolvency practitioner's release. In Scotland, trustees in sequestration apply to the Accountant in Bankruptcy for their release.

Control body

The body responsible for the authorisation of the insolvency practitioner is also responsible for monitoring the work of the insolvency practitioner to ensure that the practitioner remains a fit and proper person to be authorised, and this includes dealing with any complaints. It is also possible for the Court to review any actions or decisions of the insolvency practitioner.

Remuneration

Insolvency practitioners tend to only be appointed in cases where there are assets. In Scotland, all company insolvencies are administered by an insolvency practitioner, there being no Scottish equivalent of the Official Receiver. In England & Wales only, for bankruptcies and companies in compulsory liquidation (i.e. the court has made the bankruptcy or winding-up order), the official receiver, who is a government official, becomes trustee and liquidator in the majority of cases where there are few or no assets. In Scotland, the Accountant in Bankruptcy may become the interim or permanent trustee or an insolvency practitioner may be appointed to carry out that office.

In England & Wales, where an insolvency practitioner is appointed, in most cases the creditors' determine whether the remuneration should be fixed either as a percentage of the value of property with which he has had to deal, or by reference to the time properly given by the insolvency practitioner and his staff in dealing with the administration. If the remuneration has not been fixed by the creditors it may be fixed by the court. The court may also review the amount of remuneration charged by the insolvency practitioner.

In Scotland, the remuneration of a trustee in sequestration is determined by the commissioners or, if no commissioners were elected by the creditors, by the Accountant in Bankruptcy. The trustee, the debtor and the creditors each have the right to appeal to the Sheriff against the determination of the trustee's remuneration.

"the applicant must have completed at least 7000 hours of insolvency work"

Guidance on charging remuneration

Statements of Insolvency Practice (SIPs) provide regulatory guidance to insolvency practitioners and SIP9 specifically deals with remuneration. In October 2004 the court issued a Court Practice Statement which provides guidance on matters that the court will take into account when it is dealing with an application for approval or a review of remuneration. As the amount of remuneration is subject to review by the court neither the SoS, nor the RPBs are able to deal with complaints about the amount of remuneration charged by a practitioner, though they will consider complaints that remuneration drawn was not properly approved.

Best Practice and continuous Professional development

All of the authorising bodies are concerned to ensure that insolvency practitioners act in an appropriate professional manner and towards this end issue guidance on best practice to be followed by insolvency practitioners. Where the insolvency practitioner fails to follow such guidance he may be required to justify his actions to his authorising body. All insolvency practitioners are also expected to ensure that they undergo continuing professional development, which must be evidenced.

The Insolvency Service provides information to insolvency practitioners on all aspects of insolvency law and practice, including SIPs & the Ethical Code and this is available via its website http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/iparea/iparea.htm

DEVORAH BURNS works for The Insolvency Service, based in London