

**VIRGIN ISLANDS**  
**INSOLVENCY PRACTITIONERS REGULATIONS, 2004**  
**ARRANGEMENT OF REGULATIONS**

*Regulation*

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SCHEDULE

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2004 NO. 63**

**INSOLVENCY ACT, 2003  
(No. 5 of 2003)**

**Insolvency Practitioners Regulations, 2004**

[Gazetted 16<sup>th</sup> September, 2004]

The Executive Council, in exercise of the powers conferred by section 486 of the Insolvency Act, 2003 (No. 5 of 2003), makes the following Regulations:

Citation.

**1.** These Regulations may be cited as the Insolvency Practitioners Regulations, 2004.

Interpretation.

**2.** In these Regulations, “licence” means a licence to act as an insolvency practitioner issued under section 476 of the Act and “licensee” shall be construed accordingly.

Application for  
licence.  
Schedule

**3.** An application for a licence shall be made to the Commission in the form set out in the Schedule and shall be accompanied by

- (a) an non-refundable application fee of two hundred and fifty dollars;
- (b) evidence that the applicant is deemed to belong to, or otherwise entitled or permitted to work in, the Virgin Islands;
- (c) the applicant’s curriculum vitae providing details of his qualifications and career history;
- (d) written confirmation from the firm or employer of the applicant that the firm or employer complies with such minimum security requirements, including insurance cover, as may be specified in the Code of Practice.

4. (1) Where the Commission approves an application for a licence, it shall issue to the applicant a notice in writing to that effect and the applicant shall pay the fee specified in regulation 5(1) and collect the licence from the Commission within three months from the date on which the notice is issued.

Approval of application for licence.

(2) The approval of an application for a licence shall expire unless the applicant complies with subregulation (1) or demonstrates to the satisfaction of the Commission that his failure to comply was due to exceptional circumstances and not any fault of his own.

(3) Where the approval of an application for a licence expires, the Commission shall not issue the licence to the applicant unless the applicant submits a fresh application and pays all the relevant fees in accordance with these Regulations.

5. (1) There shall be payable for the year in which a licence is issued, a fee of

Licence fees.

- (a) two thousand, five hundred dollars, where the licence is issued on or before the 30<sup>th</sup> day of June in that year;
- (b) one thousand, two hundred and fifty dollars, where the licence is issued on or after the 1<sup>st</sup> day of July in that year; or
- (c) one thousand, two hundred and fifty dollars, where the licence is issued subject to a restriction that no new insolvency appointments are undertaken.

(2) On or before the 31<sup>st</sup> day of March every year following the year in which a licence is issued, there shall be payable in respect of the licence an annual fee of

- (a) two thousand, five hundred dollars, in the case of a licence referred to in subregulation (1)(a) or (b); or
- (b) one thousand, two hundred and fifty dollars, in the case of a licence referred to in subregulation (1)(c).

(3) Without prejudice to the power of the Commission to suspend or revoke a licence under section 479(2)(e) of the Act, an unpaid annual fee may be sued for by the Commission by action as a civil debt to be recoverable summarily, and the Commission may require, and the court may order, the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

Maintenance of records.

6. (1) A licensee shall maintain in respect of his practice as an insolvency practitioner

- (a) records and details of each appointment as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee;
- (b) case records, working papers and all proper documents relating to all insolvency work undertaken.

(2) A licensee shall, in writing, notify the Commission of the address in the Virgin Islands where any records or documents referred to subregulation (1) are kept.

(3) A licensee shall, in respect of each of his appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, keep the records and documents referred to in subregulation (1) for a period of at least six years after the appointment has ceased to have effect.

Inspection of records.

7. (1) The Commission may, after giving reasonable notice to a licensee of its intention to do so,

- (a) inspect such records and documents of the licensee as are referred to in regulation 6(1) for the purpose of ensuring compliance with the Act, Regulations made under the Act and the Code of Practice; and
- (b) make copies of any such records and documents.

(2) The Commission may appoint one or more competent persons to exercise its powers under subregulation (1) and where a person so appointed is not a member or officer of the Commission, he shall, unless otherwise agreed between him and the Commission, be remunerated on such terms and conditions as the Commission may determine.

**8.** (1) A licensee or an applicant for a licensee shall, in writing, notify the Commission of any matter which may affect his status as a fit and proper person to hold a licence, as soon as practicable and in any event within ten days of becoming aware of the matter.

Notification of changes.

(2) A licensee shall, in writing, notify the Commission of any change in circumstances which might affect his eligibility for a licence or his general ability to accept appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, as soon as practicable and in any event within ten days of becoming aware of the change.

(3) A licensee shall, in writing, notify the Commission of the following, as soon as practicable and in any event within ten days of becoming aware thereof:

- (a) any change to
  - (i) his name or address;
  - (ii) his business name or business address;
  - (iii) the name, principal business address or registered office address of his firm or employer;
  - (iv) the address where records and documents referred to in regulation 6(1) are kept;
- (b) any matter relating to his firm or employer or any of his firm's or employer's partners, directors or employees which could render the licensee no longer fit and proper to hold a licence.

**9.** The Commission may, having regard to the particular circumstances of an applicant for a licence, a licensee or any insolvency proceedings, impose a higher standard or greater level of security than that provided for in the Code of Practice.

Variation of minimum level of security.

**10.** (1) Where the Commission is satisfied that a licensee has contravened the Act, Regulations or Rules made under the Act or the Code of Practice, the Commission may cause to be delivered to the licensee a notice setting out the particulars of the contravention or contraventions, as the case may be, and requiring the licensee to pay to the Commission, before the expiration of one month from the date of delivery of the notice, an administrative penalty of five hundred dollars in respect of each contravention.

Administrative penalties.

(2) If the licensee fails to pay the amount specified in the notice within the time specified therein, the administrative penalty shall increase by ten per cent of that amount.

(3) If the licensee fails to pay the amount due as an increased administrative penalty under subregulation (2) before the expiration of two months from the date of the delivery of the notice, the administrative penalty increases by fifty per cent of that amount.

(4) The Commission may recover unpaid administrative penalties in civil proceedings in the Magistrate's court, provided that where the licensee appeals against the imposition of the administrative penalty in accordance with section 44 of the Financial Services Commission Act, 2001, no such proceedings shall be instituted by the Commission before the appeal has been determined.

No. 12 of 2001

Complaints  
against licensees.

**11.**(1) A person may file with the Commission a complaint against a licensee and shall set out in the complaint such facts or matters as may indicate that the licensee may have become liable to have his licence suspended or revoked under Part XX of the Act.

(2) The Commission shall not proceed to consider a complaint unless

- (a) firstly, the complainant demonstrates, to the satisfaction of the Commission, that the complainant has previously addressed the complaint to the licensee and to the firm or employer of the licensee and that the matter has not been resolved to the satisfaction of the complainant; and
- (b) the Commission determines, having regard to all the circumstances of the matter, that a prima facie case has been made that the licensee has become liable to have his licence suspended or revoked.

(3) In considering a complaint, the Commission may require the licensee or the complainant concerned to provide such information as the Commission thinks necessary for the purpose of evaluating the merits of the complaint.

(4) Where a complaint is upheld by the Commission, the Commission may

- (a) issue to the licensee such directives under the Act as it thinks fit;
- (b) suspend or revoke the licence of the licensee in accordance with the Act;
- (c) require the licensee to pay such administrative penalties under these Regulations as it thinks fit;
- (d) take such enforcement action under the Financial Services Commission Act, 2001 as it thinks fit; or No. 12 of 2001
- (e) publish the details and outcome of the complaint.

(5) Where a complaint is upheld by the Commission, the Commission may charge the licensee concerned for some or all of the costs it incurred in dealing with that complaint.

(6) A licensee who is aggrieved by a decision of the Commission under this regulation, may appeal to the Financial Services Commission Appeal Board in accordance with section 44 of the Financial Services Commission Act, 2001. No. 12 of 2001

**12.** Subject to section 487(2) of the Act, the Code of Practice may provide for any matter specified in section 486(1) of the Act. Code of Practice.

**APPLICATION FOR A LICENCE  
TO ACT AS AN INSOLVENCY PRACTITIONER**

Pursuant to The Insolvency Act, 2003, Section 475(1)

**This application form should be read in conjunction with:**

- **the Insolvency Act, 2003 (the “Act”)**
- **the Insolvency Rules, 2004 (the “Rules”)**
- **the Insolvency Practitioners Regulations, 2004 (the “Regulations”)**
- **the Insolvency Code of Practice (the “Code”)**
- **the explanatory notes**

**Words or terms used throughout the form have the meanings given to them in the Act, Rules, Regulations and Code.**

<p><b>This form and annexes thereto should be completed using INK and BLOCK CAPITALS or TYPESCRIPT for all answers</b></p>
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Applicants who are already approved or licensed by the Financial Services Commission (the “Commission”) pursuant to other financial services legislation are advised to contact the Commission prior to completing this form to discuss whether certain details may be dispensed with.

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Completed application forms should be submitted to:

Director, Insolvency Services  
Financial Services Commission  
P. O. Box 418  
Pasea Estate, Road Town  
Tortola  
British Virgin Islands

1. PERSONAL AND BUSINESS DETAIL		
TITLE	SURNAME	GIVEN NAME(S)
ANY PREVIOUS NAME/ALIAS	REASONS & DATE OF NAME CHANGE	
BIRTH DATE (Day/month/year)	PLACE OF BIRTH	
NATIONALITY	PASSPORT NUMBER	
Please attach certified copy of passport photo identification page		
SOCIAL SECURITY NUMBER	HOME ADDRESS	
HOME E-MAIL	HOME TELEPHONE NUMBER	
Please disclose your county (or countries) of residence over the last 10 years, if not the Virgin Islands		
MONTH/YEAR	COUNTRY OF RESIDENCE	
<p>A Police Clearance Certificate or similar document stating that you have no criminal record, prepared by the law enforcement agency of each of the countries in which you have resided during the past 10 years (including the Virgin Islands), should be attached to this application.</p> <p>If a law enforcement agency does not customarily provide such certificates, the Financial Services Commission will accept a sworn affidavit from the applicant in its place.</p>		
Please attach to this application a brief Curriculum Vitae, providing details of qualifications and career history.		
PRINCIPAL BUSINESS DETAILS		
FIRM NAME		
ADDRESS		
TELEPHONE NUMBER		
FAX NUMBER		
E-MAIL ADDRESS		
FIRM'S WEBSITE	www.	
NATURE OF BUSINESS (e.g. Accountants, lawyers, consultants)		
LEGAL STATUS OF FIRM (e.g. Limited company, partnership, limited liability partnership, sole proprietor )		
POSITION WITHIN THE FIRM		
ARE YOU, PERSONALLY, CURRENTLY APPROVED OR LICENSED BY THE COMMISSION PURSUANT TO OTHER FINANCIAL SERVICES LEGISLATION? IF SO PLEASE PROVIDE DETAILS		

2. MAILING INFORMATION

Which address do you wish to us to use for all communications regarding this application?

Principal business address                       Home address                       Other

If you answered “Other” please provide the address you wish us to use in the space below

3. RECORD KEEPING

Will your insolvency case records, working papers and all proper documents relating to all insolvency work undertaken be maintained at the business address referred to in question 1?                       YES                       NO

If you answered “No”, please provide the address in the Virgin Islands at which the records will be kept in the space below

4. RESIDENCY STATUS

Insolvency licence holders must be resident in the Virgin Islands. Please state the basis on which you claim to be a Virgin Islands resident in the box below

Please attach to this application documentary evidence in support of your statement (e.g. a certified copy of your passport photo identification page, belonger certificate, certificate of residence, trade licence, work permit etc. as applicable)

5. FURTHER EDUCATION			
COLLEGE, UNIVERSITY ETC. ATTENDED	FROM	TO	ACADEMIC QUALIFICATION ATTAINED (AND GRADE)

6. PROFESSIONAL QUALIFICATIONS			
<p>If you are currently a member of a professional body, please provide the address and copies of certificates, and also complete the boxes below</p>			
PROFESSIONAL BODY	QUALIFICATIONS	MEMBERSHIP NUMBER	DATE ADMITTED
<p>Applicants who are not professionally qualified and regulated by a professional body (or bodies) are required to attach two references. The referees should be persons who can speak of your conduct, character, experience and ability to act as an insolvency practitioner, having worked substantially with you during the past three years.</p>			

7. PREVIOUS INSOLVENCY LICENCE APPLICATIONS

Do you hold or have you previously held an insolvency licence or a near equivalent in the Virgin Islands or elsewhere?

YES

NO

If you answered "YES", please provide details in the box below (to include the identity of the licensing body, the licence number and the dates covered by the licence, together with any other relevant supporting information) and attach a copy of any current licence.

Have you ever been refused an insolvency licence or near equivalent, either in the Virgin Islands or elsewhere?

YES

NO

If you answered "YES", please provide details of the circumstances including the name of the licencing body/bodies and the dates of your application(s) in the box below.

## 8. INSOLVENCY EXPERIENCE

Please complete Appendix 1, setting out details of your practical insolvency experience over the past three years. The schedule may be copied as many times as is required for completion.

For the purposes of Appendix 1, the categories of insolvency experience are as follows:

- (a) carrying out work (or, in the case of legal professionals, providing legal advice to an insolvency practitioner in connection with work) of a type reserved to insolvency practitioners under the Act (that is to say, acting as administrator, administrative receiver, liquidator, provisional liquidator, interim supervisor, supervisor or trustee in bankruptcy).
- (b) carrying out:
  - (i) other insolvency related work (or, in the case of legal professionals, providing legal advice to an insolvency practitioner in connection with insolvency related work) not reserved to insolvency practitioners under the Act but which the Commission considers to be relevant experience (such as receivership and solvent winding-up);
  - (ii) other work done at the request of a potentially insolvent entity or of its creditors, which might lead to insolvency work or the avoidance of formal insolvency (for example, viability review work and reporting, advising directors or creditors, and formulating informal work-outs).

Cases may be referred to by means of a reference number if client confidentiality needs to be maintained (notably with regard to category (b)(ii) assignments).

If you wish to highlight any matters regarding your previous insolvency experience to the Commission in support of your application, you may include these in Appendix 2.

Please summarise your hours of insolvency experience over the past three years, as detailed in the completed Appendix 1, in the boxes provided below:

YEAR ENDED	TOTAL HOURS SPENT ON INSOLVENCY RELATED WORK IN CATEGORY		
	(a)	(b)(i)	(b)(ii)
TOTAL FOR 3 YEARS			
TOTAL OF ALL CATEGORIES			

9. FIT & PROPER – PERSONAL		
Please tick the relevant box in relation to each question. If the answer to any of the questions is “yes”, please provide details of the circumstances in Appendix 2.	YES	NO
1. Have you ever been bankrupt or the subject of an individual creditors’ arrangement, or a scheme or composition relating to your financial affairs?		
2. Have you ever been a principal shareholder, director, or officer of a business that has entered into an insolvency procedure, a scheme or a statutory based rehabilitation procedure?		
3. Are you or have you ever been subject to a disqualification order or a disqualification undertaking pursuant to a Part X of the Act, a bankruptcy restrictions order or a bankruptcy restrictions undertaking pursuant to Part XV of the Act, or similar restrictions in another jurisdiction?		
4. Have you ever been found guilty of, or pleaded guilty to, an indictable offence?		
5. Have you ever been the subject of a successful claim for negligence in the conduct of an insolvency matter?		
6. Have you ever been removed for misconduct from an insolvency appointment?		
7. Have you ever been dismissed, or asked to resign and resigned, from employment, a position of trust or similar role?		
8. Have you ever been censured, suspended, criticised or been the subject of other disciplinary action by a regulatory or professional body?		
9. Do you have any legal or disciplinary proceedings pending against you that, if upheld, would require disclosure under this section?		
10. To the best of your knowledge, would any directors, partners, employees or other persons who might be in a position to influence the conduct of your insolvency work be unable to answer “NO” to any of the questions in this section?		
11. Are there any other matters affecting your competency or fitness that the Commission ought to be aware of?		

10. FIT & PROPER - INFRASTRUCTURE AND RESOURCES

Please set out the number and experience level of staff available within your firm to perform insolvency work. Please also refer to any external resources, including major sub-contractors, that you intend to call upon.

Please describe the internal controls or other systems in place or (under development) to ensure that:

- Appropriate independence checks are made and other ethical implications are considered before insolvency work is accepted.
- The requirements of the Act are complied with.
- Staff are adequately supervised and insolvency work within the firm is performed to an appropriate high standard.
- The assets of insolvent estates (whether in cash held in estate bank accounts or otherwise) are secure.

Is the firm financially sound with adequate resources to withstand adverse economic cycles?

11. SECURITY	
I have in place the minimum security, including insurance cover, to be maintained by a licensee pursuant to the Act, the Regulations and/or the Insolvency Code of Practice.	<input type="checkbox"/> YES <input type="checkbox"/> NO
I attach, in support, either:  (a) A copy of the cover note  (b) Written confirmation from my firm or employer that my firm or employer has the minimum security cover in place.	<input type="checkbox"/>  <input type="checkbox"/>

12. DECLARATION
<p>I enclose the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Completed and signed application form.</li> <li><input type="checkbox"/> Certified copy of identification document. (Question 1)</li> <li><input type="checkbox"/> Police Clearance Certificate(s) or sworn affidavit. (Question 1)</li> <li><input type="checkbox"/> Curriculum vitae. (Question 1)</li> <li><input type="checkbox"/> Certified copy of evidence of Virgin Islands residency. (Question 4)</li> <li><input type="checkbox"/> Copies of certificates of professional qualifications. (Question 6)</li> <li><input type="checkbox"/> Two references, if applicable. (Question 6)</li> <li><input type="checkbox"/> Evidence of minimum security. (Question 11)</li> <li><input type="checkbox"/> Copy of previous or existing insolvency licence (if any). (Question 7)</li> <li><input type="checkbox"/> Appendix 1 and Appendix 2. (All questions)</li> <li><input type="checkbox"/> Cheque made payable to the Financial Services Commission for the non-refundable application fee of US\$250.</li> </ul>

12. DECLARATION (CONT'D)

I, the undersigned, declare that I am the applicant named in this application and that the information set out in this application and in the attached documents is to the best of my knowledge true, correct and complete.

I agree to comply with the Act, the Rules, the Regulations and the Code should the Financial Services Commission grant me a licence.

I undertake to notify the Financial Services Commission in writing, without delay, of any changes to the information supplied in this application, or change in circumstances which might affect my eligibility for a licence or my general ability to accept appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator or bankruptcy trustee.

I acknowledge that a false declaration on any part of this form may lead to disciplinary action being taken against me by the Financial Services Commission.

I hereby apply for a licence to act as an Insolvency Practitioner in the Virgin Islands commencing:

Month: \_\_\_\_\_ Year: \_\_\_\_\_   
(being not more than six months from the date of  
this application)

As soon as possible

Signed: \_\_\_\_\_

Date: \_\_\_\_\_





APPENDIX 2 – ADDITIONAL INFORMATION

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Made by the Executive Council this 25<sup>th</sup> day of August, 2004.

H. M. PERCIVAL,  
Clerk of the Executive Council.