



INSOL International

Collection of Practical Issues Important to Small Practitioners – British Virgin Islands

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Small Practice Issues Technical Series

Collection of Practical Issues Important to Small Practitioners - British Virgin Islands

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Acknowledgement

INSOL International is pleased to present a country study on the British Virgin Islands under its Small Practice Technical Papers Series focusing on “A Collection of Practical Issues Important to Small Practitioners”. The paper was written by Martin Trott, RHSW Caribbean, British Virgin Islands and Mungo Lowe, Fellow INSOL International, Maples and Calder, London.

INSOL International sincerely thanks Martin Trott and Mungo Lowe for providing INSOL members with this very informative paper on the British Virgin Islands.

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Collection of Practical Issues Important to Small Practitioners

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1 How to find information about IPs in your country

1.1 How are insolvency practitioners organised?

The Financial Services Commission (the "Commission") is responsible for the licensing and supervision of insolvency practitioners ("IPs") which it does through its Insolvency Services Division. Under the Insolvency Act, 2003 (as amended) (the "Insolvency Act") only licensed IPs are eligible to accept appointments as administrative receiver, interim supervisor, supervisor, provisional liquidator, liquidator (other than in the solvent liquidation procedure) or bankruptcy trustee. However, there are provisions to enable an overseas IP to be appointed jointly with a BVI licensed IP in appropriate circumstances, for example where the insolvent business or assets are located overseas (see section 2.4 below).

IPs operate in private practice either as individuals, in a boutique firm that practices exclusively in the area of insolvency and restructuring, or as part of a larger accountancy firm. Many IPs work as part of firms providing a wide range of professional services. At the time of writing there are 25 licensed IPs from 16 firms. A list of IPs is published on the Commission's, Insolvency Division webpage at <http://www.bvifsc.vg/en-gb/regulatedentities/insolvencypractitioners.aspx>, although this list is updated infrequently so may not reflect all current license holders. The key point of contact at the Insolvency Services Division of the Commission is Mr. Kenneth Baker who can be contacted at bakerk@bvifsc.vg.

1.2 What are the associations to contact & what do these associations do?

All IPs are members of the Recovery and Insolvency Specialists Association ("RISA"). While nearly all licensed IPs are accountants by background, a significant amount of insolvency work is done in conjunction with the legal practitioners working at law firms in the BVI and their respective overseas offices. The legal profession in the BVI is a fused profession consisting of barristers and solicitors, all of whom are regulated under the Legal Practitioners Act, 2015. All BVI legal practitioners are members of the BVI Bar Association and those who conduct insolvency and restructuring work are also members of RISA. RISA is a not-for-profit organisation and is a member association of INSOL International ("INSOL"). All members of RISA are members of INSOL.

1.3 Where do you go to get the information either when you are looking for someone, or looking for a solution?

INSOL members can be found through channels such as the INSOL Directory. Most contacts, however, are made to professionals with known expertise, based on someone knowing who to call. Referrals in this manner are still the predominant source of leads for BVI files ranging from the smallest matters to the largest international restructurings.

2 Cross-border issues important to small practitioners

2.1 Information about available insolvency laws that apply to cross-border cases

Owing to the BVI's position as a pre-eminent offshore financial centre, almost all BVI insolvencies are likely to involve a cross-border element. The principle statute governing insolvency proceedings is the Insolvency Act which is supplemented by the Insolvency Rules, 2005 (as amended) (the "Insolvency Rules"). The Insolvency Act and Insolvency Rules deal with creditors' arrangements, receivership, insolvent liquidation and the bankruptcy of individuals. Two material parts of the Insolvency Act are, however, not currently in force: (i) the administration regime set out at Part III, and (ii) the regime for giving and seeking assistance in cross-border insolvency proceedings set out at Part XVIII (which is based on the UNCITRAL

* The views expressed in this paper are the views of the authors and not of INSOL International, London.

Model Law on Cross-Border Insolvency). At the time of writing there are no plans to bring either of these Parts into force in the foreseeable future.

Since Part XVIII of the Insolvency Act is not in force, there is limited legislation which directly addresses cross-border cases. In certain cases, Part XIX of the Insolvency Act (Orders in Aid of Foreign Proceedings) may apply. This provides a regime for foreign representatives in certain types of foreign proceedings in relevant foreign countries to apply to the BVI Court for relief in aid of those foreign proceedings. This part is discussed in more detail at section 2.4 below.

Owing to the aforementioned matters, it may be necessary to rely on common law powers of the courts to recognise and provide assistance to foreign office-holders. The common law was introduced by the Common Law (Declaration of Application) Act 1705. The rules of equity were formally extended to the BVI by the Eastern Caribbean States Supreme Court (Virgin Islands) Act 1969 but the terms of that statute make it clear that the rules of equity were applied in the jurisdiction before that date.

On 15 May 2017, the BVI adopted the Judicial Insolvency Network ("JIN") Guidelines for Communication and Cooperation between courts in Cross-Border Insolvency Matters (the "Guidelines"). The Guidelines, which are a product of a joint initiative by judges from Australia, the BVI, Canada, the Cayman Islands, the UK, Hong Kong SAR, Singapore, and the US, are intended to provide a framework of best practice to enhance key aspects of communication and cooperation among courts, insolvency representatives and insolvency / restructuring stakeholders.

2.2 How to enforce claims in the BVI

Outside of an insolvency proceeding, foreign judgments can be enforced in the BVI in one of two limited instances provided by statute: (i) under the Foreign Judgments (Reciprocal Enforcement) Act (Cap 27) 1964, and (ii) under the Reciprocal Enforcement of Judgments Act (Cap 65) 1922. Given the limited applicability of these statutes it is more common for foreign judgments to be enforced in the BVI at common law.

Alternatively, a judgment creditor can apply to appoint a liquidator over a company. Once a liquidator has been appointed, an unsecured creditor may submit a written claim to the liquidator. This must be done by completing a Form R184 and annexing material documents to substantiate the claim. Upon receipt of the claim form a liquidator may require the unsecured creditor to verify his claim by affidavit, provide further particulars or provide further documentary evidence. Thereafter the liquidator will either admit or reject the claim in full or in part. Any person aggrieved with an act, omission or decision of the liquidator has a right to apply to court under section 273 of the Insolvency Act.

2.3 What are the key criteria to consider when tracing and recovering assets in a foreign jurisdiction?

A key step in tracing and recovering assets in a foreign jurisdiction is the gathering of information. Only after sufficient information has been gathered and analysed can steps be commenced to recover assets. At first instance this involves taking control of company books and records located in the BVI and the asking of questions of key stakeholders. If voluntary disclosure proves to be unsuccessful, action may be required in the BVI to compel disclosure, for example through Norwich Pharmacal applications against third parties or examination orders.

Given the BVI's position as a centre for company incorporation, the type of assets located in the BVI tends to be shares in holding companies of group structures. Liquidators will invariably have to consider whether to vote the shares in subsidiaries located in foreign jurisdictions in such a way as to protect underlying assets and have access to information located abroad, for example by effecting changes at board level of the subsidiaries. In this regard, a practical consideration is whether to appoint a joint liquidator located in or proximate to the foreign jurisdiction where the business of the company is carried out or its assets are located. Another key method of procuring information is for the IP to seek recognition of their appointment outside of the BVI. This can enable the IP to trace assets through such methods as the public examination of directors in their jurisdictions of residence and the bringing of

discovery applications against financial institutions. For example, there are numerous reasons why Chapter 15 recognition in the United States might be of assistance to a BVI liquidator. This can enable the liquidator to obtain a stay of litigation against the debtor company or its assets; gain control over underlying assets located in the US; obtain discovery from related US entities; pursue claims in the US and / or to facilitate a global restructuring. In this regard, before filing in the US, it may be necessary for a liquidator to undertake key activities from within the BVI to ensure it can be demonstrated that the company's COMI is in the BVI. Such steps might include the holding of meetings in the BVI, notification of creditors that the company is being administered in the BVI, the opening of bank accounts, the moving of books and records to the BVI (if located elsewhere), the creation of a website and the funding of payments from bank accounts in the BVI.

The tracing of assets will invariably require access to IT specialists capable of securing, searching and cataloguing digital information so as to enable the IP to conduct the relevant forensic analysis.

2.4 What rights and / or powers does a foreign insolvency officer have to act directly in the BVI?

In certain circumstances, for example where under the domestic law of his / her country certain rights or assets have vested in a foreign insolvency officer, a foreign insolvency officer may have direct standing to bring proceedings in the BVI. Unless this is the case, a foreign insolvency officer does not have rights to act directly in the BVI. As mentioned above, Part XVIII of the Insolvency Act (Cross-Border Insolvency) is not currently in force with the effect that there is no blanket statutory framework for a foreign insolvency officer to obtain recognition and assistance in the BVI courts.

Under Part XIX of the Insolvency Act (Orders in Aid of Foreign Proceedings) a "foreign representative" in a "foreign proceeding" pending in a designated country may apply on a case-by-case basis to receive specific assistance from the BVI court. This does not invest the foreign office-holder with powers of his / her own but provides a mechanism for the BVI court to deploy its own powers in aid of the foreign proceedings. Examples of the type of assistance the BVI court can provide include:

- an order restraining the commencement or continuation of any proceedings, execution or other legal process or the levying of distress against a debtor or in relation to the debtor's property;
- an order restraining the creation, exercise or enforcement of any right or remedy over or against any of the debtor's property;
- an order requiring any person to deliver up to the foreign representative any property of the debtor or the proceeds of such property;
- any orders appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of a BVI insolvency proceeding with a foreign proceeding;
- an order requiring a person to deliver up to the foreign representative any property of the debtor.

In practice Part XIX of the Act is rarely used. First, a qualifying foreign proceeding is narrowly defined as meaning a collective judicial or administrative proceeding in a relevant foreign country, including an interim proceeding, *pursuant to a law relating to insolvency* in which proceeding the property and affairs of the debtor are subject to the control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy. Crucially, this excludes certain types of restructuring proceedings, for example an English scheme of arrangement. Secondly, only 9 countries, territories or jurisdictions are currently designated as relevant foreign countries. These are Australia, Canada, Finland, Hong Kong, Japan, Jersey, New Zealand, the United Kingdom and the United States.

Where Part XIX is not available, foreign insolvency officers can be recognised and assistance given to the extent that the common law permits.

Moreover, under the Evidence (Proceedings in Foreign Jurisdictions) Ordinance (Cap 24) the court has power to grant relief pursuant to a letter of request issued from a foreign court in furtherance of civil proceedings which have been instituted before the requesting court. The court has power to make an order for the obtaining of evidence in the BVI in aid of the foreign proceedings, for example by making provision for the examination of witnesses (either orally or in writing), the production of documents, the inspection, photographing, preservation, custody or detention of any property; or the medical examination of any person.

As an alternative, foreign insolvency officers should consider whether there is standing and grounds to bring a liquidation application against a relevant BVI company and, if so, nominate themselves as liquidator jointly with a BVI-based IP. The Insolvency Act expressly permits an individual resident outside the BVI to be appointed to act as an IP jointly with a licensee provided he / she has sufficient qualifications and experience, has given written consent, is not disqualified from so acting, complies with the minimum security requirements and insurance cover required, and prior written notice has been given to the Commission.

2.5 Are there State aid supported proceedings available in the BVI that that foreign IPs can use?

There are no such State aid supported proceedings.

3 Marketing of small practices

3.1 What are the marketing strategies that are used by practitioners?

For almost all commercial appointments IPs and their legal counsel use personal referral networks to generate work. For debtor initiated restructurings, other lawyers and accountants are the principle referral sources, although again principally based on personal referrals. For creditor initiated work, banks and lenders are the traditional source.

The expansion of a practitioner's referral network comes from a variety of activities. Developing name recognition is generally done by becoming involved in trade organisations, writing papers or presenting at conferences, professional development and educational events. Personal contacts are made through ongoing assignments, involvement in business organisations, social engagement and receptions and generally staying in touch with referral sources.

Given that the operating assets of BVI companies or groups tend to be located in 'onshore' jurisdictions, the use of affiliated networks in such jurisdictions is an important route to market for many practitioners. It is common to see practitioners either from the same global brand or from mutual affiliations appointed as joint liquidators, for example (and quite commonly) a Hong Kong practitioner appointed jointly with an affiliate based in the BVI.

Despite the challenges of international travel to and from the BVI, practitioners tend to spend significant time travelling in order to market their services and the jurisdiction. This includes attendance at client meetings or in foreign courts, seminar or conference attendance and / or other speaking engagements. Corporate social responsibility is high on BVI firms' agendas (both IPs and legal practitioners) and therefore practitioners often sponsor charitable events (be they academic, cultural or sporting) as a way of supporting the wider community and raising their profile.

3.2 How do IPs raise and manage the cost of marketing?

IPs treat marketing expenses as a cost of doing business. Generally marketing plans are generated for the forthcoming financial year, budgets allocated and plans executed. Travelling costs and conference attendance can form a significant proportion of marketing expenses and, as a result, airline and hotel memberships are often used by IPs to manage these costs. Where feasible, conference call and videoconference (or webinars) facilities are utilised to avoid unnecessary travel. IPs will also use their global brand members or affiliates to help market their services, helping those firms to demonstrate their breadth of capabilities in the process.

For marketing within the BVI, industry events such as those organised by RISA will tend to be held on a co-sponsorship basis thereby allowing IPs to share the marketing costs, typically alongside a local law firm.

3.3 What are the effective marketing tools?

A strong referral base is key. Generally, this results from working with other professionals collaboratively, performing quality work at competitive rates and obtaining good results. Using the networks practitioners have or are able to develop results in reciprocity and a strong track record. The internet is a key source of information and it is very important for IPs and lawyers to have a presence on the internet so that their credentials can be accessed and evaluated. Travel is an occupational necessity for BVI-based practitioners as there is often no substitute for a face-to-face meeting to effectively market the firm's services and develop work generating leads.

4 Financing options for small businesses

4.1 Are there viable financial options for smaller businesses from conventional financial sources?

The financial options for businesses in the BVI tend to be the same as those in most other jurisdictions. These include international and local lenders, equity sources and alternative lenders such as funds.

IPs can also access the market for financing of specific cases or groups of cases via liquidation funding. In these cases, the potential for future realisations in the estate needs to be high (more than just a reasonable prospect of success from, say, a litigation claim) for a funder to agree to provide such financing in the early stages of an insolvency.

5 How do practitioners get remunerated?

5.1 What are the available models to determine fees – percentage based or time based?

The Insolvency Act makes provision for percentage based remuneration where the IP so requests and the creditors' committee or the court considers that the circumstances justify it. This may relate to a percentage of the assets realised and / or a percentage of the assets distributed. In practice, it is far more common for all professional's fees to be calculated on a "time spent at applicable hourly rates" basis.

The remuneration of a liquidator or bankruptcy trustee is fixed either by the creditors' committee or by the court on an application made under section 430 of the Insolvency Act. An application will be made to court where (a) no creditors' committee has been formed, (b) the creditors' committee fails, for whatever reason, to fix the office-holder's remuneration, (c) the creditors' committee has fixed the remuneration but the office-holder considers this to be either insufficient, or not in the appropriate currency or on unacceptable terms.

The general principles to be applied when fixing remuneration are set out in section 432 of the Insolvency Act. These allow for the remuneration to be fixed by reference to the time properly given by the IP and his staff in carrying out his duties in the insolvency proceeding. However, when approving remuneration, the court is obliged to take into account specific criteria including:

- the need for the remuneration to be fair and reasonable;
- the time properly spent by the IP and his staff in carrying out his duties;
- the complexity of the insolvency proceeding and whether the IP is required to take any responsibility of an exceptional kind or degree;
- the effectiveness with which the IP is carrying out, or has carried out, his duties;
- the value and nature of the assets with which the IP has had to deal;

- the hourly rates charged by other IPs (both within and outside the BVI) in undertaking similar work; and
- whether any expenses which were incurred were properly incurred.

Additionally, the court is permitted to take into account a number of discretionary factors including:

- the commercial and personal risks accepted by the IP;
- the time spent by the IP and his staff outside the BVI and the amount of travelling required; and
- the standards and practice used for assessing remuneration in jurisdictions other than the BVI.

Given that the BVI tends to be the *situs* of holding companies, it is common for most insolvencies to involve asset tracing exercises, cross-border recovery and litigation claims. As a result, recovery of fees and disbursements and settlement of liquidation expenses can take longer than in other jurisdictions where insolvencies contain tangible assets that are more readily realisable. This can result in cash-flow difficulties for smaller IPs however the BVI Commercial Court has recently confirmed that in appropriate circumstances court appointed liquidators can draw interim payment on account in respect of fees and disbursements yet to be incurred.

6 Litigation & funding litigation

6.1 Funding causes of actions - Who are the best funders?

Litigation in the BVI is generally funded by the litigants with costs consequences where a litigant is unsuccessful. In the absence of any specific legislation, the BVI applies the English common law position in relation to champerty and maintenance of litigation and, under the indemnity principle, a litigant will be able to recover from his / her opponent only to the extent that he / she was contractually liable to his / her lawyers. This rule prevents parties from entering into conditional fee agreements or contingency arrangements.

The rules relating to third party funding are more uncertain and it remains an open question whether it is lawful for non-lawyer third parties to fund litigation.

6.2 Are there alternatives to litigation, for example arbitration or mediation?

The existence of arbitration clauses contained in underlying commercial documents may not be rendered inoperative following liquidation and consequently a liquidator may be required to arbitrate a dispute rather than resolve it under the statutory adjudication process or in court. There is no obligation for disputes to be mediated.

6.3 Enforcing judgments – local and foreign

This is discussed at section 2.2 above.

7 Licensing and regulation of IPs

7.1 How are IPs regulated?

In addition to issuing licenses to act as BVI IPs, the Commission also regulates IPs. The Insolvency Act gives the Commission wide powers, including the power to issue the Code of Practice dealing with eligibility criteria, the procedures to be followed by an IP and the conduct to be expected of IPs. In addition, the Commission can impose terms and conditions on the license and it can revoke or suspend a license. The Commission can also require an IP to produce for inspection any records, accounts or reports prepared for the insolvency proceedings in respect of which the IP was appointed.

Part XX of the Insolvency Act provides that no person shall act as an IP without a license issued by the Commission. The application process is governed by the Insolvency Practitioners Regulations 2004 which requires an application to be made in the prescribed form, payment of an application fee of US\$300, evidence that the applicant is deemed to belong or alternatively permitted to work in the BVI, a copy of the applicant's *curriculum vitae* and written confirmation from the applicant's employer that it complies with the minimum security requirements and insurance cover required (currently US\$500,000 per the Insolvency Code of Practice (the "Code")).

IPs are required to complete an Annual Return issued by the Commission which confirms the IP's continued eligibility, that they maintain appropriate resources, have adequate insurance in place and sets out quantitative details of the types of engagements completed or ongoing. This is in addition to paying an annual license fee of US\$3,000.

7.2 Who can become an IP or which professionals regularly work as IPs?

Either lawyers or accountants with the relevant qualifications and experience are able to become IPs. In practice, almost all IPs are qualified accountants with many years' insolvency experience by background.

7.3 What kind of work is carried out by IPs in the BVI?

IPs carry out a variety of work in the BVI. The Insolvency Act provides that only licensed IPs may act as:

- administrative receiver of a company;
- the liquidator or provisional liquidator of a company;
- as a portfolio liquidator of a portfolio of a segregated portfolio company;
- as the interim supervisor under a proposal for a creditors' arrangement;
- as the supervisor of an arrangement; or
- as the bankruptcy trustee of an individual.

In addition, many IPs act as liquidators of BVI companies in voluntary solvent liquidation. In this regard, the statutory voluntary solvent liquidation regime set out in the BVI Business Companies Act 2004 (as amended) (the "Business Companies Act") does not require the liquidator be a licensed IP unless the company concerned is a regulated entity.¹ IPs also are commonly instructed to act as receivers.

7.4 Who appoints an IP?

Generally speaking this will be by the party which initiates the relevant process. In the case of a court-appointed liquidator, an office-holder is appointed by the court having been nominated by the party initiating the proceedings (usually a creditor). The liquidation regime allows for the creditors to resolve to replace the liquidator with an alternative IP at the first creditors' meeting. In the case of a voluntary solvent liquidation, the liquidator is appointed by the directors of the relevant company. In creditors' arrangements, the company typically nominates an IP to act as the interim supervisor who then, if the proposal is agreed at a creditors' meeting, usually becomes the supervisor of the arrangement.

¹ A company will be a regulated entity if it holds or has at any time held (a) a banking licence issued under the Banks and Trust Companies Act; (b) a Class 1, Class II or Class III trust licence (not being a restricted trust licence), issued under the Banks and Trust Companies Act; (c) a company management licence issued under the Company Management Act; (d) a category A or a category C insurer's licence issued under the Insurance Act; an insurers intermediary's licence issued under the Insurance Act; an insurance manager's licence issued under the Insurance Act; or (g) a money services licence issued under the Financing and Money Services Act, 2009.

7.5 Is an IP who gets court appointments allowed to do advisory work as well?

The Insolvency Act sets out the situations where an IP may not act in relation to a company or foreign company. These include where he / she is acting or has within the previous three years acted as the auditor of the company or an employee of such auditor or as a director of the company. Additionally, an IP may be disqualified from acting as an IP in respect of entities to which he / she is connected. Subject to these qualifications and any conflict of interest that may arise from any prior material professional relationship, an IP is permitted to do advisory work.

8 Compliance issues

Please provide available information on the following:

8.1 Tax requirements relevant to smaller practices

In practice the only tax in the BVI is on payroll – there are no corporate taxes or other personal taxes.² There is duty on imported goods and on certain money transactions (such as the issuing of cheques).

8.2 Money laundering and financial crimes

The BVI has a host of legislation aimed at detecting, preventing and prosecuting money laundering and other serious financial crimes. Amongst other statutes this includes the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (as amended) and the Proceeds of Criminal Conduct Act, 1997 (as amended).

8.3 The right to access information

As set out in section 2.3 above, the governing documents of a BVI business company, such as the M&A, registers of directors, members and charges and a register of beneficial owners, are held by the relevant BVI registered agent for the company. Under the Business Companies Act companies are required to maintain records and underlying documentation that are sufficient to show and explain the company's transactions and will, at any time, enable the financial position of the company to be determined with reasonable accuracy. This obligation extends to BVI business companies but not companies that have been incorporated outside the BVI which have an establishment in the BVI and are registered as foreign companies under the Business Companies Act.

The financial records of a company are required to be kept at the office of its registered agent or, if kept elsewhere, a record of the relevant location must be provided to the registered agent. Upon appointment by the court as liquidator, the office-holder has power to take delivery of the company's books and records.

Certain information is held at the BVI Registry of Companies and is publicly available via a search portal at the Commission. However, this is only basic information on a company and would not include details of directors or shareholders.

8.4 Corporate governance

The Business Companies Act serves as the main statute setting out corporate governance for BVI business companies and each company's M&A sets out the specific governance for each entity (such as number and class of share, number of directors, company meetings etc.).

On insolvency engagements, qualified insolvency practitioners licensed by the Commission must be the named appointees and they are responsible for the administration of each case in accordance with the Act, the Rules, the Insolvency Practitioners Regulations 2004 and the Code. Overseas licensed IPs can be appointed alongside a BVI licensed IP at the discretion of the court.

² The Income Tax Act, 1946 remains in force but all of the tax rates have been set at zero

8.5 Regulatory authorities

The Commission acts as the regulatory authority for IPs in the BVI. In addition, most practitioners will hold professional qualifications such as ACCA, CPA and ICAEW and therefore maintain their membership of the relevant recognised professional body.

8.6 Disciplinary matters and the complaints systems in operation

The Commission operates a complaints procedure against IPs by parties affected by any proceeding. In general terms, there is an assessment of the complaint and the IP is given an opportunity to respond. Where a complaint is found to have merit the Commission can impose sanction pursuant to its disciplinary powers.

As mentioned at section 2.2 above, there is also provision in the Insolvency Act for stakeholders in the process who are aggrieved by any decision of an office-holder to apply to the court for an order reversing or modifying that decision.

The court has power to remove a liquidator if satisfied that his conduct of the liquidation is below the standard to be expected of a reasonably competent liquidator or if the liquidator has an interest which conflicts with his role as liquidator or for some other reason.

In the event of a complaint regarding a member of the legal profession, these are directed to the Disciplinary Tribunal established under the Legal Profession Act, 2015.

9 Best practices

9.1 Client money rules

Upon each insolvency engagement, the IP will open a bank account (or accounts) specifically for that case and keep accounting records. Funds in an insolvency estate are treated as client money and kept segregated from an IP's own funds and those on other insolvencies. Mismanagement of insolvency estate funds by an IP will result in disciplinary action being taken by the Commission.

9.2 IT security

Amongst other requirements an IP must ensure that there are adequate systems in place for the conduct of insolvency work – this includes IT systems that have a sufficiently robust security environment around them (user authentication, firewalls, backups, anti-virus software, password protections, disaster recovery etc.)

9.3 Licensing requirements

As noted in section 7.1 above, the Commission will issue a license to act as an IP upon successful completion of the application process. The application form can be downloaded from the Commission's webpage: <http://www.bvifsc.vg/en-us/divisions/insolvencyservices.aspx>.

The required qualifications are that an applicant is either (a) admitted to practice as a legal practitioner in the BVI or a jurisdiction recognised by the Commission, or (b) qualified as an accountant by an examination conducted by a professional accountancy body in a jurisdiction recognised by the Commission, and in both cases has completed at least 200 hours of insolvency experience in the 3 years preceding the date of his or her application.

When assessing whether an applicant is fit and proper to act as an IP, the Commission is required to take into account whether the applicant is solvent and in good financial standing; whether the applicant is in good standing with his professional bodies; whether the applicant has adequate office facilities, staff and systems in place to enable insolvency work to be delivered to a high standard; any previous disciplinary failings or pending investigations by a professional body, regulator or similar body; any conviction, decision, sentence or judgment involving an applicant.

9.4 Insider dealing

The BVI does not have a stock exchange or other monetary / commodity exchange. Any insider dealing matters encountered in BVI insolvencies relate to the breach of trading rules of overseas exchanges.

9.5 Local employment law requirements

In order to work in the BVI it is necessary to either belong in the territory, hold BVI citizenship, hold permanent residency or have a valid work permit. Work permits are valid for one year and applications must pass stringent local labour and immigration requirements. Generally, work permits will only be granted if the position, once advertised, is unable to be filled by a BVI Belonger or a BVIlander. Temporary work permits can also be applied for in the case of short term employment. IPs as employers are subject to the Labour Code, 2010.

9.6 Codes of ethics

The Commission has published a code of ethics which all licensed IPs are required to comply with. Failure to comply with specific requirements of the Code may give rise to a penalty and may call into question the "fit and proper" status of the IP thereby providing grounds to revoke an IP's license.

9.7 Time management for IPs

As common to a number of other jurisdictions, timesheets are used to record time on cases in six minute increments across a number of industry best practice categories (e.g. administration, debtors, creditors, legal, reporting). As referred in paragraph 5 above, IPs time and expenses are taxed by the court and, as a result, fee applications will include a detailed breakdown of time costs by grade of staff and category of activity in order that the court can determine whether the costs have been properly incurred.

Smaller practitioners face the challenge of managing time on cases whilst handling all other aspects of running a business (such as marketing, financial planning, employee matters and regulatory needs).



AlixPartners LLP
Allen & Overy LLP
Alvarez & Marsal
Baker McKenzie
BDO
Brown Rudnick LLP
BTG Global Advisory
Clayton Utz
Cleary Gottlieb Steen & Hamilton LLP
Clifford Chance LLP
Conyers Dill & Pearman
Davis Polk & Wardwell LLP
De Brauw Blackstone Westbroek
Deloitte LLP
Dentons
DLA Piper
EY
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Freshfields Bruckhaus Deringer LLP
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Huron Consulting Group
Jones Day
King & Wood Mallesons
Kirkland & Ellis LLP
KPMG LLP
Linklaters LLP
Morgan, Lewis & Bockius LLP
Norton Rose Fulbright
Pepper Hamilton LLP
Pinheiro Neto Advogados
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RSM
Shearman & Sterling LLP
Skadden, Arps, Slate, Meagher & Flom LLP
South Square
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White & Case LLP