

REPRESENTATION 04/2017

INSOLVENCY CODE OF ETHICS CONSULTATION QUESTIONNAIRE

[Please use the TAB key to move from one answer to the next, and the drop down menu to select responses where appropriate.]

Name of individual making the response: Paul Cahill on behalf of the Insolvency
Technical Committee (Northern Ireland) and the
CCAB-I Insolvency Committee (Republic of
Ireland)

Firm name : N/A

RPB:

- 1 Do you believe that the revised version of the Code provides a clear structure and uses clear language under which to operate?** Yes

Comments

The Committees agreed that the revised version of the Code generally provides a clear structure and clear language with some minor exceptions. The Committees believe that the Code is very prescriptive providing more of a rules based standard than a code for IPs to comply with. The Committees noted that the revised version of the Code refers only to the United Kingdom, for example, the definition of an Insolvency Practitioner, and the examples provided in Section I relate only to UK and Scotland.

- 2 If “no”, please explain why.**

- 3 Do you believe that the Code would be supported by issuing guidance and will be an effective way of assisting stakeholders to understand the application of the framework to specific situations?** No

Comments

- 4 If “no”, please explain why.**

With the exception of the comments made under question 1 in relation to the Code referring to certain jurisdictions, the Committees agreed that having a Code that is too prescriptive or providing too much guidance may result in the Code being interpreted as being 'exhaustive', which may undermine the spirit of the Code.

The Committees noted that in the whole IPs are of good standing. However, issues surrounding the lack of documentation of the IP's consideration of ethical issues may lead a third party to conclude that the IP had not considered the ethical issues of the insolvency

assignment. It is paramount that the IP fully document their consideration of ethical issues on all insolvency assignments as evidence on the IP case file.

Further, the issue was raised of what happens to an IP's insolvency case(s), where the IP was an employee or a subcontractor of the firm and had to resign from an assignment due to ethical issues, for example, PII cover.

5 Please provide information on areas where you consider guidance would be particularly helpful.

As raised under question 1, the definitions included in the Code relate to the UK and examples included under Section I relate to the UK and Scotland only. The Code has not referred to the other jurisdictions.

6 Do you believe that the revised version of the Code identifies in Part 2 Section H the key matters of specific application where an IP is an employee? No

Comments

7 If "no", what additions do you believe should be made to the matters contained in the Code?

The Committees believe that any referral fees and/or commission relating to insolvency appointments should be strictly prohibited. Insolvency Practitioners who are employees in the firm are required to comply with the Code of Ethics as well as legislative requirements.

In the Republic of Ireland, section 642, Companies Act 2014 states that it is an offence for any person to make a payment to secure his own or another person's appointment as a liquidator. Consequently, paragraph 79 should be amended to state "Where an engagement may lead to an insolvency appointment, insolvency practitioners shall not make or accept referral fees or commissions".

8 Do you believe that the provisions in the Code relating to an IP obtaining specialist advice or services (Part 2 Section C) remain appropriate? Yes

Comments

The Committees determined that the provisions of Part 2 Section C are adequate. However, the Committees noted that where an IP obtains external specialist advice, it is the responsibility of the IP to ensure that they are satisfied with the specialist advice obtained and to be able to rely on that advice. The wording of the Code is unclear and may indicate that the IP is required to obtain tenders. In addition, the Code has not addressed the issue of materiality.

9 If "no", please explain why and what amendments you believe should be made.

10 Do you consider the provisions in Part 2 Section C are adequate where the specialist advice or services provider is an entity or person where there is a personal or business relationship Yes

Comments

The Committees believe that consideration of the personal and/or business

relationship is addressed through the fundamental principles included under Part 1.

11 If “no”, please explain why and what amendments you believe should be made.

12 Do you believe that the provisions in the Code relating to referral fees or commission in respect of an engagement which may lead to an *insolvency appointment* or during an *insolvency appointment* (Part 2 Section D) remain appropriate? No

Comments

13 If “no”, please explain why and what amendments you believe should be made.

The Committee believe that any referral fees relating to insolvency assignments impact an IP's objectivity under the fundamental principles in Part 1 of the Code and therefore should be strictly prohibited. Refer also to comments under Question 7.

14 The Code sets out in Part 2 Section E that due to the ‘special nature’ of insolvency appointments, the payment or offer of any commission for or the furnishing of any valuable consideration towards the introduction of insolvency appointments is inappropriate.

Please explain why you consider insolvency appointments to be of a ‘special nature’ and what the ‘special nature’ is.

The special nature arises as the IP is equivalent to a trustee and therefore should have the same obligations as the trustee, in that the interests of the trust are put ahead of the personal interests of the trustee.

15 Do you believe that the provisions in the Code relating to obtaining insolvency appointments (Part 2 Section E) remain appropriate? Yes

Comments

While the Committees agreed that the specific provisions under Part 2 Section E remain appropriate, both Committees have significant concerns in relation to the impact of referral fees on the IP's objectivity when obtaining insolvency appointments, as outlined earlier under questions 7 and 13.

Paragraph 87 should be supplemented to address the legislative requirements in the Republic of Ireland, for example, including “The cost of such services will be determined in accordance with relevant laws.” and include a footnote to state that this is currently required under legislation in Republic of Ireland.

16 If “no”, please explain why and what amendments you believe should be made.

17 Do you consider that the approach taken within the Code to matters under Part 2 Section C, Section D and Section E should differentiate between personal and corporate appointments? No

Comments

The approach between personal and corporate appointments should be consistent. The matters to be considered should be extended to include section B 'Dealing with the assets of an entity'.

18 If “yes”, please explain why and how the approach should differ.

19 Are there any other amendments you would wish to suggest to the Code? Please provide details below.

Paragraph 103 provides an example of the application of the framework. This paragraph should be amended as practitioners in the Republic of Ireland should be reminded that by virtue of sections 635(1) and (2), Companies Act 2014, a statutory auditor is an officer of the Company and therefore cannot accept an appointment as liquidator to a members' voluntary liquidation within a period of 24 months of ceasing to be auditor.

It may be useful to contact you to discuss your comments so please give your:

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Please email your completed comments to the secretary of the Joint Insolvency Committee (jic_sip_consultation@icaew.com) or send by post to:

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Closing Date: 25 July 2017