

Application for the approval of the SRA Insolvency Practice Rules [2012]

Proposed Alteration

1. We propose that the SRA Handbook be amended to include a new set of rules, the SRA Insolvency Practice Rules 2012, in the “Specialist Services” section of the Handbook. The rules will require solicitors and registered European lawyers (RELs) to comply with the Insolvency Code of Ethics, made by the Joint Insolvency Committee, when carrying on insolvency practice, that is, when they accept an appointment, or act as an appointment holder as an insolvency practitioner, within the terms of the Insolvency Act 1986 and other related legislation.
2. The Solicitors’ Code of Conduct 2007 required solicitor/REL insolvency practitioners to comply with the Insolvency Code of Ethics, but this requirement was not carried over into the new SRA Handbook which came into force in October 2011.
3. The proposed rules, attached at the **Annex**, were made by the SRA Board on 29 February 2012, subject to the approval of the Legal Services Board.

Nature and effect of the current provisions

4. The current Handbook does not contain any provisions dealing specifically with insolvency practice. Solicitors and RELs carrying on insolvency practice are subject to the provisions of the Handbook, including the SRA Principles and the SRA Code of Conduct, but there is no mandatory provision requiring them to comply with the Insolvency Code of Ethics.

Nature and effect of the amendments to the SRA Handbook

5. The proposed amendment introduces new rules which require solicitors and RELs to comply with the Insolvency Code of Ethics when they carry on insolvency practice.
6. The Code of Ethics includes five fundamental principles to which insolvency practitioners must adhere. These are: integrity, objectivity, professional competence and due care, professional behaviour and confidentiality. The Code sets out a framework that licensed practitioners can use to identify actual and potential threats to the fundamental principles and to determine what safeguards, if any, may be available to meet such threats.
7. The SRA is of the view that solicitor/REL insolvency practitioners may already be complying with the Insolvency Code of Ethics in order to demonstrate compliance with the SRA Principles. However, this is not a specific requirement, leading to potential uncertainty. The inclusion of the Insolvency Practice Rules would provide clarity in respect of the regulatory requirements on solicitor/REL insolvency practitioners.

Rationale for introducing the SRA Insolvency Practice Rules

8. The Law Society is one of several professional bodies recognised under the Insolvency Act 1986 and associated legislation for the purpose of authorising its members to act as licensed insolvency practitioners. The Council of the Law Society has devolved this function to the SRA Board. Once authorised, solicitors and RELs can undertake various insolvency appointments.
9. The Insolvency Service has raised concerns about the lack of a specific rule in the Handbook requiring compliance with the Code of Ethics given the terms of the Memorandum of Understanding between the SRA and the Insolvency Service.

Compliance with the Memorandum of Understanding is a requirement upon all recognised professional bodies under the Insolvency Act 1986 and is a condition of them continuing to operate as an insolvency practitioner regulator.

10. The new rules will ensure that solicitor/REL insolvency practitioners are subject to the same requirements as other insolvency practitioners.

Statement in respect of the Regulatory Objectives

Protecting and promoting the public interest

11. The public interest will be best served by insolvency services being provided to a high and consistent standard by all insolvency practitioners. We therefore consider that these Rules will have a positive impact on this objective.

Supporting the constitutional principle of the rule of law

12. These Rules do not have any impact on this regulatory objective.

Improving access to justice

13. We do not consider that these Rules will impact on access to justice.

Protecting and promoting the interests of consumers

14. These Rules will ensure that insolvency services are provided to the same standard by all insolvency practitioners and that the required standards are clear, thus protecting consumers' interests.

Promoting competition in the provision of services

15. We do not consider that this policy will impact on competition among insolvency practitioners. We therefore consider that this policy is neutral in relation to this objective.

Encouraging an independent, strong, diverse and effective legal profession

16. The Rules support the effectiveness of the legal profession by making clear the standards required of solicitor/REL insolvency practitioners.

Increasing public understanding of the citizen's legal rights and duties

17. This policy supports this objective by providing clarity for citizens on their rights, and the standard of service required, when an insolvency matter is being dealt with by a solicitor/REL.

Promoting and maintaining adherence to the professional principles

18. We believe that the fundamental principles set out in the Code of Ethics are consistent with the professional principles and that the Rules therefore have a positive impact on this objective.

Statement in respect of the Better Regulation Principles

Proportionality

19. We consider that this policy is proportionate as it applies only to those solicitors/RELS who have been licensed as insolvency practitioners.

Accountability

20. The fact that these Rules impose a Code of Ethics on insolvency practitioners will impact positively on their accountability.

Consistency

21. These Rules will ensure consistency between insolvency practitioners licensed by the various professional bodies.

Transparency

22. These Rules will ensure that insolvency practitioners are clear about their obligations.

Targeted

23. These Rules affect only the small number of solicitors and RELs that practise as insolvency practitioners and is therefore targeted.

Statement in relation to desired outcomes

24. The SRA seeks to ensure that:

- its regulatory requirements are clear and transparent, both for those we regulate and for the public;
- insolvency services provided by solicitors and RELs are of the same standard as those provided by other insolvency practitioners.

25. These outcomes will be achieved once this policy change is implemented.

Statement in relation to impact on other Approved Regulators

26. This policy has no discernable impact on any of the other Approved Regulators.

Implementation timetable

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| March 2012 | Application for approval of rules submitted to Legal Services Board |
| 1 April 2012 or the date of approval by the Legal Services Board, whichever is the later. | Rules come into force in Edition 3 of the SRA Handbook |

Stakeholder engagement

27. This policy has been discussed with the Insolvency Service which considers it essential that compliance with the Code of Ethics should be a mandatory requirement for insolvency practitioners licensed by the SRA. We have not consulted more widely on this proposal, given that it does not represent a change in policy.

Further explanatory information

28. The Insolvency Code of Ethics is available on our website at:
<http://www.sra.org.uk/documents/solicitors/accreditation/insolvency-practitioners-ethics-code.pdf>