

Succession Planning [July 2005]

1. Introduction

Insolvency appointments are personal to an insolvency practitioner, who has an obligation to ensure that cases are properly managed at all times, and to have appropriate contingency arrangements in place to cover a change in the insolvency practitioner's circumstances. The over-riding principle is that the interests of creditors and other stakeholders should not be prejudiced.

2. Continuity

It is important for insolvency practitioners to consider on a regular basis the arrangements in place to ensure continuity in the event of death, incapacity to act, retirement from practice or the practitioner otherwise retiring from a firm

3. Sole practitioners

3.1 A sole practitioner should consider the steps necessary to put a workable continuity agreement in place, although there may well be considerations as to whether a sole practitioner's cases would be accepted by another insolvency practitioner. The full consequences, both practical and financial, of the relationship with another insolvency practitioner have to be recognised by both the office holder and the nominated successor, so that continuity can be achieved and the interests of creditors and other stakeholders safeguarded. In particular, the nominated successor would have to consider whether the obligations arising from a successor arrangement can be discharged properly and expeditiously, having regard to the number and nature of the cases to be taken over.

3.2 A retiring office holder should normally make arrangements for the transfer of cases (including, where appropriate, an application to court) in sufficient time to ensure that the cases are transferred before the retirement takes place.

3.3 The nominated successor may need to make an application to court for the transfer of cases as soon as possible after the other office holder's death, incapacity or, if no other arrangements have been made, retirement.

3.4 The arrangements with the nominated successor will need to be reviewed as circumstances dictate, but preferably at least annually.

3.5 The principal matters that might routinely be dealt with in a continuity agreement are set out in the Appendix.

4. Firms

4.1 Every insolvency practitioner in a firm (whether a principal or an employee) should consider the comments made above regarding sole practitioners, and should discuss with the firm the arrangements for succession planning, to cover death, incapacity to act, retirement or leaving the firm. It is recommended that this is reflected in the partnership agreement or in a separate insolvency practice agreement.

4.2 In a firm with other insolvency practitioners, it is likely that the arrangements would include, at the least, an understanding that another insolvency practitioner will take over open cases, and make an application to court for the transfer of those cases, if the office holder is unable to do so. It will be the professional responsibility of the remaining partners (as insolvency practitioners) to take prompt action to safeguard the interests of creditors and other stakeholders.

4.3 When an office holder retires from a firm, it may be acceptable for the office holder to remain in office for a short period, with an insolvency practitioner in the firm dealing with the administration of cases. However, where the office holder needs to receive appropriate information on the progress of cases, and be consulted when decisions are to be made, the office holder is likely to require unrestricted access to case files. Such an arrangement, however, is unlikely to be appropriate other than for cases that are clearly in their closing stages. In normal circumstances, the retiring office holder should be replaced within a reasonable period, likely to be within 12 months of retirement.

4.4 Where there are no other insolvency practitioners in a firm, and in the absence of any contractual arrangements to deal with death, incapacity to act, or retirement, the remaining partners (presumably themselves members of professional bodies) should consider their own professional obligations to ensure the proper management of their practice, including making arrangements for another insolvency practitioner to step in as office holder. The firm may have to procure an application to court for the transfer of cases as soon as possible after the office holder's death, incapacity or retirement.

4.5 The principal matters that might routinely be dealt with in an insolvency practice agreement (or a partnership agreement) are set out in the Appendix.

5. Disputes

5.1 There can be disputes between firms and partners (and employees who are office holders) who leave the firm. However, commercial disputes should not be allowed to obscure the over-riding principle arising from the personal nature of insolvency appointments set out at the beginning of this paper – that the interests of creditors and other stakeholders should not be prejudiced.

5.2 It is important, therefore, that the contractual arrangements referred to above should provide for the (essentially) mechanistic and financial consequences of an office holder leaving the firm (or upon incapacity to act). There will be similar considerations when an office holder (either partner or employee) is suspended by a firm, or is otherwise excluded from the firm's offices.

5.3 Where there are no contractual arrangements, or where a dispute arises, both parties should consider their professional obligations, and the standard of conduct required by their professional bodies. Further, an office holder must have regard to the statutory obligations of the office held.

5.4 If there is a dispute, it is for the office holder to decide how best to ensure that the obligations of office can be discharged: an application to court may be the only means of finding a solution. It is always open to an office holder to consult with his or her authorising body.

5.5 As noted above, there may be professional obligations on remaining partners to arrange for the proper management of their practice, and so ensure that they do not bring their own professional bodies into disrepute.

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IGPs, planned to be no more than 2-3 pages, are just that – guidance. They are intended to cover matters where it is not seen to be appropriate or necessary for there to be a SIP imposing mandatory standards or methods of work; but where the RPBs and The Service consider that there might be some improvements in approach and that IPs could benefit from additional guidance so that greater consistency can be achieved. IPs may already have or may develop different approaches to IGP matters; but IGPs should still provide a useful reminder of and benchmark for dealing with insolvency work and practice administration.

IGPs are not intended to replace SIPs which set out required practice which IPs should follow.

IGP: Succession Planning - Appendix

Principal matters that might be dealt with in a continuity agreement

1 A clear statement of the circumstances upon which the agreement would become operative, and also the circumstances in which the nominated successor can decline to act.

2 The extent and frequency of disclosure to the nominated successor of case details and financial information.

3 Detailed provisions to provide for:

- the steps to be taken by the nominated successor when the agreement becomes operative;
- ownership of, or access to, case working papers;
- access to practice records; and
- financial arrangements.

Principal matters that might be dealt with in an insolvency practice agreement (or in a partnership agreement)

1 Clear statements of what happens in the event of an insolvency practitioner (whether partner or employee):

- dying, or being otherwise incapable of acting as an insolvency practitioner;
- retiring from practice;
- being suspended or otherwise excluded from the firm's offices; or
- leaving the firm.

2 Where the agreement provides for another insolvency practitioner (whether in the firm or in another firm) to take over appointments:

- the time within which transfer of cases will take place, and the arrangements for the interim period, including provisions for access to information and files;
- the obligations placed on the practitioner, the firm and the successor practitioner, both in the interim period and thereafter;
- professional indemnity insurance arrangements; and
- financial arrangements.

3 Where the insolvency practitioner is to remain as office holder following retirement or leaving the firm:

- ownership of, or access to, case working papers;
- access to practice records;
- professional indemnity insurance arrangements; and
- financial arrangements.

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