

# Insolvency Policy

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## Document properties

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## Associated regulations and policies

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<i>Code of Professional Ethics</i>	<i>Civil Sanctions Policy</i>
<i>Disciplinary Regulations</i>	<i>Disciplinary Sanctions Policy</i>
<i>AAT Regulations</i>	
<i>Licensing Regulations</i>	
<i>Delegated Powers Policy</i>	
<i>Appeals Regulations</i>	
<i>Health and Disability Policy</i>	
<i>Protected Characteristics Policy</i>	
<i>Publication Policy</i>	
<i>Criminal Convictions Policy</i>	

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# 1. Introduction

- 1.1. Insolvency is a risk indicator, raising a question whether an individual is a fit and proper person to enter the accountancy profession. AAT has a robust approach to assessing whether a member is, and continues to be, a *fit and proper* person. This policy and guidance are intended to support the AAT in meeting that obligation.

## 2. Scope and applicability

- 2.1. AAT endeavours to ensure that all *applicants* and *members* are treated fairly and consistently in accordance with the policy framework. This policy applies to any individual who discloses an *insolvency* matter to AAT.

## 3. Purpose and Objectives

- 3.1. This policy sets out the criteria used to determine whether *an applicant* or *member* is considered a *fit and proper* person to hold membership and/or a *licence*.

## 4. Terms and definitions

- 4.1. The words and phrases set out in the following table only have the meanings set opposite them for the purpose of our regulations and policies as published by AAT.

Words	Meaning
<i>applicant</i>	An individual applying for entry to the Register under AAT's Regulations or for a licence under the <i>Licensing Regulations</i> .
<i>fit and proper</i>	A person considered to be suitable for entry into the accountancy profession by virtue of their conduct, who has not acted or is not likely to act in a way that poses a risk to the public or is likely to undermine confidence in AAT or its members.
<i>insolvency</i>	Corporate insolvency – when an individual is or was a director of an entity which is or was insolvent as defined in the <i>Insolvency Act 1986</i> , including any modifications as detailed in the <i>Enterprise Act 2002</i> , or equivalent legislation in other jurisdictions.  Personal insolvency - as covered by the <i>Insolvency Act 1986</i> , including any modifications as detailed in the <i>Enterprise Act 2002</i> , or equivalent legislation in other jurisdictions.  AAT also requires individuals to declare any County Court Judgments and debt management plans. They shall be defined as <i>insolvency</i> , or the individual/entity considered as <i>insolvent</i> for the purpose of this policy.
<i>licence</i>	A licence to provide <i>accountancy and/or bookkeeping services</i> to the public under the <i>Licensing Regulations</i> .
<i>member</i>	A person admitted to the membership of AAT in accordance with the provisions of the <i>AAT Regulations</i> (where the context so

	permits), this term includes <i>associate members, full members, and fellow members</i> , whether past or present.
<i>misconduct</i>	A member committing any act or omission that falls short of the standards reasonably expected of them, including but not limited to those matters listed in the <i>Code of Professional Ethics</i> , which brings, or is likely to bring, discredit to the member, the accountancy profession, or AAT.
<i>self-employed accountancy services.</i>	An associate member, full member or fellow member engaged in public practice by offering or providing <i>accountancy services</i> or <i>bookkeeping services</i> to the public, or holding themselves out to provide <i>accountancy services</i> and/or <i>bookkeeping services</i> to the public as: a sole practitioner; or a director of a limited company and holds at least 5% of the shares* of the company; or a partner in any type of partnership arrangement (whether salaried or equity); or a member of a limited liability partnership (designated and non-designated members); or a principal in any other corporate entity and holds at least 5% of the shares* of the entity. * <i>Shares belonging to anyone in the member's household or family are treated as belonging to the member</i>

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## 5. Policy detail

### Insolvency on application

- 5.1 AAT will not normally approve an application for *membership* from an *applicant* with an undischarged bankruptcy or Debt Relief Order for which the moratorium period has not expired.
- 5.2 AAT will consider the following criteria in determining whether an applicant is a fit and proper person to be admitted to membership:
- i. the type of *insolvency* declared
  - ii. the amount of money owed at the point of *insolvency*
  - iii. the circumstances surrounding the *insolvency*, including aggravating factors and mitigation
  - iv. representations from the Insolvency Practitioner (where relevant)
  - v. the applicant's present circumstances
  - vi. information available in the public domain
  - vii. any other representations put forward by the *applicant*.
- 5.3 The test to be applied to determine whether an *applicant* meets the *fit and proper* requirements is whether the *applicant*, based on their *insolvency* or other declaration and the circumstances surrounding it, would pose a risk to the public or is likely, by virtue of holding membership, to undermine public confidence in AAT or its *members*.
- 5.4 Several circumstances exist where AAT can determine whether an *applicant* can be admitted as a *member*. These are detailed in AAT's *Delegated Powers Policy*.
- 5.5 If AAT becomes aware that an *applicant* failed to disclose an *insolvency* as required, the matter may be investigated as *misconduct* under AAT's *Disciplinary Regulations*.
- 5.6 AAT will not approve an application for fellow membership from an applicant who is insolvent. Once the applicant becomes solvent, AAT will consider the application in accordance with this policy.

### Insolvency on reinstatement

- 5.7 AAT will consider applications for reinstatement of membership in accordance with the provisions detailed in paragraphs 5.1 to 5.4 above.
- 5.8 If AAT becomes aware that an applicant chose to resign or allow their membership to lapse without notifying AAT of an *insolvency* as required in accordance with paragraph 5.9, their application for reinstatement will be rejected and they will be barred from making another application for a period of five years.

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## **Insolvency whilst a member**

- 5.9 A *member* must notify AAT of *insolvency* within 30 days of the date of its occurrence. If a *member* does not do this, then the failure to notify will normally amount to *misconduct*.
- 5.10 If a member discloses a bankruptcy or debt relief order, their membership will cease for a period of 12 months or until the discharge of the bankruptcy/expiration of the moratorium period for the debt relief order (whichever is the longer period). After this time, the *member* may apply for reinstatement of their membership and their application will be considered in accordance with this policy.
- 5.11 In all other circumstances, the matter will be assessed by AAT first to determine if the matter needs to be investigated in accordance with the *Disciplinary Regulations*.

## **Insolvency for those applying for, or holding, a licence:**

- 5.12 It is a general condition of holding a licence under the *Licensing Regulations* that a *member* is not, and does not become, *insolvent*.
- 5.13 AAT will reject an *application* for a *licence* from any *member* who discloses an *insolvency* matter when applying for their *licence*.
- 5.14 If a *member* holding a *licence* becomes insolvent, their *licence* will normally be terminated with immediate effect in accordance with AAT's *Licensing Regulations*.
- 5.15 Termination of a *licence* will normally result in removal of all membership unless written confirmation and evidence, as required, is provided to AAT demonstrating the *member* is no longer providing *self-employed accountancy services*.
- 5.16 AAT may impose such *specific conditions* on a *member's licence* as it sees fit if the decision is taken not to terminate the *licence*.

## **Insolvency in other jurisdictions**

- 5.17 AAT recognises that some jurisdictions have different approaches to *insolvency*.
- 5.18 An *applicant* from a jurisdiction other than the UK will be required to disclose any *insolvency* comparable to the provisions detailed in the *Insolvency Act 1986*.

## **Right of appeal**

- 5.19 *Applicants* and *members* have the right to appeal any decisions made under this policy. Appeals will be dealt with in accordance with AAT's *Appeals Regulations*.

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