

CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR INSOLVENCY PRACTITIONERS

MBR | MALTA
BUSINESS
REGISTRY

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RECEIVERSHIP
SERVICE

PREAMBLE

This Code defines the requirements of professional conduct for insolvency practitioners. The purpose of this Code shall be to safeguard the standing of the profession of the insolvency practitioner, to continuously update it and to create a uniform set of rules on the conduct of insolvency practitioners. To this end, it sets out the duties and obligations of insolvency practitioners to meet the ethical standards expected of them. At the same time, the aim of this Code shall be to ensure the quality and transparency of the services provided by the insolvency practitioners and guarantee proper performance of the work undertaken by them, in order to best serve the interests of the creditors and the debtor. The Code applies to insolvency practitioners who are duly authorised in terms of the Act. Furthermore, the objective of this Code is to ensure that insolvency practitioners do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such other manner as could seriously affect the trust conferred on them. The insolvency practitioners shall be liable to disciplinary action as a result of failure to comply with these rules, in accordance with the relevant provisions. In addition to various requirements, this Code contains definition and application material that provide context to a proper understanding of the Act.



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DEFINITIONS AND INTERPRETATION

ACT:

The Insolvency Practitioners Act, Chapter 632 of the Laws of Malta.

CLOSE OR IMMEDIATE FAMILY/ NEXT OF KIN:

A spouse, civil partner (or equivalent), dependent, parent, child or sibling.

COMPETENT AUTHORITY:

Insolvency and Receivership Service within the Malta Business Registry established by the Malta Business Registry (Establishment as an Agency) Order.

CONNECTED UNDERTAKING:

An undertaking which is effectively managed or promoted as one practice with the registered firm or as a related undertaking of the registered firm.

EMPLOYEE:

A person subject to a contract of employment or a contract for services with an insolvency practitioner or a firm.

ENTITY:

Any natural or legal person or any group of such persons, including a partnership.

INDIVIDUAL UNDER THE FIRM:

The insolvency practitioner, any principals in the firm and any other employees in the firm.

INDUCEMENTS:

An inducement is an object, situation or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from gifts, minor acts of hospitality, to acts that results in non-compliance with laws and regulations.

INSOLVENCY APPOINTMENT:

A formal appointment under the obtaining laws and regulations of Malta.

INSOLVENCY PRACTITIONER:

A person who is authorised to carry out the functions of an insolvency practitioner in accordance with Article 4(2) of the Act.

INSOLVENCY TEAM:

All persons under the control or direction of an insolvency practitioner.

MALTA BUSINESS REGISTRY:

The agency established by the Malta Business Registry (Establishment as an Agency) Order.

PRINCIPAL:

Every member of the administrative or management body of a registered firm and shall include any person who is authorised to represent the registered firm for any judicial or legal purpose, and any person who is responsible for directing the fulfilment of any engagements taken on by the registered firm.

REGISTERED FIRM:

An entity, regardless of its legal form, formed in accordance with Article 6 of the Act, and any connected undertaking.

PART ONE

GENERAL APPLICATION OF THE CODE

1.1 CONDUCT OF INSOLVENCY PRACTITIONERS

1.1.1 Insolvency practitioners must at all times comply with all relevant and applicable laws, regulations and professional standards governing insolvency practice in Malta and in the European Union. This includes, but is not limited to, statutory provisions and any other legal or regulatory obligations that pertain to their conduct, duties and responsibilities as insolvency practitioners. An insolvency practitioner shall, therefore, in the exercise of his/her profession, safeguard both in his/her own action and in the actions of those who act on his/her behalf.

1.1.2 There are five basic principles of ethics for insolvency practitioners:

- a) **Integrity:** to be straightforward and honest in all professional and business relationships.
- b) **Objectivity:** not to compromise professional or business judgments due to bias, conflict of interest or undue influence of others.
- c) **Professional Competence and Due Care:**
 - i. Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
 - ii. Act diligently and in accordance with applicable technical and professional standards.

d) **Confidentiality:** to respect the confidentiality of information acquired as a result of professional and business relationships.

e) **Professional Behaviour:** to comply with relevant laws and regulations and avoid any conduct that the insolvency practitioner knows or should know might discredit the profession.

1.1.3 Insolvency practitioners must:

a) Strictly comply with the laws of Malta.

b) Practice their profession and provide their services in accordance with the rules of their respective profession.

c) Provide their services conscientiously, with integrity, objectivity and honesty.

d) Uphold the honour and dignity of the profession and avoid any behaviour that is not consistent with the scientific standing of the profession.

e) Ensure their independence vis-à-vis the creditors and debtor, and any third person.

f) Pay the greatest attention possible to carrying out the services they provide.

g) Collect and assess the information they require and personally draw up the necessary documents and reports.

h) Be constantly up-to-date and trained in their profession by participating in training conferences and attending seminars of a minimum duration of ten (10) hours every two (2) years, which are organised by certified bodies.

i) Refrain from taking on cases outside of their discipline and experience.

j) While performing their duties, show honesty, commitment to the task and moral integrity.

k) Be discreet and not breach their professional confidentiality.

- l) Declare themselves unable to participate in insolvency or restructuring procedures for their own assets and assets belonging to next of kin or third parties whom they relate to in a particular way.
- m) Not use unfair means for their promotion.

1.1.4 Insolvency practitioners shall be permitted to:

- a) Publicise their cases, provided that the publication is for scientific information and is carried out without payment.
- b) Publish their opinion in any matter, provided that they support the legitimate interests of the creditors and debtor, and meet fairly, with diligence and objectivity, their obligation towards them.

1.1.5 An insolvency practitioner is an officer of the Court and should conduct himself/herself accordingly.

1.1.6 In all that is entrusted to them, insolvency practitioners have the duty to:

- a) Properly administer as a bonus paterfamilias;
- b) Refrain from deriving any personal benefit therefrom;
- c) Give due account thereof when so requested.

1.1.7 Accountability

- a) Insolvency practitioners shall perform all duties in accordance with applicable laws, regulations and professional standards.
- b) Insolvency practitioners shall act with integrity, impartiality and due care in the conduct and management of proceedings.
- c) Insolvency practitioners shall maintain complete and contemporaneous records of all actions taken, and shall provide timely reports to stakeholders, creditors, the Court and the competent authority, as required.

d) Insolvency practitioners are accountable for their decisions and actions and shall cooperate with any investigation, review or audit relating to the proceedings.

1.1.8 Discretion

- a) Discretion shall be exercised honestly reasonably and in good faith.
- b) Decisions shall conform with statutory requirements, Court orders and applicable professional codes of conduct.
- c) In the realisation of assets pertaining to their clients, insolvency practitioners shall not act for personal benefit nor in any manner that prejudices the general body of creditors.
- d) In applying this clause, regard shall be had, where relevant, to the duties of directors under Article 136A of the Companies Act (Cap. 386).

1.1.9 Non-Discrimination

- a) Insolvency practitioners shall treat all stakeholders equitably, including creditors, debtors, employees and third parties, and shall ensure that asset realisations and decisions are made on objective grounds.
- b) Insolvency practitioners are subject to applicable anti-discrimination laws, and discriminatory conduct is inadmissible.

1.2 CONFLICTS OF INTEREST

1.2.1 An insolvency practitioner should not accept instruction to act for two (2) or more clients where there is a conflict or likelihood of a conflict between the interests of those clients, whether the client is a personal client or a client of the firm or association.

1.2.2 If an insolvency practitioner has acquired relevant knowledge concerning a former client during the course of acting for that client, the insolvency practitioner must not accept instructions to act against the client.

1.2.3 An insolvency practitioner must not continue to act for two (2) or more clients where a conflict of interest exists between those clients.

1.2.4 An insolvency practitioner must not act where his/her interests conflict with the interests of a client.

1.2.5 An insolvency practitioner who holds a power of attorney from a client must not use that power to gain a benefit which, if acting as a professional adviser to that client, he/she would not be prepared to allow to an independent third party.

1.3 CONFIDENTIALITY

1.3.1 Besides being bound by professional secrecy, an insolvency practitioner is under a duty to keep confidential the affairs of clients and to ensure that his/her staff do the same.

1.3.2 The duty to keep confidential information about a client and his/her affairs applies irrespective of the source of the information.

1.3.3 The duty to keep confidential a client's business continues until the client permits disclosure or waives the confidentiality.

1.3.4 The duty to keep a client's matters confidential, as opposed to what applies to the duty of professional secrecy, can be overridden in certain exceptional circumstances and shall include those cases in

which an insolvency practitioner is required to disclose confidential information in terms of law; and those cases in which such disclosure is essential for an insolvency practitioner to defend himself/herself in any proceedings taken against him/her or on the complaint of a client or a former client, in which event the disclosure shall be limited to what is indispensable for the insolvency practitioner to defend himself/herself.

1.3.5 Personal data shall be processed lawfully and fairly in accordance with applicable data protection law, including Regulation (EU) 2016/679 and the Data Protection Act (Chapter 586 of the Laws of Malta).

1.3.6 Personal data collected in the course of insolvency proceedings shall be used solely for administering the insolvent estate and for compliance with legal obligations.

1.3.7 Appropriate technical and organisational measures shall be implemented to protect personal data against unauthorised access, loss, alteration or disclosure.

1.3.8 Data subjects shall be provided with clear information regarding the processing of their data, their rights and the means to exercise those rights.

1.3.9 Personal data shall be retained only for as long as necessary for the purposes stated in clause 1.3.6 and to fulfil legal and regulatory requirements.

1.3.10 Any sharing of personal data with creditors, courts or third parties shall be limited to what is strictly necessary and shall comply with data protection law applicable in the jurisdiction.

1.3.11 In the event of a personal data breach, the insolvency practitioner shall notify the relevant supervisory authority and affected individuals in accordance with applicable law.

1.4 CONCEPTUAL FRAMEWORK

1.4.1 The framework approach is a method that insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them.

1.4.2 Many different circumstances, or a combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to the basic principles and specify the appropriate mitigating action that should be taken. The nature of an insolvency appointment may differ and, consequently, different threats may exist, requiring the application of different safeguards.

1.4.3 Insolvency practitioners are therefore requested to use a conceptual framework to identify, evaluate and address threats to the general basic principles, rather than merely comply with a set of specific rules which may not cover every eventuality. In the public interest the Competent Authority is therefore identifying in clause 1.4.4 five categories of threats which should form part of the framework used by insolvency practitioners for this purpose.

1.4.4 Many threats fall into five categories:

- a) **Self-interest threats**, which may occur as a result of the financial or other interests of a practice or an insolvency practitioner or of an immediate or close family member of an individual within the practice;
- b) **Self-review threats**, which may occur when a previous judgement made by an individual within the practice needs to be re-evaluated by the insolvency practitioner;

- c) **Advocacy threats**, which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;
- d) **Familiarity threats**, which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic to the interests of others; and
- e) **Intimidation threats**, which may occur when an Insolvency Practitioner may be deterred from acting objectively by threats, actual or perceived.

1.5 BREACHES OF THE CODE

1.5.1 An insolvency practitioner who identifies a breach or any other provision of the Code shall evaluate the nature and seriousness of the breach and its potential or real impact on the insolvency practitioner's ability to comply with the basic principles.

The insolvency practitioner shall also:

- (i) Take whatever action or actions might be available, as soon as possible, to address the consequences of the breach satisfactorily; and
- (ii) Determine whether to report the breach to the relevant parties or competent authority.

The parties to whom such a breach might be reported include those who might have been affected by it, or an authorised body.

1.6 PENALTIES

1.6.1 A breach of the obligations of this Code by an insolvency practitioner shall be punishable by penalties in terms of the Act.

1.6.2 Enforcement of this Code shall be delegated to the Competent Authority.

1.6.3 Without prejudice to the provisions of the Act disciplinary measures may include written warnings, administrative penalties, restrictions, suspension or revocation of authorisation to act as an insolvency practitioner. Measures and penalties may be published by the competent authority in accordance with the Act.

1.7 RECORD KEEPING

1.7.1 It will always be up to the insolvency practitioner to justify his/her actions. An insolvency practitioner will be expected to be in a position and able to demonstrate the steps and the conclusions that he or she reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency appointment, by reference to written contemporaneous records.

The records an insolvency practitioner keeps in relation to the steps that he or she took and the conclusions that he or she reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

1.7.2 Records shall be retained in accordance with applicable legal obligations. Records may be kept in secure digital form, provided full accessibility and integrity can be demonstrated.

1.8 RESOLUTION OF ETHICAL CONFLICT

1.8.1 An insolvency practitioner might be required to resolve a conflict in complying with the basic principles. When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, might be or become relevant to the resolution process:

- a) relevant facts;
- b) ethical issues involved;
- c) general basic principles related to the matter in question;
- d) established internal procedures; and
- e) alternative courses of action.

1.8.2 Having considered the relevant factors, it is necessary for an insolvency practitioner to determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the insolvency practitioner might wish to consult with other appropriate persons within the firm for help in obtaining resolution.

1.8.3 Where a matter involves a conflict with, or within, an entity, an insolvency practitioner will need to decide whether to consult with those charged with governance of the entity, such as the board of directors or senior management team.

1.8.4 The insolvency practitioner shall document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

PART TWO

SPECIFIC APPLICATION OF THE CODE

2.1 INSOLVENCY APPOINTMENTS

2.1.1 Before accepting an insolvency appointment, an insolvency practitioner shall determine whether acceptance would create any threats to compliance with the general basic principles and shall complete and retain a written independence and conflicts checklist identifying relevant threats and safeguards.

2.2 ACTING WITH SUFFICIENT EXPERTISE

2.2.1 An insolvency practitioner shall only accept an insolvency appointment if he or she possesses or can acquire sufficient expertise.

2.2.2 An insolvency practitioner shall not intentionally mislead an employing organisation as to the level of expertise or experience possessed.

2.2.3 The principle of professional competence and due care requires that an insolvency practitioner only undertake significant tasks for which the insolvency practitioner has, or can obtain, sufficient training or experience.

2.3 PROFESSIONAL AND PERSONAL RELATIONSHIPS

2.3.1 The insolvency practitioner shall avoid appointments which breach the principle of objectivity due to an individual within the firm, the close or immediate family of an individual within the firm itself, has or has had a professional or personal relationship which relates to the insolvency appointment being considered.

Relationships could include (but are not restricted to) relationships with:

- a) the entity;
- b) senior management or any director or shadow director or former director of the entity;
- c) shareholders of the entity;
- d) business partners of the entity;
- e) debtors of the entity;
- f) close family or next of kin; and
- g) creditors.

2.3.2 Insolvency practitioners shall assess any prior professional or personal relationships with the entity or connected persons when considering an appointment, also considering Article 305(2) of the Companies Act (Chapter 386 of the Laws of Malta) which sets a four-year time frame concerning eligibility to act as liquidator where prior appointments with or in connection with the company have existed.

2.4 EXPERT ADVICE AND SERVICES

2.4.1 When an insolvency practitioner intends to rely on the advice or work of another, from within the firm or by a third party, the insolvency practitioner shall evaluate whether such advice or work is warranted. Any advice or work contracted shall reflect best value and service for the work intended.

2.4.2 Where external experts are engaged, the insolvency practitioner shall conduct appropriate due diligence on their competence, independence and data handling practices, and shall keep documentary evidence covering scope, confidentiality, conflicts and deliverables

2.5 INDUCEMENTS, GIFTS AND HOSPITALITY OFFERS

2.5.1 In relation to an insolvency appointment, offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the general basic principles, particularly the principles of integrity, objectivity and professional behaviour. An inducement might be offered to the firm, an individual within the firm or a close or immediate family member, as well as to the insolvency practitioner personally. Inducements offered to others will still give rise to threats to compliance with the general basic principles.

2.5.2 The insolvency practitioner is prohibited from accepting inducements in the exercise of his functions.

2.6 DEALING WITH AN ASSET OF THE ENTITY

2.6.1 The insolvency practitioners appointed to any insolvency appointment in relation to the entity, shall not themselves acquire, directly or indirectly, any of the assets of an entity, not knowingly permit any individual within the firm, or any close so immediate family member of an individual within the firm, directly or indirectly, to do so.

2.6.2 Asset realisations shall be supported by independent and appropriate expert valuations, reasonable marketing, any necessary restrictions and transparent reporting to stakeholders and creditors.

2.7 THE INSOLVENCY PRACTITIONER AS AN EMPLOYEE

2.7.1 Where an insolvency practitioner is an employee of a firm, the insolvency practitioner shall comply with the general basic principles. In the instance, where the insolvency practitioner is an employee or is considering accepting an offer of employment, the insolvency practitioner might be unable to address the threats to compliance with the general principles. In those circumstances the insolvency practitioner will need to consider whether they can accept the offer of employment or resign from their current employment.

2.7.2 Where threats to compliance with the general principles cannot be addressed, the insolvency practitioner shall consider withdrawal or resignation from employment. No person shall suffer retaliation for making such an assessment or decision in accordance with applicable law.

2.8 CLIENTS' MONEY

2.8.1 Segregation of Funds

- a) Clients' money shall be kept separate from the insolvency practitioner's and the firm's own funds.
- b) Clients' money shall be held in a designated client account.

2.8.2 Permitted Use

- a) Clients' money shall be used only for the specific purpose for which it is provided.
- b) Clients' money shall not be used for the practitioner's or the firm's benefit.

2.8.3 Records and Reconciliation

- a) Detailed and accurate records shall be maintained for each client account.
- b) Client accounts shall be subject to regular reconciliation at intervals appropriate to the volume and risk.

2.8.4 Notification and Consent

- a) Clients shall be informed of where and how their money is held.
- b) Written client consent shall be obtained before any transfer of funds between client accounts, save where otherwise required by law or Court order.

2.8.5 Money due to clients, including refunds, payments or disbursements, shall be transferred without undue delay upon which any interest is dealt with.

2.8.6 Clients shall be informed if their funds earn interest and of the basis upon which any interest is dealt with.

2.8.7 Client money handling shall be subject to periodic internal review and, where applicable, external audit or regulatory oversight.

2.8.8 Misuse or mishandling of clients' money constitutes professional misconduct and may result in disciplinary action, administrative penalties, revocation or suspension of authorisation, and any applicable civil or criminal proceedings.

PART THREE

RELATIONS WITH THIRD PARTIES

3.1 RELATIONS WITH CREDITORS AND DEBTORS

3.1.1 The insolvency practitioners must carry out tasks assigned to them in such a way as to achieve as far as possible a swift and comprehensive result.

3.1.2 In relation to the creditors and debtor, the insolvency professional must:

- a) avoid developing particular relationships which may hinder the performance of their tasks;
- b) support the legitimate interests of the creditors and debtor and meet fairly, with diligence and objectivity, their obligations towards them;
- c) respect the confidentiality of information related to the creditors and debtor;
- d) clearly inform the creditors and debtor regarding the nature and scope of the assigned task, so that they can make decisions with the maximum amount of information possible;
- e) not accept the assignment of work if they do not believe that they have the required level of expertise and experience, or if they have a family or other economic relationship with the creditors or debtor which may affect their judgment;

- f) not offer or accept gifts, hospitality or supplies which may influence their work by creating inappropriate professional obligations; and
- g) take into account that they are serving the public interest when making decisions and providing advice.

3.1.3 Fees and Engagement Terms

- a) Fees, charging bases and any disbursements shall be disclosed in advance of service provision in clear terms, with no hidden costs.
- b) Clients shall agree to the fees in advance, and an engagement letter shall be provided.

3.1.4 The insolvency practitioner shall communicate clearly and fairly with stakeholders and shall issue periodic progress reports at appropriate intervals, ordinarily not less than once every three months, unless otherwise directed by law or the courts.

3.2 RELATIONS WITH OTHER INSOLVENCY PRACTITIONERS

3.2.1 Respect for and conduct towards other insolvency practitioners on the basis of this Code shall be the duty of every insolvency practitioner.

3.2.2 The insolvency practitioners must make every effort to maintain a spirit of collegiality and respect for each other.

3.2.3 The insolvency practitioners must:

- a) fully respect the work of other insolvency practitioners; and
- b) not exploit any position which they may have, with a view to carrying out insolvency services.

3.2.4 The insolvency practitioners must not use or allow others to use, directly or indirectly, agents or brokers with a view to influencing them and assigning jobs to them, or pay anyone to influence any person for the purpose of providing insolvency administration services.

3.2.5 Upon a change of appointment and following the relevant release from services given by the insolvency practitioner to his client, the outgoing insolvency practitioner shall cooperate to provide a timely handover, including all relevant records, the status of realisations, prior communications with stakeholders and a clear statement of the proceedings' current status.

PART FOUR

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

4.1 COMPLIANCE DUTY

4.1.1 Insolvency practitioners shall comply with all applicable Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) legislation, guidance and sanctions regimes, including but not limited to the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) and the Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01).

4.2 CUSTOMER DUE DILIGENCE

4.2.1 Appropriate customer due diligence (CDD) and, where necessary, enhanced due diligence (EDD) shall be undertaken on relevant stakeholders, including directors, shareholders, beneficial owners (when available), creditors and related parties.

4.3 SOURCE OF FUNDS/WEALTH

4.3.1 Funds or assets recovered or managed during proceedings shall, where applicable, be subject to verification of source of funds and, as appropriate, source of wealth.

4.4 SUSPICIOUS ACTIVITY AND FREEZING OBLIGATIONS

4.4.1 Where property is suspected to constitute the proceeds of crime or a transaction is suspected to involve criminal property, the practitioner shall file the requisite report with the Financial Intelligence Analysis Unit (FIAU) and, where applicable, the Sanctions Monitoring Board, and shall refrain from proceeding with the transaction unless authorised in accordance with law.

4.5 TRAINING AND PROCEDURES

4.5.1 Periodic AML/CFT training shall be provided to relevant staff. Procedures shall be maintained for compliance with EU and national regulations, including targeted financial sanctions screening where applicable.

4.6 RECORD-KEEPING

4.6.1 In addition to the obligations contained in section 1.7, AML/CFT documentation shall be retained in line with regulatory requirements and may be disclosed to regulatory or law-enforcement authorities in terms of law.

4.7 BENEFICIAL OWNERSHIP

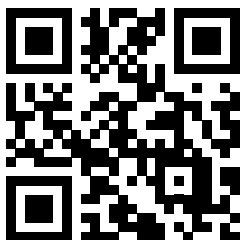
4.7.1 Accurate and up-to-date beneficial ownership information shall be held at all times. Any discrepancies identified shall be reported without delay to the Malta Business Registry in accordance with applicable requirements.

4.8 STATUTORY FILINGS

4.8.1 The insolvency practitioner shall ensure that all statutory filings with competent authorities are made in a timely manner to avoid penalties.

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