



STATEMENT OF BEST PRACTICES AVOIDANCE OF CONFLICT OF INTEREST

I. FUNDAMENTAL PRINCIPLES

An Insolvency Professional (as defined under the IBC) shall comply with the following fundamental principles while undertaking an assignment under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and rules/regulations thereunder:

- (i) **Integrity:** to be straightforward and honest in all professional and business relationships.
- (ii) **Objectivity:** to not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
- (iii) **Professional Competence and Due Care:** to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques, and to act diligently and in accordance with applicable technical and professional standards.
- (iv) **Confidentiality:** to respect the confidentiality of information acquired as a result of professional and business relationships and therefore, to not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor to use the information for the personal advantage of the Insolvency Professional or third parties.
- (v) **Professional Behaviour:** to comply with relevant laws and regulations and avoid any action that discredits the profession.
- (vi) **Independence:** to maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.

II. TEST TO EVALUATE CONFLICT OF INTEREST SITUATION

Whether a reasonable and informed third party, having knowledge of all relevant information, including the significance of threat, would conclude the threat to be acceptable. An Insolvency Professional must assess all material circumstances and make disclosures which may affect the decision making ability of the entity engaging the Insolvency Professional.

III. TAKE REASONABLE STEPS TO IDENTIFY CONFLICT OF INTEREST SITUATION

Properly handling a conflict of interests issue is key for any profession that wants to build up and retain trust on the market. An Insolvency Professional shall take

reasonable steps to identify material circumstances that could pose a conflict of interest. Such material circumstances may create a threat to compliance with the fundamental principles listed in Para I above.

Examples of situations where a conflict of interest may arise are in the following scenarios:

- (i) If an Insolvency Professional accepts multiple appointments in cases where he has dealt with claims between the separate and conflicting interest of entities over which he is appointed without satisfying himself that he would be able to take steps to minimise potential conflicts and that his overall integrity and objectivity would, and would be seen to, be maintained. For example, the Insolvency Professional must be aware of the difficulties likely to arise from the existence of inter-company transactions or guarantees in group, associated or “family-connected” company situations.
- (ii) There is a succession of or sequential appointments, for example – if the Interim Resolution Professional is continued as an Insolvency Professional and then is further continued as Liquidator in liquidation proceedings, then he has to be conscious of the separate roles he plays as an Insolvency Resolution Professional or Insolvency Professional or Liquidator, as the case may be, and act in accordance with the Fundamental Principles.
- (iii) Payments, remuneration and expenses arise from an insolvency appointment to the office holder or his or her associates;
- (iv) Conflict of interest will arise in instances where any advisor (especially legal advisors) to the Insolvency Professional extends his or her advice to any other stakeholder (such as a financial creditor or committee of creditors) with respect to the corporate debtor.
- (v) Where an Insolvency Professional makes a payment of referral fee to any person for referring him an assignment, the arrangement must be disclosed to all concerned.
- (vi) Where an Insolvency Professional shifts from one firm to another, and a situation arises where the Insolvency Professional becomes non-independent due to the position held by him in the previous firm. In such an event, the Insolvency Professional’s previous employments / engagements should be disclosed to all parties in interest of transparency.
- (vii) The Insolvency Professional has or had a significant relationship with the corporate debtor or someone connected with the corporate debtor. An Insolvency Professional shall evaluate the impact of the relationship in the context of the appointment being sought or considered. Issues to consider in evaluating whether a relationship may lead to compliance with the fundamental principles may include the following:

- (a) The nature of the previous duties undertaken by the Insolvency Professional during an earlier relationship with the entity.
- (b) The impact of the work conducted by the Insolvency Professional on the financial state and/or the financial stability of the entity in respect of which the appointment is being considered.
- (c) Whether the fee received for the work by the Insolvency Professional is or was significant to the practice itself or is or was substantial, say for example 10% of the total turnover of the Insolvency Professional came from that entity proposing to engage the Insolvency Professional.
- (d) How recently any professional work was carried out by the Insolvency Professional. It is likely that greater threats will arise (or may be seen to arise) where work has been carried out within the previous two years. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period should elapse before any threat can be reduced to an acceptable level. Say for example the Insolvency Professional has helped the entity restructure its debt.
- (e) Whether the appointment being considered involves consideration of any work previously undertaken by the practice for that entity.
- (f) Whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors and shadow directors of a company to which the appointment relates).
- (g) The extent of the insolvency team's familiarity with the individuals connected with the entity.

IV. IDENTIFICATION OF THREATS

An Insolvency Professional needs to take reasonable steps to identify possible threats and in particular threats in existence at the time of or immediately preceding the acceptance of an appointment. In reality, this means having in place systems to ensure that any threat to the fundamental principles are identified and evaluated properly before accepting the assignment.

V. SAFEGUARDS

- (i) Having identified and evaluated a relationship that may lead to non-compliance with the fundamental principles, Insolvency Professional shall introduce possible safeguards to materially reduce the possibility of non-compliance with the fundamental principles. In particular, he should consider whether a reasonable and informed third party in possession of all the

relevant information, including the significance of the threat would consider any safeguards acceptable. Some example of the safeguards would be having:

- (a) Policies and procedures to implement and monitor conflict of interest in engagements.
 - (b) Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level.
 - (c) Policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influencing the outcome of an insolvency appointment.
 - (d) A disciplinary mechanism to promote compliance with policies and procedures.
 - (e) Published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice and/or the Insolvency Professional any issue relating to compliance with the fundamental principles that concerns them.
- (ii) An Insolvency Professional may encounter situations in which no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such a situation appropriate course would be (a) withdrawing from the insolvency team; or (b) terminating (where possible the financial or business relationship giving rise to the possibility of a conflict of interest.
- (iii) While a trivial relationship of an Insolvency Professional with the insolvent entity / concerned creditor is not a bar for being appointed as an Insolvency Professional for that insolvent entity, for instance having personal banking relations with the financial / operational creditor, consideration should always be given to the perception of others when deciding whether to accept an appointment. Whilst an Insolvency Professional may regard a relationship as not being significant to the appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.
- (iv) Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.



VI. FULL DISCLOSURE

- (i) The Insolvency Professional shall make full disclosures of all conflict of interest situations before accepting an appointment in compliance of the disclosure required in para (vi) of the Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- (ii) An Insolvency Professional shall always disclose anything that may result in conflict of interest. Therefore, details such as the situation, safeguards incorporated, and why the situation does/doesn't constitute a cause for termination/cessation of appointment should be disclosed.