

## **CONDITIONS IMPOSED BY THE LICENSING OFFICER FOR THE GRANT OR RENEWAL OF INSOLVENCY PRACTITIONER'S LICENCE**

In addition to the requirements under the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (and any revised editions) ("IRDA") and the Insolvency, Restructuring, Dissolution (Insolvency Practitioners) Regulations 2020 for obtaining and holding an insolvency practitioner's licence, the following conditions imposed by the Licensing Officer under section 52 of the IRDA are to be complied with by the Licensee:

### **(A) Definitions**

1. In this set of conditions, unless the context otherwise requires –

"Business and professional relationships" includes (i) providing any professional services or advice (for e.g. accounting, audit, tax, insolvency, financial advice related work etc.) to the individual or corporation or giving any legal advice or representation; (ii) lending to or borrowing from the insolvent individual or corporation; and (iii) having any financial interest in the insolvent individual or corporation, solely or jointly (for e.g. partnership, joint venture or co-investment etc.);

"Chartered Accountant" means a person registered or deemed to be registered as a Chartered Accountant of Singapore under the Singapore Accountancy Commission Act (Cap. 294B);

"Close or immediate family member" means a spouse, partner, dependent, parent, parent-in-law, or child which shall include an adopted child and a step child, or sibling;

"Court" means any Court of competent jurisdiction in Singapore;

"Corporation" has the meaning given under the IRDA;

"Expertise" includes having appropriate training, technical knowledge and familiarity with the relevant insolvency or debt restructuring regime applicable laws, and the business with which the individual or corporation is concerned;

"Identification" means details of an individual's identity card under the National Registration Act (Cap. 201), or particulars of the individual's passport or such other similar evidence of identity as is acceptable to the Licensing Officer;

"Individual" means a natural person, whether living or deceased;

"Insolvency or debt restructuring appointment" means a formal appointment that, under the IRDA, must be undertaken by an insolvency practitioner;

"IP" and "Licensee" mean a licensed insolvency practitioner within the meaning of the IRDA.

“Organisation” includes any individual, company, association or body of persons, corporate or unincorporated, whether or not (i) formed or recognised under the law of Singapore; or (ii) resident, or having an office or a place of business in Singapore;

“Personal data” means data, whether true or not, about an individual who can be identified – (a) from that data; or (b) from that data and other information to which the organisation has or is likely to have access;

“Practice” means the firm, company or other organisation in which the Licensee practises or is employed;

“Public Accountant” means a person who is registered or deemed to be registered in accordance with the Accountants Act (Cap. 2) as a public accountant;

“Qualified person” has the meaning given under section 50 of the IRDA;

“Remuneration” or “fees” means the monies claimed or received by the Licensee in connection with an insolvency or debt restructuring appointment;

“Solicitor” has the meaning given under the IRDA; and

“Stakeholder” includes a creditor (whether an individual or otherwise) to whom a debt is or may be owed by the debtor undergoing insolvency or debt restructuring proceedings or administration, employee of the debtor, as well as an officer and shareholder of the debtor (if the debtor is a corporation).

## **(B) Codes of Professional Conduct and Ethics**

2. A Licensee must when carrying out work under an insolvency or debt restructuring appointment adhere to all of the rules or codes pertaining to ethics or professional conduct for the time being in force which are applicable to his profession by virtue of which the Licensee is a qualified person.

*Without prejudice to the generality of condition 2:*

3. A Licensee who is a public accountant must adhere to the Code of Professional Conduct and Ethics for public accountants and Accounting Entities issued by the Accounting and Corporate Regulatory Authority when carrying out work under an insolvency or debt restructuring appointment.
4. A Licensee who is a chartered accountant and a member of the Institute of Singapore Chartered Accountants must when carrying out work under an insolvency or debt restructuring appointment adhere to the:
  - (i) Ethics Pronouncement (EP) 100 Code of Professional Conduct and Ethics; and

- (ii) EP 200 Anti-Money Laundering and Countering the Financing of Terrorism – Requirements and Guidelines for Professional Accountants in Singapore.
- 5. A Licensee who is a solicitor and a member of the Law Society of Singapore must adhere to the Legal Professional (Professional Conduct) Rules 2015 when carrying out work under an insolvency or debt restructuring appointment.
- 6. A Licensee who holds a membership in any other local and / or foreign professional body must also adhere to the Code of Professional Conduct and Ethics (or equivalent) issued by that professional body when carrying out work under an insolvency or debt restructuring appointment.

**(C) Professionalism, Competency and Integrity**

- 7. A Licensee must not engage or be involved in any illegal or dishonest activities, business and professional relationships or conduct that:
  - (i) are not in accordance with existing laws and regulations; or
  - (ii) brings his profession into disrepute.
- 8. A Licensee must ensure that he possesses sufficient expertise and resources before accepting an insolvency or debt restructuring appointment.
- 9. A Licensee must act diligently and attend to his duties in a professional and timely way.
- 10. A Licensee must take all reasonable steps to ensure that those working under the Licensee's authority or instruction in connection with an insolvency or debt restructuring appointment have appropriate training and supervision.
- 11. A Licensee must be objective and impartial when exercising professional judgment and ensure that he is:
  - (i) not influenced by personal feelings, prejudice or relationships with any particular stakeholder or stakeholders; and
  - (ii) making decisions based on relevant facts and information and not for his personal interest or based on any irrelevant factors.
- 12. A Licensee must notify the Licensing Officer no later than 14 days after he is aware of any investigation, legal action or proceeding that has been commenced by the Singapore Police Force, his professional body or Practice against him for an offence or misconduct involving fraud, dishonesty or moral turpitude.
- 13. A Licensee must notify the Licensing Officer no later than 14 days after he becomes aware that any of the circumstances mentioned under section 55 of the IRDA apply to him.

## **(D) Confidentiality**

14. A Licensee must not disclose any personal data, or confidential or sensitive information which he acquires in the course of an insolvency or debt restructuring appointment to any other persons (including but not limited to close or immediate family members) without proper and specific authority, unless there is a legal or professional right or duty to do so.
15. Personal data and confidential or sensitive information acquired by the Licensee in the course of his insolvency or debt restructuring appointment must not be used to the personal advantage or benefit of the Licensee, his Practice or third parties.
16. A Licensee must comply with the Personal Data Protection Act 2012 in respect of personal data that is in his possession or control.
17. A Licensee must mask the identification (either in part or in full, whichever is appropriate) of an individual if he intends to use or disclose the same in his correspondence to any persons or parties outside of the Licensee's organisation, other than the relevant individual.
18. A Licensee must take all reasonable steps and measures to ensure that personal data, confidential or sensitive information of an organisation acquired in the course of his insolvency or debt restructuring appointments are adequately safeguarded to prevent unauthorised access, collection, use, disclosure, copying, modifications, disposal or similar risks.

## **(E) Independence**

19. A Licensee must be independent and be seen to be independent by declining an insolvency or debt restructuring appointment, or ceasing to act, if there are reasonable grounds to believe that he would not be capable of exercising impartial and objective judgement when performing his role as an IP in respect of that appointment.
20. A Licensee must not assume concurrent responsibilities or appointments that are not independent in fact, or are not seen to be independent, or which give rise to a potential or actual conflict of interest or may otherwise compromise his ability to carry out his duties as an IP properly.
21. Before taking on an insolvency or debt restructuring appointment, a Licensee must disclose to his client and creditors (including the committee of creditors or committee of inspection, whichever applicable) his and his Practice's past and / or existing business interest or activities that may give rise to a lack of independence or conflict of interest and obtain their consent to act in such circumstances.
22. If, in the course of an insolvency or debt restructuring appointment, circumstances arise which may lead to a conflict of interest or may compromise the Licensee's independence, he must disclose this to his client and creditors (including the committee of creditors or committee of inspection, whichever applicable) as soon as reasonably practicable and obtain their consent to continue acting.

## **(F) Fees, Remuneration and Work to be Performed**

### *Prior to accepting an insolvency or debt restructuring appointment*

23. A Licensee must inform his potential client(s) in writing of all material terms relating to the proposed appointment, including:
- (i) the terms of the engagement and a description of the type(s) of work involved; and
  - (ii) the basis on which any fees will be charged (e.g. time-cost or commission basis) and which services are covered by those fees.

### *After accepting an insolvency or debt restructuring appointment*

24. A Licensee must not accept referral fees or commissions relating to a client unless he has established safeguards to ensure that such fees or commissions do not compromise his actual or perceived integrity, independence or impartiality.
25. A Licensee must not pay referral fees or commissions relating to a client unless he has established safeguards to ensure that such fees or commissions do not compromise his actual or perceived integrity, independence or impartiality.
26. For the purposes of conditions 24 and 25 above, adequate safeguards include disclosing to the client any arrangements to pay or receive a referral fee for the work referred or for referring the client, whichever is applicable.
27. A Licensee claiming remuneration must provide sufficiently detailed, meaningful, open and clear disclosure to the person or persons authorised by the IRDA to approve his remuneration to enable such person(s) to understand the nature, quantity and relevance of the work done and to make an informed decision on whether the proposed remuneration is reasonable and valid.

## **(G) Advertising and Marketing**

28. A Licensee must be truthful and fair in advertising or marketing his services as an IP, and must not engage in any unfair practices within the meaning of the Consumer Protection (Fair Trading) Act (Cap. 52A).
29. A Licensee must at all times, avoid making any exaggerated or misleading claims for services offered, qualifications or experience, or any unsubstantiated or disparaging comments on the work, qualifications or experience of any other IP.
30. A Licensee must comply with all relevant laws, codes of practice and guidance in relation to advertising and marketing.

#### **(H) Gifts and Hospitality**

31. A Licensee must not offer, provide and/or accept or solicit gifts or hospitality that may compromise his actual or perceived integrity, independence or impartiality.

#### **(I) Acquisition and Custody of Client's Assets**

32. A Licensee must not directly or indirectly acquire or assume custody of monies or assets belonging to an individual or corporation under his care, unless permitted or required by law or the Court.

#### **(J) Documents and Records Keeping**

33. A Licensee must ensure that there are proper systems, procedures in place and staff training in relation to the retention of all relevant documents and records relating to any work he performs as an IP.
34. A Licensee must keep a sufficient and accurate record of every case in which he has undertaken an insolvency or debt restructuring appointment. This record must include all significant decisions and actions taken leading up to and during the Licensee's appointment.
35. A Licensee must have regard to all applicable legal requirements on the retention of documents and records under the IRDA.
36. A Licensee must cease to retain any documents or records containing personal data obtained in the course of his insolvency or debt restructuring appointment, and remove the means by which the personal data can be associated with individuals, as soon as it is reasonable for the Licensee to assume that:
- (i) the purpose for which that personal data was collected is no longer served by retention of the personal data; and
  - (ii) retention is no longer necessary for legal or business purposes.

#### **(K) Professional Indemnity Insurance**

37. A Licensee must have professional indemnity insurance coverage when undertaking insolvency or debt restructuring work.

With effect from 30 July 2020

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