



INSOL INTERNATIONAL

# TOWARD 2021

ETHICAL PRINCIPLES  
FOR INSOLVENCY  
PROFESSIONALS



## Ethical Principles for Insolvency Professionals

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## President's Introduction

I am pleased to introduce to you the '*Ethical Principles for Insolvency Practitioners*' (the "Principles") developed as part of INSOL International's Taskforce Initiative *Toward 2021*. One aspiration of the INSOL Taskforce is to lead the insolvency and restructuring profession in research, development and best practices around the globe. Whilst we focus on substantive legal and regulatory change and implementation, we cannot overlook the ethical foundation which underpins our entire profession.

The work was carried out by the INSOL Taskforce - Working Group 10 (the "Group"), chaired by Samantha Bewick, formerly of KPMG LLP (UK). I would like to thank the Group for their hard work and continued interest to develop these Principles and appreciate their feedback throughout this long process.

We began discussions in 2016 and considered an extensive range of issues, including how the objectives were best to be achieved, the underlying factors determining the success of the Principles, the benefits thereof, and the associated risks. The Principles were approved by the INSOL Board of Directors earlier this year and provided to all key contacts in our member associations.

If your jurisdiction does not have such guidelines, we hope that you will initiate and procure the implementation of these Principles for your practitioners. In your endeavours to do so, if you would like assistance from INSOL International, please feel free to contact Dr Sonali Abeyratne, Technical Director ([sonali@insol.ision.co.uk](mailto:sonali@insol.ision.co.uk)).

I thank you in anticipation for your interest and support of this important INSOL International initiative.

Yours very truly

A handwritten signature in blue ink that reads "Julie M. Hertzberg".

Julie Hertzberg  
*President*  
*INSOL International*



## Acknowledgement

The *Ethical Principles for Insolvency Practitioners* have been developed as part of INSOL International Taskforce Initiative *Towards 2021*.

The concept behind the Principles is to provide a guide to best practice while allowing for the differing nature of legislation and insolvency practice in different jurisdictions.

The Taskforce wishes sincerely to thank Samantha Bewick, formerly of KPMG LLP (UK), for chairing the working group preparing these principles, with the assistance of Narelle Ferrier of ARITA (Australia); Mat Ng of Ernst & Young (Hong Kong); Evan Flaschen, formerly of Bracewell LLP (USA), Melissa Coakley of Clifford Chance LLP (UK); and David Lawton of Bracewell LLP (USA).

The working group extends special thanks to Dr Lezelle Jacobs of the University of Wolverhampton and to David Burdette and Sonali Abeyratne of INSOL International for their help.

June 2019



## **INSOL International – Ethical Principles for Insolvency Professionals**

### **1. Introduction and Purpose of the Principles**

The primary purposes of the Principles are to:

- suggest best practices for Members;
- inform and educate INSOL Members about such best practices;
- assist members in implementing best practices by providing professional and ethical guidance; and
- provide an instructive reference for stakeholders and disciplinary bodies.

Members should take into account both the specific terms of the Principles and the spirit of the Principles.

#### **1.1 Interaction with Legislation and Regulation**

The Principles are not a restatement of applicable legislation, regulations and judicial pronouncements; instead, they provide guidance based on international standards of conduct. Some principles may impose a higher standard than existing jurisdictional legal requirements. Where the law is silent, or ambiguous, the Principles provide guidelines to clarify best practices.

To the extent the Principles conflict with local rules or laws, they are not intended to supersede such rules or laws.

The goal in establishing the Principles is to enhance and protect the integrity of the insolvency profession, and create a framework that is fair, effective, practical, and readily understood.

#### **1.2 Principles - based**

The practice of insolvency or restructuring and turnaround services is often complex and varied. A Member may have to operate in difficult circumstances involving distressed parties with competing demands, strict deadlines and complex legal, financial and factual issues. It is impossible to conceptualise and codify every possible situation or scenario. Accordingly, the Principles attempt to establish broad standards of practice that can be applied to every situation - instead of specific, limited rules that might be erroneously construed to encourage and / or prohibit the actions clearly defined therein.

As statements of principle are unavoidably general, explanatory guidance is provided - but the Principles themselves (and not only the specific guidance) are there to assist in guiding Members' decisions and actions. In addition to assisting Members, the guidance may also assist stakeholders in setting reasonable expectations by better understanding certain limitations of insolvency advisors and / or officeholders in carrying out their duties.

Members should also be able to use their professional and commercial judgment; when in doubt, they should seek legal or other advice, or the assistance of the applicable Court, before proceeding.



### 1.3 The Principles are not mandatory

The Principles do not impose mandatory requirements on Members, however it is hoped that Members would find them useful to implement and be guided by the principles in their professional practice.

The Principles use a two-level hierarchy of wording to describe and explain their application:

- recommended behaviours to achieve best practice (should / should not); and
- permissive statements where greater discretion is available (may).

### 1.4 Regulators and Courts

The regulation of the insolvency profession varies in different jurisdictions, and the conduct of insolvency practitioners may be subject to review by disciplinary tribunals and Courts in accordance with local requirements.

It is intended that the Principles may be used by regulators, tribunals and Courts to assist with the identification and enforcement of acceptable insolvency practices and professional standards.

The Principles are intended to be a resource and guide for such bodies, not a directive. The Principles always remain subject to applicable law and judicial or regulatory authorities.

### 1.5 Other professional standards

Many Members may also be members of other professional associations, which may have guidelines or requirements that are similar to the Principles.

Where applicable, Members should comply with applicable regulatory guidance promulgated by local regulators. To the extent that following the Principles would impose a higher standard on Members than applicable law, regulations, or rules published by other associations, Members should still have regard to the Principles.

To the extent that applicable law, regulations, or association rules impose a higher standard on applicable Members, that higher standard will apply and compliance with the Principles does not supersede any local requirements.

### 1.6 Application of the Principles

All Members of INSOL International who are authorised in accordance with local law, practice and regulation to accept appointments and engagements as insolvency professionals should have regard to the Principles.

Number	Principle	Commentary
1	<b>Integrity</b>  In addition to complying with applicable law, Members should endeavour to demonstrate the highest levels of integrity by being straightforward, honest,	Integrity implies fair dealing, honesty and truthfulness.



Number	Principle	Commentary
	and truthful; and by adhering to high moral and ethical principles in all aspects of their professional practice.	
2	<p><b>Objectivity, Independence and Impartiality</b></p> <p>Members should exhibit the highest levels of objectivity, independence and impartiality in the exercise of their powers and duties.</p> <p>Members should avoid circumstances likely to result in a conflict of interest.</p> <p>Members appointed over an estate should not acquire or remove any assets or cash from the estate except as prescribed or as properly authorised remuneration.</p> <p>Members should not be unjustly enriched, for example, by receiving secret kick-backs or commissions.</p>	<p>Independence should be considered both as a matter of fact and from the perspective of an informed observer. It should be considered with reference to jurisdictional guidance, whether legislative, professional or code-based, but the key tenet underlying the principle of independence should be ensuring that a Member's conduct is, and is seen to be, not unfairly or improperly biased towards any party, including Members themselves or their associates. A Member should not accept an appointment in connection with the estate if his (or a related party's) relationship with the directors of the company or any of the stakeholders would give rise to a possible or perceived lack of independence.</p> <p>Threats to objectivity, independence and impartiality may include any of the following, singly or in combination:</p> <ul style="list-style-type: none"> <li>• Self-interest;</li> <li>• Self-review;</li> <li>• Advocacy;</li> <li>• Familiarity; and</li> <li>• Intimidation.</li> </ul> <p>Each term is defined in the Glossary.</p> <p>Lack of independence cannot necessarily be cured by disclosure or by appointment of an independent joint practitioner or officeholder, although both options may be considered and may be appropriate in certain circumstances.</p>



Number	Principle	Commentary
		<p>Where a Member purchases or removes assets or cash from the estate (excluding appropriately approved remuneration and disbursements payments), it is likely that there will be a <b>perception</b> that independence, objectivity and / or impartiality has been breached, even if it has <b>not</b> in fact been breached. Such action may erode trust in the integrity of such Member and the process.</p> <p>Where a Member appointed over the estate of a commercial retailer is purchasing goods or services from a commercial retailer that sells to the public, it should generally be permissible for such Member to purchase such items from the retailer in the ordinary course of business (for example, buying food in a retailer on the same terms as every other purchaser). However, Members should not take advantage of staff discounts or special payment terms, as doing so may impair, or be perceived to impair, independence.</p> <p>Bribery or payment or receipt of secret commissions in order to receive work or provide work to others should be unacceptable.</p> <p>Acquisitions by close connections, e.g. family, connected / related parties, will generally give rise to the same concerns as acquisitions by Members themselves. Therefore immediate relatives and close business connections should be subject to the same restrictions as Members.</p> <p>Jurisdictions may wish to permit a Member (or relative or connection) to purchase assets where the stakeholders have given explicit permission in advance.</p>
3	<b>Professional / Technical Competence</b>	





Number	Principle	Commentary
	<p>Members and their firms should maintain an acceptable level of professional competency. This may be achieved by:</p> <ul style="list-style-type: none"> <li>• Keeping current with legislative / regulatory changes;</li> <li>• Undertaking continuing professional education; and</li> <li>• Undertaking sufficient case work to remain experienced</li> </ul>	<p>Members and their firms should be sufficiently and appropriately experienced and resourced to deal with the engagements and cases they accept, or can call upon specialists or further resources as required.</p> <p>Accepting cases where a Member cannot give them the level of attention or technical expertise required to deliver the best result for stakeholders may bring such Member and the profession into disrepute.</p> <p>Even where there may not be continuing education or qualification requirements, Members should endeavour to maintain a high level of competency in their field in order to deliver the services they are engaged to perform and in accordance with any statutory duties.</p>
4	<p><b>Professional Behaviour</b></p> <p>Communication with stakeholders should be used to inform and educate them on the progress of a case. Members should strive to be accurate, honest, clear, succinct and timely.</p> <p>It is in the best interests of all parties for Members to co-operate and communicate in a professional manner with other Members and adjudicating bodies. Nonetheless, a Member's duty is to the estate.</p> <p>When promoting themselves, or their Firm, or when competing for work, Members should act with integrity and should avoid bringing the profession into disrepute.</p>	<p>It is important to provide information about the progress of, and potential recoveries in, the proceedings to those parties with any tangible interest in such proceedings (including but not limited to creditors and shareholders). This does not mean that Members can or should be expected to respond to every query raised.</p> <p>Disseminating information should be balanced with maintaining commercial and other confidentiality obligations, and Members should consider the cost of preparing the response against the benefit of such response.</p> <p>In a high-profile case, many persons without a tangible interest in the case might demand information. Members should weigh the advantages of providing the information against the associated cost and disruption to the company or estate. Decisions should be made in the best interests of the estate and its stakeholders.</p> <p>Duties should be carried out in a timely fashion, respecting legislative</p>



Number	Principle	Commentary
		<p>time limits. Members should strive to complete cases efficiently, without undue delay.</p> <p>Although Members are naturally in competition for engagements, Members have a common interest in upholding standards for the insolvency profession.</p> <p>Members should not allow their personal relationships with other Members (or the hope of obtaining work) to unduly influence or adversely affect their dealings with the estate. In particular, where different Members are appointed over different estates or divisions of a company group, a Member should act in the interests of their allotted portion of the estate and its stakeholders, which should prevail over the interests of the collective group in the event of a conflict. For example, agreeing to a collective settlement that would leave the individual estate to which a Member is appointed in a worse position than could be obtained by another course of action would be contrary to such duty.</p>
5	<p><b>Remuneration</b></p> <p>Members are entitled to remuneration for their work (necessary or beneficial, and properly performed). Members should maintain and provide sufficient information to the body approving such remuneration (where applicable) in order to allow an informed decision on whether the remuneration is reasonable. Remuneration should only be drawn in accordance with the approval obtained (if applicable).</p>	<p>Remuneration is a very sensitive subject. Where applicable law does not provide procedures or standards for remuneration, it is important to carefully consider the manner in which Members request and provide justification for remuneration (or pay themselves where no approvals are required by law or professional guidance).</p> <p>Acceptable methods of calculating remuneration may include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Fixed fee;</li> <li>• Percentage of the value of the assets realised and / or the value of distributions made;</li> </ul>



Number	Principle	Commentary
		<ul style="list-style-type: none"> <li>• Hourly, or otherwise based on the time properly spent on attending to the case;</li> <li>• Contingent fee arrangement; and</li> <li>• Combination of the above methods.</li> </ul> <p>The terms of any contingent fee arrangement (including remuneration based on realised value) should be transparent, objectively measurable, and if applicable agreed or approved by the proper authority or stakeholders.</p> <p>Members should be able to justify the work performed, for example, by demonstrating that it is required by law (for example, certain jurisdictions may require reports to regulators, which do not benefit stakeholders but which serve a public interest), or that such work is reasonable in light of the:</p> <ul style="list-style-type: none"> <li>• complexity of the case;</li> <li>• degree of responsibility falling upon Members;</li> <li>• effectiveness of Members in carrying out their duties;</li> <li>• value and nature of the estate assets and liabilities; and</li> <li>• benefit therefrom accruing to the estate.</li> </ul> <p>It is helpful to distinguish between disbursements, remuneration, and third party costs billed to the estate.</p> <p>Disbursements which are a direct recovery of costs paid by Members or their firms to a third party (e.g., travel costs) should be disclosed.</p> <p>Disbursements that may arise from a recharge or allocation of costs incurred by Members or their firms and contain a profit element (e.g., a charge for use of a meeting room to</p>



Number	Principle	Commentary
		<p>hold a statutory meeting) should be approved, where applicable, in the same way as remuneration.</p> <p>Third party costs are not considered remuneration or disbursements and, accordingly, should be disclosed separately in accordance with local law and regulation.</p>
6	<p><b>Practice Management</b></p> <p>It is in Members' (and their agents and service providers) interests to implement policies, procedures and systems to ensure reasonable and proper:</p> <ul style="list-style-type: none"> <li>• record-keeping;</li> <li>• quality control;</li> <li>• risk management;</li> <li>• compliance management;</li> <li>• complaints management; and</li> <li>• professional indemnity / fidelity insurance (where available).</li> </ul>	<p>Members should endeavour to perform their duties in a timely fashion, respecting legislative time limits.</p> <p>Members should consider and obtain, where required or reasonably available, appropriate professional indemnity and / or fidelity insurance in keeping with the best interests of stakeholders.</p> <p>Professional indemnity insurance provides redress to stakeholders in the event a Member acts negligently.</p> <p>Fidelity insurance protects stakeholders in the event a Member (or a Member's staff) defrauds the estate.</p>

## Glossary

Advocacy	A situation in which a Member promotes a position or opinion to the point that subsequent objectivity may be compromised (e.g., the Member has acted on behalf of a significant creditor to advance such creditor's position). In such case, it is unlikely that other creditors would consider the Member to be impartial.
Agent	A person / firm employed under an engagement letter by the insolvent estate (acting by a Member) to perform a task or provide a service: for example, the employment of legal counsel.
Associate	Persons connected to the Member in the capacity of (for example) a personal friend or acquaintance, spouse, partner, civil partner, employee, employer, colleague, a relative of the Member or the Member's spouse or civil partner, the spouse or civil partner of a relative of the Member or the Member's spouse or civil partner.
Close business associate	Persons connected to the Member through professional means, including via employment, partnership, directorships of or shareholding in corporate entities or corporate trust arrangements.
Creditor	A person who is, or claims to be, owed money by the insolvent estate, whether or not such claim is ascertained, liquidated or contingent.
Disbursements	Sums paid by a Member or its firm to third parties or a recharge or allocation of costs incurred by Members or their firms which is charged to the estate.
Estate	The insolvent entity or its assets over which the Member has been appointed insolvency practitioner in accordance with applicable law.
Familiarity	A situation in which a Member's relationship to a stakeholder impairs (or is perceived to impair) such Member's impartiality and objectivity owing to the Member being too sympathetic or antagonistic to the interests of certain others (e.g., where the Member is a close relative of a significant creditor or shareholder, or of a director of the insolvent estate).



Family	<p>Lineal ancestors / descendants (including step-parents). Dependent relations-by- marriage in lineal relationship. Any other dependents living within the household (adult or children).</p> <p>A Member is related to another individual if they - (i) are married, or live together in a relationship similar to a marriage; or (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity. A Member is related to a corporation, partnership or other juristic person or entity if the</p>
Insolvency and Restructuring Officeholders	<p>Officeholders include formal and informal appointments such as Liquidator, Provisional Liquidator, Insolvency Administrator, Insolvency Trustee, Receiver, Restructuring Officer, and Insolvency Resolution Professional.</p>
Insolvency and Restructuring Professionals (“IPs”)	<p>IPs include professionals engaged in insolvency administration, restructuring and turnaround practice areas, and the advisers to those engaged in these practice areas.</p>
Intimidation	<p>A situation in which a Member is, or may be, threatened or pressured (e.g., with litigation, unfounded complaints, or even physical harm).</p>
Member	<p>Individual member of INSOL International authorised in accordance with applicable law, practice and regulation to accept an engagement or appointment in respect of an estate.</p>
Regulator(s)	<p>Any recognised professional body charged with regulating the profession of insolvency practitioners (whether solely or as part of a wider body of professional regulation) in accordance with local law and guidance.</p>
Self-interest	<p>A situation in which a Member has, or is perceived to have, a direct interest in obtaining a particular outcome: for example, where such Member (or a close associate) is also a creditor or shareholder of the insolvent estate.</p>
Self-review	<p>A situation in which actions taken by a Member, such Member’s firm, a close associate, or a close associate’s firm is (or is perceived to be) subject to review only by such Member (e.g., where a Member’s firm carried out the disposal of certain assets of the insolvent estate prior to insolvency, and there are suspicions that the disposal is in some way improper).</p>



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Shareholder	A person having an equity interest in the insolvent estate (ordinary, preferred, restricted) as defined by local law and accounting standards.
Stakeholder	A person having a tangible interest in the insolvent estate.
Tangible interest	Financial (monetary or economic) interest, whether direct or indirect (e.g., loss of employment)
Third party costs	Sums paid directly from the estate to a third party supplier. The third party supplier invoices the estate.



## **INSOL International GROUP THIRTY-SIX**

AlixPartners LLP  
Allen & Overy LLP  
Alvarez & Marsal  
Baker McKenzie  
BDO  
Brown Rudnick LLP  
Clayton Utz  
Cleary Gottlieb Steen & Hamilton  
Clifford Chance LLP  
Conyers  
Davis Polk & Wardwell LLP  
De Brauw Blackstone Westbroek  
Deloitte LLP  
Dentons DLA Piper EY  
Ferrier Hodgson  
Freshfields Bruckhaus Deringer LLP  
FTI Consulting  
Goodmans LLP  
Grant Thornton  
Greenberg Traurig LLP  
Hogan Lovells  
Huron Consulting Group  
Jones Day  
King & Wood Mallesons  
Kirkland & Ellis LLP  
KPMG LLP  
Linklaters LLP  
Morgan Lewis & Bockius LLP  
Norton Rose Fulbright  
Pepper Hamilton LLP  
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