EBRD INSOLVENCY OFFICE HOLDER PRINCIPLES

EBRD Principles for an Effective Professional and Regulatory Framework for Insolvency Office Holders

European Bank
for Reconstruction and Development

Contents

Introduction

EBRD Principles in Relation to the Development of a Professional and Regulatory Framework for Insolvency Office Holders.

The Legal Transition Team of the European Bank for Reconstruction and Development (EBRD) assists governments to reform and strengthen insolvency legislation and regulation. We support continuing professional development of insolvency office holders and judges with training initiatives and structured programmes. We also conduct assessments to measure the extensiveness and effectiveness of insolvency systems against recognised international best practices and standards.

Despite differences in national insolvency laws, insolvency office holders, variously called trustees, administrators, receivers, liquidators, or insolvency practitioners, are at the heart of insolvency systems around the world. Office holders occupy a position of trust and have important fiduciary duties. In some jurisdictions, they are officers of the court. They frequently control or monitor the debtor's operations and have significant influence on how the debtor's assets are sold and any proceeds distributed to creditors. It is, therefore, essential to ensure that office holders act honestly and professionally and are subject to an appropriate level of regulation.

An insolvency office holder's role and duties depend on the type of insolvency procedure. In liquidation proceedings, office holders typically displace the debtor's management and are responsible for the sale of the debtor's business or assets. In reorganisation proceedings, office holders often support the preparation and negotiation of a reorganisation plan by the debtor. They have a more limited, but no less critical, role during reorganisation proceedings where the debtor's management remain in control of the business (so-called 'debtor-in-possession'). In these proceedings, office holders may be responsible for monitoring the debtor's activities and ensuring that the interests of creditors are protected.

Recently, there have been legislative efforts to encourage early restructuring, both at national and international level, including the EU Directive 2019/1023 on preventive restructuring. This may lead in the future to an additional role for office holders in national insolvency systems. In some countries, office holders also act outside of the insolvency procedures, as advisors to the debtor or creditors in out of court workouts.

In 2014, we completed a detailed assessment of the insolvency office holder profession and its performance across 27 emerging economies where the EBRD invests. In most economies, office holders were required by law to have a special authorisation to act, either in the form of a licence or registration, and needed to sit an entrance examination to gain admittance to the profession. A dedicated state agency (or a combination of self-regulation by a professional association and state oversight) is indicative of more 'active' regulation of office holders. However, most economies that we assessed invested limited resources, resulting in 'passive' regulation of the profession. The assessment highlighted the importance of increased competition among office holders in order to raise standards of performance. In particular, it identified the need for appointment systems to take past performance of office holders into account and for remuneration rules to be structured in such a way as to incentivise effective and timely case management.

Since the assessment, we have worked on a number of country projects to develop the insolvency office holder profession.[1] These projects have confirmed the importance of investing in continuing professional development and specialised training for office holders. Training helps to deliver the knowledge and practical skills that office holders need to take appointments. Properly qualified and trained office holders support a more efficient insolvency system. A professional association of office holders can play a central role in organisation and delivery of continuing professional development. Where there is no active professional body of office holders, national authorities should cooperate with office holders to support the establishment of such a body that may, one day, share or assume responsibilities with respect to training, professional conduct and admission to the profession.

The EBRD Insolvency Office Holder Principles complement the 2020 **EBRD Core Principles of an Effective Insolvency System** by articulating the core elements that should be considered by policymakers for the development of the insolvency office holder profession. More broadly, the Principles seek to advance the integrity, fairness and efficiency of the insolvency law system by ensuring that appropriately qualified and regulated professionals take insolvency appointments. First published in June 2007, the EBRD Insolvency Office Holder Principles have been revised in 2021 to take into account recent developments in insolvency law and practice and to incorporate findings from both the EBRD assessment of the insolvency office holder profession and recent EBRD country projects.

Further guidance on development of the profession can be found in the UNCITRAL Legislative Guide on Insolvency Law and the INSOL Europe Statement of Principles and Guidelines for Insolvency Office Holders in Europe, as detailed in the annex to this publication.

Terms used throughout these Principles are defined in the 'Terminology' section on the next page.

Click here to view the EBRD Core Principles of an Effective Insolvency System Document

[1] Including in Armenia, Croatia, Cyprus, Greece, Serbia and Tunisia.

Terminology

Unless specified otherwise, references in these Principles to:

'assessment' means the assessment conducted from 2012 to 2014 by the EBRD on the insolvency office holder profession in 27 EBRD countries of operations, with the aim of evaluating the development of the profession and the legal and regulatory framework applicable to insolvency office holders.

'courts' includes any administrative authorities involved in supervising insolvency proceedings, as an alternative to the courts.

'dedicated regulatory authority' means a body established for the regulation of the insolvency office holder profession. This may include a self-regulatory association and a state-operated agency or department responsible for the regulation of insolvency office holders.

'insolvency office holders' or 'office holders' includes any practitioner involved in liquidation or reorganisation procedures as defined below, including, without limitation, any administrators, liquidators, receivers, or trustees. The term 'insolvency office holder' is often used interchangeably with the term 'insolvency practitioners' or 'insolvency representatives'.

'law' includes any legislative or other normative act.

'liquidation' means a formal insolvency procedure, pursuant to which an insolvency office holder (the liquidator) is appointed to realise the assets of a legal entity, to distribute the proceeds of such assets to creditors and to dissolve the entity.

'out of court workout' means a voluntary, contractual agreement between the debtor and its creditors to restructure the liabilities of a debtor's business.

'preventive reorganisation' means any procedure that is available to a debtor (legal entity) in financial difficulties, with a view to preventing insolvency and ensuring the viability of the debtor's business.

'professional association' means an organisation formed to promote and support the insolvency office holder profession. It may provide services, such as continuing professional development, to its members.

'reorganisation' includes any preventive reorganisation procedure and any insolvency procedure, which involves the restructuring of the assets and/or liabilities of a debtor (legal entity) or any other part of its capital structure, with view to assuring the continuation of the debtor's business.

'self-regulatory association' means a professional association of insolvency office holders that is responsible for the regulation of all or some areas of the profession.

Principles*

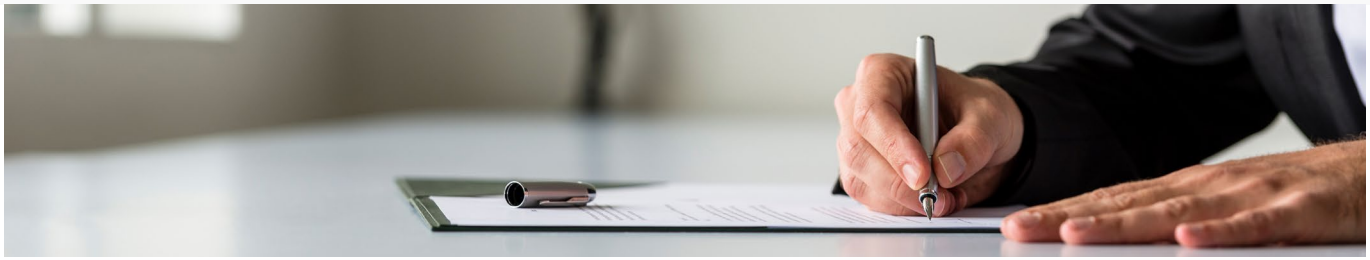
1 | Licensing and Registration

Owing to the special nature of their work and their fiduciary duties to different groups of stakeholders, insolvency office holders should be regarded as a distinct professional body and should have special permission to carry out their professional activities.

Accordingly, insolvency office holders should be regulated by a system of either licensing, involving the issuance of a licence, certificate or similar official document, or registration, in which the names of authorised insolvency office holders are entered into an official list or register. Both licensing and registration models are equally valid forms of official authorisation to act. Insolvency office holders may also be required to be members of a professional association of office holders, as a condition for maintaining any authorisation to act.

In some jurisdictions, appointments in preventive reorganisation procedures may be open to a wider group of professionals or experts operating in the field of restructuring and insolvency and not, therefore, limited to authorised insolvency office holders. There may also be a derogation from the licensing or registration regime in jurisdictions where a public official can act as an insolvency office holder. Licensing or registration is usually only applicable to private insolvency office holders.

* With special thanks to José Garrido, Nino Goglidze, Andres Federico Martinez, Dr Paul Omar, Kerry Trigg and INSOL Europe members for their comments.



Any licensing or registration system for office holders should include the following:

(a) an admissions process administered by the regulatory authority

The insolvency law or regulatory framework should define a single authority responsible for administering the licensing or registration procedure. Generally, this is the same authority managing the examination process. Any licence or registration should be dependent on satisfaction by the office holder of certain objective criteria, further detailed in Principle 2, including a successful entrance examination.

(b) a public list of authorised office holders

There should be a centralised list of authorised office holders accessible by every court having jurisdiction over insolvency procedures, all insolvency stakeholders and the wider public. The list should be maintained by the relevant regulatory authority dispensing the authorisation to act and updated on a regular basis to reflect any changes in status. In the interest of transparency, the public list should be easily accessible and freely available online. Where possible, the list should provide information about the professional experience of office holders to support the appointment process.

(c) the power of the regulatory authority to suspend, cancel, withdraw or renew any authorisation to act

The body administering the authorisation system should have the power to cancel, suspend or withdraw the authorisation to act in specified circumstances. All of these actions should be conducted in accordance with an appropriate formal disciplinary or court procedure. Where the licence or registration is of limited duration, the regulatory authority should have the power to renew this, subject to satisfaction of certain conditions. These may include satisfaction of any continuing professional development and training requirements described in Principle 2.

(d) prohibition of candidates with certain types of criminal records and proper criminal record checks on all office holder candidates

Owing to the public nature and the trust vested in office holders, candidates with criminal records that involve fraud, dishonesty, theft or any other offence that demonstrates disreputable character, should be barred from admission to the profession. All candidates should be subject to diligent criminal checks. If an office holder is given such a criminal conviction after admission to the profession, the candidate should be disqualified from acting as an office holder. A regular assessment of criminal records should be carried out by the relevant regulatory body.

(e) special provisions for any regulation of corporate entities (to the extent permitted)

The vast majority of insolvency systems license or register natural persons to ensure the right level of professional qualifications for the effective management of the insolvency case and personal responsibility for any decision-making. Authorisation of corporate bodies as office holders is permitted in some jurisdictions. However, this is exceptional and should be subject to certain additional requirements, including:

1. The principals of the corporate entity responsible for the conduct of the insolvency case and any decisions taken should be clearly identified to all insolvency stakeholders to deliver better outcomes and decision-making in the insolvency case. This may be evidenced by the nomination of one or more authorised principals by the corporate body to represent it in any insolvency proceedings.
2. All principals of any corporate body involved in the management of insolvency cases should satisfy the qualification and training requirements outlined in Principle 2.
3. Conflicts of interest which may arise by the involvement of a corporate body, its personnel and a larger number of persons in the insolvency case should be properly managed. This will require the establishment of relevant internal procedures including procedures for appropriate management of confidential information within the corporate entity. For example, a conflict of interest may include a business relationship between the company and the debtor or the company's prior engagement as an auditor of the debtor.
4. There should be clear provisions governing the accountability of the corporate body towards insolvency stakeholders, irrespective of any separate arrangements regarding liability and apportionment of any losses between the corporate body and its principals.

In addition, consideration should be given to limiting the activities of any corporate entity that is authorised to act as an insolvency office holder. This would reduce potential conflicts of interest that might arise if the corporate entity is engaged in a wide range of activities. Further regulations could govern the constitution of the corporate entity, such as the requirement for owners or shareholders to be registered insolvency office holders or for the corporate entity to employ persons with a minimum level of professional expertise.

2 | Qualifications and Training

Insolvency office holders should have relevant tertiary qualifications and professional expertise. Previous professional work experience, 'on the job' training and an entry examination should be part of the admission system.

Office holders should be required to maintain their professional skills and knowledge once admitted to the profession. Any continuing professional training programme should be designed to meet the needs of the office holders. Training of trainers may be advisable to improve the quality of training delivered to office holders.

Given the multi-disciplinary nature of insolvency cases, training should include financial, as well as legal training topics. In practice, office holders are unlikely to be equally qualified in law and finance and may need to hire experts to manage the insolvency case effectively. Restructuring skills should be a key area of competence for any training programme, given the increasing focus on business reorganisation and the lack of practical experience in this field among office holders in many emerging markets. Other qualities, including dispute resolution skills, may also be beneficial, because of the contentious nature of some insolvency proceedings and the need to achieve a consensus among stakeholders wherever possible.

In a minority of countries, insolvency office holders are subject to professional exclusivity rules and are prevented from carrying out all other types of professional activities to minimise potential conflicts of interest. However, such restrictions are impractical if there is insufficient demand or work available and they may limit development and growth of the profession. As the profession develops, it may be expedient to allow office holders to choose whether they wish to specialise in certain areas of insolvency, for example to focus on either liquidation or reorganisation cases. This could further shape the qualifications and training criteria developed for the profession.

The law should provide that:

(a) prospective office holders possess legal, financial and/or business tertiary qualifications relevant for the work

The work of an office holder requires a diverse skill set and includes knowledge of the law as well as commercial, financial and accounting matters. Therefore, law, finance, economics and/or business may all potentially be equally valid degree subjects. Where the office holder deems it necessary for the successful administration of the insolvency case, he/she should have the power to engage or request the engagement of outside expert(s) and to delegate specific tasks to the expert(s). It is the office holder's responsibility to ensure that the outside expert(s) has the necessary qualifications, expertise and experience to be able to undertake any delegated tasks. The fees of any outside expert should constitute an expense of the insolvency case and should be subject to appropriate scrutiny by the court.

(b) prospective office holders pass a specific examination in insolvency-related subjects to gain admittance to the profession

A specific examination should assess the knowledge, experience and skills of the candidate in insolvency-related subjects and should include relevant legal, commercial, financial and accounting matters. The content of the examination may be tailored to different professional backgrounds (legal or financial) and should be sufficiently rigorous to admit only candidates who have satisfied the examiners of their aptitude. The entry examination and the development of the examination curriculum should be overseen by the relevant regulatory authority and should test practical, as well as theoretical, knowledge.

(c) candidates undertake meaningful 'on the job' practical insolvency work experience or training prior to taking an office holder appointment

Candidates should have previous work experience with an acting, licensed office holder in insolvency-related matters. Where specific insolvency-related work experience or training is not readily available, other relevant practical experience may be an appropriate substitute. Alternatively, office holder candidates may be required to complete a mandatory training course to gain admission to the profession.

(d) office holders undertake continuing professional training

All office holders should participate in a specified number of hours of regular continuing training in insolvency related matters. The required number or duration of training sessions should be set on an annual basis. Training should either be required by law, or as a condition for continued membership of a recognised professional association and should be connected with the maintenance of any authorisation to act.

The format and curriculum of any training programme should incorporate some flexibility. Where possible, professionals should be able to choose training that is commensurate with their level of experience and practical needs. Various delivery methods for training can be considered, including online distance learning training and/or in-person training. Distance learning has the advantage of scalability and enables professionals to learn at their own pace, while in-person training has the advantage of enabling real-time dialogue and interaction among professionals sharing experience and know-how. The appropriate balance between such training methodologies is a matter for the regulatory authority or recognised professional association.

3 | Appointment and Review of the Appointment

The insolvency office holder appointed to an insolvency case has a decisive impact on the outcome of the case for both the debtor and its creditors. The law should, therefore, establish a fair, transparent and effective system for the appointment of an office holder that balances the interests of all stakeholders involved, minimises conflicts of interest and resolves any issues related to the appointment in a timely manner.

The law should provide for an effective appointment process for office holders that matches the skills and experience of an office holder with the demands of a particular insolvency case. At the same time, the appointment process should remain objective and avoid any conflicts of interest, bias and undue influence.

The structure of the appointment system is dependent on the national legal context and culture. However, the debtor should have the right to propose the appointment of a particular insolvency office holder in preventive reorganisation procedures. This incentivises the debtor to initiate such procedure early, in anticipation of financial difficulties. Where the appointment of an insolvency office holder is optional, creditors should, in certain circumstances, have the right to request the appointment of an office holder.

Equally, creditors should have the right to propose an insolvency office holder in any insolvency procedure where the debtor's management is replaced by an office holder, provided that such office holder acts on behalf of all creditors. In certain cases, it may be possible for the debtor and its creditors to reach an agreement on the identity of the office holder out of court, prior to commencement of the procedure. Where there is consensus among the parties, the court should, where possible, appoint the parties' preferred candidate.

The court should act as an arbitrator of any disputes between the parties and should consult the parties where applicable. A party should be able to appeal a court appointment, where such appointment would be unduly prejudicial to its interests or where there is a clear conflict of interest.

In some countries, the insolvency law provides for a court-based automatic or randomised appointment system for insolvency office holders. This can be useful where the court needs to appoint an insolvency office holder on a temporary, urgent basis at the opening of the proceedings or where parties are unable to reach an agreement on a candidate. Such a system can also address concerns regarding corruption and collusion between the parties provided it is sufficiently safeguarded from manipulation. However, a system that is entirely based on automatic selection has limitations. As the selection is made at random, it is unlikely, without the appropriate technology, data sources and selection of parameters, to match the right office holder to the case. This could have negative implications for both the debtor and for creditors and is inappropriate for high value, complex cases requiring specialist professional input. Randomised selection does not encourage competition and does not incentivise high professional standards or performance.

Where an automatic appointment system exists, it is advisable to separate insolvency office holders into different groups according to experience and qualifications. This enables the more complex cases to be assigned to an office holder within a more experienced and qualified group. The court may be given the discretion to depart from the automatic selection procedure in certain specified exceptional circumstances, for example where the insolvency case is requires specialist expertise. This power may not be appropriate where there is a high degree of concern about court independence. Alternatively, majority creditors may be given the right to request the replacement of a randomly selected office holder in exceptional circumstances.

Irrespective of which appointment system is chosen, the insolvency office holder should be independent and should act impartially, as required by law and as detailed in these Principles, to balance the interests of various insolvency stakeholders and to safeguard any public interest.

The law should provide for:

(a) the body that may appoint an office holder

The law should clearly define for each procedure, taking into account the objective of such procedure, whether the court, the creditors, the debtor or the regulatory authority should appoint the office holder. It should set out the circumstances in which one or more of these parties may participate in the appointment process, including in any process to challenge the appointment of an office holder.

In some insolvency systems, the law may stipulate that the court or the regulatory authority shall appoint an interim or temporary insolvency office holder at the opening of the proceedings. Such office holder may be confirmed or replaced by the court or the parties later during the proceedings. Insolvency systems that have the option of a public or state appointed official will generally provide that such person is selected by the relevant state body. A state body may also select office holders for any insolvency procedure involving a state-owned enterprise.

(b) a clear and transparent appointment procedure that takes into account professional experience

The procedure should be fair and transparent for all stakeholders in law and in practice. Any appointment should be from the official public list of licensed or registered insolvency office holders. Furthermore, the appointment of office holders should be based on their professional experience and overall 'fit' for the insolvency case.

(c) certain checks and balances for any appointments

All appointments should meet the standards set out in these Principles. Where the court is ultimately responsible for selection of the office holder, the law may require prior consultation with creditors or the debtor.

(d) the grounds on which an office holder may be ineligible for appointment

The law should seek to prevent any office holder appointment that might jeopardise the best possible outcome of the insolvency proceedings. Relevant factors that could jeopardise such an outcome are any factors that would give rise to a conflict of interest or to a lack of independence from the debtor or a creditor, such as an existing personal or family connection with the debtor or an existing or prior professional, business or contractual relationship with the debtor or a creditor (and, in the case of a corporate entity, its officers or shareholders).

An office holder should be ineligible for appointment and should have any permission to act withdrawn by the regulator for certain serious cases of professional misconduct. The law should also provide for an obligation of disclosure on the part of a proposed insolvency office holder in relation to any ground for ineligibility, whether arising prior to the appointment being made or during the administration of the case.

(e) the grounds upon which an appointment may be reviewed

The grounds on which an appointment may be reviewed could include a conflict of interest or other absence of independence, inability to properly administer the case, by reference to expertise, lack of relevant up-to-date experience or resources and/or where the office holder does not perform duties with proper professionalism and care.

(f) a review process for any appointment

The process for review of an office holder's appointment should be transparent and efficient so that this does not unnecessarily delay the progress of the insolvency case. In the case of a court appointment, an appeal against the decision to appoint the office holder would be required, subject to this being permissible under local law.

4 | Removal and Resignation

All stakeholders acting in good faith and with a clear and justified interest in the insolvency case should have the right to apply for the removal of the insolvency office holder in specified circumstances. Additionally, the office holder may wish to resign from office or may become unable to carry out the tasks necessary for the successful administration of the insolvency case.

Accordingly, the law should provide for:

(a) the grounds on which an office holder may be removed from an insolvency case

The grounds for removal should include any breach of duty or any inability to administer the insolvency case properly and without undue delay, by reference to expertise, experience or resources. Additionally, establishment of criminal liability, such as fraud, in relation of the office holder's professional activities may be considered a ground for removal. All grounds that would make the office holder ineligible for the appointment, including those set out in Principle 3 (e), should also lead to the removal of the office holder. The law should impose an obligation of transparency on an office holder to disclose without delay the existence or occurrence of any such grounds.

(b) the process for the removal of an office holder

The process should involve an application to the court which has the jurisdiction over the insolvency case by the concerned party – the debtor, creditors, the regulatory authority – or the initiation of the removal by the court at its own initiative on reasonable grounds. The procedure for the removal of an insolvency office holder should be transparent and speedy and entitle the office holder to be heard by the court. Given the importance of procedural efficiency and the time-consuming nature of any removal proceedings, a court should only review the removal of an office holder where there is clear evidence of serious misconduct (see paragraph (a) above). Any abuse of office holder removal provisions should be sanctioned to deter parties from wasting court time.

(c) the resignation of an office holder from office

An office holder may wish to resign from an insolvency case or may become unable to carry out the tasks required. The law should facilitate this process and provide for procedural rules that must be followed, including the requirement for the office holder to justify the resignation. A court's approval may be required before any resignation can be effective. This may ensure that an appropriate replacement is found.

5 | Replacement

In any case of removal or resignation of an insolvency office holder, it is important to proceed promptly with the appointment of a replacement office holder to avoid any unnecessary delay. In exceptional circumstances, where an appointment cannot be made immediately, an interim office holder may be appointed, pending a formal appointment being made.

Accordingly, the law should provide:

(a) for the prompt appointment of a new office holder to replace the former office holder

The law should specify the procedure for the replacement and impose the same selection rules and procedure as for an initial appointment of an office holder described in Principle 3. If an interim office holder is appointed, the court must be satisfied that such person has the appropriate expertise, experience and skills to conduct the case pending a formal appointment. The law should also address the settlement of the remuneration between the former office holder and the new office holder.

(b) that the new office holder is entitled, without delay, to take possession or access any of the assets, books and records of the debtor's estate that were in the possession of the former office holder

The law should facilitate the transition process. The former office holder should be required to account for any management of the estate and affairs of the debtor to the new office holder.

(c) that the new office holder is entitled, without delay, to the books and records of the former office holder that are related to the administration of the insolvency case by the former office holder

A new office holder should have access to all records, books and communications data, including electronic communications that have been prepared in relation to the administration of the estate and affairs of the debtor by the former office holder.

(d) that the retiring or removed office holder must cooperate with and assist the new office holder in the transfer of the insolvency case

This should be provided as a general and continuing obligation. The cost for any cooperation and assistance by the former office holder should be classified as an insolvency expense.

(e) that an interim office holder is able to enjoy the same rights as a new office holder.

The law should determine the ability of any interim office holder to obtain cooperation from the former office holder under the same terms as those applicable above in relation to a new office holder.

6 | Standards of Professional Conduct

The regulatory framework for insolvency office holders should set professional standards that guide office holders and support the effective and timely administration of insolvency proceedings.

Professional standards should be distinguished from 'ethical rules', which are general moral principles that an office holder is expected to follow and can be set out in a code of ethics (Principle 10). Compliance with standards of professional conduct should be supervised by the relevant regulatory authority and a breach of professional standards should lead to sanctions for misconduct. standards are contained in a code of conduct for the profession, compliance with such standards is usually monitored by a professional association.

Accordingly, the law and, where appropriate, a professional code of conduct for office holders, should:

(a) provide general standards that are critical to proper professional conduct of office holder duties

These will establish general standards that an office holder should follow in every insolvency case. They should include the obligation to comply with the principles of integrity, objectivity and professional competence. An office holder should be required to act with due care, to the best of his/her knowledge, diligently and with consideration towards all insolvency stakeholders. There should also be a requirement for the office holder to act promptly and to comply with relevant timelines set by the law.

(b) regulate any conflicts of interest

Office holders should not accept appointments in an insolvency case where this would give rise to a conflict of interest and would compromise their objectivity or independence and thus their ability to balance effectively the interests of different stakeholder groups. Guidance with respect to conflicts of interest may be supplemented in a code of conduct for office holders. Office holders should be under an obligation to disclose without delay any potential conflicts of interest on a continuing basis during an insolvency case, as well as any grounds of ineligibility for appointment prior to such appointment.

(c) regulate standards relating to:

- **the preparation of reports by the office holder**
  As further described in Principle 7, office holder reports to stakeholders serve an important function and act as an accountability mechanism. Reports should provide a clear and transparent account of any use of funds or proceeds pertaining to the debtor's estate by the office holder, including any expenses claimed by the office holder.
- **initial collection and safeguarding of assets**
  The standards should cover duties such as identifying assets, insuring assets, making an inventory of assets and taking control of bank accounts and any other asset accounts or investment portfolios that the debtor may have.
- **continued operation of the debtor's business or parts of the business after the commencement of the insolvency proceedings**
  The standards should cover the formalities that need to be followed if the office holder continues operating the debtor's business or parts of the business, such as the records or invoices that need to be kept.
- **maintaining records**
  The formalities of maintaining the records related to the administration of the insolvency case should be set out in the secondary legislation.
- **convening and conduct of creditors' meetings**
  Where the convening and conduct of creditors' meeting falls within the responsibilities of the office holder, the standards should be directed at content, publication of notices and timing of meetings, conduct of meetings, election of the chairperson, proposal of resolutions, conduct of voting and other procedural technicalities, including any remote participation or proxy voting.
- **sale and other disposal of assets**
  Procedural conduct and formalities regarding the different methods of sale and conduct of such sales, including any private sale, public auction or tender process.
- **opening and operation of bank accounts**
  Office holders should separate estate funds from their own funds. The standards should include details on safeguarding and use of estate funds. Office holder insurance should cover any fraudulent misappropriation of debtor estate funds by the office holder and therefore protect stakeholders from any loss caused by the office holder as discussed in Principle 11.
- **reorganisation plan contents and explanatory memorandum**
  This should supplement any legislation regarding the information to be contained in the plan and the explanatory memorandum.

7 | Reporting

All stakeholders in an insolvency procedure, including the court, the creditors, the debtor and the regulatory authority, should be regularly informed by the office holder about the progress of the insolvency proceedings.

Relevant information from the office holder should be presented in a clear and helpful format. Written records facilitate the monitoring of the actions and decision-making by office holders and are important for both accountability and transparency. Where the parties consent or the law otherwise mandates it, reports should be delivered where possible by electronic communication to improve efficiency and reduce costs. This could be supported by the development of a secure, centralised electronic platform for insolvency cases.

Accordingly, the law should provide:

(a) for electronic communications

Where the law requires documents to be delivered by the office holder to the court, the debtor, the creditors or the regulatory authority, it should be possible for such documents to be delivered in electronic form, provided that the intended recipient consents and provides an electronic address for delivery (whether via email or dedicated portal for uploading).

(b) that the office holder is required to provide regular reports on the actions undertaken and decisions made as well as progress of the administration of the insolvency procedure

It is essential that the law sets out clear rules with regard to the information required to be included in the reports to make sure that the reports are useful for creditors and other interested parties. The information provided may differ depending on the type of insolvency procedure and on the specific role of the office holder. In debtor-in-possession proceedings, where the debtor has strict reporting obligations and the office holder is mainly supervising the activities of the debtor, the reporting requirements for the office holder may be less detailed than for other procedures where the office holder is in full control and possession of the debtor's books. For full transparency, any reports should be submitted simultaneously to the court, the debtor (where applicable) and to creditors. Where the office holder is in charge of the debtor's estate, reports should include a full receipts and payment account and an estimated outcome statement if practical. Reports may also be made available, upon request, to any interested parties.

(c) guidelines for the timetable for filing reports

Reports should be submitted on a regular basis ideally within a short period e.g. four months following commencement of the insolvency case and thereafter at least semi-annually, with the possibility for the court to request more or less frequent reporting if the circumstances require this. As time is of the essence in insolvency proceedings, reports should be submitted without delay and there should be sanctions for failure to comply with any deadline.

(d) that the court and the creditors' committee are entitled to request additional information as necessary in response to any reports

It is essential that the office holder should provide additional information where necessary to the court and the creditors' committee, in order for the court and creditors to be able to monitor effectively the insolvency proceedings and the activities of the office holder. Any requests for information should be examined on their merits and should be met, where reasonable.

8 | Regulation, Supervision and Discipline

Active supervision and regular monitoring supports compliance by insolvency office holders with legal and professional duties and standards of professional and ethical conduct. Effective regulation requires sufficient dedicated resources and expertise and the ability to impose sanctions where necessary in response to cases of professional misconduct. A professional association of office holders can enhance the performance of insolvency office holders.

The courts play an important role in many countries in overseeing the work of insolvency office holders. However court oversight on its own is not an effective means of regulating the office holder profession, since the courts are limited to reviewing of the actions of an office holder in a particular case and lack the capacity to monitor the general professional performance of the office holder. A dedicated regulatory authority, such as a state agency or self-regulatory association, is more likely to be an active regulator than a government ministry, which may often lack the necessary personnel or expertise to oversee the office holder profession. A dedicated regulatory authority can act as a central point of authority for office holders and facilitate a coordinated approach to supervision and discipline. However, a self-regulatory association should be subject to government oversight to ensure that it fulfils its duties and membership of such an association should be compulsory for practising office holders.

Active monitoring can raise expectations regarding office holders' professional performance and act as a deterrent to professional misconduct. By comparison, irregular or reactive monitoring to incidents or complaints by a court or government ministry may be too infrequent and uneven to raise overall standards within the office holder profession as a whole. A dedicated regulatory body is in a better position to undertake active monitoring and to impose disciplinary sanctions across the profession than a ministerial committee, which may only meet infrequently. An important component of any regulatory system for insolvency office holders is the ability to impose sanctions, where necessary, in response to cases of professional misconduct.

Accordingly, the law should provide:

(a) for a dedicated regulatory authority to have appropriate regulatory, investigatory and disciplinary powers in respect of office holders

The law should facilitate the establishment of a dedicated regulatory authority, which may be either a state agency or a self-regulatory professional association of office holders. A state agency can be established under a ministry and should perform the main regulatory, investigatory and disciplinary functions in respect of the insolvency office holder profession. A self-regulatory professional association is established privately and can perform some regulatory, investigatory and disciplinary functions. However, the ministry or the dedicated agency (if any) should retain overall responsibility and oversight of the insolvency framework and have the right to intervene where necessary.

(b) for an effective complaints system

Dealing with complaints against office holders is fundamental since complaints may reveal cases of misconduct that merit investigation and wider issues within the profession that need to be addressed. An effective complaints system should facilitate the submission, review and resolution of complaints against office holders by third parties at little or no cost. It should encourage the submission of complaints against office holders to the regulatory authority, rather than to the court and thus support the efficient operation of insolvency proceedings. Any complaints should be addressed by the authority in a timely and proportionate manner.

(c) provide for the powers of the relevant regulatory authority, including the power to:

- **subject to appropriate checks and limitations, conduct regular on-site monitoring visits at its own initiative, at the request of a court or other competent body or as a result of a complaint by a stakeholder**
  The ability of a regulatory authority to conduct on-site monitoring to review an officer holder's case files and to check compliance with legal duties serves two main functions. It underlines the importance of office holders maintaining high professional standards and also acts as a powerful deterrent to office holder misconduct.
- **investigate the conduct of an office holder upon a referral from a court, upon the complaint of an affected third party or on its own motion**
  This is intended to apply when the conduct of an office holder should be considered in the context of overall eligibility to continue acting as an office holder. It is not intended to replace the court in cases where an application for removal of the office holder or review of his/her actions and decisions has been submitted to the court.
- **be consulted as part of any court application for removal of the office holder and review of any actions and decisions taken by the office holder**
  It is important that a court can take into account the views of the relevant regulatory authority (an 'industry' view) in cases where a complaint of any type (application for review or for removal or a general complaint) has been submitted to the court. The power to remove the office holder from the insolvency case should remain solely with the court. However, the proceedings may give rise to disciplinary measures for the office holder by the regulatory authority.
- **impose disciplinary measures on an office holder**
  The regulatory authority should have the power to impose disciplinary measures on an office holder.

  This is in addition to any sanctions that the court might impose. Any removal of an office holder from the insolvency case or review of the office holder's decisions and actions in such case should only be carried out by the court.

(d) provide that the regulatory authority has access to digital tools to support its supervisory role

The capacity of regulatory authority personnel is often limited. Access to digital tools, such as electronic reporting and risk management systems, support more effective and efficient supervision of office holders by the regulatory authority. Business intelligence tools can help the regulatory authority to process large amounts of data from electronic reporting to identify trends and detect potential misconduct. They can also reduce the frequency of human error. Ultimately, digital tools reduce both risks and costs for the regulatory authority, support better data driven decision-making and encourage greater regulatory compliance by office holders.

(e) provide that the regulatory authority is given a range of disciplinary powers, including powers to:

- impose a reprimand or warning
- impose a fine on an office holder
- suspend the licence or registration of an office holder
- cancel or withdraw the licence or registration of an office holder

The above remedies and sanctions are not intended to be exhaustive. It is important that the regulatory authority has a certain flexibility of response and can deploy an appropriate sanction in accordance with the seriousness of any misconduct.

(f) entitle the office holder to appeal against the imposed sanction(s)

Any decision that, directly or indirectly, affects the position of the office holder by imposing sanctions should be capable of appeal by the office holder.

(g) for the appointment, in appropriate cases, of a committee of creditors who may oversee the work of an office holder

This is not to encourage interference in the performance of office holders' work, but rather to enable a group of creditors to consider the progress and quality of the work within a clearly defined scope of promoting the best outcome for the insolvency case. It can sometimes be achieved by close consultation between the office holder and the committee on important matters that arise.
A committee of creditors will not be appropriate in all cases. Factors to be considered in determining whether a committee of creditors is needed include the size of the estate relative to the expense of a committee, the number of creditors and so forth. A committee will also depend on an active body of creditors willing to assume such responsibilities.

9 | Remuneration and Expenses

Since insolvency office holders are usually paid from the debtor's estate, a statutory framework should exist to regulate and protect the payment of office holder fees. The level of remuneration has a significant impact on the development of the profession and on the ability to attract talent. If remuneration is insufficient, professionals may not be incentivised to join the profession.

Remuneration is also a means of rewarding performance and should ideally be linked with the management and outcome of the insolvency case. There should be a clear separation between office holder remuneration and any expenses paid by the office holder in relation to the proceedings.

Accordingly, the law should provide:

(a) for the entitlement of an office holder to be remunerated for their work and to recover expenses properly incurred in an insolvency case

It is axiomatic that an insolvency office holder is a professional and should be entitled to charge for services rendered. Any expenses properly incurred by the office holder in the conduct of the case should be reimbursed at regular intervals. Remuneration levels should be sufficient to allow development of a professional activity and permit the office holder to establish the necessary appropriate administrative infrastructure to manage the professional activities arising from the insolvency case.

(b) the basis upon which the remuneration of an office holder may be calculated

This needs careful consideration. There is no universal approach to remuneration. In some countries, the preference is for remuneration based on 'time spent' on the insolvency case. In other countries, there may be court-based rate ranges that provide a reference point determining an office holder's remuneration. Alternatively, remuneration may be more tightly prescribed through the formal mechanism of a tariff system established by law. The tariff system is usually designed on a sliding scale, according to which office holders are paid a fixed percentage of either realisations and/or distributions from the estate, in respect of a liquidation case, or the amount of any restructured debt or value of the debtor's estate in a reorganisation case. The scale is generally based on a decreasing range whereby the higher the amounts involved, the lower the percentage is. Both tariff systems and time spent are equally valid approaches and not necessarily mutually exclusive. However, the time spent method should be based on an agreed hourly rate and proper documentation of activities undertaken during such time. In some cases, this method might be subject to appropriate caps agreed in advance. Additionally, a tariff system, while transparent, needs to be carefully designed. Depending on how the scale is set, a tariff system can result in overcompensation or undercompensation of an office holder's work.

In some countries, where the tariff system is the only available mechanism for remuneration and could result in undercompensation of the office holder's activities, it may be useful to provide an additional financial incentive such as a bonus payment or success fee so that office holders can be properly remunerated. These financial incentives could recognise additional work performed by the office holder, for example, owing to the complexity of the case or to achieve a better outcome for creditors or the debtor. Policymakers should ensure that any remuneration framework does not incentivise office holders to pursue liquidation over reorganisation.

Generally fixed fees for office holder remuneration, such as a monthly salary, are less appropriate since they tend to create the wrong incentives. They may have a negative effect on efficient management of the insolvency case by the office holder or encourage the office holder to minimise any costs. However, fixed fees may be an option where these are accompanied by a success fee.

(c) that the entitlement for remuneration of an office holder may be approved or reviewed by the court and other relevant parties

Given the sensitivity around remuneration of office holders and the need to consider the recoveries of creditors in an insolvency, it is important for any office holder remuneration to be subject to an appropriate level of scrutiny. There is no universal rule regarding which entity should approve office holder fees. This can be the debtor in certain preventive reorganisation procedures and otherwise the creditors or the court. In some jurisdictions, a creditors' committee may be required to confirm remuneration, with court approval only needed where creditors decline to provide their approval. Creditor approval is typically needed for payment of any bonus or success fee to the office holder. The involvement of the court in approving or reviewing office holder fees is generally in the interests of all insolvency stakeholders.

(d) a clear distinction between the treatment of remuneration and expenses

Expenses should be properly incurred in relation to the insolvency case and should not be used as a means of increasing remuneration. Any expenses should be properly reported by office holders in accordance with Principle 7. Creditors should have the opportunity to review and, in certain circumstances, challenge any significant expenses claimed by the office holder.

(e) an appropriate mechanism for the review/appeal against the determination of the remuneration payable to an office holder

Depending on the approach taken in (c) above, this may be an appeal to a court or other authority.

(f) for the payment of such remuneration out of the assets of the estate of the debtor, including payment on account during the progress of the case

Another possible source is a fund established by the government. This may be needed in low value or asset-less cases where the office holder would otherwise be exposed to risk on payment of its fees.

(g) an appropriate level of priority for the payment of such remuneration ahead of other claims

When an office holder accepts an appointment, he/she bears the risk that the proceeds of the insolvent debtor's estate may be insufficient to cover all fees and expenses. With the exception of any court expenses, there should be no claims that have priority for payment over the remuneration of an office holder. To provide otherwise would run the certain risk of deterring office holders from accepting appointments. Most insolvency systems provide that an insolvency office holder's approved fees and expenses shall be paid in priority from the proceeds of the debtor's estate.

10 | Code of Ethics

The law should encourage and facilitate the development of a code of ethics for insolvency office holders and its monitoring.

Such a code of ethics should include the need for:

1. impartiality, independence and objectivity, as well as integrity and accountability in respect of professional or business judgments;
2. confidentiality of information acquired as a result of professional or business relationships;
3. compliance with relevant laws and regulation to uphold the reputation of the profession; and
4. proper communication with all stakeholders, including other office holders and the court.

The law may enforce the application of a code of ethics. Alternatively, it could require a code established by a professional association to be recognised as binding on office holders.

11 | Insurance and Bonding

The law should require that an insolvency office holder must at all times maintain a bond or professional liability insurance to protect stakeholders of the insolvency case against a breach of duty by an office holder or its agents and ensure proper performance.

Office holders have a significant influence on the course of the insolvency case. Any breach of duty by an office holder or its agents may result in substantial losses incurred by the stakeholders. In some countries, litigation against office holders is common. Therefore, a bond or professional liability insurance covering liabilities up to an agreed threshold arising from the performance of the office holder's duties should be provided for any type of insolvency case. The requirement of a bond or a professional liability insurance is consistent with the requirement for such insurance in most regulated professions. Where private insurance is not readily available for individual office holders, consideration should be given to the establishment of a guarantee fund for office holders to which contributions are made by existing office holders.

12 | Release of Office Holder

The law should provide that, subject to any objection by a regulatory authority or an interested party, insolvency office holders may be released from their appointment in an insolvency case.

The law should provide that the release from the appointment can occur upon the expiry of certain period of time (for example, X years from the payment of a final distribution of funds to creditors or from the filing of final accounts or a report) or by court order upon the application of the office holder. This is in addition to any ability of office holders to resign from their appointment discussed under Principle 4(c) above. The effect of such release is that it formally terminates the appointment of the office holder to the insolvency case. It may also release the office holder from liability arising from the administration of that insolvency case.

Annex

Specific Guidance

1. EBRD Report on the Insolvency Office Holder Assessment
   https://www.ebrd.com/what-we-do/sectors/legal-reform/debt-restructuring-and-bankruptcy/sector-assessments.html Click here
2. INSOL Europe Statement of Principles and Guidelines for Insolvency Office Holders in Europe
   https://www.insol-europe.org/download/resource/167 Click here
3. UNCITRAL Legislative Guide on Insolvency Law, Part Two, Section III, B
   https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law Click here
4. The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, Part D
   https://openknowledge.worldbank.org handle/10986/35506 Click here

General Guidance and Benchmarks

1. EBRD Core Principles of an Effective Insolvency System
   https://www.ebrd.com/legal-reform/ebrd-insolvency-core-principles.pdf Click here
2. The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes
3. The World Bank Group and UNCITRAL, Report on Treatment of MSME Insolvency
   http://www.uncitral.org/pdf/english/workinggroups/wg_5/51stWG5/FINALMSME_UNCITRAL_Slides.pdf Click here
4. The World Bank Guide on Out-Of-Court Debt Restructuring
   http://documents.worldbank.org/curated/en/417551468159322109/pdf/662320PUB0EPI00turing09780821389836.pdf Click here
5. The International Monetary Fund, Orderly & Effective Insolvency Procedures
   https://www.imf.org/external/pubs/ft/orderly/index.htm#:~:text=An%20orderly%20and%20effective%20liquidation%20procedure%20addresses%20the%20inter%2Dcreditor,to%20be%20distributed%20to%20creditors Click here
6. INSOL Europe – Guidance note no.1 on the implementation of preventive restructuring frameworks addressing claims, classes, voting, confirmation and the cross-class cram-down
   https://www.insol-europe.org/publications/guidance-notes Click here
7. INSOL Europe – Guidance note no. 2 on the implementation of preventive restructuring frameworks addressing stay of individual enforcement actions
   https://www.insol-europe.org/publications/guidance-notes Click here

Legislative Guidance

1. UNCITRAL Legislative Guide on Insolvency Law
   https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law Click here
2. UNCITRAL Model Law on Cross-Border Insolvency
   https://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf Click here
3. UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments
   https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml_recognition_gte_e.pdf Click here
4. UNCITRAL Model Law on Enterprise Group Insolvency
   https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlegi_-_advance_pre-published_version_-_e.pdf Click here
5. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt
   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023 Click here
6. Regulation (EU) 2015/848 of the European Parliament and of the Council 20 May 2015 on insolvency proceedings (recast)
   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848 Click here

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