INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

15th February 2022

Discussion Paper

Engagement and appointment of 'professionals' in a corporate insolvency resolution process

The Insolvency and Bankruptcy Board of India (Board) has made several efforts, in the past, to streamline the process of engagement of professionals by insolvency professionals to make it more transparent and robust by way of change in Regulations after due consultations. Several concerns relating to the purpose for which such appointments are made, the implications of such appointment on the insolvency resolution process cost, the accountability of such professionals, the need for transparency in such appointments to avoid conflict of interest situations etc., have been deliberated and acted upon. Despite the same, clarity on various aspects of engagement of professionals is still missing. This Paper attempts to evoke further discussions on the key concerns with a view to address them.

2. The paper is divided into three parts. First part describes the existing framework covering all aspects of engagement of professionals in terms of legal provisions – Code, Regulations, Circulars. Second part is a brief on market practices, concerns and developments through orders of the Disciplinary Committee. Last part proposes a change to the CIRP Regulations to make the process of appointing professionals more robust in terms of transparency, fair practices and solicits comments on the same. The learnings from other international jurisdictions are presented in the **annexure.**

Understanding the extant provisions regarding the engagement of professionals

3. This part attempts to understand the current framework for engagement of professionals in terms of (i) what can be the purpose for their appointment, (ii) who can be appointed as a professional and (iii) the manner of such appointments.

4. In the Chapter II of the Code various duties to the interim resolution professional (IRP) or the resolution professional (RP) have been assigned. The key duties specifically identified and assigned inter-alia include; (i) filing of application to the Adjudicating Authority (AA) seeking extension of period of the CIRP (S.12), (ii) identifying critical goods or services to keep the corporate debtor (CD), a going concern (S.14 (2A)), (iii) constituting the committee of creditors after collation of claims and determination of financial position of the CD, (iv) appointment of authorised representative for class of creditors (S.21 (6A)), (v) obligation to provide information sought by members of the CoC (vi) conduct meetings of the CoC (S.24) including the determination of voting share; filing of application for avoidance transactions (S.26), (vii) preparation of information memorandum (S.29), and (viii) receipt and examination of resolution plans and presentation to CoC and application to the AA for approval of the resolution plan (S.30). It can be observed that all activities specifically assigned by the Code are those that are part of conducting a CIRP.

5. Alongwith the above stated duties, the Code also includes a listing of duties of the IRP and RP in sections 18 and 25 respectively. Section 18(d) includes to 'monitor the assets of the corporate debtor and manage its operations' by the IRP; section 20(1) indicates that the IRP 'shall make every endeavour to protect and preserve the value of the property and manage the operations of the corporate debtor as a going concern' and section 25(1) lays that it is the duty of the RP 'to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor'. Provision in section 23 makes it clear that the RP shall conduct the entire CIRP and manage the operations of the CD during the CIRP period. There is also the broad provision in section 20(2)(e) stating that, 'to take all such action as are necessary to keep the corporate debtor as a going concern'. **It is clear from the above that running of the CD's business is an integral part of the duties of IRP/RP.**

6. Section 20(2)(a) and section 25(2)(d) of the Code specifically empowers the IRP and the RP respectively to appoint accountants, legal, or other professionals as may be necessary to 'protect and preserve the value of the property and manage the operations of the corporate debtor as a going concern' and 'to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor'. **It thus, becomes clear that the power of appointment of professionals has been conferred upon IRP/RP for running of CD's business. The provisions for appointments of professionals across these provisions is linked only to duties relating to managing the business of the CD.**

7. Section 240 of the Code empowers the Board to make regulations to provide for the manner of appointing accountants, lawyers, and other professionals under section 25(2)(d) of the Code. Regulation 27 of the CIRP Regulations provide for the appointment of two registered valuers to enable the estimation of fair and liquidation value of the CD's assets required as part of the CIRP. The regulation enabled operationalisation of an activity that is indispensable for conduct of a CIRP. **Regulation 27 further enables the appointment of professionals to assist in the duties of the RP subject to the conditions that services of the professionals are required and such services are not available in the CD.**

8. However, the Board clarified further vide Circular dated 3rd January, 2018 titled 'Insolvency Professional not to outsource his responsibility'. **It prohibits outsourcing of any of his duties and responsibilities under the Code.**

9. On the question of who can be appointed, regulation 27 provides a negative list of persons who are not to be appointed in a CIRP. It includes relative of the RP or a partner/director of the IPE where the RP is a partner / director, a related party of the CD and auditor of the CD. **The provision aims at preventing any misuse by the RP for personal or pecuniary gains or where such professionals by way of their duties function in a way that benefits directly or indirectly a select set of stakeholders over others.**

10. Insolvency and Bankruptcy Bill, 2015, as introduced in Parliament, initially provided for the RP to "*appoint accountants, lawyers and other advisors in the manner as specified by the Board*" under section 25(2)(d). The Joint Parliamentary Committee, however, modified this formulation to "*appoint accountants, lawyers and other professionals in the manner as specified by the Board*". This modification clarifies that only professionals, and not advisers,

may be engaged by a RP. This draws attention to the accountability of such professionals for their actions and the subsequent implications to a CIRP. **This is of major concern where the tasks assigned to these professionals are critical to the CIRP and have the potential to influence the outcome for the CD and stakeholders.**

11. On the manner of appointment, regulation 27 provides that it be done on an arm's length basis following an objective and transparent process. Alongwith concerns stated in para 9 above, it aims to avoid situations of conflict of interest in a CIRP owing to the engagement of professionals.

12. Further, the Board vide Circular dated 16th January, 2018 titled, 'Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes', requires an IP to disclose his relationship, if any, with other professional(s) engaged by him. It also requires him to ensure disclosure of the relationship, if any, of the other professional(s) engaged by him including with himself. The IP shall provide a confirmation to the effect that the appointment of every other professional has been made at arms' length. For better clarity, the circular also specifies the kind and nature of relationships to be disclosed. **This circular aims to ensure that independence of professionals engaged is maintained at all times during the CIRP.**

13. Another crucial aspect in the context of appointment of professionals is its implication on the insolvency resolution process cost (IRPC). Regulations 33 and 34 provides that the expenses incurred for engaging such professionals by the IP shall be included in the IRPC. Regulation 33(4) further provides that only the amount of expense ratified by CoC shall be treated as a part of IRPC. The Board vide Circular date 12th June, 2018 further clarified that the IRPC shall not include, any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP; any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP; any expense incurred by a member of CoC or a professional engaged by the CoC; any expense incurred on travel and stay of a member of CoC; and any expense incurred by the CoC directly. **The incurring of expenses on professionals in a CIRP is subject to the mandatory requirement for an IP to ensure that the CIRP is conducted at reasonable costs.**

14. The IBBI (Insolvency Professionals) Regulations, 2016 [IP Regulations] provide in clause 25A of the Code of Conduct requires an IP to disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency, which is then made available in the public domain. Para 16 of the Code of Conduct also provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for making the decision, and the information and evidence in support of such a decision. This shall be maintained to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions. These provisions aim to bring in transparency to the manner in which the IP conducts his duties.

15. While discussing the engagement of professionals in a CIRP it is necessary to include the role of an Insolvency Professional Entity (IPE). The Board institutionalised the concept of IPE

where several IPs may come together, pool their resources and capabilities. Regulations 12 to 14 of the IP Regulations, inter alia, provide for eligibility criteria and process of recognition of an IPE. It requires emphasis that IPEs are regulated by the Board and are mandated to offer services keeping in line with the Code of Conduct for IPs. **The IPE was institutionalised to enable IPs to deal with insolvency proceedings involving very high stakes or where complex issues of law or practical difficulties are involved.**

Market practice, concerns and developments through DC orders

16. It is observed from existing market practices, that the professionals are being engaged by RPs for the following purposes:

16.1 The CIRP Regulations provide for the conduct of the valuation exercise and enables the appointment of registered valuers. The valuers are required to be registered with the IBBI as per the Companies (Registered Valuers & Valuation) Rules, 2017. They are subject to supervision of the IBBI as the designated authority under the said Rules. The CIRP Regulations mandate that an RP must file an application for preferential and other transactions before AA as per regulation 35A. For the purposes of the same, an IP has to form an opinion whether CD is subject to such transactions and make a determination. It is observed that RPs have adopted the practice of appointing accountants specialising in such tasks, popularly referred to as transaction auditors or forensic accountants. These professionals are usually regulated as they are mostly Chartered Accountants but may include other specialists who are not regulated by any regulator. So far, it is understood that though such professionals provide the report the ultimate responsibility falls on the RP. The RP has no means to hold these professionals accountable.

16.2 The RP's appoint legal professionals – lawyers and law firms as enabled by the Code to represent him in the AA and in other courts. There are also situations where the RP has to represent before Government agencies like tax authorities, Enforcement Directorate etc., and appoints senior lawyers. RPs also avail the services of lawyers for seeking opinions on specific questions of law. The purpose of appearing in courts could be for an activity as part of the CIRP or running the business, making this distinction is difficult and sometimes not very relevant given that the RP is responsible for both sets of activities or the outcomes are interdependent. RP may also appoint chartered accountants to assist them in their duties which is provided for under the Code.

16.3 The issue has also been presented in the Table below:

S.No.	Type of Professional	Whether regulated?	Governing Law	Regulated by	Purpose	Concerns	Activity
1.	Registered valuers	Yes	Companies (Registered Valuers & Valuation) Rules, 2017	Insolvency and Bankruptcy Board of India	Conduction of valuation exercise	Fee paid to valuers	Part of CIRP

S.No.	Type of Professional	Whether regulated?	Governing Law	Regulated by	Purpose	Concerns	Activity
2.	Chartered Accountants as Transaction auditors or forensic accountants	No	No applicable regulation presently	No regulator presently	Assisting IP to form an opinion for transactions covered under S.43, 45, 50 or 66.	No measures for accountability	Part of CIRP
3.	Legal professionals	Yes	Advocates Act, 1961	Bar Council of India	Various legal activities including appearance before judicial forums	(i) Charging of exorbitant fee (ii) Issues in fixing accountability may be tricky	Part of business of CD
4.	Chartered accountants	Yes	Chartered Accountants Act, 1949	The Institute of Chartered Accountants of India	Assistance in duties of IP	Charging of fee	Part of business of CD

16.4 There are cases where the RPs have appointed entities such as LLPs, IPEs for providing support services like infrastructure and manpower and for advisory services. The scope of work for such engagement is broad based and the RPs seem to justify the need due to the large size of the CD or complexity of the CIRP. In cases of advisory firms, the scope of their role is unclear as to what advice the RP seeks and requires, when the Code and subordinate legislations already provide clear and ample clarity and guidance. The concern is more acute when such services are engaged at large payments. There the RP appoints another IP as a process advisor leading to questions of competence of the RP. There are several concerns are observed in these appointments including the following:

(i) They may be assigned activities that the Code specifically assigned to RPs leading to outsourcing of duties.

(ii) The charges for these entities are over and above to the fees of the RP, while they are engaged to only assist the RP and in several cases observed to be exorbitant. There may be substantial burden on the already stressed CD.

(iii) A large number of people are engaged and also become part of CoC meetings with potential for confidentiality breaches.

(iv) Though the RP discloses the relationship of the entity to himself and the CD, there is no disclosure as to the people the entity employees for the CIRP. Any possibility of conflict of interest of individual employees goes undisclosed.

(v) In terms of accountability for their activities in the CIRP engagement it is to be noted that IPEs are regulated by the Board, hence within some regulatory ambit whereas LLPs are profit making service providers not subject to any regulatory supervision. The responsibility for their actions and consequences would rest with the RP.

16.5 In a recent matter of CIRP of Videocon Group of Companies, the AA observed that "*a sample from the 10, 11, 12 CoC minutes, Members of CoC attended is 26 & 28 respectively*

whereas the Applicant as Chair and the Applicant's Authorised Representative from Deloitte Touche Tohmatsu India LLP were 22, 20 & 28 represents respectively in addition to the Applicant's Legal Counsel. Such a large number of Authorised Representative for the Applicant indicates either he is not fully prepared or monitory benefit (fees) to these Representatives. Therefore, we request IBBI to examine this issue as well and appropriate guideline may be issued".

16.6 On other instances, an IP may require certain other professional service such as advertising and marketing, change and leadership management, business restructuring advisory etc. These are more generically labelled as consultancy services and do not fall under a single banner of profession. These services are hired as service contracts or professionals are employed through contractual arrangements. These are not regulated entities or professionals but are employed on contractual terms. The concerns regarding the cost, conflict of interest and confidentiality exist especially when entities are appointed for this purpose.

17. Managing the affairs of the CD as a going concern is integral to the duties of the RP. The duties/functions that accrue to the IRP/RP in his role as the executive/board of directors of the CD and are directly related to running the business operations of the CD. These may sometimes require sectoral/ domain expertise specific to the business of the CD in which the IP does not have the required technical competence. RPs have also appointed professionals with specific sectoral expertise to manage the business operations of the CD. CIRPs for sectors ranging from telecom, hotels, aviation, real estate, film production houses, power generation, steel manufacturing, financial service providers etc. have taken place and such appointments are made. Similar to instances discussed in para 16 above, such appointments are through service contracts or professionals employed through contractual arrangements and lead to similar concerns.

18. Based on market practice and extant provisions a rigid restriction on the purpose and scope of appointment of professionals may not be feasible in all situations. It may also constrain the RP from taking necessary steps to ensure value maximisation and timely completion while managing the business operations of the CD which are the tenets of the Code. However, there is need to account for the misuse of the discretion available to the IPs currently observed. The cost of unwarranted and unjustified appointments of professionals and at considerable expense may have adverse effects on the IRPC and on the confidence of stakeholders in the process. Hence it is warranted that the discretion available to the IPs must be used in an accountable manner.

Guidance by the Disciplinary Committee

19. The Disciplinary Committee (DC) constituted by the Board, while issuing orders against IPs has on several occasions dealt with issues in respect of duties of the RP, appointment of professionals to assist the RP etc. These orders provide an understanding of the lapses observed in the prevalent market practices and contraventions committed by IPs.

19.1 The DC vide order No. IBBI/DC/21/2020 dated 20th April 2020 held that the RP in contravention of the Code and Regulations as he had outsourced his duty and engaged IPE for verification of claims. He further included the payment made for the same in the IRPC thereby

burdening the ailing CD with additional costs. It also indicated that the fee of Rs. 3,00,000/- plus GST has been paid to the IPE for verification of claims, which was the primary duty of the RP himself. The DC held that though an IPE the entity should not have been appointed for performing a primary duty assigned by the Code on the IP.

19.2 The DC vide order No. No. IBBI/DC/26/2020 dated 8th June 2020 examined aspects in detail while discussing the appointment of an entity (an LLP) to provide support services during the CIRP of three CDs of a group that the RP conducted.

(i) Whether the appointed entity was a professional: On this, it noted that providing infrastructure, personnel, and back-office support services cannot be classified as "professional services" involving skill or even a "profession" falling within the definition (given in Black's Law Dictionary). Further, it distinguished between the LLP and an IPE stating that firm engaged cannot be regarded as an IPE since it has not been recognized by the Board. **The LLP does not fall within the definition of the term "professional", because the firm is not a professional with the authorisation of a regulator of any profession to render any professional service, and its conduct and performance are not subject to oversight by any regulator of any profession.**

(ii) Whether the fee paid to the LLP was reasonable or not: On this, the DC while noting that the fee paid to the firm was 19 times that of the fee payable to the RP. It is inconceivable that the cost of providing infrastructure, personnel and back-office support services is 19 times of the fee payable to the RP. **The DC also made note of such exorbitant payments made to the firm for support a CIRP of a CD which was not a going concern, and all assets were attached by Government agencies. It found the appointment of the firm nothing but a way of siphoning off the money of the CD.**

(iii) On the aspect of scope of work for support services: The DC noted that the mandate for the LLP was: (i) initial analysis and strategy, (ii) taking control of business, (iii) monitoring business and cash, (iv) assisting in development of business resolution plan, (v) finalising the resolution plan, and (vi) approval of resolution plan. None of these services is a service of a professional. The first three are responsibilities of the RP himself and for this, he may need support services, for which he has option either to use his employees or take assistance of an IPE, if he is a member of that IPE. **The DC made clear distinction between what constitute the duty of the RP and where he can take assistance. It also stated that in such cases an IPE may be chosen but not an unregulated firm.**

(iv) On the manner of appointment of the firm: In the instant case, The IRP and the firm were appointed together based on an arrangement made with the applicant creditor. The DC noted that the appointment of the IP and the firm was always envisaged collectively, and they were appointed on their collective strength and credentials. It stated that the IP has been appointed not on his own strength or merit, but on the strength of the firm and he alone is not capable of discharging the responsibilities as an IP. **It stated that the law envisages appointment of an IRP and not such collective appointment, either by the Adjudicating Authority or the CoC. In order to get the assignment, the IP mortgaged the interests of the CD to the**

creditor, by committing to engage the firm and transfer crore of rupees to it in the guise of fee.

19.3 The DC vide order No. IBBI/DC/68/2021 dated 5th March, 2021, again examined aspects relating to the appointment of advisory services firm:
(i) The scope of work for the firm included preparation of Information Memorandum (IM). As per section 25(2) (g) of the Code makes it mandatory for the RP to prepare the IM. **Thus, preparation of IM is the primary function of the RP and by involving the firm, the IP has outsourced activities and not taken reasonable care and diligence and not performed his functions in the manner specified in the Code.**

(ii) The DC also took note that the IP had entered into an agreement with the LLP for providing restructuring/IBC advisory services. It allowed the use of the IPs name by the Firm to designate itself as an IP as proof of their credentials. The DC noted that section 206 of the Code provides that no person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with the Board. **It concluded that by allowing the use of his name by the consulting firm in correspondences, has not only allowed the firm to misrepresent itself as an IP but has also become party to the misrepresentation.**

19.4 However, there has also been an instance where the DC has recognised as to what shall not construe as outsourcing of duties by an IP under the Code. In order No. IBBI/DC/76/2021 dated 27th August, 2021, the DC noted that it was in the ordinary course of business to outsource the operation of the water park to an outside vendor. **The DC also noted that to maintain the going concern status, it was necessary to operate the water park as the CD was cash strapped and maintenance of the water park and other expenses could not have been incurred unless revenue was generated.** It also discussed the expression 'ordinary course of business' as stated in the matter of Anuj Jain vs. Axis Bank Limited and Ors. (2020) 8 SCC 401 by the Hon'ble Supreme Court in which it has been held that: *"…. It speaks of the course of business in general. But it does suppose that according to the ordinary and common flow of transactions in affairs of business there is a course, an ordinary course. It means that the transaction must fall into place as part of the undistinguished common flow of business done, that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special or particular situation*."

19.5 The DC vide order No. IBBI/DC/73/2021 dated 20th July, 2021 it held that during the **CIRP it is the utmost responsibility of an IP to run the CD as a going concern while at the same time not bog down the CD which is already overburdened with debt by creating additional IRPC which does not contribute to the maximisation of value of the assets of the CD.**

20. Practices in other jurisdictions were also studied. The power to appoint professionals has been provided in UK, USA but with safeguards to ensure that such appointments do not affect the interest of the process and those appointees are disinterested parties. Chinese law allows such appointments with prior approval of the People's court. Australia also applies the benchmark of assessing the fairness in such appointments as it may appear to a "*reasonable*

and informed third party". Such options of delegation of powers and duties are also available in Saudi Arabia, Romania and Singapore. Internationally these jurisdictions employ various measures to deal with the issues mentioned in the paper. Certain countries mandate court's approval prior to appointments while others have issued various guidelines in the interest of transparency of appointments. The guidelines issued contain various provisions to effectuate transparent and fair appointment of professionals at arm's length. There is also a negative list in certain jurisdictions which states that in which circumstances and situations the appointments cannot be made. The details are presented in the annexure.

Proposed amendment

21. From the discussions above, it is amply clear that there is need to make the process of appointment of professionals more robust and transparent. Therefore, a need has arisen to amend the CIRP Regulations pertaining to 'appointment of professionals' to make the appointment process more robust and improve transparency in such appointments.

22. **It is proposed that a sub-regulation (5) be added under regulation 27 of the CIRP Regulations and it shall state the following:**

"(5) The interim resolution professional or the resolution professional, as the case may be, shall perform the following actions before making an appointment under this Regulation:

(a) The request for appointment of professional must be laid before the CoC for ratification.

(b) Such request for appointment must be accompanied by a statement in writing providing the reason and justification for the appointment by way of cost benefit analysis, the scope of work assigned, the absence of such services in the corporate debtor, the manner of selection and reasonableness of cost for such service.

(c) The request must also be accompanied by a declaration by the IP that, (i) he has exercised reasonable due-diligence before proposing such appointment (ii) the appointment is not of a related party (iii) he has obtained an undertaking that the same professional(s) will not associate himself, in any way, with other stakeholders involved in the process, and (iv) requisite disclosures have been made regarding such appointments."

Public Comments

The Board accordingly solicits comments on the amendment proposed in para 22 above.

Submission of comments

23. Comments may be submitted electronically by **30th March, 2022**. For providing comments, please follow the process as under:

(i) Visit IBBI website, www.ibbi.gov.in;
(ii) Select 'Public Comments';
(iii) Select 'Discussion paper – CIRP Feb22'
(iv) Provide your Name, and Email ID;
(v) Select the stakeholder category, namely, -
a) Corporate Debtor;
b) Personal Guarantor to a Corporate Debtor;

c) Proprietorship firms;
d) Partnership firms;
e) Creditor to a Corporate Debtor;
f) Insolvency Professional;
g) Insolvency Professional Agency;
h) Insolvency Professional Entity;
i) Academics;
j) Investor; or
k) Others.

(vi) Select the kind of comments you wish to make, namely,
a) General Comments; or
b) Specific Comments.

(vii) If you have selected 'General Comments', please select one of the following options:
a) Inconsistency, if any, between the provisions within the regulations (intra regulations);
b) Inconsistency, if any, between the provisions in different regulations (inter regulations);
c) Inconsistency, if any, between the provisions in the regulations with those in the rules;
d) Inconsistency, if any, between the provisions in the regulations with those in the Code;
e) Inconsistency, if any, between the provisions in the regulations with those in any other law;
f) Any difficulty in implementation of any of the provisions in the regulations;
g) Any provision that should have been provided in the regulations, but has not been provided; or
h) Any provision that has been provided in the regulations but should not have been provided.
(viii) And then write comments under the selected option.

24. If you have selected 'Specific Comments', please select para number and then sub-para number and write comments under the selected para/sub-para number.

25. You can make comments on more than one para/sub-para, by clicking on more comments and repeating the process outlined above from point 23 (vi) onwards.

26. Click 'Submit' if you have no more comments to make.

Annexure - Study of International Jurisdictions

United Kingdom

Under the United Kingdom's Insolvency Act 1986, Insolvency Practitioners can seek certain insolvency appointments of several professionals including specialist advisors, and advertising/ marketing service providers. As a safeguard measure against unfair practices by such appointees, the regulator has provided certain guidelines on:

a) identifying personal or professional relationships,
b) analysing significance or impact of such relationships on insolvency appointments,
c) factors such as reputation, expertise, resources available and applicable professional and ethical standards to be considered while seeking such appointments.

United States

Pursuant to Section 327 of the United States Bankruptcy Code governing 'employment of professional persons', the trustee may employ attorneys, accountants, appraisers, auctioneers or other professionals to represent or assist him in carrying out the trustee's duties. As a safeguard measure, it mandates that such professional persons do not hold or represent any interest adverse to the estate, and that are disinterested persons.

People's Republic of China

The Enterprise Bankruptcy Law 2006 of the People's Republic of China (Article 28) allows the Administrator to appoint necessary working personnel. However, prior consent needs to be obtained from the People's Court which shall also decide the compensation to be paid to the Administrator.

Australia

The Australian Restructuring Insolvency and Turnaround Association (ARITA) Code incorporates the "double might test" but instead of the fair-minded lay observer refers to the "reasonable and informed third party":

A member must be seen to be independent, that is, they must not accept an appointment, or continue to act under an existing appointment, if: a reasonable and informed third party; on the information available (or which should have been available) at the time might reasonably form the opinion that the Member might not bring an independent mind to the Administration and thus may not be impartial or may in fact act with bias; because of a lack of independence, or a perception of a lack of independence.

It is accepted practice for personal insolvency practitioners to accept appointments from third parties such as solicitors, accountants (including other insolvency practitioners), creditors, brokers and financial counsellors. The practitioners must take care not to make arrangements which might affect their impartiality or create that impression in a reasonable minded observer. He must consider:

a) frequency and financial value17 of referrals accepted and services procured from third parties
b) nature and extent of any undertakings sought by or concessions given to third party referrers.

Another aspect of third-party referrals that personal insolvency practitioners must be alert to are untrustworthy advisors. Certain advisors target debtors whose businesses or individual circumstances may be in financial distress and suggest that they take actions that are unethical or illegal (e.g. suggest or arrange the transfer of assets to another person or company without payment). These actions can lead to serious consequences for debtors including large fines or imprisonment.

Insolvency practitioners are expected to make appropriate enquiries and conduct reference checks of any advisors from whom they intend to accept referrals to ensure that they do not:
a) provide unqualified or unlawful advice to debtors
b) facilitate any voidable transfers to related entities for debtors.

A related entity includes:
- a relative of someone who is a bankrupt or a debtor
- a company of which the debtor or person made bankrupt (or their relative) is a director
- a beneficiary under a trust of which the debtor or person made bankrupt (or their relative) is a trustee
- a trustee of a trust under which the debtor or person made bankrupt (or their relative) is a beneficiary
- a member of a partnership of which the debtor or person made bankrupt (or their relative) is a partner.

Before accepting an appointment, registered trustees must sign a Trustee Consent to Act Declaration (Form 12) under section 156A of the Act. That form includes a declaration of relationships that requires disclosure of whether the registered trustee (or their related entities) is related to the debtor they consent to act for.

The Australian Code specifies this provision to avoid conflict of interest to an extent:

60 21 Inducements to be appointed as trustee

A person (the first person) commits an offence if:
(a) the first person gives, or agrees or offers to give, to another person any valuable consideration; and
(b) the first person does so with the intention of:
(i) securing the first person's appointment or nomination as a trustee of a regulated debtor's estate; or
(ii) securing or preventing the appointment or nomination of a third person as a trustee of a regulated debtor's estate.

Penalty: Imprisonment for 6 months.

60 26 Payments in respect of the performance by third parties

No payments for performance of trustee's ordinary duties by another person

(1) If a trustee of a regulated debtor's estate receives remuneration for his or her services, a payment in respect of the performance by another person of the ordinary duties that are required by this Act to be performed by the trustee is not allowed in the trustee's accounts.

Singapore

As per the provisions of Section 20(1) of the Insolvency, Restructuring and Dissolution Act 2018, the Official Assignee and Official Receiver may delegate to any person all or any of their powers or functions.

Romania

In order to accomplish his or her duties, the court-appointed administrator may engage the services of professionals such as lawyers, accountants, valuers or other specialists. No person may be designated if they are bound by a contract which could cause a conflict of interest; in this case, they must recuse themselves or they may be challenged in the conditions set out in Articles 43 and 44 of Law No 134/2010 on the Code of Civil Procedure, republished, as amended and supplemented (Article 61(2)). The court appointed administrator, and any of the creditors, may put forward objections against the valuation reports prepared in the case.

Saudi Arabia

Under the KSA Bankruptcy Law of Saudi Arabia, the trustee can appoint a restructuring advisor.

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