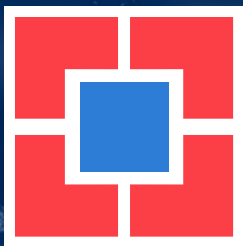


GARIA

**GHANA ASSOCIATION OF RESTRUCTURING
AND INSOLVENCY ADVISORS**



**CODE OF PROFESSIONAL
CONDUCT AND ETHICS FOR INSOLVENCY
PRACTITIONERS**

TABLE OF CONTENTS

01	PART 1: INTERPRETATION
03	PART 2: APPLICATION OF THIS CODE
04	PART 3: FUNDAMENTAL PRINCIPLES
04	3.2 Professionalism
05	3.3 Independence and Objectivity
07	3.4 Confidentiality
07	3.5 Integrity
10	3.6 Practice Management
10	PART 4: APPOINTMENT OF AN INSOLVENCY PRACTITIONER
10	4.1 Notice to the Regulator
11	4.2 Circumstances Requiring an IP to decline Appointment
12	PART 5: ACTIVITIES OF AN IP
12	5.1. Relationships between an IP and Debtor
13	5.2 Relationships between an IP and Creditor
14	5.3 Relationships between an IP and the Court
14	5.4 Relationships between an IP and the Registrar of Companies
15	5.5 Remuneration and reimbursement of the IPs expenses
15	5.6 Employment of an Expert
16	5.7 Commercial Engagements
18	5.8 Insolvency Estate
19	PART 6: TERMINATION OF AN IP'S ACTIVITY
20	PART 7: CLOSE-OUT OF IP'S ACTIVITIES

GOVERNING COUNCIL APPROVAL

This code of Professional Conduct and Ethics has been approved by the Governing Council of Ghana Association of Restructuring and Insolvency Advisors for use by all its members at its 59th Governing Council Meeting of 30 September 2021 held virtually.



Felix Addo
President

ENDORSEMENT FROM THE REGISTRAR OF COMPANIES

I am pleased to endorse this GARIA Code of Professional Conduct and Ethics for use by all Insolvency Practitioners in the discharge of their responsibilities under the applicable laws and professional standards.

I encourage all Insolvency Practitioner's to abide by the principles and activities enclosed herein to ensure a uniform and consistent practice within the highest levels of professionalism for their stakeholders especially their clients.

In accordance with Section 171 of the Corporate Insolvency and Restructuring Act, Act 1015, until the Ghana Association of Restructuring and Insolvency Advisors (GARIA) is converted from a Professional Body to a Statutory Body under an Act of Parliament, GARIA shall assist the Office of the Registrar of Companies to train and license all Insolvency Practitioners (IP's).

I fully endorse this Code. It is in recognition of this legislative directive that I fully endorse this code for use by all our certified Insolvency Practitioners (IP's)

Dated this day on 30 November, 2021 at Dodoo Street, Ministries, Accra



JEMIMA MAMAA OWARE
REGISTRAR -GENERAL

GHANA ASSOCIATION OF RESTRUCTURING AND INSOLVENCY ADVISORS (“GARIA”)

CODE OF PROFESSIONAL CONDUCT AND ETHICS FOR INSOLVENCY PRACTITIONERS (IP'S)

The purpose of this Code of Professional Conduct and Ethics (This Code) for IPs is to establish conditions for a transparent and efficient execution of the duties of IP's, speedy resolution of insolvency proceedings, and maintenance of public trust and respect for IPs.

PART 1: INTERPRETATION

For the purposes of this Code, the following expressions shall have the meanings set out below:

“*Associated person*” means (a) a spouse of an IP or any relative of the IP or his/her spouse up to the third degree of kinship; (b) a legal person whose governing body member is an IP or any person mentioned in subsection (a) of this section; (c) a legal person controlled by an IP or by any person mentioned in subsection (a) of this section.

“*Court*” means a court of competent jurisdiction empowered to take decisions in the course of insolvency proceedings against the Debtor.

“Code” shall mean this Code of Professional Conduct and Ethics for IPs.

“Creditor” means a legal or natural person entitled to claim the discharge of a Debtor's obligations and is required to file a proof of debt.

“Debtor” means a legal person in respect of whom insolvency proceedings have been commenced.

“Expert” means a legal or natural person (including an entrepreneur) who provides services that require a level of expertise or professional competence which the IP does not possess and who assists an IP to perform his/her functions (including but not limited to financial analysis of the Debtor's activity, property protection, valuation of property, auditing, litigation, drafting of documents and reports.)

“Insolvency estate” means all assets of the Debtor, including money and securities, other assets, rights and interests in assets, which belong to the Debtor and can be used or disposed of (including by way of encumbrances) in order to enable satisfaction of Creditors' claims.

“IP” means (a) a liquidator (b) a receiver (c) a manager [under the Companies Act, 2019 (Act 992)]; (d) an administrator (e) a restructuring officer [under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015)] or (f) a trustee in bankruptcy under the Insolvency Act, 2006 (Act 708) who has the requisite licensing and Professional Indemnity insurance.

“Law” means the Laws of the Republic of Ghana.

“Participant in insolvency proceedings”

means a Court, Debtor, Creditor, or any other party involved in insolvency proceedings against the Debtor, or considered to be a participant in insolvency proceedings according to Law.

“Support staff” means an Expert or any other person who with consent of an IP has access to documents and information concerning performance of an IP's functions.

All other expressions used in this Code shall have the same meanings as they have in: (a) Law; (b) the Corporate Insolvency and Restructuring Act, 2020 (Act 1015); (c) Companies Act, 2019 (Act 992); (d) related regulations; and (e) generally accepted business practice and usage.

PART 2: APPLICATION OF THIS CODE

- 2.1. This Code applies to all IPs licensed under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015).
- 2.2. This Code shall apply also to Experts and Support staff engaged by the IP.
- 2.3. If legislation contains rules that expressly oblige an IP to act otherwise than prescribed by this Code, the IP shall execute the rules of such legislation.

- 2.4. An IP's violation of this Code may lead to revocation of the IP's license.

PART 3: FUNDAMENTAL PRINCIPLES

- 3.1. An IP shall be required to comply with the following fundamental principles:
- Professionalism;
 - Independence and Objectivity;
 - Confidentiality;
 - Integrity;
 - Practice Management.

3.2. Professionalism

- 3.2.1. An IP shall make best efforts to acquire knowledge and skills that are sufficient and necessary for efficient execution of IP duties.
- 3.2.2. An IP shall engage in annual continuous professional development as prescribed by GARIA. An IP shall maintain continuing awareness and understanding of relevant technical and professional developments, including developments in insolvency legislation, regulations and guidance issued by the authorizing body, as well as judicial practice (including review of the Court's practice).

- 3.2.3. An IP should only accept an appointment as an administrator, restructuring officer, liquidator, receiver, manager, or Trustee in Bankruptcy if the IP has sufficient expertise to enable him to execute the IP role efficiently.
- 3.2.4. An IP must comply with all relevant laws, regulations, guidelines or directives and should avoid any conduct that might discredit the profession. The IP should conduct business with courtesy and consideration towards all with whom they come into contact when discharging obligations.

3.3. **Independence and Objectivity**

- 3.3.1. An IP shall demonstrate independence from all conflict of interest situations and vested interests, whether of an economic, familial or other nature that affect or may affect the performance of IP's duties.
- 3.3.2. An IP shall not engage in any business or occupation that would jeopardize the IP's objectivity or independence in respect of the insolvency proceedings.
- 3.3.3. Unless otherwise permitted by Law, this Code, or other legislation, an IP may not solicit or accept any gratuity, gift, or other remuneration or thing of value, privileges or other benefits from any person, if they affect or may affect the official actions of the IP.

3.3.4. Unless otherwise permitted by Law, this Code, or other legislation, an IP shall not perform functions of an administrator, restructuring manager, liquidator, receiver, manager or trustee in bankruptcy, if there exists “an active conflict of interest”.

3.3.4.1. For the purposes of this Code any circumstances set out below shall be considered as posing an “active conflict of interest”:

- an Associated person is a Debtor or Creditor;
- the IP or Associated person has (or has at any time during two(2) years before the commencement of insolvency proceedings against the Debtor) had a contractual relationship with any Participant in the insolvency proceedings and such a relationship impairs, or appears in the opinion of an informed third party to impair the objectivity, independence or performance of the IP's functions.
- the IP or Associated person is (or has been at any time during two (2) years before the commencement of insolvency proceedings against the Debtor) a Participant (shareholder, owner etc.) or member of the governing body of the legal entity, that is considered to be a competitor of the Debtor or Creditor, and if insolvency proceedings against the Debtor may significantly affect the activity or position of such a competitor;

- there are other circumstances that, in the opinion of a reasonable and informed third party, having knowledge of all relevant information, will impair the objectivity, independence or performance of the IP's functions.
- 3.3.5. An IP shall take all necessary and possible actions for the timely detection of the Expert's conflict of interest and ensure that conflict of interest may not affect the IP's performance.
- 3.3.6. This Code's restriction of the conflict of interest shall apply to an Expert and support staff.
- 3.3.7. The IP should be cognizant of the following threats: Self-interest; Self-review, Advocacy, Familiarity and Intimidation.
- 3.3.8. An IP shall balance the rights of Creditors and Stakeholders in accordance with the Law.
- 3.4. **Confidentiality**
- 3.4.1. An IP shall observe confidentiality and not disclose information about the Debtor, Creditor, Insolvency Estate or other information that is gathered in a professional capacity to a third party unless the disclosure is mandatory according to Law, or the IP has been compelled by a Court of competent jurisdiction to do so.
- 3.4.2. An IP shall take reasonable steps to ensure his Experts

and Support staff's adherence to confidentiality.

3.4.3. An IP shall not use any confidential information that is gathered in a professional capacity for IP's personal benefit or for the benefit of a third party unless otherwise permitted by the Law.

3.5. **Integrity**

3.5.1. An IP shall be straight forward, honest and truthful in all professional and business relationships.

3.5.2. An IP shall not assist, advise, or encourage any person to engage in any conduct that violates the Law, or this Code or other legislation, in respect of bankruptcy or insolvency proceedings.

3.5.3. Any information contained in a document produced by an IP shall be set forth in a clear and unambiguous way. The IP shall use best efforts to avoid situations when unclear statements or withholding information can result in decisions of the Court, Creditor or Debtor that would differ from decisions made on the basis of clear and unambiguous information.

3.5.4. An IP shall not sign any document, including a letter, statement, report, financial statement or plan, that the IP knows, or reasonably ought to know, is false or misleading.

- 3.5.5. If according to the Law, this Code, or other legislation, an IP is obliged to make any report (notice, message etc.), such report shall be made within a reasonable period in order to give the receiver of the report enough time to read it and make a decision (take an action, produce a document) based on the information of the report.
- 3.5.6. If according to the Law or other legislation, an IP is obliged to produce any document about the IP's activity and/or activity of the Debtor (hereinafter referred to as Report), such Report shall contain comprehensive information that affects or may affect rights or legally protected interests of the Report's recipient. In the Report, the IP shall reveal information the disclosure of which is predictably desirable for the receiver of the Report. This rule does not apply if (a) the form and content of the Report are established by legislation and requirements of this subsection differ from those of the legislation, or (b) expenses on producing a comprehensive Report are not commensurate with the purpose of the Report.
- 3.5.7. An IPs shall refrain from actions that unreasonably delay the resolution of insolvency proceedings against the Debtor.
- 3.5.8. If the Law or another act of legislation obliges an IP to perform actions during a certain long period, the IP shall use best efforts to perform such actions as soon as possible in order to ensure prompt consideration of the

insolvency case. This rule shall also apply if the Law and other legislation do not establish a certain period for performance of the obligatory actions of the IP.

3.6. Practice Management

- 3.6.1. The IP (and Experts or Support staff) should implement policies, procedures, systems and appropriate technologies to ensure reasonable and proper record-keeping, quality control, risk management, compliance management, complaints management, professional indemnity insurance in the discharge of the IP's duties.

PART 4: APPOINTMENT OF AN INSOLVENCY PRACTITIONER

4.1. Notice to the Regulator

Before appointment as an IP, the qualified person must in writing inform the regulator of the appointment indicating the following:

- 4.1.1. the possession of a valid IP license;
- 4.1.2. the IP 's ability to manage his/her caseload in insolvency proceedings efficiently;
- 4.1.3. the presence or absence of any conflict of interest (active or inactive);and,

4.1.4. any other information that may affect the performance of IP's functions.

4.2. **Circumstances requiring an IP to decline appointment**

An IP should refuse appointment under the following circumstances:

- 4.2.1. there are reasonable grounds to decide that the IP will not properly perform duties effectively because of inability to manage the caseload; or
- 4.2.2. there are reasonable grounds to decide that the IP does not have sufficient knowledge and skills for execution of his/her duties in insolvency proceedings against Debtor, and cannot compliment the gap with appropriate Experts or Support staff; or
- 4.2.3. the performance of functions of an IP will pose an active conflict of interest; or
- 4.2.4. there are reasonable grounds to decide that an IP will not properly perform his/her duties because of ill health; or
- 4.2.5. there are circumstances under which the Law forbids an IP from performing the required functions; or
- 4.2.6. there are other circumstances that impair or will

probably impair an IP's performance.

- 4.3. An IP shall not, directly or indirectly, pay (or undertake to pay) to a third party a commission, compensation or other benefit in order to obtain an appointment.

PART 5: ACTIVITIES OF AN IP

5.1. Relationships between an IP and Debtor

- 5.1.1. An IP shall use all available and permitted by law means to restore Debtor's solvency.
- 5.1.2. An IP shall take actions to prevent the acting on behalf of the Debtor by any unauthorized person or person not under the IP's control. Such actions may include (but shall not be limited to) the following:
 - 5.1.2.1. immediately notify in writing all banks through which the Debtor performs payment operations of the opening of the bankruptcy proceedings, and change the person authorized to act on behalf of the Debtor (including signing an order for payment or other documents);
 - 5.1.2.2. terminate any power of attorney granted by the Debtor to third parties without IP's consent (or prior to the appointment of the IP);

- 5.1.2.3. notify in writing the main counter parties of the Debtor that the IP has assumed control over the assets and business operations of the Debtor.
- 5.1.3. After appointment as an IP (if the head of the Debtor is replaced by such manager), an IP shall ensure compliance of the Debtor's activities with the appropriate legislation.
- 5.1.4. Upon determining that there are reasonable grounds to believe that the Debtor (officials or employees of the Debtor) has committed a crime, an IP is required to conduct investigations and report suspect violations to the appropriate law enforcement bodies and promptly provide them all information, facts and evidence relevant to the allegations.

5.2. Relationships between an IP and Creditor

- 5.2.1. An IP shall use all available means permitted by law to obtain maximum value from realizations to settle Creditors' claims.
- 5.2.2. During the execution of the IP's functions (or in connection with such execution) an IP shall not acquire, directly or indirectly, any of Creditor's assets or conclude any contract with the Creditor unless otherwise permitted by Law, this Code, or other legislation.
- 5.2.3. An IP shall avoid unequal treatment among Creditors.

This rule does not apply when unequal treatment is required by Law, this Code, or other legislation.

- 5.2.4. If an IP is responsible for (or involved in) holding a meeting of Creditors or Creditors' committee, the IP shall favor and support the Creditors' exercising their rights connected with the participation in meeting.

5.3. Relationships between an IP and the Court

- 5.3.1. Any statements, speeches, remarks, explanations, complaints and claims of the IP shall be lawful.
- 5.3.2. If an IP reasonably believes that the Court's actions are contrary to the legislation and violate the rights or legally protected interests of the IP, the latter has a right to use all available means permitted by law to minimize or eliminate the violation of IP's rights or legally protected interests.
- 5.3.3. An IP shall influence the Court only in a way that is permitted by Law or other legislation.

5.4. Relationships between an IP and the Registrar of Companies

- 5.4.1. An IP shall file all relevant documentation as applicable to the law with the Registrar of Companies.
- 5.4.2. An IP shall take steps to investigate any possible

evidence of fraud and other offenses by a debtor or company directors and report same to the Registrar of Companies and other appropriate authorities.

- 5.4.3. An IP shall influence the Court only in a way that is permitted by Law or other legislation.

5.5. Remuneration and reimbursement of the IPs expenses

- 5.5.1. An IP, shall preferably before acceptance of the IP mandate, negotiate his/her remuneration with the appointing authority (ie. person involved in the determination or approval of the IP's remuneration), taking cognizance of best practice and as authorized by applicable laws and regulations.
- 5.5.2. An IP shall refrain from incurring expenses that are not reasonably necessary, or the size of which is not justified, in the discharge of his/her duties.

5.6. Employment of an Expert

- 5.6.1. An IP with no expertise in a particular field (ie. Law, Engineering, Physician etc.), for the purpose of ensuring the effective running of an insolvency proceedings shall take steps to acquire the necessary knowledge and skills, by hiring an Expert.

- 5.6.2. The Expert to assist in performing the IP's duties shall be employed at the expense of the Debtor and/or Creditor. This right is subject to the following conditions:
- 5.6.2.1. actions performed by the Expert are required by legislation, or benefits from such actions are of greater value than the Expert's remuneration; and
 - 5.6.2.2. the Expert has such necessary knowledge and skills; and
 - 5.6.2.3. the Law does not forbid employment of the Expert according to the terms and conditions listed above.
- 5.6.3. An IP may agree to receive services (results of work) of the Expert only if obtaining such services (results of work) meet all requirements of this Code and such Expert has a contractual obligation to observe confidentiality according to the same rules as those applied to the IP.
- 5.6.4. An IP may agree to receive service of an Expert only if such Expert has provided the IP written confirmation of the absence of the Expert's conflict of interest. Conclusions about the presence or absence of a conflict of interest shall be made on the same grounds and in the same manner as those of IPs.

5.7. Commercial Engagements

- bringing voidable transaction claims;
- terminating Debtor's obligation;
- staff redundancy;
- terminating (or suspending) loss-making activities;
- ensuring a proper protection of the Debtor's property;
- ensuring a proper registration of Debtor's assets in order to put them in turn-over (including but not limited to, registration of title documents for illegally built or reconstructed properties, obtaining title of ownership to land, etc.);
- reclaiming property from adverse possession;

5.8.2. If an IP is authorized to file claims, satisfaction of which will result (or probably result) in increasing (or saving) the value of the Insolvency estate, the IP shall ensure filing of such claims during a reasonable period but not later than the term of limitation of action, or to file written applications with claims to the debtor in insolvency proceedings, or to submit an enforcement document.

5.8.3. An IP shall ensure proper procedural protection of an interest in increasing (saving) the value of the Insolvency estate where such action may affect the chances of an estate's case being heard in a court. This obligation includes filing necessary explanations, testimonials, appeals, statements on application of limitation of action, petitions for injunction, written applications with claims to the debtor in insolvency proceedings, etc.

- 5.7.1. Before the alienation of a Debtor's assets, an IP shall ensure that all potential buyers have equal access to all relevant information relating to the Debtor's assets as well as access to the assets subject to sale.
- 5.7.2. An IP shall initiate a termination of Debtor's obligation, a recognition of the Debtor's deal as invalid, or unilateral refusal to discharge the Debtor's obligation under the following conditions:
- 5.7.2.1. there are reasonable grounds to believe that recognition of the deal as invalid or unilateral refusal to discharge the obligation, will increase the value of the Insolvency estate; and
- 5.7.2.2. according to the Law, this Code, or other legislation, the IP is authorized to take the actions listed above.
- 5.7.3. An IP shall ensure value for money in acquiring goods and services.

5.8. Insolvency Estate

- 5.8.1. An IP shall take all possible and necessary actions to preserve, and if possible, enhance the value of Insolvency estate. These actions may include (but not be limited to):
- Creating an inventory of the Insolvency estate;
 - Identifying Debtor's assets including assets to which information has not been provided by the Debtor;

PART 6: TERMINATION OF AN IP'S ACTIVITY

- 6.1. An IP shall immediately submit a notice of resignation to the body authorized to terminate his/her appointment if after accepting such appointment IP discovers that:
 - 6.1.1. because of the IP's inability to manage the caseload, he/she cannot properly perform the duties; or
 - 6.1.2. an IP cannot properly perform his/her duties in insolvency proceedings against the Debtor because of lack of expertise; or
 - 6.1.3. a performance of the IP's functions is posing a conflict of interest(active or inactive); or
 - 6.1.4. IP's state of health prevents the proper performance of his/her functions; or
 - 6.1.5. there are other circumstances that impair or will probably impair the performance of the IP's functions.
- 6.2. If according to the Law, this Code, or other legislation an IP is obliged to file a notice of resignation, the IP shall refrain from actions that significantly affect the rights or legally protected interests of the Debtor and/or Creditor until the notice of resignation will be considered by a body authorized to terminate an IP's appointment. This rule does not apply if there are reasonable grounds to decide that refraining from certain actions will lead (or

will probably lead) to a significant decrease in the Insolvency Estate's value.

- 6.3. In a reasonable term after a termination of an IP's appointment, and the appointment of another person responsible for the Debtor's management, the outgoing IP shall hand over to the incoming IP all documents related to the Debtor's activity and necessary for a proper management of the Debtor. This rule does not apply to documents and information that according to the Law, this Code or other legislation shall be stored by the IP after termination of the appointment.

Termination of an IP's appointment neither terminates nor reduces the obligation of such a person to observe confidentiality of information about the Debtor, Creditor, Insolvency Estate, and other information gathered in a professional capacity.

PART 7: CLOSE-OUT OF IP'S ACTIVITIES

- 7.1. Upon conclusion of the IP proceeding, the IP must ensure that the following close-out activities are completed before exiting the IP role:
- 7.1.1. The IP must ensure timely filing of the appropriate final reports with the relevant authorities.
- 7.1.2. IP must ensure his/her work is audited and signed off by

a qualified Auditor.

7.1.3. Close-out meetings are held with relevant participants (Creditors and shareholders).

7.1.4. The IP is expected to retain records, reports and books for the relevant periods as may be required by relevant laws, regulations, directives and guidelines



Address: 7th Floor, SSNIT Emporium Building, Airport City, Accra
P. O. Box CT6146 Cantonments Accra, Ghana

Tel: +233 50 158 3771, +233 50 158 3770, +233 50 158 3772

E-mail: gariagroup@gmail.com / info@garia.org

Website: www.garia.org