

General Notice No. 2260 of 2012

THE INSOLVENCY ACT

Notice is hereby given that the following Rules governing the performance and conduct of Insolvency Practitioners have been set by the Insolvency Service in association with and after conferring with all relevant professional bodies pursuant to section 369(3)(f) of the Insolvency Act and are hereby published for general information.

19 October 2012

Director of the Insolvency Service
One Cathedral Square
Jules Koenig Street
Port Louis

RULES GOVERNING THE PERFORMANCE AND CONDUCT OF INSOLVENCY PRACTITIONERS

These Rules are intended to assist Insolvency Practitioners meet the obligations expected of them by providing professional and ethical guidance.

PART A

Definitions and Scope

1. Unless otherwise stated the following definitions apply-

“Act” means the Insolvency Act;

“close or immediate family” means a spouse (or equivalent), dependent, parent, brother, sister, child or sibling;

“entity” means a corporate body;

“fundamental principles” means the fundamental principles set out at Part B of these Rules;

“individual within the practice” means the Insolvency Practitioner, any principals in the practice and any employees within the practice;

“Insolvency Practitioner” has the same meaning as under the Act;

“Insolvency Practitioner appointment” means formal appointment in terms of the provisions of the Act;

“Insolvency Practitioner’s team” means any person under the control of the Insolvency Practitioner in the carrying out of his or her functions;

“practice” means the organisation in which the Insolvency Practitioner practices;

“principal” in respect of a partnership, means a partner or any person who is held out to be a partner; in respect of a sole practitioner, that person; and

“professional body” means a professional body to which the Insolvency Practitioner belongs.

2. These Rules apply to all Insolvency Practitioners. Insolvency Practitioners should take steps to ensure that these Rules are applied in all professional work relating to an insolvency appointment, and to any professional work that may lead to such an insolvency appointment. Although an insolvency appointment

will be of the Insolvency Practitioner personally rather than his or her practice, he or she should ensure that the standards set out in these Rules are applied to all members of the insolvency team.

3. These Rules and the spirit that underlies them govern the conduct of Insolvency Practitioners. Failure to observe these Rules may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an Insolvency Practitioner.

PART B

Fundamental Principles

4. An Insolvency Practitioner is required to comply with the fundamental principles set out in this Part.

Integrity

5. An Insolvency Practitioner shall be straightforward and honest in all professional and business relationships.

Objectivity

6. An Insolvency Practitioner shall not allow bias, conflict of interest or undue influence of others to override professional or business judgment.

Professional competence and due care

7. An Insolvency Practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques, including international best practices. An Insolvency Practitioner shall act diligently and in accordance with applicable technical and professional standards when providing professional services.

Confidentiality

8. An Insolvency Practitioner shall respect the confidentiality of information acquired as a result of professional and business relationships and shall not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships shall not be used for the personal advantage of the Insolvency Practitioner or third parties.

Professional behaviour

9. An Insolvency Practitioner shall comply with relevant laws and regulations and shall avoid any action that discredits the profession. Insolvency Practitioners shall conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

PART C

Framework Approach

10. The framework approach is a method that Insolvency Practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an Insolvency Practitioner to-

- (a) take reasonable steps to identify any threats to compliance with the fundamental principles;
- (b) evaluate any such threats; and
- (c) respond in an appropriate manner to those threats.

Included in these Rules are examples of threats and possible safeguards. These examples are illustrative and should not be considered as an exhaustive list of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles, or to specify the safeguards that may be available.

Identification of threats to the fundamental principles

11. An Insolvency Practitioner shall take reasonable steps to identify the existence of any threats to compliance with the fundamental principles that arise during the course of his or her professional work.

12. An Insolvency Practitioner shall take particular care to identify the existence of threats which exist prior to, or at the time of, taking an Insolvency Practitioner appointment or which, at that stage, may reasonably be expected to arise during the course of such an Insolvency Practitioner appointment. The Insolvency Practitioner shall take these threats into account when deciding whether to accept an Insolvency Practitioner appointment.

13. In identifying the existence of any threats, an Insolvency Practitioner shall have regard to relationships whereby the practice is held out as being part of a national or an international association. Threats may fall into one or more of five categories-

- (a) **Self-interest threats:** which may occur as a result of the financial or other interests of a practice or an Insolvency Practitioner, or of a close or immediate family member of an individual within the practice;
- (b) **Self-review threats:** which may occur when a previous judgment made by an individual within the practice needs to be re-evaluated by the Insolvency Practitioner;
- (c) **Advocacy threats:** which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;
- (d) **Familiarity threats:** which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and
- (e) **Intimidation threats:** which may occur when an Insolvency Practitioner may be deterred from acting objectively by threats, actual or perceived.

The following paragraphs provide examples of the possible threats that an Insolvency Practitioner may face.

Self-interest threats

14. Examples of circumstances that may create self-interest threats for an Insolvency Practitioner include-

- (a) an individual within the practice having an interest in a creditor or potential creditor with a claim that requires subjective adjudication;
- (b) concerns about the possibility of damaging a business relationship; or
- (c) concerns about potential future employment.

Self-review threats

15. Examples of circumstances that may create self-review threats include-

- (a) the acceptance of an Insolvency Practitioner appointment in respect of an entity where an individual within the practice has recently been employed by or seconded to that entity; or

- (b) an Insolvency Practitioner or the practice having carried out professional work of any description, including sequential Insolvency Practitioner appointments, for that entity.

Advocacy Threats

16. Examples of circumstances that may create advocacy threats include-
- (a) acting in an advisory capacity for a creditor of an entity; or
 - (b) acting as an advocate for a client in litigation or dispute with an entity.

Familiarity Threats

17. Examples of circumstances that may create familiarity threats include-
- (a) an individual within the practice having a close relationship with any individual having a financial interest in the insolvent entity;
 - (b) an individual within the practice having a close relationship with a potential purchaser of an insolvent's assets and/or business.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

Intimidation Threats

18. Examples of circumstances that may create intimidation threats include-
- (a) The threat of dismissal or replacement being used to-
 - (i) apply pressure not to follow relevant laws and regulations made thereunder, these Rules, any other applicable guidelines, technical or professional standards;
 - (ii) exert influence over an Insolvency Practitioner appointment where the Insolvency Practitioner is an employee rather than a principal of the practice;
 - (b) being threatened with litigation; or
 - (c) the threat of a complaint being made to the Insolvency Practitioner's professional body.

Evaluation of threats

19. An Insolvency Practitioner shall take reasonable steps to evaluate any threats to compliance with the fundamental principles that he or she has identified.

20. In particular, an Insolvency Practitioner shall consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.

Possible safeguards

21. Having identified and evaluated a threat to the fundamental principles an Insolvency Practitioner shall consider whether there are any safeguards that may be available to reduce the threat to an acceptable level.

22. The relevant safeguards will vary depending on the circumstances. Generally safeguards fall into two broad categories-

- (a) firstly, safeguards created by the profession, legislation or regulation; and
- (b) secondly, safeguards in the work environment.

23. In the insolvency context safeguards in the work environment can include safeguards specific to an Insolvency Practitioner appointment. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged. Some examples include-

- (a) leadership that stresses the importance of compliance with the fundamental principles;
- (b) policies and procedures to implement and monitor quality control of engagements;
- (c) documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level;
- (d) documented internal policies and procedures requiring compliance with the fundamental principles;
- (e) policies and procedures to consider the fundamental principles before the acceptance of an Insolvency Practitioner appointment;
- (f) policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties;
- (g) policies and procedures to prohibit individuals who are not members of the Insolvency Practitioner's team from inappropriately influencing the outcome of an Insolvency Practitioner appointment;
- (h) timely communication of a practice's policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures;
- (i) designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguards system;
- (j) a disciplinary mechanism to promote compliance with policies and procedures;
- (k) published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice and/or the Insolvency Practitioner any issue relating to compliance with the fundamental principles that concerns them.

PART D

Specific Application of these Rules

Insolvency Practitioner appointments

24. The practice of insolvency is principally governed by statute and secondary legislation, and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, an Insolvency Practitioner must comply with such provisions. In relation to his or her conduct, an Insolvency Practitioner must also comply with directions from any relevant authority, including the Official Receiver, the Director of the Insolvency Service, and the Court, to the extent that such directions are not inconsistent with statute, secondary legislation or these Rules.

25. In addition to the obligations imposed upon him or her by paragraph 24 of these Rules, an Insolvency Practitioner shall comply with such other duties or obligations that he or she may be under.

26. Before agreeing to accept any Insolvency Practitioner appointment (including a joint appointment), an Insolvency Practitioner shall consider whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest, or by any significant professional or personal relationships.

27. In considering whether objectivity or integrity may be threatened, an Insolvency Practitioner shall identify and evaluate any professional or personal relationship that may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships shall then be considered, together with the introduction of any possible safeguards. Generally, it will be inappropriate for an Insolvency Practitioner to accept an Insolvency Practitioner appointment where a threat to the fundamental principles exists, or may reasonably be expected to arise, during the course of the Insolvency Practitioner appointment, unless-

- (a) disclosure is made, prior to the Insolvency Practitioner appointment, of the existence of such a threat to the Court or to the creditors on whose behalf the Insolvency Practitioner would be appointed to act and no objection is made to the Insolvency Practitioner being appointed; and
- (b) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

28. The following safeguards may be considered-

- (a) involving and/or consulting another Insolvency Practitioner from within the practice to review the work done;
- (b) consulting an independent third party, such as a committee of creditors, a professional body or another Insolvency Practitioner;
- (c) involving another Insolvency Practitioner to perform part of the work, which may include another Insolvency Practitioner taking a joint appointment where the conflict arises during the course of the Insolvency Practitioner appointment;
- (d) obtaining legal advice from a legal practitioner with appropriate experience and expertise;
- (e) changing the members of the Insolvency Practitioner's team;
- (f) the use of separate Insolvency Practitioners and/or staff;
- (g) procedures to prevent access to information by the use of information barriers (e.g. strict physical separation of such teams, confidential and secure data filing);
- (h) clear guidelines for individuals within the practice on issues of security and confidentiality;
- (i) the use of confidentiality agreements signed by individuals within the practice;
- (j) regular review of the application of safeguards by a senior individual within the practice not involved with the Insolvency Practitioner appointment;
- (k) terminating the financial or business relationship that gives rise to the threat; or
- (l) seeking directions from the Court.

29. As regards joint appointments, where an Insolvency Practitioner is specifically precluded by these Rules from accepting an Insolvency Practitioner appointment as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the Insolvency Practitioner appointment appropriate.

30. In deciding whether to take an Insolvency Practitioner appointment in circumstances where a threat to the fundamental principles has been identified, the Insolvency Practitioner shall consider whether the interests of those on whose behalf he or she would be appointed to act would best be served by the

appointment of another Insolvency Practitioner who did not face the same threat and, if so, whether any such appropriately qualified and experienced other Insolvency Practitioner is likely to be available to be appointed.

31. An Insolvency Practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an Insolvency Practitioner shall conclude that it is not appropriate to accept an Insolvency Practitioner appointment.

32. Following acceptance, any threats shall continue to be kept under appropriate review and an Insolvency Practitioner shall be mindful that other threats may come to light or arise. There may be occasions when the Insolvency Practitioner is no longer in compliance with these guidelines because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the Insolvency Practitioner has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In deciding whether to continue an Insolvency Practitioner appointment, the Insolvency Practitioner may take into account the wishes of the creditors who, after full disclosure has been made, have the right to retain or replace the Insolvency Practitioner.

33. In all cases an Insolvency Practitioner will need to exercise his or her judgment to determine how best to deal with an identified threat. In exercising his or her judgment, an Insolvency Practitioner shall consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by factors such as the significance of the threat, the nature of the work and the structure of the practice.

Conflicts of interest

34. An Insolvency Practitioner shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles.

35. Examples of where a conflict of interest may arise are where-

- (a) an Insolvency Practitioner has to deal with claims between the separate and conflicting interests of entities over whom he or she is appointed;
- (b) there is a succession of or sequential Insolvency Practitioner appointments; or
- (c) a significant relationship has existed with the entity or someone connected with the entity.

36. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.

Practice mergers

37. Where practices merge, they shall be treated as one for the purposes of assessing threats to the fundamental principles.

38. At the time of the merger-

- (a) existing Insolvency Practitioner appointments shall be reviewed and any threats identified; and
- (b) principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new Insolvency Practitioner appointments to clients of either of the former practices.

39. However, existing Insolvency Practitioner appointments that are rendered in apparent breach of these Rules by a merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate ethical conflict.

40. Where an individual within the practice has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an Insolvency Practitioner appointment of the new practice, the individual shall not work or be employed on that assignment.

Professional competence and due care

41. Prior to accepting an Insolvency Practitioner appointment the Insolvency Practitioner shall ensure that he or she is satisfied that the following matters have been considered-

- (a) knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;
- (b) an appropriate understanding of the nature of the entity's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;
- (c) knowledge of relevant industries or subject matters;
- (d) experience with relevant regulatory or reporting requirements;
- (e) assignment of sufficient staff with the necessary competencies;
- (f) use of experts where necessary.
- (g) compliance with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

42. The fundamental principle of professional competence and due care requires that an Insolvency Practitioner should only accept an Insolvency Practitioner appointment when the Insolvency Practitioner has sufficient expertise.

43. A self-interest threat to the fundamental principle of professional competence and due care is created if the Insolvency Practitioner, or the Insolvency Practitioner's team, does not possess or cannot acquire the competencies necessary to carry out the Insolvency Practitioner appointment. Expertise will include appropriate training, technical knowledge, knowledge of the entity and the business with which the entity is concerned.

Professional and personal relationships

44. The environment in which Insolvency Practitioners work, and the relationships formed in their professional and personal lives, can lead to threats to the fundamental principle of objectivity. In particular, the principle of objectivity may be threatened if any individual within the practice, the close or immediate family of an individual within the practice or the practice itself, has or has had a professional or personal relationship that relates to the Insolvency Practitioner appointment being considered. Professional or personal relationships may include (but are not restricted to) relationships with:

- (a) the entity;
- (b) any director or shadow director or former director or shadow director of the entity;
- (c) shareholders of the entity;
- (d) any principal or employee of the entity;

- (e) business partners of the entity;
- (f) companies or entities controlled by the entity;
- (g) companies which are under common control;
- (h) creditors (including debenture holders) of the entity;
- (i) debtors of the entity;
- (j) close or immediate family of the officers of the entity; or
- (k) others with commercial relationships with the practice

Safeguards within the practice shall include policies and procedures to identify relationships between individuals within the practice and third parties in a way that is proportionate and reasonable in relation to the Insolvency Practitioner appointment being considered.

45. Where a professional or personal relationship of the type described in paragraph 44 has been identified, the Insolvency Practitioner shall evaluate the impact of the relationship in the context of the Insolvency Practitioner appointment being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following-

- (a) the nature of the previous duties undertaken by a practice during an earlier relationship with the entity;
- (b) the impact of the work conducted by the practice on the financial state and/or the financial stability of the entity in respect of which the Insolvency Practitioner appointment is being considered;
- (c) whether the fee received for the work by the practice is or was significant to the practice itself or is or was substantial;
- (d) the time elapsed since professional work was last carried out by the practice for the entity;
- (e) whether the Insolvency Practitioner appointment being considered involves consideration of any work previously undertaken by the practice for that entity;
- (f) the nature of any personal relationship and the proximity of the Insolvency Practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the Insolvency Practitioner appointment relates;
- (g) whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists;
- (h) the nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the entity;
- (i) the extent of the Insolvency Practitioner's team's familiarity with the individuals connected with the entity.

Having identified and evaluated a relationship that may create a threat to the fundamental principles, the Insolvency Practitioner shall consider his or her response including the introduction of any possible safeguards to reduce the threat to an acceptable level. Such safeguards may include-

- (a) withdrawing from the Insolvency Practitioner's team;
- (b) terminating (where possible) the financial or business relationship giving rise to the threat;

- (c) disclosure of the relationship and any financial benefit received by the practice (whether directly or indirectly) to the entity or to those on whose behalf the Insolvency Practitioner would be appointed to act.

46. An Insolvency Practitioner may encounter situations in which no or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a **significant** professional relationship or a **significant** personal relationship. Where this is the case the Insolvency Practitioner shall conclude that it is not appropriate to take the Insolvency Practitioner appointment.

Consideration should always be given to the perception of others when deciding whether to accept an Insolvency Practitioner appointment. Whilst an Insolvency Practitioner may regard a relationship as not being significant to the Insolvency Practitioner appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

47. Actual or perceived threats to the fundamental principles during realisation of assets in the course of an Insolvency Practitioner appointment.

Save in circumstances which clearly do not impair the Insolvency Practitioner's objectivity, Insolvency Practitioners shall not themselves acquire, directly or indirectly, any of the assets of an entity, nor knowingly permit any individual within the practice, or any close or immediate family member of the Insolvency Practitioner or of an individual within the practice, directly or indirectly, to do so.

48. Where the Insolvency Practitioner sells the assets and business of an insolvent company shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. Creditors or others not involved in the prior agreement may also see the sale as a threat to objectivity. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

It is also particularly important for an Insolvency Practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his or her decision-making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

Obtaining specialist advice and services

49. When an Insolvency Practitioner intends to rely on the advice or work of another, the Insolvency Practitioner shall evaluate whether such reliance is warranted. The Insolvency Practitioner shall consider factors such as reputation, expertise and available resources and the applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

50. Threats to the fundamental principles (for example familiarity threats and self-interest threats) can arise if services are provided by a regular source independent of the practice.

Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each Insolvency Practitioner appointment. Additional safeguards may include clear guidelines and policies within the practice on such relationships. An Insolvency Practitioner should also consider disclosure of the existence of such business relationships to the general body of creditors, or the creditor's committee if one exists.

51. Threats to the fundamental principles can also arise where services are provided from within the practice, or by a party with whom the practice (or an individual within the practice) has a business or personal relationship. An Insolvency Practitioner shall take particular care in such circumstances to ensure that the best value and service is being provided.

Fees and other types of remuneration

52. Where an engagement may lead to an Insolvency Practitioner appointment, an Insolvency Practitioner shall make any party to the work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees.

53. The following applies after accepting an Insolvency Practitioner appointment-

- (a) during an Insolvency Practitioner appointment, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate;
- (b) if such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the Insolvency Practitioner or the practice;
- (c) further, where such fees or commissions are accepted an Insolvency Practitioner should consider making disclosure to creditors.

Obtaining Insolvency Practitioner appointments

54. The special nature of Insolvency Practitioner appointments makes the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of Insolvency Practitioner appointments inappropriate. This does not, however, preclude an arrangement between an Insolvency Practitioner and an employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the Insolvency Practitioner through the efforts of the employee.

Gifts and hospitality

55. An Insolvency Practitioner, or a close or immediate family member, may be offered gifts and hospitality. In relation to an Insolvency Practitioner appointment, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.

The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality the Insolvency Practitioner shall have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision-making or obtain information, the Insolvency Practitioner may generally conclude that there is no significant threat to compliance with the fundamental principles.

56. Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. If an Insolvency Practitioner encounters a situation in which no or no reasonable safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level he or she should conclude that it is not appropriate to accept the offer.

57. An Insolvency Practitioner shall not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

58. It will always be for the Insolvency Practitioner to justify his or her actions. An Insolvency Practitioner will be expected to be able to demonstrate the steps that he or she took and the conclusions that he or she reached in identifying, evaluating and responding to any threats, both leading up to and during an Insolvency Practitioner appointment, by reference to written contemporaneous records.

59. The records an Insolvency Practitioner maintains, in relation to the steps that he or she took and the conclusions that he or she reached, must be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his or her actions.

Timeliness

60. Administrations that are conducted in a timely manner will generally be more efficient and effective. In the interests of minimising costs, administrations should be conducted in a timely manner. To ensure that statutory requirements are met, Insolvency Practitioners should use and maintain a checklist or other systems that alert them to critical dates such as-

- (a) statutory obligations and notifications;
- (b) meetings; and
- (c) reporting.

If an extension of time is required, the Insolvency Practitioner will need to give reasons for the need for additional time.

61. An Insolvency Practitioner may claim remuneration and costs of applying for an extension of time from the administration, subject to any order from the Court. An Insolvency Practitioner may not claim remuneration and costs for applying for an extension of time if the reason for the failure to meet the deadline was attributable to the poor conduct of the Insolvency Practitioner such as-

- (a) inattention to the passage of time;
- (b) lack of knowledge of the time limits;
- (c) poor processes; or
- (d) inadequately trained or supervised staff.

62. Insolvency Practitioners must ensure that stakeholders are clearly advised of time limits that impact on them and the consequences of not meeting those time limits.