The Regulatory Regime for Insolvency Practitioners

The IAIR Principles

https://www.insolvencyreg.org/

Email: secretariat@insolvencyreg.org

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Contents

WHAT IS THE IAIR?

The International Association of Insolvency Regulators (**IAIR**) is an international body that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. IAIR members have a unique perspective given the role that they play in insolvency systems.

IAIR provides a range of support to regulators of insolvency practice in its member countries.

Insolvency practice and policies remain in a considerable state of flux in many countries. The changing nature of debt coupled with a sharp rise in consumer debt, a tighter financial climate and less money available from the public purse to fund insolvency proceedings has led many countries to revisit their legislation and insolvency products. The IAIR community allows members to tap on each other's experiences to find solutions to problems they face, and to develop new systems.

IAIR also works with international organisations such as the World Bank Group and European Bank for Reconstruction and Development in the dissemination of best practice.

The objectives of IAIR are to:

- promote liaison, cooperation and discussion among government insolvency regulators;
- be recognised as an international body with the knowledge and credibility to promote fair, effective and efficient systems for the administration of insolvencies.

IAIR membership

IAIR is open to representatives from government departments, ministries, agencies and public authorities which have responsibility in their country for one or more of the following functions:

- insolvency policy and legislation;
- insolvency practice and administration;
- insolvency regulation.

Hence, IAIR members are normally government officials or representatives of the court. IAIR currently has around 30+ active member countries and is keen to increase its representation across the full range of countries involved in delivering corporate and/or personal (consumer) bankruptcy systems.

Main activities

IAIR's main activity is an annual conference and general meeting, which is its principal forum through which liaison, cooperation and discussion are promoted.

IAIR held its first annual conference and meeting in November 1995 on the back of the INSOL conference in Hong Kong. Since then, IAIR's annual conference has been hosted by one of its member countries in a wide range of cities around the world, most recently in

Edinburgh, Scotland in 2013, in Washington D. C., USA in 2014, Bermuda in 2015, Singapore in 2016, London in 2017 and Mauritius in 2018.

Each conference has a theme and provides topical inputs (keynote speeches, panel debates and workshops) on subjects of relevance to its members. Rotating the hosting of the conference allows different member countries to provide speakers on important issues affecting their insolvency regime. It also provides participants with an opportunity to learn more about the insolvency system in that country, sometimes even with a visit to the law-making institutions or bankruptcy courts.

Attendance at the conference is only open to delegates from IAIR member countries, and countries eligible for membership. The relatively small group of attendees (around 50) thus makes for a friendly atmosphere where it is easy to network and get to know colleagues from other jurisdictions.

Recent IAIR initiatives

IAIR seeks to use its network to undertake project work and produce reports on topics of interest affecting its members.

At the 2018 conference IAIR will launch this series of principles for the regulation and licensing of insolvency practitioners. This has been produced by Prof Riz Mokal from a survey of IAIR members practice.

Other initiatives have included a project on the Financial Education and Counselling in Personal Insolvency (led by Canada in 2012), and a study into the range of no asset procedures (NAPs) [1] being adopted by member countries (led by Jersey in 2013) which examined the impact of these procedures on an individual's circumstances and their ability to manage their finances in the future.

In 2014, Scotland led an IAIR project to compare the fee-charging regimes that operated in each of the member countries. Other studies have included the development of an insolvency profession and standards led by Serbia and Canada in 2010, the mutual recognition of sanctions report in relation to both personal and corporate bankruptcies led by Ireland in 2008 and the regulation of Phoenix companies led by Ireland in 2004. IAIR is currently working on a project, led by the UK, to look at the regulation of practitioners.

Member countries are able to use all these project summary reports to inform best practice for future policy development**.**

All these reports and a wealth of additional information are provided for IAIR members on its website at www.insolvencyreg.org. This provides members with easy access to contact details, national bankruptcy registers and a range of summary and technical information on fellow member countries – facilitating the exchange of insolvency information across borders.

1. [1] A NAP is an insolvency process under which an individual debtor who is insolvent and who has no, or very limited, assets is able to access a formal debt relief mechanism, which provides for the cancellation of outstanding debts after a specified period.

In summary, for the past 20 years, IAIR has been providing its members worldwide with a range of support and information. Effectively run by its members, with the support of a secretariat function, it strives to facilitate the more effective and efficient development of insolvency regimes around the world**.**

Contact information

To find out more about IAIR, its membership or reports, contact www.insolvencyreg.org or email Rosemary Winter-Scott - **secretariat@insolvencyreg.org**

INTERNATIONAL ASSOCIATION OF INSOLVENCY REGULATORS

The Regulatory Regime for Insolvency Practitioners

October 2018

INTRODUCTORY NOTE TO THE PRINCIPLES

The International Association of Insolvency Regulators ('**IAIR**') publishes these Principles for the Regulatory Regime for Insolvency Practitioners ('**the Principles**') to assist national policymakers seeking to create or strengthen the regulation of insolvency practitioners in their jurisdiction. The Principles are premised on the recognition that there is no uniquely right way for regulating this sector of the market. Instead, each regulatory regime must be carefully designed to respond to and cohere with the particular cultural, economic, legal, and institutional circumstances of its jurisdiction.

Rationale for regulation

The necessity to regulate the system within which insolvency practitioners operate may be conceptualised as deriving from market failure. Insolvency practitioners' decisions, actions, and omissions generate 'externalities': the manner in which a practitioner performs their functions in an insolvency process can have adverse effects or 'costs' for certain creditors, employees, and other stakeholders who are not party to the decision to appoint that particular practitioner to that particular case. Such stakeholders are thus unable through their choice of practitioner to force these costs to be internalised, that is, to fall only on those who have participated in the decision to appoint. Further, the practitioner obtains information over the course of the insolvency process by virtue of having access to the distressed debtor's managers, employees, documents, and (qua the debtor's decision-maker and alter ego) also to its counterparties. Stakeholders need this information in order to assess whether the process is being conducted in a way that duly respects their rights and protects their interests. Private contracting between the practitioner and these various stakeholder groups to mitigate these problems of externalities and informational asymmetry is unlikely to help, since it would be prohibitively expensive for stakeholders together to set up the terms under which the practitioner ought to operate, to monitor compliance with those terms, and to punish breaches. Regulation can provide an off-the-peg method for mitigating the effect of these failures.

Forms of regulation

At the most basic level, the regulatory regime for insolvency practitioners represents a choice between state- and self-regulation of the profession. The choice is not a mutually exclusive or 'either/or' one. Rather, it is better understood as one amongst forms of co-regulation differing in the degree to which (i) the insolvency profession, acting through one

or more '**professional bodies**', would be able itself and without external constraint (for example, by the government's Bankruptcy Department) to set the rules by which its members would be governed; (ii) those rules would be legally enforceable (that is, whether they would be definitively or merely presumptively binding at law, or constitute 'best practice' standards but not create obligations, or be entirely voluntary, etc.); and (iii) some group, whether consisting of practitioners or employees of the Bankruptcy Department or representatives of both of these and other groups, would enjoy a monopoly in formulating such rules.

Balancing the costs and benefits of state and self-regulation

Systems involving a greater degree of self-regulation would be likely (i) to be able to draw on greater expertise and technical knowledge in formulating and amending regulatory rules; (ii) to possess greater tolerance for welfare-enhancing innovations in compliance with such rules; (iii) to reduce compliance costs by capitalising on greater levels of trust between those regulating and those being regulated; and (iv) to internalise to the profession the direct costs of the exercise of regulatory authority. At the same time, however, greater self-regulation would (v) necessitate greater overlap between regulator and regulated, leading to (vi) a greater identity of interest between the two groups, and thus a tendency for the system (vii) to be more partial to the profession; (viii) to be less open to external scrutiny and accountability; (ix) to be more likely to err towards the adoption of lax standards; (x) to be less likely to find a breach by a practitioner; and (xi) to be less likely to impose duly severe sanctions.

A fine judgement is required within the particular context of each jurisdiction to decide upon the balance of costs and benefits in imposing a particular form of co-regulation. This involves examining factors such as (i) the relative abilities of state and professional bodies to formulate and modify technical regulatory standards requiring knowledge of law, accountancy, and insolvency practice which are sufficiently flexible but not unduly lax; to be able effectively to monitor compliance with such standards, to detect and punish breaches, and to be responsive to the interests of and accountable to the entire range of stakeholder groups; (ii) the relative ease with which errant practitioners may subvert bureaucratic and judicial officials on the one hand and fellow practitioners acting qua regulators on the other. It also depends on (iii) the strength of extra-legal constraints like reputation, the effectiveness of which would favour a self-regulatory regime in situations where subversion of judicial institutions was relatively effortless. Further, and other things being equal, (iv) the greater the amount of uncertainty in the manner of implementation of regulations, the more attractive a system more heavily reliant on the profession itself for formulating the regulations; and (v) the greater the polarisation between the interests and perspectives of practitioners on the one hand and stakeholder groups affected by their actions on the other, the greater the welfare-enhancing potential of a more state-oriented system.

Reaching a judgement on these factors involves information gathering from a balanced and representative range of interested parties in the public and private sectors and a deep understanding of insolvency policy.

Methodology for formulating the Principles

The IAIR administered a questionnaire concerning all key elements of the regulatory regime governing insolvency practitioners. The questionnaire was divided into seven parts addressing, respectively, regulatory regime overview, practitioner qualification and licensing, appointments, standards of work and ethics, disciplining, fees, and reform prospects. Responses were received in July 2016 from nineteen IAIR member jurisdictions: Australia; Bermuda; Canada; Chile (provided in June 2018); England & Wales; Finland; Hong Kong Region, China; Ireland; Jersey; Mauritius; New Zealand; Northern Ireland; Russian Federation; Serbia; Scotland; Singapore; South Africa; Uganda; and the United States of America. Updates and corrections were received in July 2018 from Australia, Canada, Hong Kong Region, China, and Singapore.

Each element of the regulatory regime about which information had been obtained through the IAIR questionnaire was tabulated. The manner in which each respondent jurisdiction addresses each element of the regime was recorded, as was the frequency with which jurisdictions favoured a particular approach. The table summarising these responses and approaches forms the Appendix to this document.

The table formed the basis for the formulation of the draft Principles. The drafting confronted two challenges from different directions. The first was undue constriction of language that would unjustifiably rule out alternative and equally valid approaches to addressing a particular issue. The second was undue vagueness of language designed to validate all existing approaches, but with the result that no meaningful normative standard would emerge by reference to which a regulatory regime might be assessed.

Where IAIR member jurisdictions diverged in their treatment of particular issues, the Principles aim for inclusivity (permitting the different approaches), comprehensiveness (favouring regulatory treatment over regulatory gap), favouring majority over minority approaches, and coherence with existing best practice standards, which include the United Nations Commission on International Trade Law's *Legislative Guide on Insolvency Law* (Recommendations 115 to 125); the World Bank's *Principles for Effective Insolvency and Creditor/Debtor Regimes* (Principles D7 and D8); the Asian Development Bank's *Good Practice Standards for Insolvency Law*; the European Bank for Reconstruction and Development *Insolvency Office Holder Principles*; and the INSOL Europe *Principles and Best Practices for Insolvency Office Holders*. The objective was to formulate Principles sufficiently capacious so as to permit a range of valid regulatory approaches, yet sufficiently contentful so as to distinguish valid from invalid approaches and to enable assessment and reform.

Successive iterations of the Principles were presented to the IAIR Executive Committee in July 2017, at the IAIR Annual Conference in London in August 2017, to the Executive Committee in January, February, and September 2018, and to the entire IAIR membership in April 2018. Feedback was received and incorporated. The Principles are being officially launched at the IAIR Annual Conference in Mauritius in October 2018.

Dr Riz Mokal
South Square Chambers
University of Florence
University College London

The Regulatory Regime for Insolvency Practitioners

– THE IAIR PRINCIPLES –

1. SCOPE OF PRINCIPLES

1.1. **These Principles provide guidance on the regulatory regime governing persons who may accept appointments in insolvency processes**.

1.2. **The Principles apply to all aspects of the training, qualification, licensing, professional ethics, remuneration, supervision, and accountability of such persons.** References to '*the regulatory regime*' and to being '*authorised*' under it should be understood as including reference to each of these aspects or to all that are relevant.

1.3. **The regime should advance fundamental regulatory objectives**. These include protecting the rights and interests of those with a legitimate stake in insolvency processes, and maintaining public confidence in them. The regulatory regime advances these objectives by setting out standards for the suitability, competence, integrity, and probity of those authorised to accept appointments in insolvency processes; by setting out clearly the functions they must perform; and by providing for their due and prompt accountability.

1.4. **The Principles may be adapted to apply to those performing a role in insolvency processes by virtue of their employment with a state body.** While not all Principles may be suitable for such application, states bodies should adopt the Principles insofar as relevant to ensure that their employees possess the requisite integrity and competence and are made duly accountable so as to meet fundamental regulatory objectives.

2. SCOPE OF AUTHORISATION

2.1. **Only natural persons should be eligible to seek authorisation.** In order to meet its fundamental objectives, the regulatory regime imposes academic, professional, and character requirements that may only be fulfilled by natural persons, and only such persons may be held duly accountable under it.

2.2. **All persons seeking appointments in insolvency processes should be required to be duly authorised.** At the very least, where those whose property, interests, or affairs are entrusted to another in the course of an insolvency process whom they

cannot effectively monitor, the person so entrusted should require authorisation. Exceptions should be narrow and based on compelling considerations.

2.3. **Authorisation may be full or partial, and may be subject to conditions.** Persons intending to accept appointments in relation to the insolvency only of natural persons or only of legal persons, or in relation to a limited range of processes (such as limited debt recovery mechanisms but not full-scale insolvency proceedings, or liquidation but not reorganisation) may be exempted from carefully identified regulatory requirements and be permitted to obtain partial authorisation. The authorising body may impose conditions upon authorisation, such as additional training or monitoring by an experienced authorised person.

2.4. **Additional specialist authorisation may be required.** Persons intending to accept appointments in relation to entities subject to special regulatory regimes (such as financial institutions, utilities, or mass transport providers) may be required to meet additional training and experience requirements, and may be accorded specialist authorisation.

2.5. **The criteria for obtaining authorisation should be clear and should be published.** This requirement should be met by criteria applicable to full, partial, and any specialist authorisation, as well as to any additional conditions that the authorising body may impose.

3. STATUS OF REGULATORY REGIME

3.1. **The basic preconditions upon whose fulfilment a person may be authorised under the regulatory regime should have legal effect.** The law should define the functions, rights, obligations, permissions, and liabilities (together, '*functions*') of those who may accept appointments in insolvency processes.

3.2. **The regulatory regime may consist of a combination of legal and other standards.** Careful consideration should be given to those elements of the regime that should be addressed by primary legislation enacted by the legislature, secondary legislation implemented by another state body, and other standards promulgated by professional bodies, respectively. Key and often competing considerations in allocating responsibilities include the need for legal effect, for updating of the regime timeously in response to changing circumstances, and for objectivity and specialist expertise in its creation and in ensuring compliance with its requirements. The regulatory regime may also include guidance that is not binding but non-compliance with which may create an onus to explain.

3.3. **The regime may provide for regular review of its constitutive standards**. This review may be undertaken periodically, such as once every five years. Further or alternatively, it may occur on an ongoing basis, as through the functioning of a standing committee with wide stakeholder membership and the mandate to review any part of the regulatory regime at its own behest or the instigation of a stakeholder.

4. POWERS OF THE COURT

4.1. **There should be adequate judicial accountability.** Where a court has control or oversight of an insolvency process, the authorised person should be answerable to that court in relation to their functions. Where no court has control or oversight of an insolvency process, the law should permit the insolvency practitioner's decisions, acts, or omissions (together, '*actions*') to be subject to challenge in court. Regulatory and supervisory actions should also be subject to judicial scrutiny.

4.2. **The court should possess adequate powers under the regulatory regime.** The court should have power to confirm, reverse, or modify any of the authorised person's actions; to undo any of their effects insofar as practicable; to provide for the compensation of anyone harmed by them; and for holding the authorised person to account in relation to them.

5. REGULATORY BODIES

5.1. **The regulatory regime should identify the bodies that have responsibilities under it.** These bodies may be in the public or the private sector, and their membership may consist of or include representatives of government departments, professional bodies, other stakeholder groups, and lay persons. Their responsibilities may include the promulgation of regulatory standards, ensuring due compliance with any aspect of the regime, and holding authorised persons to account.

5.2. **Regulatory arbitrage should be precluded.** If persons seeking to be authorised under the regime are offered a choice amongst multiple regulatory bodies, the regime should implement measures to preclude choices that would undermine the objectives and integrity of the regulatory regime. Such measures should generally include a core minimum of standards that must be met irrespective of the authorising body by which an authorised person has chosen to be regulated.

5.3. **There should be due accountability of regulatory bodies.** A state body should have the responsibility to ensure that any non-state bodies with regulatory

responsibilities comply with such responsibilities. The non-state bodies should be required to report regularly on the supervisory and other activities they have undertaken. The state body should possess adequate and proportionate powers to obtain information, conduct regular on-site visits, impose sanctions for and deter non-compliance. Any affected party should have the right to seek judicial redress, and the court should possess adequate powers to provide such redress.

5.4. **The regulatory regime should ensure collection and public dissemination of aggregated data about its performance.** This is key to meeting the fundamental objective of maintaining public confidence. The data should include the number of cases, in aggregate, handled by persons authorised by the authorising bodies; the amount of value at issue, realised, and distributed in different types of insolvency processes; the range of fees charged and expenses incurred by authorised persons in different types of insolvency processes; the nature and level of supervisory activities by authorising bodies including on-site visits; the number of complaints against authorised persons and the types and frequency of the outcomes of these complaints; etc.

6. QUALIFICATION AND AUTHORISATION

6.1. **Authorised persons should be duly qualified and of good character.** The regulatory regime should specify the academic and professional requirements to be met and any practical experience to be demonstrated by a person seeking authorisation to accept appointments in insolvency processes. The person should be of good character. The regime should preclude from authorisation a person with a recent serious criminal conviction or regulatory sanction. Undischarged bankrupts may be precluded from holding authorisation, or alternatively, may be authorised subject to additional restrictions and monitoring, such as in relation to the handling of cash. Duly discharged bankrupts should not, by that fact alone, be precluded from holding authorisation provided that they meet the regime's character and other requirements.

6.2. **Authorised persons should possess adequate financial, business, and legal knowledge to meet the objectives of the regulatory regime.** This knowledge may be demonstrated by attainment of formal qualifications in chartered or public accountancy, business, and commercial law, or a specialist insolvency qualification with comparable requirements.

6.3. **The regulatory regime should require persons seeking authorisation to obtain adequate professional insurance.** The regulatory body may specify a minimum level of cover in relation to losses resulting from the incompetence or dishonesty of the

authorised person in the performance of their functions. The insurance may be obtained individually by the authorised person or collectively by an organisation to which they belong. The regulatory regime may require additional insurance coverage when an authorised person accepts appointment in relation to a particularly significant insolvency process.

6.4. **The regulatory regime should specify the bodies with the power to authorise persons to accept appointments in insolvency processes.** Authorisation may be subject to the payment of a fee, which should not be excessive.

6.5. **There should be a register of authorised persons.** The register should be maintained by the authorising body, and should be freely accessible to the public.

6.6. **The regime may provide for authorisation to expire after a particular period unless renewed**. Expiry of authorisation, say, every one to three years, creates the opportunity for the person seeking renewal to be required to demonstrate continuing suitability for authorisation, including through completion of adequate continuing professional education.

6.7. **The regime should set out clear criteria for the suspension, revocation, or involuntary non-renewal of authorisation.** These may include non-compliance with continuing professional education requirements; deficiencies in the processes, controls, or procedures revealed through supervision; failure to maintain adequate professional insurance; non-payment of any renewal fee; serious criminal conviction or regulatory sanction; and personal bankruptcy where appropriate.

7. APPOINTMENT AND REMOVAL

7.1. **The responsibility to appoint an authorised person to an insolvency process is ultimately and often even initially placed on the court**. The selection may be made randomly from a list of authorised persons, or on the basis of the particular expertise that an authorised person would bring to the particular process. The court should in all cases be required to satisfy itself that the appointment of a particular authorised person to the insolvency process in question would advance, or at least would not frustrate, the fundamental objectives of the regulatory regime.

7.2. **The regulatory regime should identify who else may appoint an authorised person in an insolvency process.** The regime may empower the debtor, its board or its members, significant secured creditors, and a stipulated proportion by value of unsecured creditors, to make the appointment without having to apply to the court. Any or all these parties, and also government ministers or other officials may also

apply to the court for appointment of the authorised person they nominate. In case of disagreement between the creditors on the one hand and the debtor, its directors or members on the other, creditors' views should carry greater weight.

7.3. **The regime should permit joint appointment of two or more authorised persons unless this would be wasteful in the circumstances of the case**. Joint appointments are particularly appropriate in large or complex cases, and also enable uninterrupted coverage in the illness or other absence of one appointee.

7.4. **The regime may also permit two or more authorised persons to be appointed concurrently to represent stakeholders with conflicting interests**. Examples include a receiver effectively acting on behalf of a significant secured creditor while a liquidator represents the interests of unsecured creditors and other stakeholders.

7.5. **The regulatory regime should permit the authorised person acting in an insolvency process to engage agents or professional advisors**. This facilitates availability of expertise if necessary and cost-effective in the process at hand. The regulatory regime should require the authorised person to engage only those suitably qualified and duly regulated, and should preclude the authorised person from delegating responsibility for proper discharge of their own functions.

7.6. **The regulatory regime should provide appropriate mechanisms for the removal of an authorised person from a particular insolvency process**. This power should be vested in the court, and may also be conferred on a regulatory body. The court or regulatory body may remove the authorised person at its own behest or upon application by stakeholders. This may occur if the authorised person is not discharging their functions competently and timeously, is not acting with independence and integrity, has lost the confidence of significant creditors or other stakeholders, or no longer fulfils the requirements for authorisation

8. PROFESSIONAL ETHICAL STANDARDS

8.1. **An authorised person should not accept appointment in an insolvency process for which they do not possess the requisite expertise or experience**. The regulatory regime should require each authorised person carefully to consider whether they are suited to a particular process prior to accepting appointment in that process. If, having done so, they reach the conclusion that they are not adequately qualified after all, they should be required to make arrangements to withdraw in favour of a suitable successor.

8.2. **The regulatory regime should require the authorised person to prevent actual and perceived conflicts.** The conflicts may be between interest and duty, such as when the authorised person has a personal or family stake in the entity the subject of the insolvency process. Alternatively, the conflict may be between duties, such as would arise if the authorised person accepted appointments and consequent duties in relation to two or more entities with conflicting interests. The absence of an actual conflict is irrelevant if a reasonable third person in possession of relevant facts would perceive there to be a conflict. The regulatory regime should direct authorised persons prior to accepting an appointment carefully to consider whether accepting the appointment would give rise to such an actual or perceived conflict, and if so, how it may be appropriately managed. The same should apply where an actual or perceived conflict arises after the authorised person has accepted an appointment. At a minimum, the authorised person must disclose the actual or perceived conflict to creditors or a regulatory body or both. Additional appropriate ways of managing such a conflict include obtaining the appointment of an additional person (as provided for in Principle 7.4), or refusing or resigning from one or more appointment.

8.3. **The regime should require the authorised person to perform their functions in an independent and impartial manner**. This requirement should extend beyond work undertaken after appointment to also include work that led up to the appointment. The requirement should apply not merely to the authorised person but also to other relevant staff at their firm.

9. SUPERVISION

9.1. **The regulatory regime should provide for the authorising body to supervise compliance with the authorisation requirements.** The purpose of supervision is to gather sufficient relevant information to enable an informed and impartial assessment of the authorised person's compliance with their duties under the regulatory regime. Supervision should cover review of authorised persons' fees and expenses, proper realisation of assets, delays in closing cases, and governance of estate accounts.

9.2. **Supervision should be based on an appropriate combination of mechanisms**. These include ensuring the filing of returns by the authorised person, review and audit of such returns, regular periodic on-site supervisory visits to verify the existence and operation of adequate processes and controls, and the assessment of any complaints. The authorising body should also have the right directly to access and obtain copies of the bank account and other relevant documents of the authorised person.

9.3. **Authorised persons' handling of the assets and funds of insolvency estates should be subjected to due scrutiny.** The authorising body should undertake regular systematic validation of accounts and ledgers, review final statements of receipts and disbursements, assess the accuracy and the timeliness of disbursements, review disclosures and reporting by the authorised person, and other matters critical to the proper discharge of their functions.

9.4. **Authorising bodies should assess the risks associated with authorised persons in order to decide upon the level and nature of scrutiny.** This enables an appropriate and proportionate regulatory response by focusing supervisory resources where they are most needed. Authorised persons with a higher risk profile should generally be subject to greater supervision than those with a lower risk profile, though all should generally receive an irreducible minimum of scrutiny, such as through a basic review of returns.

10. ACCOUNTABILITY

10.1. **The regulatory regime should require adequate complaint handling processes at the level of the authorised person's firm, the authorising body, and the state supervising body if different.** The primary objective of such processes should not be to manage the reputational or litigation risks of the authorised person or their authorising body. Instead, it should be to ensure due compliance of the authorised person's actions with the requirements of the regulatory regime and the protection of the rights and interests of the stakeholders in the given insolvency process. The complaint handling process should be low-cost and time-efficient, and its determinations should be subject to an independent review or to judicial appeal or to both.

10.2. **A complaint may be launched by a stakeholder in a particular insolvency process, a member of the public, or by a complaint handling body at its own instigation.** Confidential complaints or 'tip-offs' should be permitted to encourage disclosure of relevant information by those, such as employees of an authorised person, who might otherwise be deterred.

10.3. **The complaint handling process should have sufficient independence of the authorised person the subject of the complaint to guarantee the impartiality and objectivity of the process**. Processes within the firm or authorising body of the authorising person should maintain due distance from that authorised person, including through information barriers and other similar safeguards.

10.4. **A range of disciplinary sanctions should be available to enable the complaint handling process to provide a proportionate response to a complaint that is upheld.** The sanctions may include a formal finding of breach under the regulatory regime against an authorised person, a formal reprimand, a fine, suspension of authorisation for a stipulated period, and withdrawal of authorisation. The imposition of a sanction should be made public unless there are compelling reasons for not doing so.

11. REMUNERATION

11.1. **The regulatory regime should provide clear criteria for the remuneration of the authorised person.** The authorised person may be remunerated out of the assets realised as part of the insolvency process. The remuneration may be calculated as a stipulated proportion of the value realised as part of the insolvency process or by reference to the amount of work in hours undertaken by the authorised person and their staff. It should also be possible for the authorised person upon appointment to agree with creditors for a fixed level of remuneration for acting in relation to the insolvency process in question. The regulatory regime should permit an authorised person acting in a particular insolvency process to be remunerated by a combination of such methods.

11.2. **The criteria for the remuneration of the authorised person should focus on the value of the authorised person's service to the insolvency process.** The factors by which to ascertain this value include the rate of return in a given insolvency process to creditors and other stakeholders, whether the debtor's business survives in whole or part as a going concern, the complexity and size of the debtor's estate and affairs, and the timeliness of the process.

11.3. **The regulatory regime should provide for the creditors by majority or the court to approve the authorised person's fees**.

11.4. **The regulatory regime should provide mechanisms by which stakeholders may challenge the authorised person's remuneration.** In case of such a challenge, the burden of explaining and justifying the bases of the remuneration should generally lie with the authorised person.

11.5. **The regime should empower the court to require the authorised person to repay monies they ought not to have received.**

APPENDIX IAIR QUESTIONNAIRE - Summary of responses*

Question	Options	Members	Number
Part One – Overview of insolvency practitioner regime			
Number of IPs (best estimate)	Not known	Jersey, Uganda	2
	0-249	Scotland, Mauritius, New Zealand, Bermuda, Northern Ireland, Chile	7
	249-499	Serbia, Singapore, Hong Kong SAR	3
	500-999	Finland, Ireland, Australia, South Africa	4
	1,000 or more	England & Wales, Canada, US, Russian Federation	4
Professional background	Lawyer	Hong Kong SAR, Uganda, New Zealand, Canada, Ireland, Finland, England & Wales, Singapore, Ireland, Australia, South Africa, Northern Ireland	12

* **Notes**:

2. This table is based solely on and should be read together with the questionnaire answers, as supplemented by IAIR members over the course of formulation of the Principles; no other information is relied upon.
3. Only answers bearing on the regulatory regime are summarised.
4. Where answers to a question elicit responses duplicative of responses to another question, such duplication is avoided to the extent practicable.
5. The total number in relation to each possible answer to each question reflects the extent and nature of the information provided by respondents. Where information applies to only some but not all types of proceeding (such as those relating to corporate but not personal insolvencies) or practitioner (for example, lawyers but not accountants), this adds 0.5 to the total.

Question	Options	Members	Number
	Accountant	Hong Kong SAR, England & Wales, Canada, Singapore, Ireland, Australia, Uganda, Jersey, New Zealand, South Africa, Northern Ireland	11
	Other	Hong Kong SAR, Ireland, Uganda, Russian Federation, Canada, Chile, Singapore	7
	No requirement	US	1
Nature of authorisation	Full authorisation only	Serbia (though no regulation yet of personal insolvency), Singapore, Hong Kong SAR, Finland (though usually only in corporate insolvencies), Canada, Scotland, Jersey (in personal insolvency cases only if appointed by the Viscount), New Zealand, Bermuda (though few take on personal insolvency matters), USA (mostly in liquidations of corporate and personal estates), Russia, Uganda, Chile (though personal insolvency cases do not usually involve insolvency practitioners)	13
	Partial authorisation permitted	England & Wales, Ireland, Northern Ireland, Australia	4
IP appointed in every case?	Yes	Serbia, Finland, Russia, South Africa, Australia (corporate insolvency)	4.5
	No – Government employees may handle some or all cases	England & Wales, Singapore, Hong Kong SAR, Ireland, Scotland, Jersey, Australia (personal insolvency), Mauritius, New Zealand, Bermuda, Northern Ireland	10.5

Question	Options	Members	Number
	No – Some proceedings are run without any formal appointment	Canada (very limited, in some consumer proposals), US, Uganda, Chile (personal insolvency cases do not usually involve insolvency practitioners)	4
Government-employed officeholders in insolvency?	Mostly or only corporate cases	None	0
	Mostly or only personal cases	England & Wales, Singapore, Hong Kong SAR, Scotland, Australia, New Zealand, Ireland (in some cases only)	7
	All or most of both corporate and personal	Jersey, Mauritius, Bermuda, Uganda, Northern Ireland, Chile	6
	Other	Serbia (socially/state owned enterprises)	1
	None	Finland, Canada, South Africa	3
Is regulatory framework provided by statute?	Primary legislation addresses all or most critical aspects	Serbia, Ireland, Mauritius, New Zealand, Uganda, Chile	6
	Delegated legislation and/or self-regulation supplement primary legislation to address certain matters	England & Wales, Canada, Scotland, Jersey, Australia, Hong Kong SAR, USA, Russia, Northern Ireland	9
Extent of court oversight of	Court has ongoing oversight responsibilities,	Serbia	1

Question	Options	Members	Number
insolvency practitioner	with corresponding limits on IP discretion		
	Court oversight limited to formal matters and issues raised on complaint; extensive IP discretion	England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Jersey, Australia, New Zealand, USA, Russia, South Africa, Uganda, Northern Ireland, Chile	16
Number of regulators	Single	Serbia, Finland, Canada, Jersey, Bermuda, USA (in 48/50 states), South Africa, Chile	8
	Multiple	England & Wales (8), Singapore (3), Hong Kong SAR, Ireland, Scotland (8), Australia (2), Mauritius (2), New Zealand, Russia, Uganda (3), Northern Ireland (2)	11
Is regulator a government or professional body or both?	Government	Serbia, Finland, Canada, Mauritius, Jersey, USA, Chile	7
	Professional	None	0
	Government and professional co-regulation	England & Wales, Singapore, Hong Kong SAR, Ireland, Scotland, Australia, New Zealand, Russia, South Africa, Uganda, Northern Ireland	11
Part Two – Qualifications and licensing			
Qualifications of insolvency	Yes	Serbia, England & Wales, Singapore, Finland, Canada, Ireland, Scotland, Jersey, Australia, Mauritius, USA, Russia, Uganda, Northern Ireland, Chile	15

Question	Options	Members	Number
practitioners set out in law?	No	Hong Kong SAR, New Zealand, Bermuda, South Africa,	4
Is there a specific insolvency practitioner qualification?	Yes	Serbia, England & Wales, Ireland (personal insolvency), Scotland, Australia, Mauritius, Uganda, Northern Ireland, Chile	8.5
	No	Singapore, Hong Kong SAR, Finland, Canada, Ireland (corporate insolvency), Jersey, New Zealand, Bermuda, Russia, South Africa	9.5
Level of qualification for insolvency practitioners	Graduate	Serbia, Russia, Chile	3
	Post-graduate	England & Wales, Hong Kong SAR (in practice), Finland (in practice), Ireland, Scotland, Australia, Mauritius, Bermuda, Uganda, Northern Ireland	10
	Other	Canada, Jersey	2
Other requirements to qualify as insolvency practitioners?	Yes	Serbia (citizenship, experience, and character), England & Wales (experience), Hong Kong SAR (experience), Canada (knowledge, expertise, and experience), Scotland, Australia (experience, character, and expertise), Mauritius (experience), Russia (experience), Northern Ireland (experience), Ireland (fitness and probity), Chile (experience, expertise)	11
	No	Singapore, Finland, Jersey, New Zealand, Bermuda, South Africa	6

Question	Options	Members	Number
Licensing body	Government body	Serbia, Singapore, Canada, Ireland (personal insolvency), Australia, Chile	5.5
	Professional body	England & Wales, Ireland (corporate insolvency), Scotland, Jersey, Russia, Northern Ireland	5.5
Prerequisites for licensing	Education	Serbia, Canada, Northern Ireland, Ireland, Chile, Australia	6
	Experience	Serbia, Singapore, Northern Ireland, Ireland (personal insolvency), Chile, Australia	5.5
	Expertise	Serbia, Singapore, Chile, Australia	4
	Character	Serbia, Canada, Ireland, Australia	4
	Professional body membership	England & Wales, Scotland, Northern Ireland, Ireland (personal insolvency), Singapore	4.5
	Other	Serbia (citizenship), Northern Ireland, England & Wales (bankruptcy status, mental capacity), Singapore (capacity), Canada (communication, strategic thinking, judgement), Ireland (organisation capacity and resources), Chile (responsibility)	7
What oversight or review is there of licensed	Government body has primary oversight role	Singapore, Canada, Ireland (personal insolvency). Uganda, Chile, Australia	5.5
	Professional body has primary oversight role	England & Wales, Scotland, Russia, Northern Ireland, Chile	5

Question	Options	Members	Number
insolvency practitioners?	None	Finland, New Zealand, Bermuda	3
Are insolvency practitioners required to hold insurance or other security?	Yes	Serbia, England & Wales, Singapore, Canada, Ireland, Scotland, Australia, Mauritius, USA, Russia, South Africa, Uganda, Northern Ireland, Chile, Hong Kong SAR	15
	No	Jersey, New Zealand	2
Other requirements before taking up an insolvency appointment	Conflict avoidance	England & Wales, Finland, Ireland (personal insolvency), Scotland, Australia, South Africa, Canada, Northern Ireland, Chile, Hong Kong SAR	9.5
	Other	England & Wales (professional ethical requirements), Canada, Serbia (registration), Scotland (professional ethical requirements), USA (tax check, credit report, personal interview), Russia, Uganda (professional ethical requirements), Northern Ireland (professional ethical requirements), Australia (capacity to perform the role), Hong Kong SAR (professional ethical requirements)	10
Part Three – Appointment of an insolvency practitioners			

Question	Options	Members	Number
Who can appoint an insolvency practitioner?	Court	Serbia, England & Wales, Canada, Singapore (court appoints upon an insolvency practitioner being nominated for an insolvency process), Hong Kong SAR, Finland, Ireland, Scotland, Jersey, Australia, Mauritius, New Zealand, Bermuda, Russia, South Africa, Uganda, Northern Ireland, Chile	18
	Creditor(s)	England & Wales, Singapore, Hong Kong SAR, Canada, Ireland, Scotland, Jersey, Australia, Mauritius, New Zealand, Bermuda, USA (rare), Uganda, Northern Ireland, Chile	15
	Debtor	England & Wales, Singapore, Canada, Ireland, Scotland, Jersey, Australia, Mauritius, New Zealand, Uganda, Northern Ireland	11
	Other	England & Wales, Hong Kong SAR, Canada, Scotland, Jersey, USA, Northern Ireland, Chile, Australia (corporate regulator may appoint an insolvency practitioner in certain circumstances; rare in practice)	8.5
When is appointment made?	At commencement	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, Mauritius, Bermuda, USA, Uganda, Northern Ireland, Chile	15
	Nomination or provisional appointment at commencement, confirmation/substitution subsequently	England & Wales, Hong Kong SAR, Canada, Ireland, Jersey, Australia, South Africa, Uganda, Northern Ireland, Chile	10

Question	Options	Members	Number
	Nomination and appointment at later stage in proceeding	England & Wales, Jersey, USA, Uganda, Northern Ireland	5
How is the insolvency practitioner generally chosen?	Randomly	Serbia	1
	Expertise	Serbia (rarely)	1
	Stakeholder choice	England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Jersey, Australia, New Zealand, Bermuda, South Africa, Uganda, Northern Ireland, Chile	15
	Rota	England & Wales, Hong Kong SAR, Australia, New Zealand, USA, South Africa, Northern Ireland, Australia (rarely)	8
Can multiple insolvency practitioners be appointed to one case?	Yes	England & Wales, Singapore, Hong Kong SAR, Finland (rare), Canada, Ireland (corporate insolvency), Scotland (corporate insolvency), Jersey (corporate insolvency), Australia, Mauritius, New Zealand, South Africa, Uganda, Northern Ireland (only in major cases)	12.5
	No	Serbia, Ireland (personal insolvency), Scotland (personal insolvency), USA, Russia, Chile	5
Is the insolvency practitioner required to	Yes	Bermuda (especially in cross-border cases), Russia (regarding companies of a nationwide importance and financial companies)	2

Question	Options	Members	Number
possess case-specific skills or experience?	No	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland (no explicit requirement), Canada, Ireland, Scotland, Jersey, Australia, Mauritius, New Zealand, USA, South Africa, Uganda, Northern Ireland, Chile	17
Can the insolvency practitioner be removed from office?	Yes – Court may remove suo motu or upon request	Serbia, England & Wales, Canada, Singapore, Hong Kong SAR, Scotland, Mauritius, New Zealand, USA, Russia, South Africa, Uganda, Northern Ireland, Chile, Australia	15
	Yes – Creditors may remove	Serbia, England & Wales, Canada, Singapore, Hong Kong SAR, Scotland, Mauritius, New Zealand, Northern Ireland, Chile, Australia	11
	Yes – Other	Ireland (personal insolvency: at culmination of complaints investigation process), Canada, Mauritius (if prohibition issued against insolvency practitioner), New Zealand, Bermuda, Russia (upon expulsion from self-regulatory organisation)	5.5
	No	Ireland (corporate insolvency), Jersey	1.5
Part Four – Standards of work and ethics			
Who sets standards for	Professional body only	Ireland (corporate insolvency), Jersey, New Zealand, Russia	3.5
	Government body only	Serbia, USA, Chile	3

Question	Options	Members	Number
insolvency practitioner?	Combination of professional and government bodies	England & Wales, Hong Kong SAR, Canada, Scotland, Australia, Mauritius, Singapore, Uganda, Northern Ireland	9
	Others	Finland (courts, creditors, and government bodies), Ireland (personal insolvency: legislation), USA	2.5
Are the standards set by statute?	Yes	Serbia (set out in regulation), Canada, Hong Kong SAR, Finland, Ireland (personal insolvency), Australia (subordinate legislation), Mauritius (subordinate legislation), New Zealand, USA, Russia, Singapore, South Africa, Uganda, Chile	13.5
	No	Ireland (corporate insolvency), Australia (professional code), Jersey, Northern Ireland	3.5
What does the ethical code cover?	Independence	Serbia, England & Wales, Hong Kong SAR, Finland (in legislation), Canada, Ireland, Scotland, Australia (personal insolvency), Mauritius, New Zealand, Bermuda, USA, Russia, Singapore, South Africa, Uganda, Northern Ireland	16.5
	Conflict management	Serbia, England & Wales, Australia, Hong Kong SAR, Finland, Canada, Ireland, USA, Russia, Singapore, South Africa, Uganda, Northern Ireland, New Zealand, Chile	15
	Other	Serbia, England & Wales, Australia, Canada, Ireland, Scotland, USA	7
Is the ethical code reviewed /	Regularly / on ongoing basis	England & Wales, Finland, Canada, Scotland, Australia, Northern Ireland, Hong Kong SAR, Singapore	8

Question	Options	Members	Number
updated regularly?	Occasionally / when necessary	Serbia, Ireland	2
	No	South Africa, Chile (ethical rule set out in the insolvency law)	2
Who undertakes the monitoring of practitioner compliance with legal and ethical requirements?	Government regulatory body	England & Wales, Serbia, Hong Kong SAR, Canada, Ireland, Scotland, Australia, Mauritius, New Zealand, Bermuda, USA, Russia, Uganda, Chile	14
	Professional body	England & Wales, Hong Kong SAR, Scotland, Mauritius, New Zealand, Australia, Russia, Northern Ireland, Singapore	9
	Other	Hong Kong SAR (the Court), Canada (the Court), Finland (bankruptcy ombudsman; creditors), Mauritius (the Court), New Zealand (the Court), South Africa (the Master of the High Court)	6
What form does the monitoring take?	Review and approval of authorisation application	Singapore	1
	Review of specific actions or proceedings, as a result of complaint or otherwise	Serbia, Hong Kong SAR, Canada, Ireland (corporate insolvency), Australia, Mauritius, Russia, Uganda, Singapore	8.5

Question	Options	Members	Number
	Review of institutional and administration mechanisms implemented by practitioner and/or their organisation	Serbia, England & Wales, Canada, Ireland (personal insolvency), Australia, Northern Ireland, Chile, Singapore	7.5
	On-site inspections	Serbia, England & Wales, Canada, Ireland (personal insolvency), Australia, USA, Russia, Northern Ireland, Hong Kong SAR	8.5
	Review of information submitted by or obtained from practitioner	Serbia, England & Wales, Finland, Canada, Ireland (personal insolvency), Scotland, Australia, Bermuda, USA, Uganda, Northern Ireland, Hong Kong SAR, Singapore	12.5
	Other	Scotland, Australia, South Africa	3
Do regulators have direct access to practitioners' records?	Yes	Serbia, Hong Kong SAR (partial), Finland, Canada, Ireland (personal insolvency), Scotland (personal insolvency), Australia (personal insolvency – partial; corporate insolvency – power to compel), Russia, South Africa, Uganda, Northern Ireland, Chile, Singapore (upon request)	12
	No	Ireland (corporate insolvency), Mauritius, Bermuda, USA	4.5
How are regulatory data collected?	Review of reports or returns by practitioners or professional bodies	Serbia, England & Wales, Canada, Ireland (personal insolvency), Australia, USA, Russia, Northern Ireland, Singapore	8.5

Question	Options	Members	Number
	Analysis of documents prepared in individual proceedings	Serbia, Hong Kong SAR, Finland, Canada, Ireland (personal insolvency), Scotland (personal insolvency), Australia, USA, Singapore, South Africa, Uganda	10
	Data collection and/or verification from original documents during on-site visits	Hong Kong SAR, Canada, Ireland (personal insolvency), Australia, Chile, Singapore	5.5
	Requirement to register documents in regulator's database	Finland, Canada	2
	Analysis of information provided by complainants	Australia, Canada	2
	Analysis of information available to tax authorities	Russia	1
	None	Jersey	1
What sort of information is reviewed as part of the monitoring process?	Practitioner fees	England & Wales, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, USA, South Africa, Uganda, Northern Ireland, Chile	12
	Proper realisation of assets	Serbia, England & Wales, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, USA, South Africa, Uganda, Northern Ireland, Chile, Singapore	14
	Delays in closing cases	Serbia, England & Wales, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia (personal	13.5

Question	Options	Members	Number
		insolvency), USA, South Africa, Uganda, Northern Ireland, Chile, Singapore	
	Governance of estate accounts	Serbia, England & Wales, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, USA, South Africa, Uganda, Northern Ireland, Chile	13
	Other	Serbia, England & Wales, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, USA, Russia, Northern Ireland, Chile	12
Are monitoring reports published?	Reports in relation to individual practitioners or practitioner organisations are published	USA, Russia	2
	Individual reports are not published but an aggregated overview is	England & Wales, Ireland (personal insolvency), Scotland, Australia, Northern Ireland	4.5
	No reports are published	Serbia, Hong Kong SAR, Finland, Canada, Ireland (corporate insolvency), Bermuda, South Africa, Uganda, Chile	8.5
Part Five – Disciplinary regime for insolvency practitioners			

Question	Options	Members	Number
Is there a complaint system in relation to insolvency practitioners?	Yes – operated by the practitioner or their organisation	England & Wales, Scotland, Northern Ireland	3
	Yes – operated by a professional body	England & Wales, Singapore, Hong Kong SAR, Scotland, New Zealand, Russia, Northern Ireland, Australia	8
	Yes – operated by a government regulatory body	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Australia, Mauritius, New Zealand, USA, Russia, Northern Ireland, Chile	15
	Yes – unspecified	Uganda	1
	No	Jersey (no legal requirement for there to be a complaint system), Bermuda	2
Active solicitation of 'tip-offs' regarding practitioners?	Yes	England & Wales (dedicated intelligence teams within public sector regulator), Canada, Scotland (corporate insolvency), Australia, USA	4.5
	No	Serbia (though permanent contact with stakeholders), Singapore, Hong Kong SAR, Finland (though public sector regulator's role is widely understood), Ireland, Scotland (personal insolvency), Jersey, Mauritius, New Zealand, Bermuda, Russia, South Africa, Uganda, Northern Ireland. Chile	14.5
Who investigates complaints against practitioners?	Public sector regulator	Serbia, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland (personal insolvency), Australia, Mauritius, New Zealand, Bermuda, USA, Russia, South Africa, Uganda, Chile	15.5

Question	Options	Members	Number
	Professional body	England & Wales, Singapore, Scotland (corporate insolvency), Russia, Uganda, Northern Ireland, Australia	7.5
	Other	Hong Kong SAR	1
Who instigates disciplinary actions against practitioners?	Public sector regulator	Serbia, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Australia, Mauritius, New Zealand, Russia, South Africa, Uganda, Chile	13
	Professional body	England & Wales, Scotland, Singapore, Hong Kong SAR, Ireland (corporate insolvency), Mauritius, Russia, Uganda, Northern Ireland, Australia	9.5
Who adjudicates allegations of misconduct?	Public sector regulator	Serbia, England & Wales, Canada, Ireland (personal insolvency), Scotland, Australia, USA, Russia, South Africa, Uganda, Chile	10.5
	Professional body	England & Wales, Singapore, Hong Kong SAR, Finland, Ireland (corporate insolvency), Scotland (corporate insolvency), Australia, New Zealand, Bermuda, USA, Russia, South Africa, Uganda, Northern Ireland	13
	Court	Hong Kong SAR, Singapore, Finland, Ireland (corporate insolvency), Mauritius, New Zealand, USA, Russia, South Africa, Australia	9.5
What type of sanctions are available?	Reprimand	Serbia, England & Wales, Scotland, Singapore, Hong Kong SAR, Ireland, Australia, New Zealand, Northern Ireland, Chile	10

Question	Options	Members	Number
	Fine	Serbia, England & Wales, Scotland, Singapore, Hong Kong SAR, Finland, Ireland, New Zealand, Russia, Uganda, Northern Ireland, Chile, Australia (limited types of misconduct attract fines)	13
	License restriction / suspension for specified period	England & Wales, Scotland, Singapore, Canada, Ireland, Australia, Mauritius, New Zealand, USA, Russia, Northern Ireland, Chile	12
	License revocation	Serbia, England & Wales, Scotland, Singapore, Canada, Ireland, Australia, New Zealand, USA, Russia, South Africa, Uganda, Northern Ireland, Chile	14
	Other	Singapore, Hong Kong SAR, Finland, Ireland, Australia, New Zealand, USA, Russia, South Africa, Northern Ireland	10
Are disciplinary outcomes published?	Yes	Serbia (public remands only), England & Wales, Scotland, Singapore, Hong Kong SAR, Canada, Ireland (major sanctions published as matter of course; publication of minor ones is discretionary), Australia (discretionary), USA, Russia, Northern Ireland	11
	No	Finland (only court decisions are published), Mauritius (court decisions only, which are also recorded on professional register), South Africa (though stakeholders are informed), (Chile (only if — and if so, the fact that — an outcome is pending)	4

Question	Options	Members	Number
Part Six – Practitioner fees			
How are insolvency practitioners remunerated?	From the debtor's estate	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Jersey, Australia, Mauritius, New Zealand, Bermuda, Chile	14
	Other	Canada (third party deposit or guarantee), Australia (third party funding), Hong Kong SAR (subsidy)	3
What is the basis for remuneration of insolvency practitioners and how is it determined?	Criteria for remuneration set out in legislation	Serbia, Singapore, Jersey (Viscount's fees only), Australia, USA, Russia, South Africa, England & Wales, Scotland (corporate insolvency), Singapore, Finland (general principles only), Canada, New Zealand (only for public sector employees taking appointments), Uganda (for advocates only), Northern Ireland, Chile	14.5
	Remuneration at stipulated level (e.g. percentage of particular realisations)	Hong Kong SAR, Canada (graduated scale linked to net realisations), Scotland (personal insolvency), Jersey, Australia, USA, Russia, South Africa, Serbia, Canada (upper limit specified by law unless creditors agree otherwise), England & Wales, Singapore (for public sector employees taking appointments)	11
	Time costs	Hong Kong SAR, Canada, Ireland (corporate insolvency), Australia, New Zealand, Northern Ireland, Canada, England & Wales, Singapore	8.5

Question	Options	Members	Number
	Other	Serbia (award for subsequently discovered assets; remuneration level varies by criteria such as complexity, duration, and extent of debt repayment), Australia (corporate insolvency – upper limit specified by law unless creditors agree otherwise; success or contingency fees; fixed fees; personal insolvency – minimum fees apply in some cases), Hong Kong SAR (minimum fees apply in some cases), England & Wales (fixed sum may be agreed), Canada (fixed feed for provision of certain services; remuneration levels take account of factors such as required experts and risks taken), Scotland (personal insolvency – remuneration includes fixed element), Russia (remuneration includes fixed element which court may increase in light of factors such as complexity), Ireland (as agreed with creditors), Chile (agreed between debtor and creditors)	8.5
Who agrees quantum of payments to practitioner?	Creditors	Singapore, Scotland (must be agreed upfront in certain personal insolvency proceedings), Jersey, Australia, Uganda, Hong Kong SAR, Canada (formally, but not usually in practice), New Zealand, Russia, Northern Ireland	9.5
	Court	Serbia, Singapore, Jersey, Hong Kong SAR, Canada (in practice), Australia (corporate insolvency), Russia, Northern Ireland (in cases of dispute)	7.5

Question	Options	Members	Number
	Other	Australia (remuneration below statutory threshold may be proposed by practitioner; corporate insolvency – in certain proceedings, determined contractually between appointor and debtor), Uganda (inspection committee or company members), Singapore (committee of inspection; creditors), Canada (public sector regulator comments on fee levels in large cases)	4
Must the practitioner provide an upfront fee estimate? What information must an upfront estimate include?	Yes	England & Wales (details of proposed work; estimate of expenses), Australia (practitioner's preferred method, rates & estimate of total), Scotland (corporate insolvency), Northern Ireland, Singapore (fee schedule)	4.5
	No	Serbia, Hong Kong SAR, Finland, Canada, Ireland, Mauritius, New Zealand, Bermuda, USA, Russia, South Africa, Chile	12
What additional information on fees and costs are provided during the proceeding, and when?	Running or final accounts	Serbia (monthly, in advance), Northern Ireland, England & Wales (every 6 or 12 months, depending on proceeding type), Mauritius (when practitioner seeks approval of fees), New Zealand (every 6 months)	5
	Status and progress reports	Serbia (quarterly), Northern Ireland, England & Wales (every 6 or 12 months, depending on proceeding type), Ireland (corporate insolvency – annually), USA	4.5
	Remuneration details (which may include time sheets)	England & Wales (every 6 or 12 months, depending on proceeding type), Singapore (when practitioner seeks approval of fees), Hong Kong SAR (when practitioner	7

Question	Options	Members	Number
		seeks approval of fees), Scotland (corporate insolvency – every 6 or 12 months, depending on proceeding type; personal insolvency – each accounting period), Australia (when practitioner seeks approval of fees), Russia (at end of proceeding), South Africa (if practitioner applies for remuneration exceeding the prescribed fee)	
	None	Finland, Jersey, Chile	3
What happens if there are insufficient assets in a proceeding to cover practitioner's fees and costs?	Practitioner or public authority whose employee has taken appointment may be left out of pocket	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland, Scotland, Jersey, New Zealand, USA, Russia, Uganda, Northern Ireland, Australia	15
	State covers some or all of the fee	Finland, Australia (corporate insolvency: limited circumstances), Bermuda	2.5
	Practitioner may seek indemnity from creditors	Australia, New Zealand, Singapore	3
	Proportionate levy on creditors	South Africa	1
How are fee disputes addressed?	Court	Serbia, England & Wales, Singapore, Hong Kong SAR, Finland, Canada, Ireland (corporate insolvency), Scotland, Jersey, Australia (corporate insolvency), New Zealand, Bermuda, USA, Russia, South Africa, Uganda (advocates), Northern Ireland, Chile	16.5
	Public sector regulator	Finland, Australia (personal insolvency), South Africa	2.5

Question	Options	Members	Number
	Professional body	England & Wales, Scotland (corporate insolvency), New Zealand, Northern Ireland	3.5
	Other	Bermuda (arbitration)	1
	No mechanism	Mauritius, Uganda (accountants)	1.5
Is there a mechanism for repayment of fees to the estate?	Yes – court	Serbia, England & Wales, Hong Kong SAR, Canada, Ireland (corporate insolvency), Scotland, Jersey, Australia (corporate insolvency), New Zealand, USA, Singapore, South Africa, Uganda, Northern Ireland	13
	Yes – public sector regulator	Finland, Australia (personal insolvency), South Africa	2.5

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Email: secretariat@insolvencyreg.org

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