

Principles of Proper Insolvency Administration (PPIA)
(Resolution of 22.04.2016)

Preamble

The current Insolvency Statute of 01.01.1999, along with further insolvency provisions of other laws, forms the legal basis for the conduct of insolvency proceedings. The VID – Verband der Insolvenzverwalter Deutschlands e.V. (German Association of Insolvency Administrators), which brings insolvency administrators together, on 04.11.2006 agreed binding professional guidelines for its members which standardise the professional obligations of insolvency administrators. With the

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the VID – Verband der Insolvenzverwalter Deutschlands e.V., which brings insolvency administrators together, has created quality standards of professional practice based on the relevant legal requirements and professional obligations.

I. Applicability

These principles shall apply to experts, (interim) insolvency administrators, special insolvency administrators and (interim) custodians and trustees, even where subsequent reference is made only to “insolvency administrators”.

II. General requirements of the administrator and his office

1. Attention to detail

The role of the insolvency administrator requires a great attention to detail. The fulfilment of an administrator’s personal performance of duties is not satisfied where he can simply be

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formally called upon as insolvency administrator and leaves the full exercise of the proceedings to others. At the same time, the deployment of staff to ensure an efficient exercise of proceedings is indispensable. The following activities shall be uniformly undertaken with the greatest attention to detail:

- Fundamental and procedural decisions (**Principle 1**)*;
- Awareness of dates at the insolvency court (**Principle 2**)*;
- Participation in creditors' committee meetings (**Principle 3**)*;
- Provision of information, at least at the first staff meeting (**Principle 4**)*;
- Fundamental negotiations with potential buyers (**Principle 5**)*;
- Internal and external management of the proceedings (**Principle 6**)*.

2. External service providers

Areas in which the insolvency administrator may make use of external service providers at the expense of all the assets involved (**Principle 7**)* include in particular:

- Inventory, appraisal and realisation of economic goods;
- Assistance in the search for investors to prepare for the transfer and restructuring of an insolvent company through an M&A consultant;
- Preparation of accounts, annual financial statements and tax returns;
- Legal advice and tax advice, insofar as it relates to “specific duties” within the meaning of the Insolvency Law Compensation Regulation;
- Appraisal and realisation of real estate;
- Involvement of industry and insolvency procedure time managers, provided that the existing management appears either insufficiently trustworthy or qualified or that management is not available for other reasons;
- In case of construction insolvency, appointment of specialist engineers required to ensure the progress of construction and the relevant wage entitlements.

The insolvency court shall be notified of the appointment of external service providers in an appropriate manner (**Principle 8**)*.

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In accordance with the version of DIN regulation EN ISO 9001 applicable to them, insolvency administrators shall evaluate their service providers at least once a year and draw the necessary consequences from these evaluations (**Principle 9**)*.

3. Substitution arrangements (holidays, illness)

The insolvency administrator shall ensure that, in his absence, a suitable representative (holder of a degree in law, economics or another field of higher education with an economic focus) takes over his duties. This guideline shall be uniformly fulfilled on the part of the insolvency administrator by the establishment of a predefined substitution arrangement scheme (**Principle 10**)*.

4. Staff and office arrangements

The administrator shall employ qualified staff for all relevant areas of the insolvency administration, namely for clerical processing, payroll and financial accounting, contract management and administration of continuing obligations, treatment of initial and preferential claims, table rankings, management of claims, quality assurance and deadline monitoring and time management (**Principle 11**)*.

For the efficient exercise of insolvency proceedings, the insolvency administrator shall make use of efficient and court-compatible electronic data processing. All relevant processes in the insolvency proceedings shall be modelled in an integrated insolvency processing programme (**Principle 12**)*. All employees of the insolvency administrator who are involved in the processing of insolvency cases shall have access to the integrated insolvency processing programme through their own PC workstations (**Principle 13**)*.

Data collected in the process shall be backed up daily (**Principle 14**)*.

Restriction of access to stored data must meet the requirements of data protection legislation. This shall be especially the case for data in the creditor information system of the insolvency administrator. Special access codes shall be employed to ensure that

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unauthorised parties do not have access to the stored data from insolvency proceedings (**Principle 15**)*.

5. Liability insurance

The insolvency administrator shall maintain a risk-appropriate professional liability insurance which is tailored to the specific risks of insolvency administration. This shall always include minimum insurance coverage of €2 million per insurance case and a €4 million annual policy limit (twice the insurance sum for all insurance claims in an insurance year) (**Principle 16**)*. The insolvency administrator shall be obliged to review his insurance cover regularly and immediately obtain temporary adequate additional insurance for specific liability risks associated with particular proceedings (**Principle 17**)*.

6. Continuing education

The insolvency administrator shall be obliged to retrain regularly. Continuing education undertaken may not be less than 30 hours per year. Author or speaker activities shall count towards continuing education obligations (**Principle 18**)*.

7. Specialist continuing education

The insolvency administrator shall ensure that specialists employed by him have regular training and continuing education. He shall guarantee that at least one man day per specialist per year shall be dedicated to training and continuing education courses. Training and continuing education may be internal or external and shall be appropriately documented. In addition, the insolvency administrator shall ensure that specialists appointed by him are kept informed of current case law and on-going developments in insolvency law (**Principle 19**)*.

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8. Compliance

The insolvency administrator shall ensure, by written work guidelines or appropriate contractual arrangements, that his employees observe the contractual prohibition, acquisition and usage restrictions of §8 of the Professional Guidelines of the VID (**Principle 20**)*.

9. Measurement of results

The insolvency administrator shall establish appropriate evaluation systems for the internal measurement of results.

Once a year, he shall review the results of proceedings completed to form a suitable base of reference values, according to the following criteria:

- Opening rate;
- Average length of proceedings;
- Asset increase through insolvency-specific claims (contesting, shareholder liability, management liability, etc.);
- Recovery rate of claims;
- Restructuring rate in terms of proportion of jobs maintained;
- Administrative costs (procedural costs, external service providers, tax consultancy, etc.) in relation to the division of assets;
- Insolvency rate (**Principle 21**)*.

III. Rules for the exercise of proceedings

1. Taking up position/statement to the court

The insolvency administrator shall confirm, immediately following receipt of the court appointment, whether he accepts the role assigned to him (**Principle 22**)*.

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The insolvency administrator may only accept the appointment if, taking into account his current case load, staff capacity and existing infrastructure, he is capable of meeting the requirements of the specific proceedings (**Principle 23**)*.

The insolvency administrator shall immediately disclose all potential conflicts of interest, even if unasked. This shall also apply to any circumstances which might give rise to the appearance that the insolvency administrator is not impartial or independent within the meaning of the law (**Principle 24**)*.

2. Establishment of contacts

Immediately following the confirmation of court appointment, the insolvency administrator shall make contact with the debtor on site in the course of business operations no later than the following working day (**Principle 25**)*.

3. Safeguards

Following appointment, the insolvency administrator shall immediately examine the company (**Principle 26**)* and report to the insolvency court (**Principle 27**)* if and what safeguards are required.

Agreed safeguards shall be immediately implemented through appropriate measures, including:

- Registration of security notes in the relevant register (**Principle 28**)*;
- Notification of the banks involved for the purpose of freezing related accounts (**Principle 29**)*;
- Seizure of movable fixed and non-fixed assets (**Principle 30**)*;

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- Inventory of movable fixed assets and (supplier related) inventories at all relevant locations by qualified personnel or specialists (**Principle 31**)*;
- For construction insolvency: securing the building site and recording the progress of construction; taking possession of construction contract documents including correspondence and guarantee documents (especially subcontractor guarantees) (**Principle 32**)*;
- Measures against third party and protective enforcements of new carrier's liens, set offs and rights of retention (**Principle 33**)*;
- Ensuring that cash receipts on accounts take place exclusively subject to the instructions of the interim insolvency administrator (**Principle 34**)*.

4. Employee matters

Employees shall normally be informed immediately following an insolvency application, at a staff meeting and by the interim insolvency administrator, of the general course of proceedings (opening procedure, opened proceedings), the company's position and the measures envisaged concerning their rights (insolvency entitlements/insolvency benefits period, the system of insolvency pre-financing, the legal status of workers' entitlements for the period before and after the opening of insolvency, company pensions/retirement). It is essential that this normally takes place within 3 days after the appointment of the interim insolvency administration (**Principle 35**)*.

In accordance with existing legal requirements, immediate consent shall be obtained to proceed and to carry out the pre-financing of the insolvency benefits (**Principle 36**)*.

The continuing operation of the HR department, in particular for wage and salary administration, shall be ensured (potentially by external service providers) (**Principle 37**)*.

Employee holiday and overtime entitlements shall be promptly determined and announced to them (**Principle 38**)*.

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Employees and the works council shall be informed of the state of affairs, measures envisaged and proceedings options throughout the course of proceedings (**Principle 39**)*.

5. Creditors' committee

If decisions of particular importance are to be taken, and it seems reasonable and appropriate in the particular circumstances, the (interim) insolvency administrator shall establish an (interim) creditors' committee (**Principle 40**)*.

6. Assessment

The expert insolvency assessment is an essential source of information for the insolvency court in the course of the official inquiry and in the preparation of the decision on the insolvency application. At the same time, it serves as the official accounting of the (interim) insolvency administrator (**Principle 41**)*. The assessment must be submitted within the time limit set by the insolvency court and shall contain the following sub-headings by way of minimum standards:

- Legal position; for natural persons, personal position as well;
- Significant contractual obligations, especially staff;
- Economic position/causes of insolvency/restructuring potential;
- Previous measures/course of insolvency proceedings;
- Presentation of active assets in line with §266, Paragraph 2 of the Commercial Code, together with assets with existing third party rights, including insolvency specific claims (e.g. challenges, liability claims against institutions and shareholders);
- Presentation of liabilities with secured/unsecured and subordinated/unsubordinated creditors, in addition to existing collateral, as the case may be;
- Presentation of the grounds for opening under §§17, 18 and 19 of the Insolvency Statute;
- Calculation of accrued liabilities and court costs pursuant to §54 of the Insolvency Statute, in conjunction with the Court Fees Law, the Insolvency Law Compensation Regulation and Judicial Remuneration and Compensation Law;
- Concrete proposals on specific agenda items (**Principle 42**)*.

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In this presentation, the following principles shall be taken into account:

- Importance
- Relevance to decision
- Truth and accuracy
- Timeliness
- Reliability
- Economy
- Comprehensibility

Nature, scope and presentation must be adapted to the particular situation in each case and with regard to any specific requirements of the insolvency court concerned.

7. Establishment of fiduciary accounts

Once the insolvency administrator has collected all funds, he shall establish specific fiduciary accounts to secure them, with verifiable assignment to the entitled parties. Omnibus accounts shall not be permitted (**Principle 43**)*. If he finds it necessary, including in the preliminary insolvency proceedings, to make use of separate fiduciary accounts (e.g. project accounts and special accounts), he shall account for these independently and free from legal or economic assignment, comprehensively and transparently to the insolvency court. The same shall also apply if the insolvency administrator appoints third parties as trustees. The legal structure of this arrangement shall be documented (**Principle 44**)*.

8. Information for the court and proceedings institutions

The insolvency administrator shall inform the insolvency court and the other institutions in a timely, detailed and transparent manner of the information available to him so that they are in a position to take the decisions required of them by law. Complete and accurate preparation of this information shall include legal schedules in accordance with §§151-153 of the Insolvency Statute.

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The report on the first meeting of creditors shall be formulated in accordance with the principles of the expert assessment and it shall satisfy the requirements of §156 of the Insolvency Statute.

Subsequent progress reports shall refer to the first report and incorporate consecutive accounting (**Principle 45**)*.

9. Information for creditors

The insolvency administrator shall provide creditors involved in the insolvency proceedings with online information on his contact details and accessibility. He shall ensure the timely provision of information on the results of the review of claims, the expected duration of the proceedings and the ratios decided. (**Principle 46**)*.

10. Rules for accounting and real-time accounting

Insolvency accounting (income and expenditure accounting) shall take place in observance of the Generally Accepted Accounting Principles (GAAP), by means of a system which excludes shadow accounting in accordance with Part III (Part 3 of the Regulatory Principles of Computerised Accounting Systems). For proceedings begun after 01.01.2013, the insolvency administrator shall use Standard Accounting Frameworks of the Insolvency Statute (SAF 03 or SAF 04) Business transactions on the trust accounts involving the movement of cash are to be processed in the accounts regularly within 10 working days. (**Principle 47**)*.

11. Preparation of annual financial statements and tax returns

Annual financial statements, in accordance with §§242 et seq of the Commercial Code, and tax returns, in observance of business and tax obligations pursuant to §§155, Paragraph 1 of the Insolvency Statute and §§238 et seq of the Commercial Code, shall be prepared. This

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shall be the case provided the costs of preparation are covered or an agreement with financial management is not possible (**Principle 48**)*.

12. Treatment of separation and segregation rights

The insolvency administrator shall uphold the interests of parties entitled to separation and segregation rights (**Principle 49**)*.

Court authorisation shall be obtained for the use of secured assets if required for opening proceedings (§21, Paragraph 2(5) of the Insolvency Statute). In realising secured assets, the insolvency administrator shall ensure that the rights of secured creditors are upheld. (**Principle 50**)*. Proceeds of sales shall be accounted for by the insolvency administrator to the secured creditors and immediately distributed by him. (**Principle 51**)*.

13. Treatment of asset liabilities

The insolvency administrator may only justify the continuation of asset liabilities if he can confirm, at the time of incurrence of these liabilities and following careful examination, that these liabilities may be serviced at their maturity (**Principle 52**)*.

Where necessary, the interim insolvency administrator shall propose, following the opening of insolvency proceedings, a court authorisation requiring the payment of existing liabilities as insolvency asset liabilities (**Principle 53**)*.

The insolvency administrator shall strive to ensure adequate protection of payment commitments (**Principle 54**)*. In the case of insufficient assets (e.g. imposed liabilities which do not provide adequate income), the insolvency administrator shall have regard to the distribution order of §209 of the Insolvency Statute and shall make division by old and new creditors (**Principle 55**)*.

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14. Continuation of business

During the course of proceedings, all possibilities for the continuation of business for the purpose of preserving the company and its jobs shall be pursued (**Principle 56**)*.

The continuation of business shall require a real-time liquidity plan in accordance with the Institute of Public Auditors standard. Compliance with the plan shall be reviewed at regular intervals through a target/actual comparison (**Principle 57**)*.

15. Discontinuation of production

In cases where it is not possible for the company to continue sustainably, the insolvency administrator shall draw up adequate plans for the period of discontinuation in the areas of staff, liquidity and production, based on realistic order volumes.

The insolvency administrator shall ensure all necessary communication, especially with employees currently in service, on the details of the process, its course and the consequences of a discontinuation of production.

At the expiry of the company's employment obligations, the insolvency administrator shall make available opportunities for promotion or further education to employees as appropriate (**Principle 58**)*.

16. Realisation of assets

Fixed and non-fixed assets must be recorded in inventory immediately following appointment or the opening of proceedings and, if need be, shall be assessed with the assistance of an external expert (**Principle 59**)*.

The realisation of assets shall take place immediately and in the best possible circumstances while maintaining the possibility of continuing the company.

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If the insolvency administrator appoints a third party for the appraisal and realisation of fixed and non-fixed assets, he shall fulfil the following requirements:

- in principle certification to the version of DIN EN ISO 9001 applicable to the insolvency administrator (**Principle 60**)*;
- Proof of adequate liability insurance (**Principle 60**)*;
- Experience with realising the asset type (**Principle 60**)*;
- Transparent disposal as a disinterested third party (§§138 of the Insolvency Statute) through submission of purchase or accounting documents (**Principle 60**)*;
- Collection of realisation proceeds in a separate fiduciary account for each set of proceedings (**Principle 60**)*;
- Real-time invoicing and distribution of realisation proceeds (**Principle 60**)*.

17. Sale of the company

The insolvency administrator shall actively search for prospective buyers.

He shall make contact with existing interested parties as soon as possible.

He shall establish, either on his own or through a suitable service provider, the necessary conditions for a structured M&A process, in which the requisite expertise for the specific circumstances are at hand and in particular the necessary foreign language skills are available.

For the optimal structuring of the sale process, the insolvency administrator shall make full use of technology solutions, such as setting up a virtual data room. (**Principle 61**)*.

He shall actively implement all necessary restructuring measures as preconditions for the best possible sale and make use of specific insolvency, labour and social security options (**Principle 62**)*.

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18. Review of claims and table rankings

The insolvency table shall be kept up-to-date. With regard to the date of review, claims must be regularly and materially verified. Provisional denials shall be avoided. An update of claims approved by the court shall be included in each progress report (**Principle 63**)*.

19. Distribution

With regard to the discretionary provisions of §187, Paragraph 2, Sentence 1 of the Insolvency Statute, a preliminary distribution of assets should take place early on (**Principle 64**)*.

20. Conclusion of proceedings

In respect of the nature, scope and shape of the relevant insolvency proceedings, the insolvency administrator shall aim to bring the proceedings to a conclusion at the earliest possible date, if necessary subject to the proviso of a subsequent distribution of assets (**Principle 65**)*.

21. Final accounting

In the final accounting, the insolvency administrator shall include in the balance sheet (§153 of the Insolvency Statute) and present comprehensively and clearly the subsequent development of assets, with reference to the progress reports made. He shall provide the insolvency court with documentation associated with traceable accounts. (**Principle 66**)*.

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22. Self-administration

The insolvency administrator shall constructively support requests for self-administration which are acceptable according to the legal requirements. He shall carry out his role as an objective and independent representative of the interests of the creditors involved.

Contact between the (interim) trustee and stakeholders before appointment will always give rise to a duty of disclosure pursuant to Part III, Sections 1 and 3.

Before his appointment, the (interim) trustee shall be under no obligation or commitment with regard to the subsequent exercise of the role.

In the exercise of this role, he shall give appropriate consideration to the debtor's interests. In cases provided for by §§274, Paragraph 3 and 285 of the Insolvency Statute, he shall provide the debtor with the opportunity to give feedback and suggest remedies, to the extent possible and without compromising the interests of the creditors.

The (interim) trustee shall verify whether the adoption of cash management is required. The debtor, the insolvency court and the creditors' committee shall be notified of such an adoption and this shall be justified to them, as needed.

He shall ensure that he is regularly informed of existing liabilities (Part III, Section 13), continuation of business (Part III, Section 14), current earnings projections and budget calculations, order situation, exercise of voting rights pursuant to §§103 et seq of the Insolvency Statute, staff development, cost savings and realisation of assets (Part III, Sections 16 and 17) (**Principle 67**)*.

23. Insolvency plan

In all proceedings, the insolvency administrator shall review whether an insolvency plan might improve the outcome of proceedings compared with standard winding up. He shall express an opinion on this in the report at the meeting of creditors (**Principle 68**)*.

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24. Special requirements for foreign interests and international insolvency law

The insolvency administrator shall only take on insolvency proceedings with a significant international dimension where he guarantees that either he or dedicated agents appointed to the matter in question have adequate knowledge of international insolvency law and appropriate language knowledge (at the very least fluency in business English).

In cross-border insolvency proceedings, the insolvency administrator shall ensure that he can as needed examine legal questions in foreign jurisdictions through a suitable network and can develop solutions (**Principle 69**)*.

25. Public relations

The insolvency administrator shall maintain active and professional public relations appropriate to proceedings in order to promote the goals of the proceedings (**Principle 70**)*.

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