

# ARITA REGULATIONS 2015

## 1 Interpretation

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- 1.1 These Regulations are the Australian Restructuring Insolvency and Turnaround Association Regulations 2015 prescribed under clause 22.3 of the Company's constitution.
- 1.2 The Regulations commenced on 18 August 2015.
- 1.3 Unless otherwise defined in these Regulations, all capitalised terms have the same meaning as in the Company's constitution.
- 1.4 To the extent that there is any inconsistency between the Company's constitution and these Regulations, the provisions of the constitution will prevail.

## 2 Membership

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### 2.1 Professional Member - general requirements

- (a) A person may be admitted as a Professional Member if he or she:
- (i) submits an application for Membership in accordance with regulation 3;
  - (ii) is a fit and proper person of good fame and character; and
  - (iii) satisfies the requirements set out in either regulation 2.2 or regulation 2.3.
- (b) As a condition of Membership, the candidate may, at the discretion of the Board or the CEO, be required to:
- (i) attend an interview to be conducted by any of the local Divisional Committee, the Board or the CEO prior to acceptance of the candidate's application;
  - (ii) undertake certain specified education programs or courses within 12 months of admission to Membership;
  - (iii) satisfy any other condition which may be reasonably imposed.
- (c) Subject to regulation 2.1(d), to maintain Membership, a Professional Member must complete a minimum of 40 hours of continual professional education (**CPE**), of which at least 10 hours must be verifiable, during each Financial Year.

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- (d) If there are extenuating circumstances which prevent a Professional Member from completing the minimum amount of CPE hours prescribed under regulation 2.1(c), then he or she may make an application in writing to the CEO detailing those extenuating circumstances and the CEO may, in his or her absolute discretion, grant an exemption to regulation 2.1(c) for a maximum of one full Financial Year from the time the request is made and any further extensions as considered appropriate by the CEO.
- (e) A Professional Member is permitted to apply the post-nominal letters RITP (being an acronym for Restructuring Insolvency and Turnaround Professional) as a designation of his or her status of Professional Member.

### 2.2 Professional Member: Foundation pathway

A person may be admitted as a Professional Member if he or she:

- (a) subject to regulation 3.2, and other than for Associate Members applying to be a Professional Member, has been proposed for admission as a Professional Member by two Professional or Life Members to whom he or she is personally known (but who are not relatives as defined in the Act);
- (b) is a member of good standing of at least one Foundation Organisation or is a Legal Practitioner or holds other similar or equivalent qualifications as resolved by the Board;
- (c) has:
  - (i) been a Legal Practitioner for at least 3 years and has satisfied the Board that in 3 of the preceding 5 years he or she has worked on sufficient insolvency assignments and that he or she has sufficient relevant insolvency experience to justify his or her admission as a Professional Member; or
  - (ii) worked for at least 3 of the preceding 5 years undertaking professional work with, and under the direct supervision of a Professional Member who is an Insolvency Practitioner; or
  - (iii) satisfied the Board that he or she has had sufficient relevant experience to justify admission as a Professional Member;
  - (iv) completed the insolvency education program prescribed by the Board (**Insolvency Education Program**) or any approved alternative or substitute program;
  - (v) paid the annual membership fee; and
  - (vi) the benefit of professional indemnity insurance (**PI Insurance**) which, in the Member's opinion, is either adequate or required (having regard to their role in the Profession, industry best practice and any relevant Professional Standards Scheme regulated by the

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Professional Standards Council) for the work undertaken either by themselves or their Firm.

### 2.3 Professional Member: Experience pathway

- (a) A person may be admitted as a Professional Member if he or she:
  - (i) subject to regulation 3.2, has been proposed for admission as a Professional Member by two Professional Members or Life Members to whom he or she is personally known (but who are not relatives as defined in the Act and only one of whom is from the Member's Firm);
  - (ii) in the case of an applicant:
    - (A) qualified in finance, accounting, commerce or business - has demonstrably practised for at least 10 years in any or all of those fields specialising in restructuring, turnaround or corporate renewal (in Australia or overseas); or
    - (B) qualified in law - has demonstrably practised in restructuring, turnaround, corporate renewal or insolvency law (in Australia or overseas) as a Legal Practitioner for a period of at least 10 years; or
    - (C) in any other case - has demonstrably practised in restructuring, turnaround or corporate renewal (in Australia or overseas) for at least the immediate past 10 years in a senior role; and
    - (D) has the benefit of PI Insurance which, in the Member's opinion, is either adequate or required (having regard to their role in the Profession, industry best practice and any relevant Professional Standards Scheme regulated by the Professional Standards Council) for the work undertaken either by themselves or their Firm.
  - (iii) submits an endorsement from the chairman or chief executive officer or regional leader of the candidate's firm:
    - (A) supporting the candidate's application for Professional Membership;
    - (B) confirming the nature and extent of the firm's commitment to supporting the candidate's active engagement with ARITA;
    - (C) confirming that completion of ongoing study relevant to professional development is a core aspect of the firm's career pathway for its professional staff;
  - (iv) submits:

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- (A) 2 references from Professional Members (who are not relatives (as defined in the Act)) which attest to the candidate's expertise as a restructuring, turnaround or corporate renewal specialist;
  - (B) 1 character reference which attests to the candidate's status as a fit and proper person of good fame and character;
  - (C) a detailed curriculum vitae including full details of educational and professional qualifications, continuing professional education (if any) for the 3 years prior to the date of application and other contributions to the restructuring, turnaround and corporate renewal profession; and
- (v) has completed the restructuring and turnaround education program prescribed by the Board or any approved alternative or substitute program that the Board endorses.
- (b) A person appointed as a Professional Member in accordance with this regulation 2.3 must be committed to ARITA, its mission, values and purpose, as demonstrated in any or all of the following ways:
- (i) a commitment by the Member's Firm to encourage membership of ARITA;
  - (ii) a commitment to undertake relevant educational programmes which ARITA may offer from time to time which are focused upon restructuring, turnaround or corporate renewal;
  - (iii) commitment of the principals or senior professionals of the Member's Firm to leading relevant workshops, participation in Divisional Committees or by otherwise providing support to ARITA;
  - (iv) regular attendance by the Member's Firm at ARITA courses and conferences; and
  - (v) a demonstrable track record of the Member's Firm in upholding the ethical standards and professional objectives equivalent to or higher than those set by ARITA.

### 2.4 Life Member

- (a) A person may be admitted as a Life Member if he or she:
- (i) is a Professional Member or former Professional Member who has rendered outstanding service to ARITA as determined by the Board;
  - (ii) has been informed by the Board of his or her eligibility for, and has signified his or her willingness to accept, Life Membership; and

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- (iii) has been granted Life Membership by a resolution of the Board supported by not less than 75% of the Board.
- (b) A Life Member is permitted to:
  - (i) refer to him or herself as a Fellow of ARITA; and
  - (ii) apply the post-nominal letters RITF (being an acronym for Restructuring Insolvency and Turnaround Fellow) as a designation of his or her status of Life Member.

### 2.5 Academic Member

- (a) A person may be admitted as an Academic Member if he or she:
  - (i) submits an application for Membership in accordance with regulation 3;
  - (ii) is a fit and proper person of good fame and character; and
  - (iii) works predominantly in a teaching or research capacity at a recognised tertiary education institution, which is determined by the Board to be a recognised tertiary education institution;
  - (iv) has been proposed for admission as an Academic Member by two Professional Members or two Academic Members, to whom he or she is personally known;
  - (v) is a person who, in the opinion of the Board, will make a contribution to the objectives and activities of ARITA; and
  - (vi) has paid the annual membership fee.
- (b) An Academic Member is permitted to apply the post-nominal letters of RITM (being an acronym for Restructuring Insolvency and Turnaround Member - Academic) as a designation of his or her status of Academic Member.

### 2.6 Associate Member

- (a) A person may be admitted as an Associate Member if he or she:
  - (i) submits an application for Membership in accordance with regulation 3;
  - (ii) is a fit and proper person of good fame and character; and
  - (iii) is engaged in carrying on a profession or occupation which is associated or connected with Insolvency Practitioners, restructuring, turnaround or corporate renewal;

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- (iv) has been proposed for admission as an Associate Member by two Professional Members to whom he or she is personally known;
  - (v) is a person who, in the opinion of the Board, will make a contribution to the objectives and activities of ARITA; and
  - (vi) has paid the annual membership fee.
- (b) An Insolvency Practitioner or a person otherwise working in legal or Insolvency Practice is not permitted to make an application for Membership as an Associate Member to the intent that such persons will undertake the actions necessary to become eligible for Professional Membership.
- (c) An Associate Member is permitted to apply the post-nominal letters of RITA (being an acronym for Restructuring Insolvency and Turnaround - Associate) as a designation of his or her status of Associate Member.

### 2.7 Graduate Member

- (a) A person may be admitted as a Graduate Member if he or she:
- (i) is upgraded from Student Membership in accordance with regulation 2.10(c); or
  - (ii) has successfully completed the Insolvency Education Program and submits an application to become a Graduate Member in accordance with regulation 3,
- and in each instance has paid the annual membership fee applicable to Graduate Members.
- (b) A Graduate Member is not permitted to apply any post-nominal letters as a designation of his or her status of Graduate Member.

### 2.8 Honorary Member

- (a) A person may be admitted as an Honorary Member of ARITA if, in the unanimous opinion of the Board having regard to the person's experience, status or other measure as determined by the Board from time to time, he or she is of sufficient seniority and standing in or for or connected to the Profession to justify admittance as an Honorary Member.
- (b) An Honorary Member will not be required to pay an annual membership fee, nor is required to submit an application for Membership, unless otherwise determined by the Board.
- (c) An Honorary Member is permitted to apply the post-nominal letters of RITM (being an acronym for Restructuring Insolvency and Turnaround Member - Honorary) as a designation of his or her status of Honorary Member.

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### 2.9 Lender & Investor Member

- (a) A person may be admitted as a Lender & Investor Member if he or she:
  - (i) submits an application for Membership in accordance with regulation 3;
  - (ii) is a fit and proper person of good fame and character; and
  - (iii) is engaged in banking, finance, private equity, venture capital or other investment which involves insolvency, restructuring, turnaround, workouts or other informal or formal insolvency processes or matters;
  - (iv) has been proposed for admission as a Lender & Investor Member by two Professional Members or two Lender & Investor Members, to whom he or she is personally known;
  - (v) is a person who, in the opinion of the Board, will make a contribution to the objectives and activities of ARITA; and
  - (vi) has paid the annual membership fee.
- (b) A Lender & Investor Member is permitted to apply the post-nominal letters of RITM (being an acronym for Restructuring Insolvency and Turnaround Member - Lender & Investor) as a designation of his or her status of Lender & Investor Member.

### 2.10 Student Member

- (a) A person may be admitted as a Student Member if he or she:
  - (i) is enrolled in, and attends, the Insolvency Education Program or the Introduction to Insolvency Program;
  - (ii) is enrolled in and attends a tertiary level course or programme of study offered by a university, technical training college or accounting industry association at a recognised tertiary education institution; and
  - (iii) has provided to the Board or CEO such further information as may be required by the Board or CEO.
- (b) A person must not be a Student Member for a period of more than 3 years (or such longer period as the CEO may approve):
  - (i) prior to enrolling in the Insolvency Education Program; or
  - (ii) following completion of the Insolvency Education Program.

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- (c) A Student Member who successfully completes the Insolvency Education Program will be upgraded (at the CEO's discretion) to Graduate Member upon payment of the relevant annual membership fee for Graduate Member in accordance with regulation 4.
- (d) A Student Member is not permitted to apply any post-nominal letters as a designation of his or her status of Student Member.

### **3 Application for and renewal of Membership**

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- 3.1 Applications for and renewal of Membership must be in accordance with the application form made available on the Website or otherwise by ARITA from time to time.
- 3.2 In the case of applications for Professional Membership:
  - (a) at least one of the two current Professional Members proposing the application must not be a principal of or employed at the same Firm (as defined in the Code of Professional Practice) as the applicant;
  - (b) the application is to be accompanied by a statutory declaration sworn by the applicant confirming that he or she:
    - (i) has no prior criminal convictions;
    - (ii) is not and has not been a bankrupt; and
    - (iii) is not and has not been the subject of disciplinary process or proceedings instigated by any professional association or regulatory body in Australia or elsewhere.
  - (c) if requested by ARITA, the applicant agrees to provide either a copy of the certificate of currency of any PI Insurance policy of which the applicant or the applicant's Firm has the benefit or otherwise provide written confirmation from the applicant's Firm that such a PI Insurance policy is current.
- 3.3 Where neither the applicant nor the proposing Professional Members are known to the members of the relevant Divisional Committee, the Divisional Secretary of the Division may request the nominating Professional Members to make inquiries that would enable the Divisional Committee and the Board to form a view that the applicant:
  - (a) is a fit and proper person of good fame and character; and
  - (b) has adequate relevant and/or appropriate experience,to be admitted as a Professional Member.



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- 3.4 Applications for Professional Membership may be approved at the discretion of the Board provided that the Divisional Committee representing the Division in which the applicant ordinarily resides has first or subsequently resolved in its discretion that the applicant:
- (a) is a fit and proper person of good fame and character; and
  - (b) has adequate relevant and/or appropriate experience,
- to be admitted as a Professional Member.
- 3.5 The Board may, from time to time and at its absolute discretion, resolve to appoint Members to any category of Membership in recognition of their current role, demonstrated experience, recognition of prior learning and/or recognition of current competency.
- 3.6 Upon annual renewal of Membership by a Professional Member, the Member, if requested by ARITA, agrees to provide either a copy of the certificate of currency of any PI Insurance policy of which the Member or the Member's Firm has the benefit or otherwise provide written confirmation from the Member's Firm that such a PI Insurance policy is current.

### **4 Fees**

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- 4.1 Entrance fees for Members may be determined by the Board and, for the present, shall be fixed at nil.
- 4.2 Annual membership fees for Members will be determined each Financial Year by the Board and published on the Website.
- 4.3 Annual membership fees will be payable in respect of the Financial Year except for Members admitted after 30 June in any Financial Year who will only be liable for 50% of the annual membership fee until that Member's next annual membership fee falls due.
- 4.4 Professional Members who have:
- (a) been a Professional Member for not less than 10 years; and
  - (b) attained the age of 65 years; or
  - (c) been granted a concessional membership fee by their Foundation Organisation,
- may apply for a reduction in the annual membership fee equal to 50% of the annual membership fee otherwise prescribed.
- 4.5 Despite regulation 4.4, if a concessional fee is granted to Professional Members they will still be required to undertake CPE as set out in these Regulations.

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- 4.6 The Board may in its absolute discretion consider applications from Members who reside permanently, not temporarily, outside Australia for a concessional membership fee. Any concession will only be granted at the absolute discretion of the CEO and will not in any event be less than 50% of the annual membership fees otherwise prescribed.

### **5 Conduct and discipline**

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#### **5.1 General process and procedure**

- (a) Subject to the provisions of the constitution and these Regulations, the Board and the PCC may each regulate its own procedures under this clause 5 of the Regulations and clause 8 of the constitution, as each may determine in their absolute discretion.
- (b) At least 2 members of the PCC must meet to investigate and consider any matter brought before it. That meeting may be held by phone or by email or other such means.
- (c) The PCC must consider complaints or concerns about a Member referred to it for investigation and decision in accordance with Company Disciplinary Proceedings. The PCC may also ask a Member to produce relevant letters, emails and other documents. The PCC may decide that it only requires responses in writing or by phone, or it may invite the member to meet with the PCC.
- (d) The PCC will otherwise communicate with a Member through the Company Secretary.

#### **5.2 Determination and referrals**

- (a) Following investigation of any matter, the PCC may determine that the concern or complaint is unsubstantiated and no further action is appropriate. Advice to this effect must be provided to any complainant, the Member and to the Board.
- (b) Following investigation of any matter, the PCC may determine that some or all of the concern or complaint is substantiated but that the matter has already been addressed and/or it is not in the interests of the public, the Member, ARITA or the Profession that any penalty be applied and no further action is appropriate. Advice to this effect must be provided to any complainant, the Member and to the Board.
- (c) Following investigation of any matter, the PCC may determine that the concern or complaint is substantiated and warrants the matter being referred to the Board. Prior to making this referral, the PCC must advise the Member of its intention and give the Member a reasonable opportunity to be heard.

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- (d) Following consideration of any further submissions by the Member, the PCC may review its decision to refer the matter to the Board, and on the basis that matter has already been addressed and/or it is not in the interests of the public, the Member, ARITA or the Profession that any penalty be applied, determine that no further action is appropriate. Advice to this effect must be provided to any complainant, the Member and to the Board.
- (e) The PCC must give reasons for its determinations and provide advice to the Board in relation to matters referred to it. The Board may review the PCC's investigation and findings.
- (f) If the Board concludes that there has been a breach of professional conduct or standards or considers that a Member has brought ARITA or the Profession into disrepute, then it must give written reasons for its decision and any penalty it proposes to apply and arrange for those to be given to the Member prior to the Member being heard on the question of penalties.
- (g) The PCC may also recommend that the Board refer a matter to a Regulator or a Foundation Organisation or appropriate law enforcement body should there appear to be fraud or serious misconduct or breach of the law alleged, whether or not the Member has given a satisfactory response to ARITA. In any such case, the Company Secretary must write to the Member asking why the matter should not be referred prior to effecting the referral.
- (h) In those cases where a complaint has been made not only to ARITA but also to the Regulator, the PCC may still separately recommend that the Board refer a matter to a Regulator.

### 5.3 Penalties

- (a) The penalties that may be applied following Disciplinary or Legal Proceedings, including those commenced because a Member is the subject of other pending Disciplinary or Legal Proceedings are:
  - (i) termination of Membership, or suspension of Membership for a period;
  - (ii) a reprimand, which will also be recorded on the Member's disciplinary record and may be taken into account in considering penalties should the member be subject to any future Company Disciplinary Proceedings;
  - (iii) a direction that the Member attend specified CPE or other courses;
  - (iv) a requirement that the Member source peer review by another Member nominated by the PCC or its delegate;
  - (v) limitations on the Member's professional practice;
  - (vi) attaching one or more conditions to the Member's Membership;

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- (vii) the payment of compensation, damages or reparations to any person;
  - (viii) forgoing payment of any future remuneration from the engagement or activity the subject of the Disciplinary or legal proceedings;
  - (ix) a requirement to reimburse remuneration paid to the Member or the Member's Firm as a consequence of the engagement the subject of the Disciplinary or Legal Proceedings; and
  - (x) the imposition of a financial penalty which requires the Member to pay a sum of money by way of fine, compensation or damages to ARITA or to another person.
- (b) In determining which if any penalties apply the Board may have regard to:
- (i) the seriousness of the findings or determinations made in the Disciplinary or Legal Proceedings;
  - (ii) the seriousness of any pending Disciplinary or Legal Proceedings including any interim judicial orders or interim decisions of a court, Regulator or Foundation Organisation;
  - (iii) the Member's previous disciplinary record;
  - (iv) the impact on the reputation of ARITA and the Profession;
  - (v) the Member's submission as to Sanctions; and
  - (vi) any references in support of the Member.
- (c) Notwithstanding that a matter has been determined against a Member, the Board may, in its discretion, not impose any penalty.

### **6 Code of Professional Practice**

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The ARITA Code of Professional Practice (as amended from time to time) forms part of these regulations.