

**STATEMENT
OF
BEST PRACTICES
FOR
INSOLVENCY PROFESSIONALS**



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA (IPA ICAI)**

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1) PROLOGUE

- Statement of Best Practices for Insolvency Professionals (hereinafter referred as "IP") is a set of practices written to help in guiding the IP under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "Code").
- The purpose of the Statement of Best Practices for IPs is to promote and maintain high ethical and professional standards by setting out the practices to be followed under the Code and also to ensure a uniform approach towards the working of the IPs.
- The ***practices suggested herein are recommendatory in nature and should be followed in parallel to the prevailing statutory framework laid down in the Code.***

2) FUNDAMENTAL PRINCIPLES GOVERNING THE PROFESSION OF IP

- The First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for the Code of Conduct for Insolvency Professionals which provides pertaining to:
 - a) Integrity and Objectivity
 - b) Independence and Impartiality
 - c) Professional Competence
 - d) Representation of correct facts and correcting misapprehensions
 - e) Timeliness
 - f) Information Management
 - g) Confidentiality
 - h) Occupation, employability and restrictions
 - i) Remuneration and costs
 - j) Gifts and hospitality
- An IP must abide by the prescribed Code of Conduct at all the times i.e before commencement, during and after the conclusion of the assignment undertaken under the Code.
- An IP should observe highest level of ethics, morality and integrity in all business and professional relationships.
- An IP should exercise independent and bias free decision making. An IP should continuously work towards upgrading its knowledge base and skill set in order to render competent professional services to their clients.
- An IP should keep confidential the information acquired about their clients through business and professional relationship and should not be used for his personal benefit or that of a related entity.

- An IP should diligently comply with the Code, rules and regulations made thereunder and should refrain from such practice which discredits the profession.
- IP shall take adequate actions to protect the assets of corporate debtor along with the preservation of their value.
- It is the responsibility of IP to demonstrate the action, analysis, evaluation and duties performed by him/her in respect to an assignment. Hence, IP shall maintain complete records in order to ensure appropriateness of the actions.

3) ADHERANCE TO THE ELIGIBILITY CRITERIA

- Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for the eligibility criteria which an IP should abide by at the time of registration and thereafter.
- An IP should ensure that the eligibility criteria are complied with throughout the validity of registration/license.
- If at any point of time after obtaining the registration license from Insolvency and Bankruptcy Board of India (hereinafter referred as "IBBI") any eligibility criterion is violated; IP shall duly report such event to the Insolvency Professional Agency with whom IP is enrolled and to IBBI.

4) APPOINTMENT OF AN IP

- Before giving consent to act as an as an Interim Resolution Professional (hereinafter referred as "IRP"), Resolution Professional (hereinafter referred as "RP") or Liquidator of the Corporate Debtor, an IP shall endeavour to do the background check of the Corporate Debtor to the extent possible and shall discuss with the applicant the reason(s) and intent for initiating corporate insolvency resolution process and shall inform the applicant about the implications of initiating fraudulent or malicious initiation of proceedings.
- Once appointed an IP has diverse roles to play. An IP is an **officer of court** responsible for running the entire resolution/bankruptcy/liquidation process in a timely and result effective manner.
- An IP also acts as the **custodian or trustee** of the assets of the Corporate Debtor which requires on his part preservation of the value of Corporate Debtor and to take all reasonable steps to continue the corporate debtor as a going concern.

5) APPOINTMENT OF OTHER PROFESSIONALS BY IP

- When an IP intends to appoint any other specialized professional for any special area of work, the IP should primarily evaluate whether such reliance is warranted.
- While engaging the services of expert, IP shall ensure that such expert is independent to the corporate debtor and fee paid to them should reflect the value of work undertaken because such fee will form part of corporate insolvency resolution process cost/liquidation cost (as the case may be).
- While engaging the services of other professionals, IP shall consider various factors in relation to other professionals such as independence, reputation, work experience, relevant skill set and expertise, bandwidth, professional and ethical standards, timely and fair services.
- IP should not promote or seek to promote services of other professional during an assignment.

6) INDEPENDENCE OF AN IP

- Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides an IP shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the IP entity of which he is a partner or director, are independent of the corporate debtor.
- A person shall be considered independent of the corporate debtor, if he:
 - a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;
 - b) is not a related party of the corporate debtor; or
 - c) is not an employee or proprietor or a partner
 - i. of a firm of auditors or 6 [secretarial auditors] in practice or cost auditors of the corporate debtor; or
 - ii. of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 5% or more of the gross turnover of such firm, in the last three financial years.
- Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA

of the Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.
- A resolution professional who is a director or a partner of an Insolvency Professional Entity (hereinafter referred as "IPE") , shall not continue as a resolution professional in a corporate insolvency resolution process if the IP entity or any other partner or director of such IPE represents any of the other stakeholders in the same corporate insolvency resolution process.
- An IP should evaluate if in any manner he/she is related/ connected to a particular stakeholder of the Corporate Debtor or with the Corporate Debtor.

7) CONFLICT OF INTEREST AND TRANSPARENCY

- An IP should take reasonable steps to identify the circumstances that could pose a conflict of interest as wherever the conflict of interest arises, there preservation of confidentiality will be of paramount importance.
- An IP should have procedure in place to check that no conflict of interest exist between the professionals appointed for assistance and other stakeholders of the Corporate Debtor.
- IP should obtain Declaration of Independence from the appointed professionals.
- In case of large corporate groups, an IP should identify if there is any possibility of conflict of interest with the parent company and other companies of the group.
- An IP shall exercise transparency throughout his/her appointment.
- An IP should engage independent professionals for his assistance in fair and transparent manner and such appointments shall be at arm's length price.
- In case of existence of any kind of relationship between IP and other professionals or between the other professionals and corporate debtor, IP shall at the earliest report such relationship to the Insolvency Professional Agency with whom he/she is enrolled, IBBI and the Committee of Creditors of the corporate debtor.
- IP should be vigilant throughout the process to identify fraudulent, preferential, onerous and extortionate credit transactions and reporting of the same to Adjudicating Authority.
- IP should record details of every meeting conducted with any stakeholder(s) of the Corporate Debtor.

8) PROFESSIONAL COMPETENCE

- Before accepting any assignment under the Code, an IP shall self assess his competence to handle that particular assignment in terms of infrastructure, manpower, technology, skill set, professional bandwidth and sectoral knowledge in which corporate debtor is working in order to efficiently handle a particular case. An IP shall not accept an assignment in case of inadequate infrastructure.
- Apart from the above an IP shall maintain his professional competence through continuous awareness and understanding of the developments in insolvency regime, prevailing critical issues and ideal safeguards to address the same.

9) FEES AND EXPENSES

- The Code of Conduct for IP under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that Insolvency Professionals shall:
 - a) charge only such fee as has been disclosed to the persons fixing remuneration.
 - b) ensure that the fee charged is a reasonable reflection of the work necessarily and properly undertaken.
 - c) ensure that the fee charged is in compliance with the applicable regulations.
 - d) disclose all expenses and costs forming part of the insolvency resolution process costs or liquidation costs to all relevant stakeholders, and
 - e) ensure that the expenses and costs incurred by him/her are reasonable.
- Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the fee to be paid to the Interim Resolution Professional and the expenses that can be incurred by the Interim Resolution Professional will be fixed by the person who applies for an insolvency resolution process under the Code. These fee and expenses are to be borne by the applicant, except to the extent the committee of creditors agrees to ratify and reimburse the fee and expenses. The ratified fee and expenses shall form part of the insolvency resolution process costs.
- Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

provides that the fee to be paid to the Resolution Professional and the expenses that can be incurred by the Resolution Professional will be fixed by the Committee of Creditors. These shall form part of the insolvency resolution process costs.

- The fee and out of pocket expenses of insolvency professionals are to be paid in priority both as part of the resolution plan and under liquidation, since they are part of insolvency resolution process costs and liquidation costs.
- IP shall charge such fee which is reasonable reflection of the work done by him/her. The fee charged by IP shall directly relates to the scope of work involved in insolvency process/liquidation process
- An IP shall consider the following factors while determining the quantum of the fee to charged:
 - a. Size of the operations of the corporate debtor.
 - b. Asset base of the corporate debtor
 - c. Man hours required to devoted to an assignment
 - d. Complexity of the case
 - e. Infrastructure requirement like manpower
- An IP may charge fixed or variable fee by using any of the following combinations i.e Time based fee, event based fee, percentage based charging, contingency fee (if any).
- IP shall not make any changes in the fee without the prior approval of the authority fixing his/her fee.
- The out-of-pocket expenses of Insolvency Professional/Liquidator shall constitute part of the insolvency resolution process costs/liquidation cost (as the case may be) and should be incurred for efficient and effective running of insolvency/resolution process.
- An IP should ensure that the out-of-pocket expenses incurred by him are reasonable. i.e expenses should be directly related to the insolvency resolution process/liquidation process and should be incurred at arm's length price.
- IP shall not accept any kind of referral fees or commissions which poses any threat to the objective of resolution/liquidation of the corporate debtor.

10) IDENTIFICATION OF THREATS AND ITS POSSIBLE SAFEGAURDS

- IP should take reasonable steps and should have mechanism in place to identify the existence of threats to the functioning of corporate debtor, objective of insolvency/liquidation and to the assets of corporate debtor.
- In the event of threat to the IP from the management of the corporate debtor or any other stakeholder of corporate debtor, IP should report

such event to the committee of creditors and before the Adjudicating Authority for seeking necessary directions.

- In the event of life threat to the Insolvency Professional, support from local authorities should be sought or security agency should be hired. Event of life threat shall also be reported to the committee of creditors and before the Adjudicating Authority for seeking necessary directions.

11) ASSET MANAGEMENT

- Upon appointment as an Interim Resolution Professional/Resolution Professional/Liquidator, the asset class should be reviewed and the potential threat and risk to the assets should be identified and safeguards measures should be taken.
- IP through appointment of registered valuer(s) should carry out physical verification of the assets of the corporate debtor and should obtain exceptional reporting from the registered valuer(s) to ensure reconfirmation of asset size vis-à-vis the books of accounts of the company.
- If nature of asset is such that it requires extra protection, then IP should engage the services of relevant security agencies or if needed assistance of local police can also be obtained by approaching the Adjudicating Authority.
- In case of factory operations, if there is risk perceived regarding unauthorized movement of goods, CCTV camera can be installed if not already installed and footage might be reviewed at regular interval.
- IP should institute the process of change in authorised signatories of bank account(s) of the corporate debtor in order to ensure effective management of cash and bank balance.
- IP should scrutinize the current assets of the corporate debtor as stated in the audited balance sheet of the company and should evaluate if any legal action is necessary towards the realization of the same.
- IP should get the records and registers pertaining to the assets of the corporate debtor completed at the earliest in order to understand the actual position of the assets of the corporate debtor (if not completed).

12) CONDUCT OF MEETING OF COMMITTEE OF CREDITOR

- IP shall endeavour to convene meeting of the Committee of Creditors at the premises of corporate debtor or bankers in order to save cost of conducting the meeting.

- IP shall ensure no unauthorized person becomes the part of meeting of Committee of Creditors.
- IP shall provide opportunity to the participants of the Committee of Creditors to express their views freely while maintaining balance amongst the various participants and the available time.
- IP should enter into Non Disclosure Agreement (NDA) with the video recorders of the meeting to ensure confidentiality of the discussions at the meeting.
- IP should ensure that the minutes of the meeting of the Committee of Creditors are drafted in a detailed manner and also cover the views of dissenting members of the Committee.

13) RECORD KEEPING

- Regulation 7(2) (g) of Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 provides that maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment.
- Regulation 5(2) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that liquidator shall preserve a physical as well as an electronic copy of the reports and minutes referred to in sub-regulation (1) i.e. preliminary report; asset memorandum; progress report(s); sale report(s); minutes of consultation with stakeholders and the final report prior to dissolution for eight years after the dissolution of the corporate debtor.
- Regulation 6 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor, and shall preserve them for a period of eight years after the dissolution of the corporate debtor:
 - a) Cash Book
 - b) Ledger
 - c) Bank Ledger
 - d) Register of Fixed Assets and Inventories
 - e) Securities and Investment Register
 - f) Register of Book Debts and Outstanding Debts;
 - g) Tenants Ledger
 - h) Suits Register
 - i) Decree Register
 - j) Register of Claims and Dividends
 - k) Contributories Ledger

- l) Distributions Register
 - m) Fee Register
 - n) Suspense Register
 - o) Documents Register
 - p) Books Register
 - q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 45; and
 - r) Such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.
- Regulation 41 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 provides that the liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.
 - IP shall preserve records pertaining to the assignment in accordance with the Record Retention Schedule once issued by IBBI.

14) CONFIDENTIALITY

- An IP shall maintain strict confidentiality with regard to the information received about the corporate debtor through business/professional relationship.
- IP shall not disclose any information acquired through business/professional relationship to any third party and shall only make disclosure if required by law or Adjudicating Authority and shall not use it for any personal benefit..
- Resolution Plans received by the IP from different resolution applicant should be kept confidential and the same shall only be shared with the participants of the Committee of Creditors.
- In case for the receipt of information, IP has to enter into Non-Disclosure Agreement, then IP shall carefully review the terms and condition of the agreement and shall avoid signing off to any terms and condition which may impact any of his duties or responsibility under the Code.
- IP should have systems and procedures in place to prevent access to confidential information to any unauthorized person.
- Confidentiality should be maintained by the IP when hiring external advisors/professionals. Confidentiality Or Non-Disclosure Agreement may be entered into with such external advisors/professionals to the extent applicable.

- In case of conduct of meeting of Committee of Creditors through video-conferencing or through any other online mode, IP shall ensure the authenticity of the system.

15) OTHER CONSIDERATIONS

- An IP shall not accept any fresh assignment under the Code during the event of the issuance of show cause notice to him/her by IBBI.
- An IP shall not raise the bill for the work done in the name of his/her IPE. Bill only for the support services rendered by an IPE can be raised by an IPE in its name.
- While dealing with a CIRP assignment, an IP should refer to the Charter of Responsibility of IP and CoC in order to ensure performance of all the duties of his/her part.
- IP should endeavour to maintain good rapport with the participants of the Committee of Creditors in order to ensure smooth conduct of the meetings.
- IP should have a process in place to promptly reply to the concerns of the stakeholders while maintaining confidentiality.