

DISCIPLINARY POLICY

OF

INSOLVENCY PROFESSIONAL AGENCY OF

ICAI

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**DISCIPLINARY POLICY
OF
INSOLVENCY PROFESSIONALS AGENCY OF ICAI**

**Pursuant to Insolvency and Bankruptcy Board of India (Model Bye-Laws and
Governing Board of Insolvency Professional Agencies) Regulations, 2016**

INTRODUCTION

Insolvency Professional Agency of ICAI [**“IPA-ICAI”**] is a Section 8 company incorporated under the Companies Act, 2013 and registered under section 201 of the Insolvency and Bankruptcy Code, 2016 [**“Code”**] with Insolvency and Bankruptcy Board of India [**“IBBI”**] as of the Insolvency Professional Agency.

Section 196(2) (p) of the Code provides that IBBI may make model bye-laws to be adopted by insolvency professional agencies which may provide for, inter alia, the manner of conducting disciplinary proceedings against its members and imposing penalties.

Section 205 of the Code mandates every Insolvency Professional Agency to make bye-laws which are consistent with the model bye-laws specified by IBBI.

Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 [**“IBBI Model Bye-Laws Regulations”**] mandates every Insolvency Professional Agency to have a Governing Board and frame Bye-Laws to regulate its procedure.

IPA-ICAI has framed its own Bye-Laws namely “Bye-Laws of Insolvency Professionals Agency of ICAI” [**“IPA-ICAI Bye-Laws”**] which are drawn from the IBBI Model Bye-Laws Regulations.

In terms of the IPA-ICAI Bye-Laws, it is necessary to formulate a Disciplinary Policy and constitute a Disciplinary Committee to deal with cases of violation of the Code as well as the rules and regulations framed thereunder by the professional members enrolled with IPA-ICAI.

OBJECTIVE

The main objective of the Disciplinary Policy is to codify the process to deal with disciplinary matters of the professional members based on any complaint received by IPA-ICAI; or *suo moto* based on any information; or reference made by the Grievance Redressal Committee or the Monitoring Committee; or directions received from IBBI or court of law.

SCOPE

The Disciplinary Policy (for short “Policy”) of IPA-ICAI is consistent with the provisions set out in Part X of the Schedule under the IBBI Model Bye-Laws Regulations, which provides that the Disciplinary Policy shall, *inter alia*, stipulate the following:

- (a) the manner in which the Disciplinary Committee may ascertain facts of a complaint, information, reference, or directions;
- (b) the issue of show-cause notice based on such facts;
- (c) disposal of show-cause notice by a reasoned order;
- (d) timelines for different stages of disposal of the show-cause notice; and
- (e) rights and obligations of the parties to the proceedings.

The aim of the Policy is to establish a mechanism for dealing with disciplinary proceedings against professional members of IPA-ICAI which is fair, transparent, efficient and fast. Attempt has been made to ensure that the policy delivers a system which results in speedy disposal of the proceedings against professional members.

DISCIPLINARY MECHANISM

IPA-ICAI has constituted a Disciplinary Committee under clause (d) of Bye-Law 8(1) of IPA-ICAI Bye-Laws with a disciplinary mechanism in place to ensure proper conduct on the part of the professional members and to address issues in case of violation of the provisions of the Code, as well as the rules and regulations framed thereunder.

PART I DEFINITIONS

1. In this Policy, unless the context otherwise requires:
 - (a) **“Appellate Panel”** means the authority constituted by the Governing Board of Insolvency Professionals Agency of ICAI under Bye-Law 25 of IPA-ICAI Bye- Laws;
 - (b) **“Code”** means the Insolvency and Bankruptcy Code,2016;
 - (c) **“Committee”** means the Disciplinary Committee constituted by the Governing Board of the Agency in terms of clause (d) of Bye-Law 8(1) of IPA-ICAI Bye-Laws;
 - (d) **“Disciplinary Proceeding”** means the proceedings under this Policy;
 - (e) **“Entity”** means any Insolvency Professional Entity registered under the Code; or any partnership firm, whether registered or not, under the Partnership Act, 1932; or any Limited Liability Partnership under the Limited Liability Partnership Act 2012; or anybody corporate incorporated under the Companies Act,2013;
 - (f) **“Governing Board”** means the Board of Directors of IPA-ICAI constituted under Regulation 5 of IBBI Model Bye-Laws Regulations; **“IBBI Model Bye-laws Regulations”** means the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professionals Agencies) Regulations,2016;
 - (g) **“IBBI”** means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code,2016;
 - (h) **“Other Misconduct”** means misconduct as defined in Part II of First Schedule to the Policy;
 - (i) **“Policy”** means the Disciplinary Policy of IPA-ICAI;
 - (j) **“Professional Member”** means an individual who is enrolled with IPA-ICAI

and registered with IBBI and includes an individual who was a member of IPA-ICAI as on the date of the alleged misconduct, although he has ceased to be a member of IPA-ICAI at the time of receipt of reference from the Grievance Redressal Committee; or direction from IBBI or court of law; or information;

(k) “**Professional Misconduct**” means professional misconduct as defined in Part I of First Schedule to the Policy;

2. All words and expressions used and not defined in this Policy, but defined in the Code, shall have the same meaning as assigned to them in the Code.

PART II PROCEDURE ON RECEIPT OF COMPLAINT, INFORMATION, REFERENCE, OR DIRECTION

1. Disciplinary proceedings may be initiated against a professional member—
 - a. based on a complaint received in prescribed format alleging professional or other misconduct; or
 - b. based on a reference made by the Grievances Redressal Committee or the Monitoring Committee; or
 - c. following the direction given by IBBI or any court of law; or
 - d. *suo moto*, based on any information.
 - e. against whom intimation or information received from the Professional body of which the insolvency professional is member, about any disciplinary action taken

 2. **Initiation of disciplinary proceedings on the basis of any complaint, reference, direction or information**
 - a. A meeting of the Committee shall be called for within a period of four weeks from the receipt of any complaint in the prescribed format, reference, direction or information, as the case may be, which is complete in all respects, along with a brief of the allegations against the professional member.
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- b. Where, any complaint, reference, direction or information, complete in all respects, is placed before the Committee, the Committee, at the preliminary stage on being briefed about the complete facts and submissions by IPA-ICAI, shall take a considered view whether a show-cause notice is to be issued on all or any of the allegations in the complaint, information, reference or direction, as the case may be or the complaint, information, reference or direction is to be closed for reasons to be recorded in writing by the Committee.
- c. Where, based on the documents available on record and from the facts disclosed, the Committee is of the considered opinion that the complaint, reference, direction or information, does not warrant issuance of show-cause notice, the Committee shall pass an order rejecting the complaint, reference, direction or information by recording reasons in writing.
- d. Where, however, the Committee is of the considered opinion that the complaint, reference, direction or information, warrants issuance of show-cause notice, the Committee shall proceed under Part – III of the Policy.
- e. Any complaint received for initiating disciplinary proceedings against a professional member, if filed by or on behalf of
 - i. a body corporate or entity formed under an act of parliament or any other entity or organization,
 - ii. the Central Government or any State Government or any other department or entity of the Central or State Government
 - iii. any statutory authority, such as Reserve Bank of India or Securities and Exchange Board of Indiashall be accompanied by a document, to be filed in original by the person duly authorized in this regard, by the body corporate or entity or government or department or authority, as the case may be.
- f. Any complaint against a professional member alleging professional or other misconduct shall be filed, in such format as may be prescribed by IPA-ICAI, disclosing the identity of the person filing the complaint, along with all the relevant documents, in triplicate and addressed to the CEO, IPA-ICAI either in person or by registered/speed post. A scanned copy of the complaint along with the annexure(s) shall also be provided by way of electronic means to IPA-ICAI. The complainant shall certify that the hard copy of the complaint is the exact replica of the complaint filed in the electronic form. A complaint shall be deemed to have been received on the day when the complaint, cured of all defects, is received in both the above formats.
- g. Any complaint that does not bear the name and address of the complainant is an anonymous complaint and shall be rejected outrightly. A complaint that does not bear the full particulars of the

complainant or is unsigned or is not subsequently acknowledged by a complainant as having been made is a pseudonymous complaint. Pseudonymous complaints will be referred to the complainant for confirmation / genuineness verification and if no response is received from the complainant within 7 days of sending the complaint, a reminder will be sent. After waiting for 7 days of sending the reminder, if still no response is received, the said complaint may be filed as pseudonymous.

- h. No complaint shall be entertained by the Committee unless the same is received in the office of IPA-ICAI within sixty days of the complainant becoming aware of the alleged professional or other misconduct.
- 3. The Committee shall, within a period of seven days from the date of passing an order under this Part, provide a copy of its decision to the concerned party.
- 4. Any person aggrieved by an order passed by the Committee rejecting a complaint, information, reference, or direction on the ground that the facts disclosed do not warrant issuance of show-cause notice, may prefer an appeal before the Appellate Panel within thirty days from the receipt of the copy of such order.

PART III

PROCEDURE UPON INITIATION OF DISCIPLINARY PROCEEDINGS

- 1. Where, the Committee is of the considered opinion that the complaint, information, reference or direction, warrants issuance of show-cause notice, it shall issue a show-cause notice, in such format as may be prescribed, at the last known address of the professional member updated in the records of IPA-ICAI requiring the professional member to, *inter alia*, submit a reply in his defense within four weeks of receipt of the show-cause notice, along with supporting documents, if any, failing which, the Committee shall proceed on the basis of material available on record.
- 2. On consideration of documents available on record and after affording an opportunity of hearing to the complainant and the professional member, where, the Committee holds that the professional member is-
 - a. not guilty of professional or other misconduct, the Committee shall dispose of the show-cause notice by recording reasons in writing within thirty days of passing such order and may also impose cost on the complainant, if the Committee is of the opinion that the complaint was frivolous; or
 - b. guilty of professional or other misconduct, it may pass any one or more of the following orders:
 - a. reprimand;

- b. monetary penalty, which shall not be less than Rupees Ten Thousand;
 - c. suspension for a period as determined by the Committee;
 - d. expulsion;
 - e. reference of the matter to IBBI, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by IBBI
 - f. directions relating to costs;
 - g. any other order, as the Committee may deem fit
3. The Committee may pass an order for expulsion of a professional member if it has found that the professional member has committed—
 - a. an offence under any law for the time being in force, punishable with imprisonment for a term exceeding six months, or an offence involving moral turpitude;
 - b. a gross violation of the Code, rules, regulations and guidelines issued there under, bye-laws or directions given by the Governing Board which renders him not a fit and proper person to continue acting as an insolvency professional.

Explanation: The violations referred to in sub-clause (b) of clause (2) above include –

 - i. making a false representation or indulging in fraud for the purpose of obtaining creditors' approval under sections 28, 31, 111 or 153 of the Code;
 - ii. contravening provisions of the Code in a manner which is actionable in accordance with sections 70(2) or 185 of the Code;
 - iii. knowingly or willfully committing or authorizing or permitting contravention of sections 14, 96, 101 or 124 of the Code;
 - iv. contravening provisions of the Code inviting action in accordance with sections 71 or 187 of the Code;
 - v. aiding or abetting any activity which is actionable in accordance with Chapter VII of Part II or Chapter VII of Part III of the Code,
 - vi. providing unequal or differential treatment to the disadvantage of a party which cannot be justified with reference to the interests of the insolvency resolution, liquidation or bankruptcy process; or
 - vii. in any other case of serious or willful lack of diligence, deemed fit by the Committee.
4. The Committee shall send, free of charge, to the professional member, complainant and IBBI, a certified copy of the final order.
5. Any order passed by the Committee under this Part shall be placed on the website of IPA-ICAI within seven days from the passing of the order.

6. No order passed by the Committee shall become effective until thirty days have elapsed from the date of receipt of the order by the professional member.
7. The Committee shall endeavor to dispose off the show-cause notice within a period of six months from the receipt of complaint, information, reference or direction, as the case maybe.
8. While disposing off any show-cause notice under this Part, the Committee shall follow its own procedure and shall be guided by the principles of natural justice.
9. Any person aggrieved by any order passed by the Committee under this Part may prefer an appeal before the Appellate Panel within thirty days from the date of receipt of copy of the order.

PART IV APPEAL TO THE APPELLATE PANEL

1. Any person aggrieved by an order passed by the Committee under Part-II of the Policy that the complaint, reference, direction or information, as the case may be, does not warrant issuance of show-cause notice or any order passed by the Committee under Part – III of the Policy, may prefer an appeal before the Appellate Panel within sixty days from the receipt of the copy of such order.
2. The Appellate Panel may call for the records of any case and may–
 - a. confirm, modify or set aside the order passed by the Committee;
 - b. impose any penalty or set aside, reduce or enhance the penalty imposed by the Committee;
 - c. remit the case to the Committee for such further enquiry as the Appellate Panel considers proper in the circumstances of the case; or
 - d. pass such other order(s) as the Appellate Panel deems fit.
3. The Appellate Panel shall follow its own procedure while deciding the appeal and shall be guided by the principles of natural justice.
4. The Appellate Panel shall endeavour to dispose of the appeal, within sixty days from the date of holding the first meeting of Appellate Panel, in the manner as it deems appropriate.

PART V
FEES, REGISTRATION AND WITHDRAWAL

1. FEES

- a. Every complaint, other than a complaint received under clause 2(e) (ii) and (iii) of Part II of the Policy, shall be accompanied by a fee of Rupees Ten Thousand Only, which may be revised by the Committee from time to time.
- b. The fee shall be paid either by way of demand draft drawn in favour of “Insolvency Professional Agency of ICAI” payable at New Delhi or online by way of NEFT/RTGS and proof of online payment shall be attached with the complaint.
- c. The fee once paid shall not be refunded:
 Provided that no additional fee shall be payable if the complaint is resubmitted after rectification of defect within stipulated period.

2. REGISTRATION

- a. Every complaint received in the prescribed format shall be endorsed and signed with date of receipt and shall thereafter, be scrutinized by an official, so designated by IPA of ICAI.
- b. Where, on scrutiny, the complaint is found to be defective, the same shall be rectified by the person filing the complaint within a period of 30 days from the date of receipt of information regarding defects in the complaint. Provided that if, the complainant fails to rectify the defect(s) within the stipulated time, the complaint, as received, shall be placed before the Committee which may decide on the action to be taken.
- c. If, on scrutiny or on resubmission, the complaint is found to be in order, it shall be duly registered and a unique case number be allotted to it, which shall be quoted in all future correspondence.
- d. If the Committee is in receipt of more than one complaint, reference, direction or information, in respect of same subject against the same professional member, it shall club the cases together for disposal and the parties/new complainant and the professional member shall be informed of the same.

- e. Every information, reference or direction shall also be endorsed, signed and registered with a unique case number to be allotted mentioning the date of receipt.

3. WITHDRAWAL

- a. Any complaint for initiating disciplinary proceedings may be withdrawn by way of a written communication by the person preferring the complaint at any time, before an order mandating issuance of a show- cause notice is passed by the Committee.

Provided that where, the complaint is received under clause 2(e) (ii) and (iii) of Part II of the Policy, the complaint shall not be withdrawn unless a written communication is received from the person duly authorized in this regard by the body corporate or entity or government or department or authority, as the case maybe.

- b. Any request to withdraw a complaint, after passing of the order mandating issuance of show-cause notice to the professional member, shall be subject to the Committee accepting such request in writing.
- c. The Committee may also, if it deems fit, impose costs, not less than Rupees Ten Thousand, against the complainant for seeking to withdraw a complaint where an order has been passed by the Committee that the complaint warrants issuance of show-cause notice. Where the complainant fails to deposit the cost so imposed, the complainant shall be barred, from filing any subsequent complaint in future, either directly or indirectly.
- d. All costs to be deposited shall be paid in an account which shall be opened specifically for such purpose by IPA-ICAI.
- e. The Committee may, in its discretion, share the details of such order imposing costs against such complainant with other Insolvency Professional Agencies for their information and record.
- f. Notwithstanding anything contained hereinabove, the Committee may reject any request for withdrawal and *suo moto* proceed against the professional member.

PART VI QUORUM

1. The quorum for a meeting of the Committee shall be one third of its total strength or two members, whichever is higher.
2. The meeting of the Committee shall be presided by the Chairperson and in his absence, the members may elect, from amongst themselves, a member to preside the meeting.

PART VII MISCELLANEOUS

1. MODE OF SENDING NOTICE

- a. Every notice or letter issued by the Committee or IPA-ICAI under the policy shall be sent to the member or the entity or any other person, by registered/speed post, except where specified otherwise in the policy as well as by electronic mail service at the email address provided by professional member to IPA-ICAI.
- b. If any notice or letter is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice or letter, the notice or letter shall be deemed to have been served.
- c. If the notice or letter is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Committee shall ask the complainant or any other person who may be in a position to provide another address of the member or entity or person whose address is found to be not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.
- d. Where the notice or letter is returned under sub clause (c), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with IPA-ICAI or in such other manner as the Committee may think fit and such service shall be deemed to be sufficient service for the purposes of the policy.

2. ATTENDANCE OF HEARINGS BY THE COMPLAINANT, PROFESSIONAL MEMBER AND ANY OTHER PERSON/OFFICIAL

- a. The complainant and the professional member or any person authorized by the complainant/professional member who may be a Chartered Accountant/Cost Accountant/Company Secretary/Advocate, shall have the right to attend the hearings of the Committee, unless ordered otherwise by the Committee, for reasons to be recorded in writing.
- b. The complainant, professional member or any other person/official shall not be eligible for reimbursement of expenses incurred for attending or not being able to attend the hearing, even if the date of hearing has been suddenly called off.

3. RESIDUARY PROVISIONS

- a. Matters relating to the procedure of conduct of cases, with respect to which no express provision has been made in the policy, shall be regulated by the Committee and the decision of the Committee shall be binding.
- b. The Committee shall be competent to amend/alter/add any clause in the Policy, as it deems fit and proper.
- c. The Committee shall be at liberty, at any stage of the proceedings, to follow any procedure prescribed under the Code of Civil Procedure, 1908

OR

For the purposes of this policy, the Committee shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- i. the summoning and enforcing the attendance of any professional member or witness and examining the witness on oath;
- ii. the discovery and production of any document or other material object producible as evidence;
- iii. the reception of evidence on affidavits;
- iv. the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- v. issuing of any commission for the examination of any witness, and
- vi. any other matter which may be prescribed.

FIRST SCHEDULE

PART I

Professional misconduct in relation to members of Insolvency Professional Agency of ICAI generally

A professional member shall be deemed to be guilty of professional misconduct, if he—

- (1) contravenes any of the provisions of the Code, rules, regulations, guidelines, directions issued in this regard by the Insolvency and Bankruptcy Board of India, from time to time, including, but not limited to the Code of Conduct under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and the supplementary Code of Conduct, as may be adopted by IPA-ICAI from time to time;
- (2) discloses information acquired in the course of his professional engagement to any person other than as permitted by the Code, rules, regulations made there under or any other law for the time being in force or as permitted by any order of any court of law;
- (3) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART II

Other misconduct in relation to members of Insolvency Professional Agency of ICAI generally

A professional member shall be deemed to be guilty of professional misconduct, if –

- (1) he is held guilty by any criminal court for an offence which is punishable with imprisonment for a term exceeding six months;
- (2) in the opinion of the Governing Board, he brings disrepute to the profession or Insolvency Professional Agency of ICAI as a result of his action whether or not related to his professional work.

ANNEXURES

FORM – A
[under clause 2(f) of Part II of Policy]

To,
The Chief Executive Officer
Insolvency Professional Agency of ICAI
(Write here address of IPA-ICAI)

passport size
photograph of
complainant

Dear Sir/Madam,

Sub: Complaint against [name of the professional member]

I/We, hereby submit the following complaint against [name of the professional member] for taking appropriate action. The details of the same are set out as under:

1. Name of the person furnishing complaint [with membership number, if any, of any institute of which such person is a member along with identity proof like election card, Aadhaar card/CIN]

2. Name of the authorized representative, if complaint is filed on behalf of the complainant along with the authorization letter and identity proof of the authorized representative

3. Complete address for correspondence with the complainant/authorized representative (along with email id & phone no.)

4. Name of the professional member of IPA-ICAI in regard to whom complaint is being submitted (with membership number of the professional member, if known)

5. Last available address of the professional member with regard to whom complaint is submitted (along with email id and phone no, if available)

6. Detailed facts and particulars of allegation(s) serially numbered together with corresponding clause/part of the relevant Schedule(s), under which the alleged acts of commission or omission or both wouldfall

a. Brief facts

b. Allegations

c. Prayer

7. Particulars of evidence(s) adduced in support of the allegation(s)made:

8. Name(s) of person who may have knowledge of the facts of the case:

9. Details of any complaint, if any, filed against the same professional member before any authority and its present status (attach documents in proof)

Declaration:

I certify that the complaint submitted by way of electronic means is the exact replica of the complaint filed in hard copy after removing defects, if any.

Date:

Place:

Signature of the complainant

VERIFICATION

I, _____ the Complainant, do hereby declare that what is stated above is true to the best of my information and belief. Nothing material has been concealed therein.

Verified today the _____ day of _____ 20__ at _____

Date:

Place:

Signature of the Complainant

FORM – B

SHOW-CAUSE NOTICE

(under Part III of the Policy)

DISCIPLINARY COMMITTEE OF IPA-ICAI
(Constituted under Bye-Law 8 of Bye –Laws of IPA-ICAI)

[pursuant to IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016]

DC/IPA-ICAI/ _____ Dated _____

In Re: Complaint/Reference/Direction/Information received against (Name of the Insolvency Professional) from (Name of the Authority/source/complainant)

To,

(Name and address of the Insolvency Professional)

WHEREAS, a complaint/reference/direction/information dated _____ has been received against you by the Disciplinary Committee of IPA-ICAI alleging that

AND WHEREAS, in a meeting of the Disciplinary Committee of IPA-ICAI held on _____, the Committee, on the basis of documents available, vide order dated _____ took a decision that the complaint/reference/direction/information warrants issuance of show-cause notice.

AND WHEREAS, if you wish to submit your reply in defense, you are at liberty to do so within four weeks from receipt of this notice, along with supporting documents, if any, failing which the Committee shall proceed to hear and decide the complaint/reference/direction/information in your absence on the basis of material on record

AND WHEREAS, the said complaint/reference/direction/information is next listed on _____ for hearing at _____ am/pm at

When you may cause an appearance on the given date, time and venue either in person or through any person authorized by you who may be a Chartered Accountant/ Cost Accountant/Company Secretary/Advocate.

YOU ARE FURTHER required to serve one copy of your reply of defense to the complainant and file three copies thereof in the office of IPA-ICAI or send the same under registered AD post covers or by speed post.

Given under my hand and the seal of the Disciplinary Committee of IPA-ICAI, this the day of _____,20

(Name and signature of the person signing with designation)
