

## ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS (ICSI IIP)

### Policy to safeguard the Interests of Insolvency Professionals

#### Introduction

Section 204 of the Insolvency and Bankruptcy Code, 2016 deals with the functions of Insolvency Professional Agencies. One among the various critical functions listed by the Code to be performed by an Insolvency Professional Agency is *“Safeguard the rights, privileges and interests of insolvency professionals who are its members”*.

Further Regulation 6 of IBBI (Model Bye-laws and Governing Board of IPAs) Regulations, 2016 deals with the duties of the Insolvency Professional Agency, which include, employment of fair, reasonable and non-discriminatory practice for enrolment and regulation of its professional members, development of the profession of IPs, promoting continuous professional development, continuous improvement on its internal regulation to ensure high standards of ethical conduct.

The Insolvency Professionals are one of the most important institutional pillars as envisaged under Insolvency and Bankruptcy Code. The entire process is managed by them. They play a vital role in cementing together as well as balancing the interests of the corporate debtor and its creditors. An Insolvency Professional functions like an extended arm of the Adjudicating Authority and is responsible for all compliances by the CD under the Code and other applicable laws.

The insolvency professional's roles are multifarious and can be variously described as captain of the ship, facilitator of the process, wise counsel and guide to the committee of creditors and strict implementor of the provisions of the Code and Regulations and directions of the Adjudicating Authority.

The Insolvency Professionals take up assignments with respect to Corporate Insolvency Resolution Process, Liquidation Process, and Voluntary Liquidation Process. They may take up the role as

- a. Interim Resolution Professional in Corporate Insolvency Resolution Process (CIRP)
- b. Resolution Professional in CIRP
- c. Liquidator after CIRP
- d. Liquidator in Voluntary Winding up
- e. Authorised Representative for a class of creditors in CIRP
- f. Representative of a particular financial creditor in the CoC in CIRP
- g. Advisory role in CIRP and liquidation processes.

Being the driving force of the Corporate Debtor and the most important factor influencing the resolution or liquidation processes, their rights, privileges and interests need to be protected so that they can perform their functions with utmost fairness, transparency and diligence.

With this background, ICSI IIP (“IPA” or “Institute”) intends to assist the Insolvency professionals in resolving the problems being faced by them while performing their

dutiesthrough specific frameworks, systems and mechanisms. Protection of rights, privileges and interest will also lead to better integrity, independence, impartiality, higher ethical behaviour and adherence to code of conduct. Protection of rights, privileges and interest will also lead to better integrity, independence, impartiality, higher ethical behaviour and adherence to code of conduct.

### **Policy focus and objectives.**

This policy document focuses on circumstances where the rights, privileges or interests of a member IP are negatively impacted because of actions of third parties where such actions may be wilful, mischievous, malicious, or arising out of any misunderstanding or incorrect understanding of any action of the IP or any provision of law.

Acts of omission or commission by the IP which may either lead to disciplinary or other action or affect the IP's rights, privileges or interests adversely have not been addressed in this policy document as the IP concerned is expected to be accountable for such acts.

The primary objectives of this policy are:

1. Set up an institutional framework to provide advice or assistance to a member IP whose rights, privileges or interests are being wrongfully threatened or affected
2. Provide a system to entertain and address genuine grievances of IPs whose interests have been wrongfully affected for no fault on their part.
3. Put in place a mechanism for sharing of learnings and experiences of member IPs who have undeservedly faced any adverse impact on their rights, privileges or interests and the manner in which they have tackled such instances successfully.

### **Actions or instances that threaten the rights, privileges or interests of an Insolvency Professional**

1. Frivolous, malicious or mischievous applications or complaints filed by promoters / directors / employees of the corporate debtor or persons instigated by them, creditors or members of the CoC, or disgruntled prospective resolution applicants before the Adjudicating Authority, Board or IPA alleging, inter alia, dereliction of duties, unfairness, collusion with one or the other stakeholders, indulging in corrupt practices, deliberately providing incorrect, inaccurate or false information
2. CoC failing to approve genuine expenses or fees without assigning valid and legitimate reasons
3. CoC refusing to fund mandatory expenses incurred by, or approved fees and expenses due to an IP, in instances where the corporate debtor has insufficient or nil free cash flows.
4. CoC member/s compromising the independence of an IP by attempting to pressurise the IP to appoint or not to appoint a particular professional as valuer, advisor or in any other capacity, by threatening, directly or indirectly to block approval or release of fees / expenses.

5. Incorrect, inaccurate or false information or declaration provided by any person involved in the CIRP which may result in an inadvertent action or lack of it by the IP resulting in loss, financial or otherwise, to the corporate debtor or any other stakeholder.
6. Non-receipt or delayed receipt of requisite information from any stakeholder by the IP resulting in compromise of the mandatory or model timelines of the Code or Regulations, or non-compliance of any statutory or regulatory requirements by the IP.

#### **Framework, systems and mechanisms to aid and assist IPs**

It is proposed to set up the following framework and mechanisms to aid and assist member IPs:

**A. Formation of an advisory cell comprising of staff of the IPA and senior and experienced member IPs**

The Institute management shall form the IP Advisory and Assistance Cell. The IP members of the Cell shall be chosen in such manner as may be determined by the Institute management. A help-line facility by way of dedicated email id and phone number/s shall be provided. The Institute shall publish procedural guidelines for the operation of the Cell.

**B. Setting up of an online system to enable affected member IPs to file their grievance and receive possible assistance**

Procedural guidelines shall be separately issued for accessing this system. The Institute may charge an appropriate fee for services rendered.

**C. Setting up a mechanism for sharing experiences and learnings on how to address threats to an IP's interests**

The mechanism will be in the form of newsletter / bulletin disseminated electronically to member IPs. The publication shall carry summarised account of issues / threats faced by an IP, the actions taken by the IP to address the issues, the role played by the Institute in the particular case, and the outcome of the matter. Where necessary, appropriate details of the case may be kept confidential by the Institute in the interests of privacy or sensitivity of the matter. The Institute shall put in place a process to enable member IPs to share their case details for publication in the proposed newsletter.