



A wholly owned subsidiary of ICSI and registered with IBBI

INSPECTION POLICY

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1. INTRODUCTION

The ICSI Institute of Insolvency Professionals (ICSI IIP) is a section 8 Company formed by the Institute of Company Secretaries of India to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with the Insolvency and Bankruptcy Code 2016 read with regulations and rules thereunder. The objective behind framing and laying down this policy is to provide for a mechanism, rules and guidelines for ICSI IIP to comply with and carry out its monitoring mandate vis-à-vis its registered members which is to be in line with the letter and spirit of the Code (IBC).

2. PREAMBLE

2.1 The role of Insolvency Professional Agencies (IPAs) as envisaged under Section 204, IBC *inter alia* includes monitoring performance of the professional members (IPs) enrolled with it.

2.2 The mandates relating to Monitoring the Professional Members are specified in *IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016* (hereinafter called 'IBBI (IPA) Regulations') and *IBBI (Insolvency Professionals) Regulations, 2016* (hereinafter called 'IBBI (IP) Regulations'). The same are as follows:

- Clause 8(1)(b) of the Schedule to the IBBI (IPA) Regulations requires every the Governing Board of an Insolvency Professional Agency (IPA) to constitute a Monitoring Committee. Further, Clause 8(2) thereof requires the Chairman of the Monitoring Committee to be an Independent Director of the IPA.
- Regulation 15 to 20 of IBBI (IPA) Regulations lays down the monitoring mechanism in detail.
- Clause 18 of the Schedule to the IBBI (IPA) Regulations requires every IPA to have a Monitoring Policy that shall *inter alia* cover the manner and format of submission or collection of information and records of the professional members **including by way of inspection**.
- Clause 18 of first Schedule to IBBI (IP) Regulations states that an Insolvency Professional must appear, cooperate and be available for inspection and investigations carried out by the Board, any person authorised by the Board or the Insolvency Professional Agencies with which he is enrolled.

3. OBJECTIVE

3.1 The object behind this Inspection policy includes the following:

- (a) To ensure that the records are being maintained by all registered members (Insolvency Professional) in the manner required under the relevant Code, Regulations, circulars et al;
- (b) To ascertain whether adequate internal control systems, procedures and safeguards have been adopted and established and are being regularly followed by the registered members (Insolvency Professionals) to fulfill their obligations under the Code, relevant regulations, circulars et al;

- (c) To ascertain whether any circumstance exists which would render a registered member (Insolvency Professional) unfit or ineligible;
- (d) To ascertain whether the provisions of the Code, or the rules, regulations, guidelines made thereunder and the directions issued by the Board, if any, as also the circulars issued from time to time, are being complied with;
- (e) To inquire into all reasonable and credible complaints received from any aggrieved person on any matter having a connection with or bearing on the activities of a registered member (Insolvency Professional); and
- (f) such other purposes as may be deemed fit by the ICSI Institute of Insolvency Professional in furtherance of the objectives of the Code, Rules, Regulations et al.

3.2 Inspections are also instruments/mechanisms to:

- Keep a tab on and put in place checks and balances on any unauthorised action(s) of the registered members (IPs) and take cognizance of all reasonable and credible complaints against such registered members and provide appropriate relief to the aggrieved person.
- Ensure that no false or misleading information is provided by any of the registered member (IPs) w.r.t the assignments handled by him/her.
- Give a fair chance of hearing to the Insolvency Professionals.

3.3 The policy shall be carried out through ascertaining the compliance, conduct and performance of the professional members who have taken up role as Resolution Professionals/Liquidators/Voluntary Liquidators/Authorized representatives etc or in any other capacity as specified under the Code/Regulations thereunder, with an unbiased/impartial approach and without any discrimination.

4. DEFINITIONS

4.1 In this Policy, unless the context otherwise requires:

- a) “Board” means the Insolvency and Bankruptcy Board of India (IBBI);
- b) “Code” means the Insolvency and Bankruptcy Code, 2016;
- c) “Committee” means the Monitoring Committee constituted by the Governing Board of the Agency
- d) “IPA” means ICSI IIP;
- e) “ICSI IIP” means the ICSI Institute of Insolvency Professionals, a section 8 Company, registered with Insolvency and Bankruptcy Board of India under section 201 of the Insolvency and Bankruptcy Code, 2016;
- f) “Governing Board” means the Board of Directors of ICSI IIP constituted under clause 5 of the Bye-Laws of ICSI IIP;
- g) “Bye-Laws” means Bye-Laws of the ICSI Institute of Insolvency Professionals (ICSI IIP) based on the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016;

- h) "IBBI" means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016;
- i) "MD" means Managing Director of ICSI IIP;
- j) "Insolvency Professionals" means Professional Member enrolled with ICSI IIP
- k) "Inspection" means inspection as empowered

4.2 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.

5. MONITORING POLICY OF ICSI IIP

5.1 Clause 1.8 of the Monitoring Policy of ICSI IIP, as approved by the Governing Board of ICSI IIP, provides for the following two types of monitoring viz.:

- Desk top Monitoring;
- Inspection of professional members which may be a Routine Inspection or event based inspection,

The word inspection *includes* e-inspection.

6. APPLICABILITY

This Policy shall be applicable to all Insolvency Professionals (IPs) registered with ICSI IIP.

7. SCOPE OF POLICY

The scope of this policy shall include but not restricted to the following:

- Adherence to provisions of the Code, Rules, Regulations and Circulars.
- Adherence to the directions of Adjudicating Authorities (NCLT) and the Appellate Authority (NCLAT).
- Adherence to the Directions / orders of the Board (IBBI).
- Adherence of the order of the ICSI IIP.

8. AUTHORISATION

Each inspection to be carried out in terms of this policy shall require a pre-authorized by the Managing Director of ICSI IIP.

"**Inspecting Authority (IA)** means an officer or a team of officers of the IPA including independent experts, *wherever required*, which has been directed by the MD of ICSI IIP, to conduct the inspection of an IP.

Independent experts can neither be relatives nor shall have any pecuniary interest with the inspectee."

9. TYPES OF INSPECTION

I. **Routine Inspection:** The routine inspection may be carried out on the basis of Annual Inspection Plan, *if any* as approved by the monitoring committee including percentage of Insolvency Professionals and frequency of inspection.

II. **Event-based Inspection:** The event based inspection may be carried out as per the circumstances prescribed in the monitoring policy and approved by MD of ICSI IIP.

The monitoring policy states that Event-based Inspection – The Board may decide to conduct an inspection of an IP:

- a) Professional Member(s) flagged under Desktop Monitoring;
- b) On receipt of a complaint against the Insolvency professional
- c) On the direction of IBBI or Governing Board or Committee;
- d) In case, it has material available on record to believe that the insolvency professional has contravened any of the provisions of the Code or the rules or regulations made, or directions issued by the Board;
- e) On receipt of any order of court or tribunal or Board that directs inspection or makes adverse observations / remarks against the professional members;
- f) Such other event as may be deemed fit by the Board.

The Professional Member(s) so flagged for inspection shall be required to complete a compliance questionnaire and to submit various documents and records, if required, to the Monitoring Officer for inspection. After assessing this documentation, Monitoring Officer shall consider whether a monitoring visit is necessary. The purpose of the visit shall be to confirm the accuracy of the information supplied on the compliance questionnaire. Professional Member(s) that fail to supply the requested information will also be scheduled for a monitoring visit.

Routine inspections are planned in advance. They usually cover all assignments handled by an IP during the relevant period. On the other hand, event-based inspections may cover a specific assignment, or a specific part of a process, or all the assignments or any combination depending on the facts of the case.

10. DUTIES AND RIGHTS OF THE INSPECTING AUTHORITY (IA)

10.1 DUTIES

- i. **Confidentiality and least burden:** Every effort should be made by the agency and the IA to keep the inspection confidential and to cause least burden on, or to cause the least disruption to, the business of the IP under inspection.
- ii. **Visit:** The IA may visit the offices of the IP for conducting the on-site inspection.
- iii. **Dress Code:** While on duty, the IA will dress appropriately to safeguard their own image as well as the image of the agency. The IA will carry their official Identity Card at all times during inspection.

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- iv. **Timings:** Unless it is specifically warranted for, the IA shall conduct inspection during the usual hours for business in a working day/s.
- v. **Entry:** On entering the premise of the IP, the IA has to ensure the following:
 - Establish and use the legal entry into the office
 - Identify self and present his official identification.
 - Sign the visitor's book where they are used by the IP's office to keep a record of visitors.
- vi. **Professionalism:** The IA must always maintain high standards of professionalism. The IA shall strive to engage in dialogue with the IP and his team members in calm and composed manner. Diplomacy, fairness and equity should be the cornerstone of the IA's position. A firm but responsive attitude will encourage cooperation and initiate good working relations. Aggressiveness should show itself in thorough work rather than the IA's overbearing demeanour.
- vii. **Public Relations:** It is important that cooperation be obtained from the IP/Associates and his staff, and good working relations are established. This can best be accomplished by using diplomacy, tact and persuasion. Hostile persons should be treated with courtesy and respect. The IA should therefore abstain from providing personal opinions concerning any person, Board etc.
- viii. **Conflict of interest:** Conflict of interest may exist whenever Inspecting Authority has a personal or private interest in a matter, which is related to his or her official duties and responsibilities. In cases where the IA feels that there is a conflict of interest that would undermine his integrity and the integrity of the agency with respect to the outcome of the inspection, he must recuse himself from the inspection.
- ix. **Gifts:** The IA shall not accept favours, benefits, loan or job offers under any circumstance that might be construed as influencing the performance of governmental duties. Bribes may be blatant attempts to whitewash a serious violation or condition or to cause the withholding of damaging information or observation. The IA must not accept money or goods and should report the incident in detail as soon as possible to the senior officer. It is also prudent for IA to decline business luncheons while on duty. When in doubt about a possible issue, the IA should contact his/her superior to clarify what can and cannot be accepted and report any possible breach of the ethics laws.
- x. **Transparency:** The IA shall strive to conduct inspections in a fair, unbiased and impartial manner.
- xi. **Knowledge:** The IA shall have a correct understanding of various regulations, inspection manuals, etc. relating to IBC, and shall strive to gain knowledge and practical inspection expertise.
- xii. **Follow procedures:** The IA shall acknowledge that inspection constitutes the exercise of authority to step into private businesses and shall strive to ensure proper

procedures when conducting inspections and conduct verification in an efficient and effective manner.

- xiii. **Not to seek unnecessary information:** The IA shall not call unnecessary information which is not relevant for inspection purpose.

10.2 RIGHTS

- i. Examination of Records: The IA may examine and record statements of any associated person of the IP in relation to the affairs of his business in the course of inspection.
- ii. Requisitioning Records: The IA may requisition any records related to the scope defined in the Inspection order.
- iii. The IA may, in course of its inspection enter any building or place where they may have reasons to believe that any such document, record or information relation to the subject matter of inquiry may be found and may seize any such document, record or information or take extracts or copies therefrom, subject to the provisions of Section 100 of the Code of Civil Procedure, 1973, insofar as they may be applicable.

11. DUTIES AND RIGHTS OF IP

11.1 DUTIES

- i. It shall be the duty of the IP and an associated person to produce before the IA such records in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.
- ii. The IP shall allow the IA to have access to the premises occupied by such IP or by any other person on its behalf and extend facility for examination of any records in the possession of the IP or such other person and provide copies of records or other material which in the opinion of the IA are relevant for inspection.
- iii. It shall be the duty of the IP and an associated person to give to the IA, all assistance which the IA may reasonably require in connection with the inspection.

11.2 RIGHTS

- i. The IP shall be provided with the scope of inspection before the commencement of inspection by the IA.
- ii. The IP shall get a receipt of the documents carried over by the IA duly signed by independent witness along with IP & IA.

12. PROCESS OF INSPECTION

Step 1	<p>Constitution of Inspection Authority</p> <ul style="list-style-type: none"> ● Appointment of Inspection Authority (hereinafter referred as “IA”) by the MD of the IPA ● Issuance of Inspection Order
Step 2	<p>Conduct of Inspection by IA</p> <ul style="list-style-type: none"> ● Issuance of Notice by IA to the IP: The notice of inspection must be sent atleast 10 days before the scheduled date of inspection along with pre-inspection questionnaire. The filled questionnaire (along with required documents) must be submitted by the IP atleast 5 days before the scheduled inspection. ● Desktop Appraisal/ On-Site Inspection by IA: The maximum time to be allotted on inspection of an IP will be 3 days <ul style="list-style-type: none"> A. Desktop appraisal: On the basis of available information/data, the IA would assess divergences from the provisions of code, Regulations, circulars and guidelines issued under the code. B. On-Site Appraisal (If required): To physically ascertain the reasons for deficiencies identified during desktop appraisal by exhaustive inspection of all the records maintained by Insolvency Professional. The horizon of on-site appraisal includes data management, Human Resources, infrastructure facilities, IT facilities etc. In addition, discussions with the IP should be made on key issues to better understand the constraints faced by her/him and a structured exit meeting would be possible.
Step 3	<p>Submission of inspection report</p> <ul style="list-style-type: none"> ● Draft inspection report will be submitted by the inspecting authority to the MD of the IPA within 10 days of completion of inspection and post approval of draft inspection report by the MD of the IPA, the same will be send to the IP for his comments. ● IP will provide his comments on draft Inspection report to the IA within 15 days of receipt of draft inspection report. ● Post review of submissions of Insolvency professional, final inspection report will be shared with the IP & MD of the IPA. ● Inspection Report will placed before Monitoring Committee for consideration and further action (if required)

13. REVIEW OF THE POLICY

The implementation of the Policy will be monitored and reviewed by the Monitoring Committee or the Governing Board as required.