

**Policy to protect the interests and rights of  
the Insolvency Professionals**

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## **Introduction**

The Insolvency Professional is the key institutional pillars for effective functioning of the Insolvency and Bankruptcy Code. The role performed by Insolvency professionals is of utmost importance simply because the entire process is managed by them. These professionals are duly licensed by insolvency professional agencies (**IPAs**) and Insolvency and Bankruptcy Board of India (**IBBI**), who will perform the roles of interim resolution professional (**IRP**)/ resolution professional (**RP**)/liquidator/Bankruptcy Trustee in the insolvency, resolution and bankruptcy process as defined under the Code. Their responsibilities are manifolded into various different sectors and require expertise in law, finance, management etc. 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.

While elucidating the role of an IP, the Bankruptcy Law Reforms Committee (BLRC), which conceptualised the Code, observed: “This entire insolvency and bankruptcy process is managed by a regulated and licensed professional namely the Insolvency Professional or an IP, appointed by the adjudicator. In an insolvency and bankruptcy resolution process driven by the law there are judicial decisions being taken by the adjudicator. There are also checks and accounting as well as conduct of due process that are carried out by the IPs. Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.”

The success of the Insolvency and Bankruptcy Code, 2016 (IBC) depends on efficacy, efficiency, trust, and confidence with which the Insolvency Professionals (IPs) perform and carry out the responsibilities entrusted on them. 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.

### **Provisions under the Code:**

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, Clause IV(6) of Model Byelaws provided in the Schedule of IBBI (Model Bye-laws and Governing Board of IPAs) Regulations, 2016 deals with the duties of the Insolvency Professional Agency which inter alia include, employ fair, reasonable, just 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.

Hence, the Code is intended to guide insolvency professionals to meet the obligations expected from them by providing professional and ethical supervision.

With this background, this **“Policy to safeguard the interest of the Insolvency Professional”** is developed by ICSI IIP (hereinafter referred as **“IPA”** or **“Institute”**) for its registered Insolvency Professionals, which aims to assist the Insolvency professionals in resolving the problems being faced by them while performing their duties through specific frameworks, systems and mechanisms. Protection of rights, privileges and interest will also lead to better integrity, independence, impartiality, higher ethical behavior and adherence to code of conduct.

### **Aim & Objectives of Policy**

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 willful, 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:

- To set up an institutional framework to provide advice or assistance to a member IP whose rights, privileges or interests are being threatened or affected.
- To provide a system to entertain and address genuine grievances and concerns of IPs whose interests have been affected for no fault on their part.
- To set up guidelines through which insolvency professional member can get assistance in case of violation of any right or hindrance caused during the management of company due to threats.

To put in place a mechanism for sharing of learnings and experiences of member IPs who have faced any adverse impact on their rights, privileges or interests and the manner in which they have tackled such instances successfully.

The implementation of the objective of this policy is to be ensured both in letter and spirit.

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

The processes under the Code are demanding, both physically and mentally. IP is expected to facilitate closure of processes with the highest level of efficiency and effectiveness while balancing interest of diverse set of stakeholders having competing interests. The ICSI IIP may be approached by its IPs whenever they find challenges, threats or violation of their rights & privileges, which may be taken up to the appropriate authorities by giving representation on common issues of members. Following are the some of the situations where it is seen that IPs have faced challenges:

- 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
- CoC failing to approve genuine expenses or fees without assigning valid and legitimate reasons.
- 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.
- CoC member/s compromising the independence of an IP by attempting to pressurize 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.
- 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.
- 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.
- Creditors when not responding to the communication or are not co-operating
- In order to understand the operations and prepare a strategy for resolution in the stringent timeliness is a major challenge faced by IPs.
- The promoters and directors of the Corporate Debtor companies being reluctant to cooperate with the IPs.
- Insolvency Professional is not provided with proper records or are given incomplete records, pending compliances & personnel of the corporate debtors.

#### **General guidance or checkpoints to be kept in mind by Insolvency Professionals**

- An Insolvency Professional should abide by the prescribed Code of conduct and relevant laws & regulations and should avoid any action that discredits the profession.
- An Insolvency Practitioner should take reasonable steps to identify the existence of any threats to compliance and take due care while dealing with any prior existing threat.
- 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. An Insolvency Professional must evaluate and identify if there exist any professional or personal relationship which may create conflict at later stage.

- In situation where no safeguard can reduce a threat, an Insolvency Professional should not accept the insolvency appointment.
- An Insolvency Professional should be mindful of his/her acts and keep appropriate checks & balance and appropriate procedures in place to deal with such matter.
- IP should 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.
- An IP should maintain strict confidentiality with regard to the information received about the corporate debtor through business/professional relationship.
- IP should endeavor to maintain good rapport with the participants of the Committee of Creditors in order to ensure smooth conduct of the meetings.
- In the event of personal threats to the Insolvency Professional, support from local authorities should be sought or security agency should be hired. Life threatening situations, if any, shall also be informed to the committee of creditors and reported before the Adjudicating Authority for seeking necessary directions.
- IP should not accept any kind of referral fees or commissions which poses any threat to the objective of resolution/liquidation 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.

#### **ICSI IIP's actions or steps for safeguarding the rights and interests of Insolvency Professionals**

- **Continuous Professional Training:**  
Creating a platform wherein the Insolvency Professionals can obtain assistance or continuous training under the experts who have sector specific expertise in different professional fields such as management, law, Chartered Accountancy, Company Secretary-ship and Cost Accounting.
- **Online Query Platform:**  
Creating an online query platform wherein the IPs can submit their queries which shall be answered by the experts on the panel of ICSI IIP and a specific timeline is provided to them in order to resolve the queries of IPs. Procedural guidelines shall be separately issued for accessing this platform.
- **Advisory & Assistance Cell:**  
To establish an IP Advisory and Assistance Cell in which IP members shall be chosen in such manner as may be determined by ICSI IIP, wherein the IPs will be provided assistance and advisory in the procedural aspects of insolvency and liquidation process under IBC, 2016 on payment basis.

- **Virtual Insolvency Professionals Club:**

A virtual platform created only for the engagement of Insolvency Professional members through which all the members can connect with one another by conducting a monthly meeting virtually. Through this meeting they can discuss any recent changes/amendments made during their practice or share their experiences and learning among themselves. ICSI IIP may also conduct a monthly offsite of its members on payment basis.

- **Levy of penalty for Frivolous / Vexatious / False complaint against the Insolvency Professional:**

If any complaint has been made against the Insolvency Professional with IBBI or IPA, being the Regulatory body or with any other competent authority by the Corporate Debtor or any other person engaged with the Corporate Debtor or other stakeholder and it is found to be frivolous / vexatious / false on inspection / verification, it is suggested to intimate the same to the Adjudicating Authority, for disposing of the complaint with necessary action against the promoter/concerned person by levy of fine payable to PM welfare fund in order to safeguard the interests of insolvency professionals.

- **Arranging the Insurance cover for IPs:**

To make arrangements with insurance companies for providing optional Life Insurance cover including indemnity coverage at discounted rates for the Insolvency professionals to cover the losses arising out of handling the processes.

- **Resolution of issues faced by IPs**

The IPAs after discussions and deliberations with Insolvency professionals shall make representations to IBBI or the Ministry of Corporate Affairs w.r.t issues being faced by them like empanelment, timelines, stays by AA, fees, interim finance etc.

- **Formulation of best practices**

To assist the Insolvency Professionals, IPAs shall develop best practices on different topics wherein no clarity is available in the Code and regulations to bring uniformity and efficiency in the working and performance of IPs.

- **Knowledge based sharing:**

To guide its members to perform their duties effectively and efficiently, facilities in the form of ICSI IIP's publications, monthly journal, daily learning curves, latest updates, knowledge capsules, compliance calendars, statement of best practices, workshops, webinars, roundtables etc. shall be made available.

