

**DISCIPLINARY POLICY**

**OF**

**ICSI INSTITUTE OF INSOLVENCY  
PROFESSIONALS (ICSI IIP)**

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**DISCIPLINARY POLICY  
OF  
ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS**

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

**INTRODUCTION**

ICSI Institute of Insolvency Professionals [“**ICSI IIP**”] 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.

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

In terms of the ICSI IIP 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 ICSI IIP.

## OBJECTIVE

The main objective of the Disciplinary Policy is to formulate & codify the process to deal with disciplinary matters of the professional members based on any credible information received or *suomoto* or reference made by the Grievance Redressal Committee or based on monitoring of professional members or directions received from IBBI or any court of law.

## SCOPE

The Disciplinary Policy (for short "Policy") of ICSI IIP 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 information, reference, or directions and take appropriate action in the matter;
- (b) disposal of matter by a reasoned order;
- (c) timelines for different stages of disposal of the show-cause notice; and
- (d) 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 ICSI IIP which is fair, transparent, time bound and efficient. Attempt has been made to ensure that the policy delivers a system which results in efficacious disposal of the proceedings against professional members.

## DISCIPLINARY MECHANISM

ICSI IIP has constituted a Disciplinary Committee under clause (d) of Bye-Law 8(1) of ICSI IIP Bye-Laws with a disciplinary mechanism in place to ensure proper conduct on the part of professional members and to address the 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 ICSI Institute of Insolvency Professionals under Bye-Law 25 of ICSI IIP 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 ICSI IIP 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 ICSI IIP constituted under Regulation 5 of IBBI Model Bye-Laws Regulations;
- (g) **“ICSI IIP”** means the ICSI Institute of Insolvency Professionals (*Formerly known as Insolvency Professionals Agency*) registered with Insolvency and Bankruptcy Board of India under section 201 of the Insolvency and Bankruptcy Code, 2016;
- (h) **“ICSI IIP Bye-Laws”** means Bye-Laws of ICSI Insolvency Professionals Agency framed based on the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016;
- (i) **“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;

- (j) **"IBBI"** means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016;
- (k) **"Other Misconduct"** means misconduct as defined in Part II of First Schedule to the Policy
- (l) **"Policy"** means the Disciplinary Policy of ICSI IIP;
- (m) **"Professional Member"** means an individual who is enrolled with ICSI IIP and registered with IBBI and includes (i) an individual who was a member of ICSI IIP as on the date of the alleged misconduct, although he has ceased to be a member of ICSI IIP at the time of receipt of reference from the Grievance Redressal Committee; or direction from IBBI or court of law; or information; (ii) an individual who is enrolled with ICSI IIP and whose registration with IBBI as Insolvency Professional is pending for Pre-registration Education course in terms of IBBI(Insolvency Professionals) Regulations, 2016
- (n) **"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 , INFORMATION, REFERENCE, OR DIRECTION

#### 1. Disciplinary proceedings may be initiated against a professional member -

- a. based on a reference made by the Grievances Redressal Committee
- b. based on monitoring of professional members; or
- c. following the direction given by IBBI or any court of law; or
- d. *suomoto*, based on any information that is backed by evidence/information indicating malafide action by the professional member.

#### 2. Initiation of disciplinary proceedings on the basis of any, reference, direction or information

(a) A meeting of the Committee shall be called for on receipt of any 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.

(b) Where, any, 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 ICSI IIP, shall take a considered view whether a show-cause notice is to be issued on the , 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, reference, direction or information, does not warrant issuance of show-cause notice, the Committee shall pass an order rejecting the, reference, direction or information by recording reasons in writing.

(d) Where, however, the Committee is of the considered opinion that the, reference, direction or information, warrants issuance of show-cause notice, the Committee shall proceed under Part - III of the Policy.

(da) Disciplinary Proceedings shall be initiated from the date of issuance of show cause notice whether issued by Agency through Disciplinary Committee, through Grievance Redressal Committee or through Monitoring Committee.”

(e) ICSI IIP shall, within a period of fourteen days from the date of passing an order under this Part, provide a copy of its decision to the concerned party.

(f) Any person aggrieved by an order passed by the Committee rejecting any, 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. Meetings of Disciplinary Committee may be held by audio visual mode or physically.
2. The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional members- based on a reference made by the Grievances Redressal Committee or based on monitoring of professional members or suo-moto. .
3. Where the Disciplinary Committee is of the considered opinion that information reference or direction, warrants issuance of show-cause notice, the committee shall direct the secretariat of the Agency, which shall authorize an officer not below the post of Deputy Director for such issuance of show cause notice, through electronic mail or , the physical copy (if required) may be sent at the last known address of the professional member updated in the records of ICSI IIP or both, requiring the professional member to, inter alia, submit a reply in his defense within fourteen (14) days 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.
4. If the Committee is in receipt of more than one reference or information, in respect of similar subject against the same professional member, it may at its discretion, combine the cases together for disposal and the parties including the professional member shall be informed of the same.
5. 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 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.
6. On consideration of documents available on record and after affording an opportunity of hearing to the professional member, where, the Committee holds that the professional member is guilty of any professional or other misconduct, it may pass any one or more of the following orders:
  - a. reprimand;
  - b. imposition of monetary penalty as per Clause 24(2)(d) of the Schedule to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. [Annexure DC 2 of this Policy]
  - c. suspension for a period as determined by the Committee.

Once a professional member is suspended from acting as an insolvency Professional, such information shall be provided immediately to the IBBI for their consideration and necessary action as well as to other IPAs if they deem fit and appropriate;
  - d. expulsion of the professional member;



- 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;
- fa. Cancellation of Authorisation for Assignment (AFA)
- g. admonishment of the professional member
- h. any other order, as the Committee may deem fit

7. 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;
  - 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.

8. The Committee shall send, free of charge, to all parties including IBBI, a copy of the final order either through electronic mail or through speed post/registered post..

9. Any order passed by the Committee under this Part shall be placed on the website of ICSI IIP within seven days from the passing of the order.

10. 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.

11. 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 may be.

12. 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.

13. 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.

14. Monetary penalty received by ICSI IIP under the orders of the Disciplinary Committee shall be credited to the Fund constituted under Section 222 of the Code in terms of Clause 24 (5) of the Model Bye-Laws.

#### **PART IV EXPULSION OF PROFESSIONAL MEMBER**

1. A professional Member shall be expelled by the agency if the professional member contravenes any of the provisions of Regulation 30 of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which reads as under:

(a) if he becomes ineligible to be enrolled under bye-law 9;

(b) on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;

(c) upon non-payment of professional membership fee despite at least two notices served in writing;

(d) upon the cancellation of his certificate of registration by the Board;

(e) upon the order of any court of law

2. The Professional Member shall be expelled by the Agency by issuing a letter specifying the contravention envisaged in Regulation 30 as aforesaid. The said letter issued by the Secretariat 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 ICSI IIP.

#### **PART V 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 to make an appeal before the Appellate Panel within thirty 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 endeavor to dispose of the appeal, in the manner it deems expedient, within thirty days of the receipt of the appeal.

## **PART VI RIGHTS AND OBLIGATIONS OF THE PARTIES**

1. The member will be given at least 7 days' notice by email for personal hearing/e-hearing.

## **PART VII 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 VIII MISCELLANEOUS**

### **1. MODE OF SENDING NOTICE**

a. Every notice or letter issued by the Committee or the ICSI IIP under the policy shall be sent to the member or the entity or any other person, by e-mail or by registered/speed post.

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 incorrect, 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 ICSI IIP 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 PROFESSIONAL MEMBER AND ANY OTHER PERSON/OFFICIAL**

- a. The professional member or any person authorized by the professional member on their behalf who may be a Company Secretary / Cost Accountant / Advocate / Chartered Accountant or any other professional, 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 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.
- c. The professional member may attend the hearing in person or E- Hearing through Video Conference as per the discretion of the Committee.
- d. The date of the hearing will be fixed by the committee and advised to the parties, subject to giving a 7 days' notice for e-hearing/personal hearing to the parties.
- e. DC may hear the matter either by giving personal hearing or e-hearing to the parties, on their discretion

## **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.

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: –

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

**DC-1**  
**SHOW-CAUSE NOTICE**  
(under Part III of the Policy)  
**DISCIPLINARY COMMITTEE OF ICSI IIP**  
(Constituted under Bye-Law 8 of Bye -Laws of ICSI IIP)  
[pursuant to IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016]

DC/ICSI IIP/ \_\_\_\_\_ 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 ICSI IIP alleging that

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**AND WHEREAS**, in a meeting of the Disciplinary Committee of ICSI IIP 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 two 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

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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 Company Secretary / Cost Accountant / Advocate /Chartered Accountant .

**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 ICSI IIP 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 ICSI IIP, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_**

**DC-2**

**Monetary Penalties to be imposed by an Insolvency Professional Agency**

The imposition of monetary penalty as per Table below:

<b>Sl.</b>	<b>Contravention</b>	<b>Monetary Penalty</b>
1.	<i>Fails to submit disclosures, returns, etc. to IPAs or submits inadequate or incorrect disclosures, returns, etc., relating to any assignment, as required under the Code and Regulations made thereunder or Bye-laws of the IPA or called upon by the Board or the IPA.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000.</i>
2.	<i>Accepts an assignment having conflict of interests with the stakeholders.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
3.	<i>Fails to maintain records properly relating to any of his assignments.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000.</i>
4.	<i>Rejects a claim(s) without giving any proper reason while undertaking an assignment or fails to exercise due diligence in claim verification.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
5.	<i>Fails to comply with directions issued by Adjudicating Authority or the Appellant Tribunal.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
6.	<i>Outsources his duties and obligations.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
7.	<i>Fails to appoint registered valuers, wherever required, under the Code or Regulations made thereunder, for conducting valuation.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
8.	<i>Fails to supply the information called for or to comply with the requirements of information sought by the IPA, Board, Adjudicating Authority or the Appellant Tribunal or does not cooperate with the inspection or investigating authority.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000.</i>
9.	<i>Fails to make public announcement in the manner provided for in the relevant Regulations.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
10.	<i>Fails to provide notice regarding meetings of creditors.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000.</i>



11.	<i>Fails to reject resolution plan from ineligible resolution applicants.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
12.	<i>Fails to take action in respect of Preferential, Undervalued, Fraudulent or Extortionate transactions.</i>	<i>Up to ₹ 2,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 1,00,000.</i>
13.	<i>Enters into contract or agreement with professionals in an incomplete and improper manner.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000.</i>
14.	<i>Contravenes any provision of the Bye-laws, or Regulations for which no specific penalty has been provided.</i>	<i>Up to ₹ 1,00,000 or 25% of fee, whichever is higher, subject to a minimum ₹ 50,000."</i>