

Disciplinary Policy
of
Indian Institute of Insolvency Professionals of ICAI

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Preamble

As per Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the Insolvency Professional Agency may initiate disciplinary proceedings by issuing a show-cause notice against members-

- a. based on a reference made by the Grievances Redressal Committee;
- b. based on monitoring of professional members;
- c. following the directions given by the IBBI or any Court of Law; or
- d. *suo moto*, based on any information received by it.

Objective

The Disciplinary Policy of IIIPI provides for the following:

- a. the establishment of a Disciplinary Committee (DC) and an Appellate Committee (AC)
- b. the manner in which the Disciplinary Committee may ascertain facts
- c. the issue of show cause notice based on the facts
- d. disposal of show- cause notice by a reasoned order, following principles of natural justice
- e. timelines for different stages of disposal of show-cause notice
- f. rights and obligations of parties to the proceedings

Making a Complaint

Complaints can either be *suo moto* by (a) IIIPI or can be referred by (b) Grievance Redressal Committee or Monitoring Committee or be based on a reference made by (c) IBBI or a Court of Law or any other agency authorized by law to file a cognizable report.

Any complaint about the conduct of a member should be made in writing and submitted in terms of the Grievance Redressal Policy of IIIPI. The discretion to change the procedure will vest in the Disciplinary Committee, based on the view of the majority of members.

Initial Assessment

When a complaint is received from a complainant apart from (a), (b) or (c), it will be initially assessed in terms of the Grievance Policy.

Once the Grievance Redressal Committee is satisfied that the complaint filed by a complainant is tenable from the Disciplinary view-point, a copy of the complaint and any supporting documentation will be sent to the Disciplinary Committee with a Complaint Number and an advice sent to the complainant by email or Speed Post, if no email id is provided..

Show Cause Notice to the Party

After Initial review of the complaint, Disciplinary Committee may either reject it *prima facie* or it may be accepted for further investigation.

The reason for Rejection will be advised to the Complainant by email, quoting the Complaint Number.

Where the Committee is of the opinion that detailed investigation into the facts of the case is required, it may issue a Show Cause Notice to the party(s) against whom the complaint has been filed. A copy of the complaint and the supporting documentation, if any, will be sent to the concerned member(s) asking for comments in writing.

Upon receipt of the member's response, the Disciplinary Committee will deliberate and may call the party(s) to appear before it for presenting their case and related evidence. Witnesses, if any, will be permitted to depose from either side only with the approval of the DC, which will not be unreasonably denied. However, if the member against whom the complaint has been lodged, does not respond, the Disciplinary Committee may proceed with the case and reach an *ex-parte* decision based on the evidence at hand.

The case file will be sent to the members of the Disciplinary Committee to consider independently and a meeting will be arranged to discuss the evidence. The Committee may approve any of the following decisions:

- That based on the information presented there is no case to be answered and the file can be closed;
- That there appears to be a case to answer but additional information or evidence is required before a decision can be made;
- That based on the information presented there is a case to answer and a formal hearing should be held.

If the Disciplinary Committee decides that there is a case to answer, it will set a date and venue for the hearing and instruct the IIPI officer to inform the member.

Rights and Obligations of the Parties

- The member must be given at least 21 days' notice in writing.
- The IIPI Officer will also inform the complainant who may attend the hearing to present their case in person, but they will be heard by the Disciplinary Committee separately.
- The Disciplinary Committee may ask the complainant, the member, or any other interested party for further information or clarification of any of the points of evidence prior to the hearing.
- Copies of all the documents which the committee is going to consider will be sent to the member prior to the hearing.

Hearing

The member may attend the hearing in person or E- Hearing through Video Conferencing, submit evidence in writing or be represented by his representative- who can be a chartered

accountant/ lawyer/ company secretary/ cost accountant. If the member chooses neither to attend nor to send a representative, then the Disciplinary Committee will consider the evidence in hand and reach a decision on that basis. If the member or his/her representative attends, he or she will be invited to present the member's response to the allegations. The Disciplinary Committee may ask questions and will then consider its decision in private. The IIIPI officer attends the hearing to take a record of the proceedings and advise on procedural matters, but does not take part in the decision-making.

The Chairman may adjourn the meeting if the committee decides that additional information or clarification of a particular point is required, and reconvene it at a later date. Once the decision has been made, the Chairman prepares and signs a formal minute of the meeting, recording the decision and the rationale. A copy of the formal minute is sent to the member and to the complainant as soon as possible after the hearing, but within 30 days at the latest from the hearing date.

Orders by Disciplinary Committee

After considering the case in issue the Disciplinary Committee may pass any of the following order, as it deems reasonable in view of the seriousness of the breach of the Code of Conduct.

- a. Expulsion of the professional member
- b. Suspension of the professional member for a certain period of time
- c. Admonishment of the professional member
- d. Imposition of monetary penalty

Expulsions from membership will always be reported.

Order of Expulsion may be passed only if:

- 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 thereunder, 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.

The violations referred to in sub-clause (b) include-

- a. 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;
- b. contravening provisions of the Code in a manner which is actionable in accordance with sections 70(2)or 185 of the Code;
- c. knowingly or wilfully committing or authorizing or permitting contravention of sections 14, 96, 101 or 124 of the Code;
- d. contravening provisions of the Code inviting action in accordance with sections 71 or 187 of the Code;
- e. 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,
- f. 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
- g. in any other case it deems fit.

Any order passed by the Disciplinary Committee shall be placed on the website of the IIPI within seven days from passing of the order, and a copy of the order shall be provided to each of the parties to the proceeding.

Monetary penalty received by IIPI under the orders of the Disciplinary Committee shall be credited to the Insolvency and Bankruptcy Fund.

Appeal

If both parties accept the Committee's decision, the order will be executed and the same shall be noted in the member's record.

An appeal should be in writing, setting out the basis for the challenge. While the appeal is pending, the Committee's decision will remain in effect unless and until an appeal is successful.

Any person aggrieved of an order of the Disciplinary Committee may prefer an appeal before the Appellate Panel within thirty days from the receipt of a copy of the final order.

The Appellate Panel shall dispose of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

The Governing Board shall constitute an Appellate Panel consisting of one independent director of the Agency, one member from amongst the persons of eminence having experience in the field of law, and one member nominated by the Board.
