

Disciplinary Policy
of the
Indian Institute of Insolvency Professionals of ICAI (IIPI)
Table of Contents

Section	Topic
1	INTRODUCTION
2	PREAMBLE
3	OBJECTIVE
4	DEFINITIONS
5	INITIATION OF DISCIPLINARY PROCEEDINGS
6	INITIAL ASSESSMENT
7	SHOW CAUSE NOTICE
8	INITIATION OF PROCEEDINGS
9	WITHDRAWAL OF COMPLAINT
10	QUORUM OF THE DISCIPLINARY COMMITTEE
11	MODE OF SENDING NOTICE
12	RIGHTS AND OBLIGATIONS OF THE PARTIES
13	MISCONDUCT
14	HEARING
15	ORDERS BY DISCIPLINARY COMMITTEE
16	APPEAL

1. INTRODUCTION

The Indian Institute of Insolvency professionals of ICAI (IIPI) is a section 8 Company formed by the Institute of Chartered Accountants 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. The core objective of the policy is to formulate & codify the procedure to deal with disciplinary matters. The policy will ensure proper conduct on the part of the members of IIPI and to deal with the cases of violation of the code as well as the rules and regulations framed thereunder.

2. 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 is required to have a Disciplinary Policy in terms of which it 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 another competent Body or any Court of Law or any other agency authorized by law to file a cognizable report;
- (d) suo moto, based on any information received by it.

3. OBJECTIVE

1. The Disciplinary Policy of IIPI provides for the following:

- (a) the establishment of a Disciplinary Committee (DC) and an Appellate Panel (AP);
- (b) the manner in which the Disciplinary Committee may ascertain facts of a complaint, information, reference, or directions;
- (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.

2. To ensure impartiality and proper application of applicable rules and norms, the DC is headed by an Independent Director of the Governing Board of IIPI, and includes a Nominee Member of the Insolvency and Bankruptcy Board of India (IBBI).

4. DEFINITIONS

1. In this Policy, unless the context otherwise requires:

- (a) "Appellate Panel" means the authority constituted by the Governing Board of IIIPI under clause 25 of the Bye-Laws of IIIPI;
 - (b) "Board" means the Insolvency and Bankruptcy Board of India (IBBI);
 - (c) "Code" means the Insolvency and Bankruptcy Code, 2016;
 - (d) "Committee" means the Disciplinary Committee constituted by the Governing Board of the Agency in terms of clause 8(1)(d) of the Bye-Law of IIIPI;
 - (e) "Disciplinary Proceeding" means the proceedings under this Policy;
 - (f) "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 a body corporate incorporated under the Companies Act, 2013 or any other statutory provision;
 - (g) "Governing Board" means the Board of Directors of IIIPI constituted under clause 5 of the Bye-Laws of IIIPI;
 - (h) "IIIPI" means the Indian Institute of Insolvency Professionals of ICAI, a section 8 Company, registered with Insolvency and Bankruptcy Board of India under section 201 of the Insolvency and Bankruptcy Code, 2016;
 - (i) "Bye-Laws" means Bye-Laws of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) based on the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016;
 - (j) "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;
 - (k) "IBBI" means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016;
 - (l) "Misconduct" means misdemeanor or other wrong doing or behavior deemed to be inappropriate or unbecoming of an IP or such other action or omission as barred under the Code of Conduct and dealt with in Section 12 of this Policy. This is further categorized as "Minor" and "Major" misconduct.
 - (m) "Policy" means the Disciplinary Policy of IIIPI;
 - (n) "Professional Member" means an individual who is enrolled with IIIPI and includes an individual who was a member of IIIPI as on the date of the alleged misconduct, although he may have ceased to be a member of IIIPI at the time of receipt of reference from the Grievance Redressal Committee or direction from IBBI or court of law or other actionable information;
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. INITIATION OF DISCIPLINARY PROCEEDINGS

1. Disciplinary proceedings can be initiated against a Professional member:
 - (a) suo moto by IIIPI on the basis of any information received by it, or

(b) can be referred by Grievance Redressal Committee or Monitoring Committee or membership Committee,
(c) be based on a grievance/complaint or reference made or directions given by IBBI or other Statutory Bodies or a Court of Law or any other agency authorized by law to file a cognizable report.

2. 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 a consensus arrived at by a majority of members. The reason for the same will be duly minuted along with the details of any dissenting opinion.

3. Any complaint received for initiating disciplinary proceedings against a professional member, if filed by or on behalf of:

- i. a body corporate or entity formed under an act of parliament or any other entity or organization,
- ii. the Central Government or any State Government or any other department or entity of the Central or State Government
- iii. any statutory authority, such as Insolvency and Bankruptcy Board of India (IBBI), Reserve Bank of India (RBI), or Securities and Exchange Board of India (SEBI),

shall be supported by a document issued by the body corporate or entity or government or department or authority, as the case may be, to be filed in original authorizing the said person to do so.

4. If the Committee is in receipt of more than one complaint, reference, direction or information, in respect of similar subject against the same professional member, it may at its discretion, club the cases together for disposal and the parties/new complainant and the professional member shall be informed of the same.

6. INITIAL ASSESSMENT

1. When a complaint is received from a complainant apart from (a), (b) or (c), as described in Section 5(1), it will be referred to Grievance Redressal Committee (GRC)
2. Once the Grievance Redressal Committee is satisfied that the complaint filed by a complainant needs to be taken up for Disciplinary action, a copy of the complaint and any supporting documentation will be sent to the Disciplinary Committee (DC) along with a Complaint Number and the reasons/rationale for the reference by GRC. A copy of the advice sent to the complainant by email or Speed Post, if no email Id is provided, will also be submitted to DC.

7. SHOW CAUSE NOTICE

1. After Initial review of the complaint based on circulation of related papers received from GRC or as per Section 5(1), Disciplinary Committee may consider any of the following decisions:
 - a) That based on the information presented there is no need for Disciplinary proceedings to be initiated and the file can be closed;
 - b) That there appears to be a case to answer but additional information or evidence is required before a decision can be made;
 - c) That based on the information presented there is a case to answer and a formal hearing should be held.
2. The reason for Rejection as in 7(1) (a) will be informed to the parties by email or speed post, referring to the Complaint Number.
3. 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 (SCN) 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. The committee may determine the manner in which SCN may be issued.
4. Disciplinary proceeding will be considered as pending against an Insolvency Professional from the time he has been issued a Show Cause Notice by IIIPI till its disposal by the Disciplinary Committee.

8. INITIATION OF PROCEEDINGS

1. If at the end of the process described in Section 5, the Disciplinary Committee concludes that there is a disciplinary case to proceed with, it will set a date and venue for the hearing to inform the parties. Meetings of DC may be held by Video/Tele-Conference or physically, as approved by the DC Chairman.
2. 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.
3. In case any of the parties are asked to appear or present witnesses, the costs and expenses incurred will be borne by the related party.

9. WITHDRAWAL OF COMPLAINT

1. Any Complaint can be withdrawn by the Complainant in writing at any time. However, after the proceeding has been initiated by the Disciplinary Committee, the withdrawal can be permitted only by all members of the DC approving the same.
2. Any request to withdraw a complaint, after passing of the order mandating issuance of show-cause notice under Disciplinary Proceedings process to the professional member, shall be subject to the Committee accepting such request in writing.
3. The Committee may also, if it deems fit, impose a fine , of not less than Rupees Ten Thousand and upto a maximum amount of Rs.50,000/-, against the complainant for filing a frivolous complaint or seeking to withdraw a complaint after the show-cause notice has been served. Where the complainant fails to deposit the cost so imposed, the complainant shall be barred, from filing any subsequent complaint in future till the cost as determined above has been deposited.
4. All costs are to be deposited in an account which shall be opened specifically for such purpose by IIIPI for disposal as per extant regulations.
5. The Committee may, in its discretion, share the details of such order imposing costs against such complainant with other Insolvency Professional Agencies for their information and record.
6. Notwithstanding anything contained hereinabove, the Committee may reject any request for withdrawal and suo moto proceed against the professional member.

10. QUORUM OF THE DISCIPLINARY COMMITTEE

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, another member to preside over the meeting.
3. For the purpose of quorum the presence of the Chairman or the presence of IBBI nominee is mandatory.

11. MODE OF SENDING NOTICE

1. Every notice or letter issued by the Committee or IIIPI under the policy shall be sent to the member or the entity or any other person, by registered/speed post or by electronic mail service at the email address provided by professional member to IIIPI except where specified otherwise in the policy.
2. 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.
3. If the notice or letter sent to the recorded address 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 not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.
4. Where the notice or letter is returned under sub clause 3, it may be served by affixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with IIIPI 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.

12. RIGHTS AND OBLIGATIONS OF THE PARTIES

1. The member will be given at least 21 days' notice by email before initiating a process or action.
2. The DC will also inform the complainant who may attend the hearing to present their case in person. However, she/he may be heard by the Disciplinary Committee in a manner decided by the Committee.
3. 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.
4. Copies of all the documents which the DC proposes to consider will be provided to the members prior to the hearing by DC.
5. The Committee may permit adjournment of meeting at their discretion.

13. MISCONDUCT

The DC may examine the Charge of misconduct in the following categories:

- A. Major Misconduct, and
- B. Minor Misconduct

A. Major Misconduct:

A professional member shall be deemed to be guilty of Major misconduct, if he:

- (1) Contravenes any of the provisions of the Code, rules, regulations, guidelines, directions issued in this regard by the Insolvency and Bankruptcy Board of India, from time to time, including, but not limited to the Code of Conduct under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and the supplementary Code of Conduct, as may be adopted by IIPPI from time to time;
- (2) Discloses information acquired in the course of his professional engagement to any person other than as permitted by the Code, rules, regulations made there under or any other law for the time being in force or as permitted by any order of any court of law;
- (3) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (4) Defalcates or embezzles moneys received by him.
- (5) Is held guilty by any criminal court for an offence which is punishable with imprisonment for a term exceeding six months;
- (6) Does not respond to or disregards queries/correspondence from IPA or IBBI
- (7) In the opinion of the Governing Board, he brings disrepute to the profession or IIPPI as a result of his action whether or not related to his professional work.

B. Minor Misconduct:

Minor misconduct in relation to members of IIPPI Insolvency Professionals Agency would generally relate to:

- (1) Misbehavior with co-professionals and/or others
- (2) Irresponsible, but not criminal behavior
- (3) Frequent delays in responding to queries/correspondence with IPA or IBBI

14. HEARING

1. The members may attend the hearing in person or E- Hearing through Video or Tele Conferencing, as approved by the DC Chairman.
2. The parties may submit evidence in writing or be represented by his/their representative, who should preferably be a member of IIPPI.

3. 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.
4. The complainant, Insolvency Professional or any other person who appears before the Committee 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.
5. 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 a decision has been taken, the Chairman will finalize and sign the formal minutes of the meeting, recording the decision and the rationale.
6. A copy of the formal minute will be sent to the members for confirmation within 7 days of the meeting and to the complainant as soon as possible but within 30 days at the latest from the hearing date.
7. For the purposes of this policy, the Committee shall exercise quasi-judicial authority regarding:
 - 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.
8. The date of the hearing will be finalized by the committee and advised to the parties.

15. ORDERS BY DISCIPLINARY COMMITTEE

1. 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 misconduct, the Committee shall dispose of the show-cause notice by recording reasons in writing within thirty days of passing such order in writing and may also impose cost on the complainant, if the Committee is of the opinion that the complaint was frivolous.

2. However, if the member is found guilty of major or minor misconduct as detailed in Section 12, 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. Penalties for Major Misconduct may extend to:

- a. Monetary penalty of not less than Rs.10,000/- upto a maximum amount of Rs.50,000,
- b. Suspension from practice for a specific term which may not be less than 15 days up to a maximum period of 10 Years as decided by the Committee,
- c. Cancellation of Authorization for Assignment,
- d. Removal from membership, or
- e. Reference of the matter to the Board, which may include ,in appropriate cases, recommendation of the amount or compensation that may be enforced by the Board,
- f. Directions relating to costs,
- g. A combination of the above or other appropriate penalty, as determined by the Committee.

B. Penalties for Minor Misconduct may include:

- a. Admonishment,
- b. Warning,
- c. Written Reprimand
- d. Monetary Penalty not exceeding Rs. 5,000/-
- e. Directions relating to costs.

3. Order of Expulsion/ Removal from Membership may be passed in case of:

- 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. 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 willfully 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. violation of the Code of Conduct {Reg 7(2)(g)} including 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.
4. Any order passed by the Disciplinary Committee shall be placed on the website of the IIIPI 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.
 5. All penalties awarded as a consequence of Disciplinary Proceedings, will be reported to the Governing Board of IIIPI and to IBBI.
 6. Monetary penalty received by IIIPI under the orders of the Disciplinary Committee shall be credited to the Insolvency and Bankruptcy Fund in terms of Clause 24 (5) of the Model Bye-Laws.
 7. Decision taken by IBBI or any other statutory body relating to the member of IIIPI will be placed before the Disciplinary Committee or the Governing Board as the case may be, for necessary action as per the applicable rules.
 8. The Disciplinary Order passed by the Committee will be effective from the date recorded in the Order or from 30 days after the date of the Order, if not specified.

16. APPEAL

1. 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 otherwise ordered by the Appellate Panel to keep the same in abeyance.
2. 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.
3. The Appellate Panel shall dispose of the appeal in the manner it deems expedient, within 30 days of the receipt of the appeal and receipt of any additional evidence or information required by it for facilitating a decision.

4. The Appellate Panel may call for the records of any case and may –
 - a. confirm, modify or set aside the order passed by the Disciplinary Committee;
 - b. impose any penalty or set aside, reduce or enhance the penalty imposed by the Disciplinary Committee;
 - c. remit the case to the Disciplinary 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.

 5. The Governing Board of IIIPI has constituted 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.
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