



## **EXPOSURE DRAFT**

### **BACKGROUND GUIDANCE**

### **CODE OF ETHICS FOR INSOLVENCY PROFESSIONALS**

**(Last Date for Comments: Jan.20<sup>th</sup>, 2022)**

# CODE OF ETHICS

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# CODE OF ETHICS

## APPLICABILITY AND HARMONIZATION

### APPLICABILITY

- (i) The Code of Ethics shall apply to IPs, whether or not director/partner of any IPE, who are undertaking any assignment under IBC as IRP/RP/Liquidator/AR or as administrator under SEBI Regulations or regulations by any other regulator.
- (ii) For the activities/processes undertaken by an IPE, the concerned IP (as IRP/RP/Liquidator) in that particular professional assignment shall be responsible for ethical conduct/requirements as applicable.
- (iii) The reference to 'firm' in respect of IP's services shall include an IP in the capacity of an individual practitioner.
- (iv) The Code of Ethics shall apply to IPs in employment related to insolvency resolution under IBC, whether or not part of any IPE, with certain modification as mentioned in the relevant section of this Code. *It may be noted that currently IBBI Regulations allow the IPs who are enrolled with IPA, inter alia, within twelve months of passing Limited insolvency Examination and also registered with IBBI as an IP, to be in employment. However, such IPs being in employment shall not be eligible for applying for 'Authorisation for Assignment or AFA' as a prerequisite for practicing as an IP.*
- (v) The Code of Ethics shall apply to IPs in employment not related to insolvency resolution under IBC, to the extent of professional competence and professional behaviour as mentioned in relevant section of this Code.
- (vi) The Guidance note on Code of Ethics is for guidance of insolvency professionals and is recommendatory in nature.

### HARMONIZATION

- (vii) In case of any variance of this Code with similar code or standards by parent professional body of an IP, the regulatory provisions shall prevail upon this code subject to disclosure as deemed necessary to the concerned authorities and stakeholders.
- (viii) The Code of Ethics provides the overarching ethical framework and can be viewed as being complementary to the Code of Conduct as prescribed under IBBI (IP) Regulations. In the case of any conflict between the two, the clause under the Code of Conduct as per Schedule I of IBBI (IP) Regulations 2016, should be followed in letter and spirit.

## SCOPE

- 1.1 Code of Ethics establishes the fundamental principles of professional ethics for IPs and provides a conceptual framework for IPs to:
  - a) identify threats to compliance with the fundamental principles;
  - b) evaluate the significance of the threats identified; and
  - c) apply safeguards, where available and capable of being applied, to reduce the threats to a level at which an IP using the reasonable and informed third party test would likely conclude that the IP complies with the fundamental principles.
- 1.2 This Code also describes how the ethical framework applies in certain situations, in a non-exhaustive manner. It provides examples of actions that might be appropriate to address threats to compliance with the fundamental principles. It also describes situations where no action can address the threats, and consequently, the circumstance or relationship creating the threats needs to be avoided.
- 1.3 Code of Ethics as provided in the following paras uses two types of statements viz.
  - (i) **Requirement**, which is mentioned as text *in bold and italics* font, imposes an obligation on an IP to comply with the specific provision.
  - (ii) **Reference matter**, which is mentioned as normal text explaining the context relevant for proper understanding of the 'Requirement' under this code.
- 1.4 *In order to protect and promote the public interest, an IP shall observe and comply with this Code. If an IP is prohibited from complying with certain parts of this Code by law or regulations, the IP shall comply with all other parts of this Code.*
- 1.5 *An IP shall use professional judgment in applying this framework.*
- 1.6 *IPs shall follow the fundamental principles, apply the conceptual framework and specific requirements of this Code in all their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the insolvency profession.*
- 1.7 *IPs shall be guided not merely by the terms but also by the spirit of this Code.*
- 1.8 *Although, an insolvency assignment will be personal to the IP rather than their firm/IPE or employing organisation, IPs shall ensure that work for which they are responsible, which is undertaken by members of the insolvency team on their behalf, is carried out in accordance with the requirements of this Code.*

## FUNDAMENTAL PRINCIPLES

1.9 There are five fundamental principles of ethics for IPs:

- a. Integrity – to be straightforward and honest in all professional and business relationships.
- b. Objectivity – not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others.
- c. Professional Competence and Due Care – to:
  - I. Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
  - II. Act diligently and in accordance with applicable technical and professional standards.
- d. Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.
- e. Professional Behaviour – to comply with relevant laws and regulations and avoid any conduct that the IP knows or should know might discredit the profession.

**1.10 An IP shall comply with each of the fundamental principles.**

1.11 An IP might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the IP might consider consulting, on an anonymous basis if necessary, with:

- others within the Firm/IPE, if any;
- a regulatory body like IBBI/IPA;
- another IP;
- a professional body;
- legal counsel.

## INTEGRITY

**1.12 An IP shall comply with the principle of integrity, which requires an IP to be straightforward and honest in all professional and business relationships.**

1.13 Integrity implies fair dealing and truthfulness.

**1.14 An IP shall not knowingly be associated with reports, returns, communications or other information where the IP believes that the information:**

- a) **Contains a materially false or misleading statement;**
- b) **Contains statements or information provided recklessly; or**

- c) ***Omits or obscures required information where such omission or obscurity would be misleading.***

1.15 If an IP provides a modified report, return, communication in respect of such a report, return, communication, or other information, the IP is not in breach of requirement.

***1.16 When an IP becomes aware of having been associated with information described in above paragraph 1.14, the IP shall take steps to be disassociated from that information.***

## **OBJECTIVITY**

***1.17 An IP shall comply with the principle of objectivity, which requires an IP not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others.***

1.18 Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

***1.19 An IP shall not undertake a professional activity if a circumstance or relationship unduly influences the IP's professional judgment regarding that activity.***

## **PROFESSIONAL COMPETENCE AND DUE CARE**

***1.20 An IP shall comply with the principle of professional competence and due care, which requires an IP to:***

- a) Attain and maintain professional knowledge and skill at the level required to ensure that a competent professional service is provided, based on current technical and professional standards and relevant legislation; and***
- b) Act diligently and in accordance with applicable technical and professional standards.***

1.21 Professional competence requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.

1.22 Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables an IP to develop and maintain the capabilities to perform competently within the professional environment

1.23 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

***1.24 In complying with the principle of professional competence and due care, an IP shall take reasonable steps to ensure that those working in a professional capacity under the IP's authority have appropriate training and supervision.***

- 1.25 ***Where appropriate, an IP shall make users of the IP's services or activities or their employing organisation aware of the limitations inherent in the services or activities.***

## **CONFIDENTIALITY**

- 1.26 The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature.

- 1.27 ***An IP in the role as office holder has a professional duty to report openly to those with an interest in the outcome of the insolvency. An IP shall always report on their acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate.***

- 1.28 ***An IP shall comply with the principle of confidentiality, which requires an IP to respect the confidentiality of information acquired as a result of professional and business relationships. An IP shall:***

- a) ***Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;***
- b) ***Maintain confidentiality of information within firm, the IPE or with any other advisor/consultant appointed by IP;***
- c) ***Maintain confidentiality of information disclosed by the firm or the IPE;***
- d) ***Not disclose confidential information acquired as a result of professional and business relationships outside the firm/IPE or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;***
- e) ***Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the IP or for the advantage of a third party;***
- f) ***Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and***
- g) ***Take reasonable steps to ensure that personnel under the IP's control, and individuals from whom advice and assistance are obtained, respect the IP's duty of confidentiality.***

- 1.29 There are circumstances where IPs are or might be required to disclose confidential information or when such disclosure might be appropriate:

- a) Disclosure is required by law, for example:
  - I. producing statutory reports for the creditors of the CD;
  - II. submitting reports on the conduct of directors of an CD;
  - III. production of documents or other provision of evidence in the course of legal proceedings; or
  - IV. disclosure to the appropriate public authorities of infringements of the law that come to light;

- b) Disclosure is permitted by law and is authorised by the employing organisation; and
- c) There is a professional duty or right to disclose, when not prohibited by law:
  - I. To comply with the peer quality review as permitted by the IPA;
  - II. To respond to an inquiry or investigation by IBBI/IPA;
  - III. To protect the professional interests of an IP in legal proceedings; or
  - IV. To comply with technical and professional standards, including ethics requirements.

1.30 In deciding whether to disclose confidential information, factors to consider, depending on the circumstances, include:

- a. Whether the interests of any parties, including third parties whose interests might be affected, could be harmed upon disclosure of information by the IP.
- b. Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose include:
  - Unsubstantiated facts.
  - Incomplete information.
  - Unsubstantiated conclusions.
- c. The proposed type of communication, and to whom it is addressed.
- d. Whether the parties to whom the communication is addressed are appropriate recipients.

**1.31 *An IP shall continue to comply with the principle of confidentiality even after the end of the relationship between the IP and an employing organisation. When changing employment or accepting an insolvency assignment, the IP is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.***

## **PROFESSIONAL BEHAVIOUR**

**1.32 *An IP shall comply with the principle of professional behaviour, which requires an IP to comply with relevant laws and regulations and avoid any conduct that the IP knows or should know might discredit the profession. An IP shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity, or good reputation of the insolvency profession, and as a result would be incompatible with the fundamental principles.***

1.33 Conduct that might discredit the insolvency profession includes conduct that a reasonable and informed third party would be likely to conclude that it adversely affects the good reputation of the profession. Examples of unprofessional conduct are:

- a. Soliciting professional work quoting an unreasonably lower fee, with an objective to undercut the fee quoted by another IP. To ascertain whether fee is unreasonably low, one criterion can be the comparison with the cost incurred arising out of cost sheet maintained by the IP to ensure that fee is not lower than the cost.



- b. Soliciting professional work quoting an unreasonably low fee, that is not commensurate with the nature of work involved.
- c. Soliciting professional work quoting an unreasonably high fee, that is not commensurate with the nature of work involved.
- d. Not extending coordination and cooperation to another IP upon latter's appointment, by way of replacement or otherwise, as IRP/RP/Liquidator.

1.34 The concept of professional behaviour implies that it is appropriate for IPs to conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

## THE CONCEPTUAL FRAMEWORK

- 2.1 The circumstances in which IPs operate might create threats to compliance with the fundamental principles. This section sets out requirements and reference matters in the form of a conceptual framework, to assist insolvency practitioners in complying with the fundamental principles and meeting their responsibility to act in the public interest. Such requirements and reference matters accommodate the wide range of facts and circumstances, including the various professional activities, interests and relationships, that create threats to compliance with the fundamental principles. In addition, they deter IPs from concluding that a situation is permitted solely because that situation is not specifically prohibited by this Code.
- 2.2 The conceptual framework specifies an approach for an IP to:
- a) identify threats to compliance with the fundamental principles;
  - b) evaluate the threats identified; and
  - c) address the threats by eliminating or reducing them to an acceptable level
- 2.3 *The IP shall apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles.***
- 2.4 *An IP shall take particular care to identify the existence of threats that exist prior to or at the time of taking an insolvency assignment or which at that stage, it might reasonably be expected could arise during the course of such assignment.***
- 2.5 *When applying the conceptual framework, the IP shall:***
- a) exercise professional judgment;
  - b) remain alert for new information and to changes in facts and circumstances; and
  - c) use the reasonable and informed third party test described below.
- 2.6 Professional judgment involves the application of relevant training, professional knowledge, skill and experience commensurate with the facts and circumstances including the nature and scope of the particular professional activities, and the interests and relationships involved. In relation to undertaking professional activities, the exercise of professional judgment is required when the IP applies the conceptual framework in order to make informed decisions about the courses of actions available, and to determine whether such decisions are appropriate in the circumstances.
- 2.7 An understanding of known facts and circumstances is a prerequisite to the proper application of the conceptual framework. Determining the actions necessary to obtain this understanding and coming to a conclusion about whether the fundamental principles have been complied with also require the exercise of professional judgment.

- 2.8 In exercising professional judgment to obtain this understanding, the insolvency practitioner might consider, among other matters, whether:
- a) There is reason to be concerned that potentially relevant information might be missing from the facts and circumstances known to the IP.
  - b) There is an inconsistency between the known facts and circumstances and the IP's expectations.
  - c) The IP's expertise and experience are sufficient to reach a conclusion.
  - d) There is a need to consult with others with relevant expertise or experience.
  - e) The information provides a reasonable basis on which to reach a conclusion.
  - f) The IP's own preconception or bias might be affecting the IP's exercise of professional judgment.
  - g) There might be other reasonable conclusions that could be reached from the available information.
- 2.9 The reasonable and informed third party test is a consideration by the IP about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the IP knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an IP, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the IP's conclusions in an impartial manner.

## **IDENTIFYING THREATS**

### ***2.10 The IP shall identify threats to compliance with the fundamental principles.***

- 2.11 An understanding of the facts and circumstances, including any professional activities, interests and relationships that might compromise compliance with the fundamental principles, is a prerequisite to the IP's identification of threats to such compliance. The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the IPE or the employing organisation that can enhance the IP acting ethically might also help identify threats to compliance with the fundamental principles.
- 2.12 Below there are examples of such conditions, policies and procedures which are also factors that are relevant in evaluating the level of threats:
- a) leadership of the firm/IPE that stresses the importance of compliance with the fundamental principles;
  - b) policies and procedures to implement and monitor quality control of engagements;
  - c) documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards

to eliminate or reduce the threats to an acceptable level;

- d) documented internal policies and procedures requiring compliance with the fundamental principles;
- e) policies and procedures to identify the existence of any threats to compliance with the fundamental principles before deciding whether to accept an insolvency assignment;
- f) policies and procedures to identify interests or relationships between the firm/IPE or individuals within the firm/IPE and third parties;
- g) policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influencing the outcome of an insolvency assignment;
- h) timely communication of a firm's policies and procedures, including any changes to them, to all individuals within the firm, and appropriate training and education on such policies and procedures;
- i) designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system;
- j) a disciplinary mechanism to promote compliance with policies and procedures;
- k) published policies and procedures to encourage and empower individuals within the firm/IPE to communicate to senior levels within the firm/IPE any issue relating to compliance with the fundamental principles that concerns them.

2.13 Threats to compliance with the fundamental principles might be created by a broad range of facts and circumstances. It is not possible to define every situation that creates threats. In addition, the nature of engagements and work assignments might differ and, consequently, different types of threats might be created.

2.14 Threats to compliance with the fundamental principles fall into one or more of the following categories:

- a) Self-interest threat – the threat that a financial or other interests of the firm/IPE, an individual within the firm/IPE or a close or immediate family member of an individual within the firm/IPE will inappropriately influence the IP's judgment or behaviour;
- b) Self-review threat – the threat that the IP will not appropriately evaluate the results of a previous judgment made or service performed by an individual within the firm/IPE, on which the IP will rely when forming a judgment as part of providing a current service;
- c) Advocacy threat – the threat that an individual within the firm/IPE will promote a position or opinion to the point that the IP's objectivity is compromised;
- d) Familiarity threat – the threat that due to a long or close relationship, an individual within the firm/IPE will be too sympathetic or antagonistic to the interests of others or too accepting of their work; and

- e) Intimidation threat – the threat that an IP will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the IP.

2.15 The following are examples of facts and circumstances within each category of threats that might create threats for an IP:

a) Examples of circumstances that might create self-interest threats for an IP include:

- i. an individual within the firm/IPE having an interest in a creditor or potential creditor with a claim which requires subjective adjudication, or having an interest in a party to a transaction;
- ii. an individual within the firm/IPE having a close business relationship with a creditor, potential creditor or a party to a transaction;
- iii. the IP discovering a significant error when evaluating the results of a previous service performed by an individual within the firm/IPE;
- iv. concern about the possibility of damaging a business relationship;
- v. concern about future employment.

b) Examples of circumstances that might create self-review threats for an IP include:

- i. accepting an insolvency assignment in respect of an entity where an individual within the firm/IPE has recently been employed by that entity;
- ii. an IP or the firm/IPE having previously carried out professional work of any description, including sequential insolvency assignments, for an entity.

c) Examples of circumstances that might create advocacy threats for an IP include:

- i. acting in an advisory capacity for a creditor of the CD/entity;
- ii. acting in an advisory capacity to CD/entity prior to its insolvency;
- iii. acting as an advocate for a client in litigation or a dispute with the CD/entity.

d) Examples of circumstances that might create familiarity threats for an IP include:

- i. an individual within the firm/IPE or a close or immediate family member having a close relationship with a director, officer, employee or any individual having a financial interest in the CD/entity;
- ii. an individual within the firm/IPE or a close or immediate family member having a close relationship with a potential purchaser of the insolvent entity's assets and/or business or any individual having a financial interest in the potential purchaser.
- iii. In this regard a close relationship includes both a close professional relationship and a close personal relationship.

e) Examples of circumstances that might create intimidation threats for an IP include:

- i. an individual within the firm/IPE being threatened with dismissal or replacement;
- ii. an individual within the firm/IPE being threatened with litigation, complaint or

adverse publicity;

iii. an individual within the firm/IPE being threatened with violence or other reprisal.

2.16 A circumstance might create more than one threat, and a threat might affect compliance with more than one fundamental principle.

## **EVALUATING THREATS**

**2.17 *When the IP identifies a threat to compliance with the fundamental principles, the IP shall evaluate whether such a threat is at an acceptable level.***

2.18 An acceptable level is a level at which an IP using the reasonable and informed third party test would likely conclude that the IP complies with the fundamental principles.

2.19 The consideration of qualitative as well as quantitative factors is relevant in the IP's evaluation of threats, as is the combined effect of multiple threats, if applicable.

2.20 The existence of conditions, policies and procedures described in paragraph 2.12 of this code might also be factors that are relevant in evaluating the level of threats to compliance with fundamental principles.

**2.21 *If the IP becomes aware of new information or changes in facts and circumstances that might impact whether a threat has been eliminated or reduced to an acceptable level, the IP shall re-evaluate and address that threat accordingly.***

2.22 Remaining alert throughout an insolvency assignment assists the IP in determining whether new information has emerged or changes in facts and circumstances have occurred that:

- a) impact the level of a threat; or
- b) affect the IP's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

## **ADDRESSING THREATS**

**2.23 *If the IP determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the insolvency practitioner shall address the threats by eliminating them or reducing them to an acceptable level. The IP shall do so by:***

- a) *eliminating the circumstances, including interests or relationships, that are creating the threats;*
- b) *applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or*
- c) *declining or ending the insolvency assignment.*

2.24 Depending on the facts and circumstances, a threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can

only be addressed by declining or ending the insolvency assignment or resigning altogether. This is because the circumstances that created the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threat to an acceptable level.

- 2.25 Safeguards are actions, individually or in combination, that the IP takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.
- 2.26 Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:
- I. Assigning additional time and qualified personnel to required tasks when an insolvency assignment has been accepted might address a self-interest threat.
  - II. Having an appropriate reviewer who was not a member of the team, review the work performed or advise as necessary might address a self-review threat.
  - III. Involving another IP to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
  - IV. Disclosing to concerned stakeholders, any referral fees or commission arrangements received for recommending services or products might address a self-interest threat.
  - V. Safeguards specific to an insolvency assignment are considered later in this Code.
- 2.27 *The IP shall form an overall conclusion about whether the actions that the IP takes, or intends to take, to address the threats created will eliminate those threats or reduce them to an acceptable level. In forming the overall conclusion, the IP shall:***
- a) *review any significant judgments made or conclusions reached; and***
  - b) *use the reasonable and informed third party test.***

## **BREACH OF THIS CODE**

- 2.28 An IP who identifies a breach of any other provision of the Code shall evaluate the significance of the breach and its impact on the IP's ability to comply with the fundamental principles. The IP shall also:
- a) take whatever actions might be available, as soon as possible, to address the consequences of the breach satisfactorily; and**
  - b) determine whether to report the breach to the relevant parties.**
- 2.29 Relevant parties to whom such a breach might be reported include those who might have been affected by it, or IBBI/IPA.

## **RECORD KEEPING**

- 2.30 It will always be for the IP to justify their actions. An IP will be expected to be able to demonstrate the steps that they took and the conclusions that they reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency assignment, by reference to written contemporaneous records.

**2.31 The IP shall document:**

- a) *the facts.*
- b) *any communications with, and parties with whom the matters were discussed.*
- c) *the courses of action considered, the judgments made and the decisions that were taken.*
- d) *the safeguards applied to address the threats when applicable.*
- e) *how the matter was addressed.*
- f) *where relevant, why it was appropriate to accept or continue the insolvency assignment.*

## **ETHICAL CONFLICT RESOLUTION**

2.32 An IP might be required to resolve a conflict in complying with the fundamental principles.

2.33 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, might be relevant to the resolution process:

- a) relevant facts
- b) ethical issues involved
- c) fundamental principles related to the matter in question
- d) established internal procedures
- e) alternative courses of action.

2.34 Having considered the relevant factors, it is necessary for an IP to determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the IP might wish to consult with other appropriate persons within the firm/IPE for help in obtaining resolution.

2.35 Where a matter involves a conflict with, or within, an entity, an IP will need to decide whether to consult with those charged with governance of the entity, such as COC, the board of directors or senior management team (under IP's supervision), wherever applicable.

**2.36 The IP shall document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.**

2.37 The IP is expected to be seen to act in such a way that threats to the fundamental principles are adequately addressed. Therefore, it is important that the IP considers disclosure, for example, to the court or to the creditors and other interested parties of the existence of any threat, together with the safeguards identified and applied.

2.38 If a significant conflict cannot be resolved, an IP might consider obtaining advice from their legal advisors. The IP generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with a legal advisor under the protection of legal privilege.



***2.39 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, an IP shall, where possible, refuse to remain associated with the matter creating the conflict. The IP shall determine whether, in the circumstances, it is appropriate to withdraw from the insolvency assignment, or to resign altogether.***

## SPECIFIC APPLICATION OF THE CODE

- 3.1 This part of the Code describes how the framework applies in certain situations to IPs. This part does not describe all of the circumstances and relationships that could be encountered by an IP that create or could create threats to compliance with the fundamental principles. Therefore, the IP is encouraged to be alert for such circumstances and relationships.
- 3.2 ***Where circumstances are dealt with by statute or secondary legislation, an IP shall comply with such provisions.***
- 3.3 The practice of insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the court.
- 3.4 **An IP shall also comply with any relevant judicial authority relating to their conduct and any directions given by the court.**
- 3.5 **An IP shall comply with standards, regulations or guidelines issued by their regulatory bodies (IBBI/IPA).**

## ACCEPTING INSOLVENCY ASSIGNMENTS

- 3.6 Acceptance of an insolvency assignment might create a threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.
- 3.7 ***Before agreeing to accept any insolvency assignment an IP shall determine whether acceptance would create any threats to compliance with the fundamental principles.***
- 3.8 When seeking to identify threats to the fundamental principles, an IP will need to identify and evaluate any professional or personal relationships that threaten compliance with the fundamental principles. The IP will then need to determine the appropriate response to any threats arising from any such relationships, including the identifying and applying appropriate safeguards.
- 3.9 ***If the IP determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the IP shall address the threats by eliminating them or reducing them to an acceptable level. The IP shall do so by:***
- a) ***Eliminating the circumstances, including interests or relationships, that are creating the threats; or***
  - b) ***Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level.***
- 3.10 ***An IP shall not accept an insolvency assignment where a threat to the fundamental principles has been identified unless the threat is eliminated or reduced to an acceptable level.***

- 3.11 Factors that are relevant in evaluating the level of a threat include measures that prevent unauthorised disclosure of confidential information. These measures include:
- a. The existence of separate practice areas for specialty functions within the firm/IPE, which might act as a barrier to the passing of confidential client information between practice areas.
  - b. Policies and procedures to limit access to client files.
  - c. Confidentiality agreements signed by personnel, partners/directors of the firm/IPE.
  - d. Separation of confidential information physically and electronically.
  - e. Specific and dedicated training and communication.
- 3.12 Examples of actions that might be safeguards, include:
- a. involving another IP, either from within or outside the firm/IPE as appropriate to the circumstances, to review the work done, perform or re-perform part of the work or otherwise advise as necessary;
  - b. changing members of the insolvency team or the use of separate staff;
  - c. terminating the financial or business relationship that gives rise to the threat;
  - d. seeking directions from the court.
- 3.13 It is important that, prior to the insolvency assignment, the IP considers disclosure, to the court or to the creditors on whose behalf the IP would be appointed to act, of the existence of any threat, together with the safeguards identified and applied, and that no objection is made to the IP being appointed.
- 3.14 An IP will need to exercise professional judgment to determine the appropriate action when threats have been identified. In exercising their judgment, an IP is expected to take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the IP at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level, such that compliance with the fundamental principles is not compromised.
- 3.15 *An IP might encounter situations in which the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threats to an acceptable level. Where this is the case, the IP shall not accept the insolvency assignment.***
- 3.16 *Following the acceptance of an insolvency assignment, the IP shall keep under review any identified threats, and the IP shall be mindful that other threats to the fundamental principles could arise.***

## CONFLICTS OF INTEREST, PROFESSIONAL AND PERSONAL RELATIONSHIPS

- 3.17 A conflict of interest creates threats to compliance with the principle of objectivity and might create threats to compliance with the other fundamental principles.
- 3.18 Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance. Such conflict of interest may arise even though the eligibility under IBC and regulations thereunder, has been established. The eligibility criteria for an IRP/RP as mentioned, in Clause 3(1) of IBBI (CIRP) Regulations, can be referred in this regard.
- 3.19 *An IP shall not allow a conflict of interest to compromise professional or business judgment.***
- 3.20 *An IP might encounter circumstances where a threat to the principle of objectivity or other fundamental principles cannot be eliminated and safeguards cannot be applied to reduce the threat to an acceptable level. Where this is the case the IP shall not accept the insolvency assignment.***
- 3.21 Examples of circumstances that might create a conflict of interest include where a significant relationship has existed with the CD/entity or someone connected with the CD/entity, or where an IP:
- a. has to deal with conflicting or competing interests between CDs/entities over whom they or another IP in their firm/IPE, is appointed.
  - b. or another IP in their firm/IPE has previously acted as an insolvency office holder to a CD/entity with a common director, or common directors. Where the IP has been appointed officeholder to a number of insolvent companies with the same director or directors, there will be an increased risk of a conflict of interest arising.
  - c. has, or others in their firm/IPE have, previously carried out one or more assignments for a CD/entity and / or its wider group and they are appointed as an insolvency office holder to the CD/entity or its connected entities.
- 3.22 There will be an increased risk of a conflict arising where an IP or their firm/IPE has carried out a number of previous assignments for an entity, its group or its charge holders or stakeholders. There will also be an increased risk if the previous assignments took place over an extended period of time. The level of risk will also depend on the services that were provided and the nature of the work carried out.
- 3.23 There will be an increased risk where an IP has, or others in their firm/IPE have, carried out one or more pre-appointment engagements for the CD/entity, and the IP is appointed as an insolvency officeholder, and they, or another IP in their firm/IPE is subsequently appointed officeholder in a further insolvency process.
- 3.24 The fact that an IP, or their firm/IPE, might not have been formally engaged to carry out an assignment, or might not have been paid for their work, does not negate the possibility of a conflict of interest arising.

- 3.25 The environment in which IPs work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.
- 3.26 *The principle of objectivity might be threatened if any individual within the firm/IPE, the close or immediate family of an individual within the firm/IPE or the firm/IPE itself, has or has had a professional or personal relationship which relates to the insolvency appointment being considered.***
- 3.27 Relationships could include (but are not restricted to) relationships with:
- a. the CD/entity;
  - b. senior management or any director or former director of the CD/entity;
  - c. shareholders or Persons of Significant Control of the CD/entity;
  - d. any principal or employee of the CD/entity;
  - e. business partners of the CD/entity;
  - f. companies or entities controlled by the CD/entity;
  - g. companies which are under common control;
  - h. potential purchasers;
  - i. creditors;
  - j. funders, including shareholders, private equity houses and debenture holders of the CD/entity;
  - k. debtors of the CD/entity;
  - l. close or immediate family of the entity (if an individual) or its officers (if a corporate body);
  - m. others with commercial relationships with the firm/IPE or personal relationships with an individual within the firm.
- 3.28 *An IP shall ensure that the firm/IPE has policies and procedures to identify relationships between individuals within the firm/IPE and third parties in a way that is proportionate and reasonable in relation to the insolvency appointment being considered.***
- 3.29 *Before accepting an insolvency assignment, an IP shall take reasonable steps to identify circumstances (including any relationships) that might create a conflict of interest, and therefore a threat to compliance with one or more of the fundamental principles. Such steps shall include identifying:***
- a) *the nature of the relevant interests and relationships between all stakeholders; and***
  - b) *the nature, extent and timing of any prior work for the CD/entity or connected entities and its implication for all stakeholders.***
- 3.30 An effective process to identify actual or potential conflicts of interest will take into account factors such as:
- a. the nature of any previous work carried out for the CD/entity or connected entities;
  - b. the nature of the insolvency assignment;

- c. the size of the firm/IPE;
- d. the size and nature of the client base;
- e. the structure of the firm/IPE, for example, the number and geographic location of offices.

**3.31 *Where a professional or personal relationship has been identified the IP shall evaluate the impact of the relationship in the context of the insolvency assignment being sought or considered, even after fulfilling the eligibility criteria as prescribed under law and/or regulations.***

3.32 Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles include the following:

- a) The nature of the previous duties undertaken by a firm/IPE during an earlier relationship with the CD/entity.
- b) The impact of the work conducted by the firm/IPE on the financial state and/or the financial stability of the CD/entity in respect of which the insolvency assignment is being considered.
- c) Whether the fees for the work or the costs incurred is or was significant to the IP, the IP's department or the firm/IPE itself.
- d) Whether the fee received for the work or the cost of the work was substantial.
- e) How recently any professional work was carried out. It is likely that greater threats will arise (or could be seen to arise) where work has been carried out within the previous three years. However, there might still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there might be situations whereby the nature of the work carried out was such that a considerably longer period will need to have elapsed before any threat can be reduced to an acceptable level.
- f) Whether the insolvency assignment being considered involves consideration of any work previously undertaken by the firm/IPE for that CD/entity.
- g) The nature of any personal relationship and the proximity of the IP to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the CD/entity in relation to which the insolvency assignment relates.
- h) Whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors of a company to which the insolvency assignment relates).
- i) The nature of any previous duties undertaken by an individual within the firm/IPE during any earlier relationship with the CD/entity.
- j) The extent of the insolvency team's familiarity with the individuals connected with the CD/entity.

- 3.33 When evaluating the nature of any previous work done, an IP is expected to take into account any work done, even if it was not subject to a formal engagement and / or did not generate a fee for the firm/IPE.
- 3.34 *Having identified and evaluated a relationship that might create a threat to the fundamental principles, the IP shall consider their response including possible actions to reduce the threat to an acceptable level.***
- 3.35 Examples of actions which might be safeguards to reduce the level of threat created by a professional or personal relationship to an acceptable level are considered in paragraph 3.12 of this code. Examples of other safeguards include:
- a) terminating (where possible) the financial or business relationship giving rise to the threat.
  - b) disclosure of the relationship to CoC/IPA/IBBI and any financial benefit received by the firm/IPE (whether directly or indirectly) to the CD/entity or to those on whose behalf the insolvency practitioner would be appointed to act.
- 3.36 While an IP might not be able to withdraw from the team, the threat created by another individual's professional or personal relationship could be reduced to an acceptable level by that individual withdrawing from the insolvency team.
- 3.37 *An IP could encounter situations in which no action can be taken to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship or a significant personal relationship. Where this is case the IP shall not accept the insolvency assignment.***
- 3.38 *An IP shall always consider the perception of others when deciding whether to accept an insolvency assignment.***
- 3.39 While an IP might regard a relationship as not being significant to the insolvency assignment, the perception of others could differ and this might in some circumstances be sufficient to make the relationship significant. In considering perception, this needs to be considered on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the IP at that time.
- 3.40 *The IP shall document:***
- a) ***the facts.***
  - b) ***any communications with, and parties with whom the matters were discussed.***
  - c) ***the courses of action considered, the judgments made and the decisions that were taken.***
  - d) ***the safeguards applied to address the threats when applicable.***
  - e) ***how the matter was addressed.***
  - f) ***where relevant, why it was appropriate to accept or continue the insolvency***

*assignment.*

**3.41** *The records an IP maintains, in relation to the steps that they took and the conclusions that they reached, shall be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of their actions.*

**3.42** *An IP shall remain alert to changes over time in the nature of services, interests and relationships that might create a conflict of interest while acting as an insolvency office holder.*

## **SPECIALIST ADVICE AND SERVICES**

**3.43** If an IP obtains specialist advice or services from others, this might create a self-interest threat to compliance with one or more of the fundamental principles.

**3.44** *When an IP intends to rely on the advice or work of another, from within the firm/IPE or by a third party, the IP shall evaluate whether such advice or work is warranted.*

**3.45** *Any advice or work contracted shall reflect best value and service for the work undertaken.*

**3.46** Factors that are relevant in evaluating best value and service are:

- a. the cost of the service;
- b. the expertise and experience of the service provider;
- c. that the provider holds appropriate regulatory authorisations;
- d. the professional and ethical standards applicable to the service provider.

**3.47** *The IP shall review arrangements periodically to ensure that best value and service continue to be obtained in relation to each insolvency assignment.*

**3.48** IP shall report any misconduct or gross negligence observed on part of any of the service provider to the respective professional regulator of that service provider.

**3.49** *The IP shall document the reasons for choosing a particular service provider.*

**3.50** Threats to the fundamental principles (for example familiarity threats and self-interest threats) can arise if services are provided by a regular source within the firm/IPE or by a party with whom the IP, firm/IPE, or an individual within the firm/IPE, has a business or personal relationship.

**3.51** Business or personal relationships might include the following:

- a. an immediate family member e.g. spouse, parent, child, sibling etc.
- b. a business partner;
- c. any company or business in which there are common shareholdings with the firm/IPE, or



which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

- 3.52 While the IP might regard a relationship as not being a cause for concern, the perception of others could differ. In considering perception, it is expected that the IP considers this on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the IP at that time.
- 3.53 Examples of actions that might be safeguards to address such threats include:
- applying clear guidelines and policies within the firm/IPE on such relationships;
  - disclosure of the relevant relationships and the process undertaken to evaluate best value and service to the general body of creditors or the creditors' committee if one exists;
  - the benefit of negotiated commercial terms such as volume or settlement discounts being received in full by the insolvent estate.

## **INDUCEMENTS, INCLUDING GIFTS AND HOSPITALITY**

- 3.54 In relation to an insolvency assignment, offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behaviour.
- 3.55 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality, to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:
- gifts.
  - hospitality.
  - entertainment.
  - political or charitable donations.
  - appeals to friendship and loyalty.
  - employment or other commercial opportunities.
  - preferential treatment, rights or privileges.
- 3.56 An inducement might be offered to the firm, an individual within the firm/IPE or a close or immediate family member, as well as to the IP personally.
- 3.57 Inducements offered to others will still give rise to threats to compliance with the fundamental principles.
- 3.58 *There may be laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The IP shall***

***obtain an understanding of relevant laws and regulations and comply with them when the insolvency practitioner encounters such circumstances.***

3.59 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

***3.60 An IP shall not offer, or encourage others to offer, any inducement that is made, or which the IP considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.***

***3.61 An IP shall not accept, or encourage others to accept, any inducement that the IP concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.***

3.62 A breach of the fundamental principle of integrity arises when an IP offers or accepts, or encourages others to offer or accept, an inducement where the intent is to improperly influence the behaviour of the recipient or of another individual.

3.63 The determination of whether there is actual or perceived intent to improperly influence behaviour requires the exercise of professional judgment. Relevant factors to consider might include:

- a. The nature, frequency, value and cumulative effect of the inducement.
- b. Timing of when the inducement is offered relative to any action or decision that it might influence.
- c. Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- d. Whether the inducement is ancillary to the insolvency assignment, for example, offering or accepting lunch in connection with a business meeting.
- e. Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the firm/IPE, such as other suppliers to the provider of the inducement.
- f. The roles and positions of the individuals offering or being offered the inducement.
- g. Whether the IP knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the recipient.
- h. The degree of transparency with which the inducement is offered.
- i. Whether the inducement was required or requested by the recipient.
- j. The known previous behaviour or reputation of the offeror.
- k. Whether inducement was accepted or rejected by IP.

3.64 Examples of actions that might be safeguards to address such threats include:

- a. informing senior management of the firm/IPE or those charged with governance of the

offer or regarding the offer.

- b. amending or terminating the business relationship with the offeror.

3.65 The requirements and application material set out in the conceptual framework apply when an IP has concluded there is no actual or perceived intent to improperly influence the behaviour of the recipient or of another.

3.66 If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

3.67 Examples of circumstances where offering or accepting such an inducement might create threats even if the IP has concluded there is no actual or perceived intent to improperly influence behaviour include:

- Self-interest threats
  - An IP is offered hospitality from the prospective purchaser of an insolvent business.
- Familiarity threats
  - An IP regularly takes someone to an event.
- Intimidation threats
  - An IP accepts hospitality, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

3.68 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

- a. Declining or not offering the inducement.
- b. Transferring responsibility for the provision of professional services to another individual who the IP has no reason to believe would be, or would be perceived to be, improperly influenced when providing the services.

3.69 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

- a. Being transparent with senior management of the firm/IPE about offering or accepting an inducement.
- b. Registering the inducement in a log monitored by senior management of the firm/IPE or another individual responsible for the firm/IPE's ethics compliance or maintained by the recipient.
- c. Having an appropriate reviewer, who is not otherwise involved in the insolvency assignment, review any work performed or decisions made by the IP with respect to the provider of the inducement to the IP.
- d. Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to a member of senior management of the firm/IPE or of those who offered the inducement.

- e. Reimbursing the cost of the inducement, such as hospitality, received.
- f. As soon as possible, returning the inducement, such as a gift, after it was initially accepted.

**3.70 *An IP shall remain alert to potential threats to the IP's compliance with the fundamental principles created by the offering of an inducement by or to an immediate or close family member of the IP.***

**3.71 *Where the IP becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence behaviour, or considers a reasonable and informed third party would be likely to conclude such intent exists, the IP shall advise the immediate or close family member not to offer or accept the inducement.***

## **ADVERTISING, MARKETING AND OTHER PROMOTIONAL ACTIVITIES**

3.72 When an IP seeks an insolvency assignment or work that might lead to an insolvency assignment through advertising or other forms of marketing or promotional activity, there might be threats to compliance with the fundamental principles, including integrity and professional behaviour.

**3.73 *When undertaking marketing or promotional activities, an IP shall not bring the profession into disrepute. An IP shall be honest and truthful and shall not make:***

- a) exaggerated claims for the services offered by, or the qualifications or experience of, the IP; or
- b) disparaging references or unsubstantiated comparisons to the work of others.

**3.74 *When considering whether to accept an insolvency assignment an IP shall be satisfied that any advertising, marketing or other form of promotional activity pursuant to which the insolvency assignment might have been obtained:***

- a) *has been fair and not misleading;*
- b) *has avoided unsubstantiated or disparaging statements;*
- c) *has complied with relevant codes of practice and guidance in relation to advertising;*
- d) *has been clearly distinguishable as advertising or marketing material, and has been legal, decent, honest and truthful.*

**3.75 *Where an IP or the firm/IPE obtains work via a third party or a third party conducts marketing activities on behalf of the IP or the firm/IPE, the IP shall be responsible for ensuring that the third party follows the application material above.***

3.76 When obtaining work via a third party or using a third party to conduct marketing activities IPs have a responsibility to ascertain that a referral manner is in accordance with this Code because IPs cannot do, or be seen to do, through others what they cannot do themselves.

- 3.77 IP should also abide by specific regulations or guidelines, if any, on the matter, as prescribed by IP's parent professional body or IBBI/IPA.

## **DEALING WITH THE ASSETS OF A CD/ENTITY**

- 3.78 When an IP realises assets, this might create threats to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

**3.79 *Except in circumstances which clearly do not impair the IP's objectivity, IPs appointed to any insolvency appointment in relation to an entity, shall not themselves acquire, directly or indirectly, any of the assets of an CD/entity, nor knowingly permit any individual within the firm/IPE, or any close or immediate family member of an individual with in the firm/IPE, directly or indirectly, to do so.***

- 3.80 Examples of actions that might be safeguards to address threats to objectivity include:

- a) obtaining an independent valuation of the assets or business being sold;
- b) considering other potential purchasers.

- 3.81 It is important for an IP to take care to ensure (where to do so does not conflict with any legal or professional obligation) that their decision-making processes are transparent, understandable and readily identifiable to all third parties who could be affected by a sale or proposed sale.

## **INSOLVENCY PRACTITIONER AS AN EMPLOYEE**

- 3.82 Where an IP is an employee of a firm/IPE, such IP might face particular threats to compliance with the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances. It does not describe all of the facts and circumstances, including professional activities, interests and relationships, that could be encountered by IP who is an employee, which create or might create threats to compliance with the fundamental principles. Therefore, the conceptual framework requires IPs who are employees to be alert for such facts and circumstances.

- 3.83 On occasion, where the IP is an employee or is considering accepting an offer of employment, the IP might be unable to address the threats to compliance with the fundamental principles. In those circumstances the IP will need to consider whether they can accept the offer of employment or resign from their current employment.

- 3.84 An IP might be an employee, contractor, partner, or director within the firm/IPE. The legal form of the relationship of the IP with their employer has no bearing on the ethical responsibilities placed on the IP.

**3.85 *An IP who is an employee shall comply with the fundamental principles.***

- 3.86 The IP who is an employee might have a reduced ability to control or influence matters within the firm/IPE which might affect the actions available as safeguards to address threats to compliance with the fundamental principles.
- 3.87 The following are examples of facts and circumstances that might create threats for an IP as an employee:
- a. being eligible for a bonus related to achieving targets or profits;
  - b. having inadequate resources for the performance of an insolvency assignment;
  - c. a lack of control over processes and internal governance;
  - d. being threatened with dismissal or demotion over a disagreement about an insolvency assignment;
  - e. an individual attempting to influence the decision-making process of the IP.
- 3.88 *An IP shall consider whether there are appropriate safeguards available to ensure compliance with the fundamental principles before accepting an offer of employment.***
- 3.89 Examples of actions that might be safeguards to address such threats prior to accepting an offer of employment include:
- a) Appropriate provisions within any contract of employment or separate legal agreement with the employer acknowledging that the IP has a duty to comply with the Code of Ethics of their IPA and that the IP will be able to take all necessary steps they deem necessary to comply with the fundamental principles.
  - b) Ensuring that policies and procedures are in place within the firm/IPE to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency assignment.
  - c) Ensuring that the firm/IPE has published policies and procedures to encourage and empower individuals within the firm/IPE to communicate to senior levels within the firm/IPE any issue relating to compliance with the fundamental principles that concern them.
  - d) Obtaining sufficient information to obtain an understanding of the structure and ownership of the firm/IPE.
- 3.90 If no actions are available to address these threats, it is expected that the IP considers whether it is appropriate to accept the offer of employment.
- 3.91 The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm/IPE, or the employing organization that can enhance the IP acting ethically might also help identify threats to compliance with the fundamental principles. In this context such factors could include:
- a) Policies and procedures within the firm/IPE to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency assignment.

- b) Published policies and procedures to encourage and empower individuals within the firm/IPE to communicate to senior levels within the firm/IPE any issue relating to compliance with the fundamental principles that concern them.

3.92 Examples of actions that might be safeguards to address threats at a particular time include:

- a) reporting concerns to senior management within the firm/IPE;
- b) seeking legal advice or advice from their regulatory bodies;
- c) reporting the concerns to their authorising bodies.

3.93 The more senior the position of the IP, the greater will be the ability and opportunity to access information, and to influence policies, decisions made and actions taken by others involved with the firm/IPE. To the extent that they are able to do so, taking into account their position and seniority in the organisation, IPs are expected to encourage and promote an ethics-based culture in the organisation. Examples of actions that might be taken include the introduction, implementation and oversight of:

- a) ethics education and training programs.
- b) ethics and whistle-blowing policies.
- c) policies and procedures designed to prevent non-compliance with laws and regulations.

**3.94 *Where threats to compliance with the fundamental principles cannot be eliminated or reduced to an acceptable level then the IP shall not accept the insolvency assignment or refuse to remain associated with the matter creating the conflict.***

3.95 In some circumstances this could mean taking steps to resign from the employment.

## **RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS**

3.96 An IP might encounter or be made aware of non-compliance or suspected non-compliance in the course of carrying out professional activities. This section guides the IP in assessing the implications of the matter and the possible courses of action when responding to non-compliance or suspected non-compliance with:

- a) Laws and regulations generally recognised to have a direct effect on the conduct of an appointment.
- b) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the outcome of an appointment.
- c) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.

- 3.97 A distinguishing mark of the insolvency profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the IP are:
- a) To comply with the principles of integrity and professional behaviour;
  - b) By alerting senior executives of CD/entity or, where appropriate, those charged with governance of the CD/entity, to seek to:
    - i. Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
    - ii. Deter the commission of the non-compliance where it has not yet occurred; and
  - c) By alerting senior executives or, where appropriate, those charged with governance of the employing organisation, to seek to:
    - i. Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
    - ii. Deter the non-compliance where it has not yet occurred; and
  - d) To take such further action as appropriate in the public interest.
- 3.98 Non-compliance with laws and regulations (“non-compliance”) comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:
- a) CD/entity over which the IP has been appointed;
  - b) those charged with governance of an CD/entity;
  - c) management of an CD/entity;
  - d) other individuals working for or under the direction of an CD/entity;
  - e) the IP’s employing organisation;
  - f) those charged with governance of the employing organisation;
  - g) management of the employing organisation;
  - h) other individuals working for or under the direction of the employing organisation.
- 3.99 Examples of laws and regulations which this section addresses include those that deal with:
- a. insolvency processes and procedures.
  - b. fraud, corruption and bribery.
  - c. money laundering, terrorist financing and proceeds of crime.
  - d. securities markets and trading.
  - e. banking and other financial products and services.
  - f. data protection.
  - g. tax and pension liabilities and payments.



- h. environmental protection.
- i. public health and safety

**3.100** *There are legal or regulatory provisions governing how IPs should address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section, for example, anti-money laundering legislation. When encountering such non-compliance or suspected non-compliance, the IP shall obtain an understanding of those legal or regulatory provisions and comply with them, including:*

- a) any requirement to report the matter to an appropriate authority; and*
- b) any prohibition on alerting the relevant party.*

**3.101** *If protocols and procedures exist within the IP's employing organisation to address non-compliance or suspected non-compliance, the IP shall consider them in determining how to respond to such non-compliance.*

**3.102** *Where an IP becomes aware of a matter to which this section applies, the steps that the IP takes to comply with this section shall be taken on a timely basis. In taking timely steps, the IP shall have regard to the nature of the matter and the potential harm to the interests of the CD/entity, creditors, employees, investors, or the general public.*

**3.103** *If an IP becomes aware of information concerning non-compliance or suspected non-compliance, the IP shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might be about to occur.*

**3.104** *The IP shall also consider whether further action is needed in the public interest.*

**3.105** Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- a. the legal and regulatory framework;
- b. the appropriateness and timeliness of the response of management and, where applicable, those charged with governance;
- c. the urgency of the situation;
- d. the involvement of management or those charged with governance in the matter;
- e. the likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.
- f. the likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

**3.106** Further action by the IP might include:

- a. Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- b. Resigning from the appointment where permitted by law or regulation.

3.107 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- a. Whether doing so would be contrary to law or regulation.
- b. Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.

**3.108 *If the IP determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, that disclosure is permitted pursuant to paragraph 1.28(d) of this Code. When making such disclosure, the IP shall act in good faith and exercise caution when making statements and assertions. The IP shall also consider whether it is appropriate to inform the CD/entity of the IP's intentions before disclosing the matter.***

**3.109 *In exceptional circumstances, the IP might become aware of actual or intended conduct that the IP has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the CD/entity, the IP shall exercise professional judgment and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. If disclosure is made, that disclosure is permitted pursuant to paragraph 1.28(d) of this Code.***

3.110 In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the IP is encouraged to document:

- a. the matter;
- b. the results of discussion with management and, where applicable, those charged with governance and other parties;
- c. how management and, where applicable, those charged with governance have responded to the matter;
- d. the courses of action the IP considered, the judgments made and the decisions that were taken;
- e. how the IP is satisfied that the IP has fulfilled the responsibility.

**3.111 *If, in the course of carrying out professional activities, a member of the insolvency team becomes aware of information concerning non-compliance or suspected non-compliance, the team member shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur.***

**3.112 *If the team member identifies or suspects that non-compliance has occurred or might occur, the team shall inform an immediate superior to enable the superior to take appropriate***

***action. If the team member's immediate superior appears to be involved in the matter, the team member shall inform the next higher level of authority within the employing organisation.***

**3.113** In exceptional circumstances, the team member may determine that disclosure of the matter to an appropriate authority is an appropriate course of action. If the team member does so, that disclosure is permitted pursuant to paragraph 1.28(d) of this Code. When making such disclosure, the team member shall act in good faith and exercise caution when making statements and assertions.

**3.114** In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the team member is encouraged to have the following matters documented:

- a. the matter;
- b. the results of discussions with the team member's superior, management and, where applicable, those charged with governance and other parties;
- c. how the team member's superior has responded to the matter;
- d. the courses of action the team member considered, the judgments made and the decisions that were taken.

## Case Law References

The following references to case laws and disciplinary actions on some of the ethical matters, can be practical guide, in non-exhaustive manner.

### 1. Integrity & Objectivity

- a. IP shall discharge his statutory responsibilities as IRP/RP to ensure running CD as going concern. An IP is not just another professional. He is dealing with a CD in distress. He needs to go beyond the call of duty to address the distress and cannot just run away because of non-receipt of fee.<sup>1</sup>
- b. RP must not compromise his independence and shall not take decisions under the influence of CoC since the responsibilities of CoC and IP are clearly demarcated by the Code. Therefore, both must not encroach upon each other's role and adding burden on CD. Fee as per Regulation 4 of Liquidation Process Regulations, 2016 is very clear on liquidator's fee and IP, by disregarding the provisions of the Regulation cannot display casual attitude and lack of understanding of law. IP must obtain complete control over the operations of the CD and post taking control over all bank accounts and operations of CD, IP cannot remain ignorant of any receipt in the bank account of CD or award in favour of CD.<sup>2</sup>
- c. IP must maintain integrity by being honest, straightforward, and forthright in all professional relationships. IP must ensure that no unnecessary benefits are provided to a third party at the expense of the CIRP and cause an additional burden on the ailing CD.<sup>3</sup>
- d. RP should ensure that his conduct would not undermine the credibility of the process and should follow the Code of Conduct while performing his duties. It is the duty of the RP to conduct CIRP with integrity, transparency, and accountability in the process, thereby ensuring an effective insolvency regime, which would in turn foster public confidence.<sup>4</sup>
- e. Insolvency Professional must act with objectivity and maintain integrity by being honest, straightforward and forthright in his all professional relationships and has to act with reasonable care and has to follow due care and the provisions of the Code.<sup>5</sup>
- f. RP does not have jurisdiction to determine any claim. Further, if the NCLT after going through the records and evidence comes to a certain conclusion that a claim amount is payable, RP should not challenge the same.<sup>6</sup>
- g. IP must act with objectivity in his professional dealings ensuring decisions are made without any bias, conflict of interest, coercion etc., leading to clean conduct before various authorities including the AA.<sup>7</sup>

<sup>1</sup> IBBI - Disciplinary Committee Case No. IBBI/DC/14/2018, Order dated 28.01.2019.

<sup>2</sup> IBBI Disciplinary Committee Case No. IBBI/DC/22/2020, Order dated 21.04.2020.

<sup>3</sup> IBBI Disciplinary Committee Case No. IBBI/DC/26/2020, Order dated 08.06.2020.

<sup>4</sup> NCLT Mumbai Bench C.P. No. 2891/I&BP/2019, Order dated 23.01.2020.

<sup>5</sup> NCLT, New Delhi Bench-III C.P. No. 2891/I&BP/2019, Order dated 04.09.2020.

<sup>6</sup> NCLAT in the matter of Mr. S. Rajendran, Resolution Professional of PRC International Hotels Private Limited v. Jonathan Muralidarane, Order dated 01.10.2019.

<sup>7</sup> NCLT Kolkata Bench in the matter of:- Basavaraj Koujalagi & 82 others v. Sumit Binani, liquidator of Gujarat NRE Coke Limited.

- h. The responsibilities undertaken by an IP requires highest level of integrity, reputation, and character. Pendency of criminal proceedings against a person adversely impacts his reputation and makes him a person who is not fit and proper to remain as an IP.<sup>8</sup>

## **2. Independence & Impartiality**

- a. IP shall take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. CoC or its members do not own the assets of the company rather they hold the assets as trustees for the benefit of all stakeholders. The gain or pain emanating from the resolution, therefore, need to be shared by the stakeholders within a framework of fairness and equity.<sup>9</sup>
- b. Transparency cannot be used to override the explicit statutory provisions, indicating compromise of professional independence to make undue /unlawful gains for himself or his related parties.<sup>10</sup>
- c. IP at all times must abide and comply with the code and regulations framed thereunder. IP shall not at any time, use the resolution plan as tool for OTS/ Recovery plan to off claims of various creditors. IP shall maintain complete independence in his conduct during the CIRP and shall not involve in any collusion with the RA and the CoC to vitiate the process and frustrate the solemn objective of the Code.<sup>11</sup>
- d. The object of the code is to revive a company under the CIRP and not to liquidate it. RP should perform his statutory duties and responsibilities as laid down in the provisions of the Code without any external factors.<sup>12</sup>
- e. There cannot be any material difference in Public Notice and Sale Certificate. Liquidator must know what has been sold and what has been delivered to Auction Purchaser. Liquidator is bound by the provisions and regulations and cannot make a litigation an adversarial litigation.<sup>13</sup>

## **3. Professional Competence**

- a. Code provides for an institutional mechanism in the form of CoC to take decisions and prescribes that such decisions shall be taken in a meeting of the CoC. If the law provides for a certain manner of doing something, it must be done in that manner only.<sup>14</sup>
- b. IP cannot charge abnormally high fee in relation to the services to inflate expenses.<sup>15</sup>

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<sup>8</sup> Delhi High Court in W.P. (C) 9520/ 2017, CM Appl. 38726-38727/2017], Order dated 05.02.2018.

<sup>9</sup> IBBI Disciplinary Committee Case No. IBBI/DC/15/2019-20, Order dated 14.11.2019.

<sup>10</sup> IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019.

<sup>11</sup> IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2018.

<sup>12</sup> NCLT Ahmedabad Bench in the matter of: Sunrise Poly films Pvt. Ltd. v. Punjab National Bank, Inv P.5 of 2018, Order dated 04.05.2018.

<sup>13</sup> NCLAT in Company Appeal (AT) (Ins) No. 22 of 2020.

<sup>14</sup> IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2018.

<sup>15</sup> IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019.

- c. IP must always abide and comply with the code and regulations framed thereunder.<sup>16</sup>
- d. IP to upgrade his professional knowledge and skills to render competent professional service and cannot act negligently while performing his functions and duties under the Code, thus contravening the code of conduct. IP to conduct CIRP with utmost caution and Professional Knowledge. The solemn purpose of the Code is to the maximise the value of assets and a critical element in achieving the objective is by ensuring transparent and credible determination of value of the assets to facilitate comparison and informed decision making. Therefore, it is essential that only qualified, accountable and professional individuals are allowed to conduct valuation under the Code. IP shall explicitly indicate its registration as IP with IBBI and capacity as IRP/RP of CD while communicating with the stakeholders.<sup>17</sup>
- e. IP shall discharge his statutory responsibilities as IRP/RP and must be aware, maintain and upgrade his professional knowledge and skills to render services under this code. Mere registration as IP without knowledge of code will not serve the purpose of fulfilling the solemn objective of the code.<sup>18</sup>
- f. IP shall avoid conflict of interest, and act with integrity and independence. IP shall not be embodiment of the pretexts.<sup>19</sup>
- g. An IP can take support by appointing accountants, legal or other professionals as may be necessary. However, he cannot outsource duties assigned to himself under the regulations.<sup>20</sup>
- h. Conducting COC meetings beyond the CIRP period and discussing agendas other than as directed by AA are beyond the provisions of the code and do not explicitly fall under the ambit of managing the operations of the corporate debtor.<sup>21</sup>
- i. IP shall all the time comply with the rules and regulations of the code and must maintain and upgrade his professional Knowledge to render competent Professional services.<sup>22</sup>
- j. The core duty of IRP is to receive, collate and verify claims which cannot be further delegated to CoC, who in turn cannot be allowed to do the same in purported exercise of Commercial Wisdom. Duty of RP is to maintain an updated list of Claim and he cannot change the status of an existing creditor on his own.<sup>23</sup>
- k. IP shall not unnecessarily indulge into forum shopping. IP shall not take any step or initiate any proceeding which shall impact the main proceeding pending before any Forum which is adjudicating the main issue.<sup>24</sup>

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<sup>16</sup> IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2018.

<sup>17</sup> IBBI Disciplinary Committee Case No. IBBI/DC/25/2020, Order dated 02.06.2020.

<sup>18</sup> IBBI Disciplinary Committee Case No. IBBI/DC/14/2018, Order dated 28.01.2019.

<sup>19</sup> IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019.

<sup>20</sup> IBBI Disciplinary Committee Case No. IBBI/DC/21/2020, Order dated 20.04.2020.

<sup>21</sup> IBBI Disciplinary Committee Case No. IBBI/DC/26/2020, Order dated 08.06.2020.

<sup>22</sup> NCLAT in Company Appeal (AT) (Insolvency) No. 1427 of 2019, Order dated 28.02.2020.

<sup>23</sup> NCLAT in Company Appeal (AT) (Insolvency) No. 519 of 2020, Order dated 18.12.2020.

<sup>24</sup> NCLT Kolkata Bench in CP (IB) No.543/KB/2017, Order dated 11.05.2021.

- l. RP should adhere to the code of conduct and should not engage in any activity or take any step which might amount to contempt of court.<sup>25</sup>
- m. The role of an IP is that of an officer of the Court. While performing his duties, the IRP/ RP may approach the adjudicating authority i.e., the NCLT for seeking any assistance during the CIRP.<sup>26</sup>
- n. While performing his duties, the IRP or the RP may approach the Adjudicating Authority i.e., the NCLT for seeking any assistance during the CIRP.<sup>27</sup>
- o. Resolution Professional should conduct the entire resolution process and assists and supervise the stakeholders in taking decisions.<sup>28</sup>

#### **4. Representation of correct facts and correcting misapprehensions**

- a. IP shall refrain from being involved in any action that would bring disrepute to the profession. Every Professional is aware of the implications of using the name IBBI which has been used to refer to the Board, a statutory body, for any purpose under the code by custom and practice.<sup>29</sup>
- b. No person other than IP shall render services under the code. To gain undue advantage IP cannot misrepresent facts and any vendor promoting website cannot publish statements on his own unless specifically instructed.<sup>30</sup>
- c. The Code provides for an IP to run a CD in distress. He cannot run away from the CD when it needs the IP the most. The conduct of IP shall sync with his statutory responsibilities and objectives of the code without any outsource influences. No single creditor, whether secured or unsecured, irrespective of his voting power or share, can substitute CoC.<sup>31</sup>
- d. RP shall run the CIRP in true spirit and shall not endeavour to mislead the Authorities to fulfil any mala fide objectives. RP cannot reject the explicit unambiguous mandate of the law or question the authority of legislature to make such a law. RP cannot work or run CIRP in nexus and collusion with RA or FC in the CoC to frustrate the solemn objectives of the Code.<sup>32</sup>

#### **5. Timeliness**

- a. An IP must diligently perform his duties and must adhere to the timelines prescribed under the provisions of the Code and the regulations made thereunder. Compliance of law made after time as stipulated by the Code cannot be treated as 'compliance' of law in the strict sense.<sup>33</sup>
- b. The IBBI is extremely particular about judicious use of time and resources of all stakeholders involved in the CIRP and expects diligence of highest level from IPs at all times. Breaking a

<sup>25</sup> NCLAT in Comp. Appeal (AT) (Insolvency) 304 of 2017, Order dated 09.02.2018.

<sup>26</sup> NCLT Mumbai Bench in C.P. No.(IB)1882(MB)/2018, Order dated 16.01.2019.

<sup>27</sup> NCLT Kolkata Bench in C.P (IB) No. 363/KB/17, Order dated 22.12.2017.

<sup>28</sup> Supreme Court of India in WP (Civil) No. 744 of 2017, Order dated 16.01.2019.

<sup>29</sup> IBBI Disciplinary Committee Case No. IBBI/DC/09/2018, Order dated 06.09.2018.

<sup>30</sup> IBBI Disciplinary Committee Order No. IBBI/ Disc. Com./2017/1 (F. No. IBBI/IP/DC/2017/29/1), Order dated 15.11.2017.

<sup>31</sup> IBBI Disciplinary Committee Case No. IBBI/DC/07/2018, Order dated 23.08.2018.

<sup>32</sup> IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2018.

<sup>33</sup> IBBI- Disciplinary Committee Case No. IBBI/DC/20/2020, Order dated 20.03.2020.

substantive resolution into many resolutions is not encouraged which has the potential to create indecision, delay and wastage of resources.<sup>34</sup>

- c. RP is expected to function with a strong sense of urgency and with utmost care and diligence and shall understand the importance of timelines during CIRP.<sup>35</sup>
- d. Failure to consider a claim not only deprives the claimant of his rights, but also deprives the potential resolution applicants to have complete information required to submit a complete resolution plan and frustrate the sole objective of the code.<sup>36</sup>
- e. IP must not display casual attitude towards his responsibilities and shall take all adequate measures to reverse any such transaction, moment it comes to his notice. The success of the process is contingent upon the competence of the IRP and the CoC.<sup>37</sup>
- f. Time is the essence of the Code and IRP should take every step to complete the resolution process within the stipulated time without any delay.<sup>38</sup>

## **6. Confidentiality**

- a. RP should obtain a confidentiality undertaking from the directors who participate in CoC and has received Resolution Plan.<sup>39</sup>

## **7. Occupation, Employability & Restrictions**

- a. IP shall refrain from taking too many assignments, if he is unlikely to devote time to each of his assignment.<sup>40</sup>
- b. CIRP is to be conducted in a fair and unbiased manner.<sup>41</sup>
- c. The Code casts an obligation upon the IP to co-operate with the Board and provide all information and records as may be required by the Board.<sup>42</sup>
- d. The RP must ensure that all statutory requirement viz submission of proceedings to IBBI etc under code are being adhered to IP at all times must abide and comply with the code and regulations framed thereunder.<sup>43</sup>

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<sup>34</sup> IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019.

<sup>35</sup> IBBI Disciplinary Committee Case No. IBBI/DC/18/2020, Order dated 27.02.2020.

<sup>36</sup> IBBI Disciplinary Committee Case No. IBBI/Ref-Disc. Comm./02/2018, Order dated 13.04.2018.

<sup>37</sup> IBBI Disciplinary Committee Case No. IBBI/DC/25/2020, Order dated 02.06.2020.

<sup>38</sup> NCLT New Delhi Bench in the matter of: Rana Global Ltd (CD), Order dated 26.04.2018.

<sup>39</sup> Supreme Court of India in Civil Appeal No. 8430 of 2018, Order dated 31.01.2019.

<sup>40</sup> IBBI Disciplinary Committee Case No. IBBI/DC/15/2019, Order dated 21.02.2019; NCLT Hyderabad Bench in CP (IB) 111/7/HDB/2017, Order dated 07.08.2017.

<sup>41</sup> NCLAT in State Bank of India Vs. M/s. Metenere Ltd. [2020] 114 NCLAT.

<sup>42</sup> IBBI Disciplinary Committee Case No. IBBI/DC/18/2020, Order dated 27.02.2020.

<sup>43</sup> IBBI Disciplinary Committee Case No. IBBI/DC/12/2018, Order dated 12.11.2020.



- e. IP shall submit/respond to every record/ query of IBBI/IPA in prompt manner, which empowers the Board to monitor the performance of an IP. It is unbecoming of a professional to ignore repeated requests of any stakeholder and the Board for the entire CIRP period.<sup>44</sup>
- f. IP must not act with biasness and negligence and shall take reasonable care while performing his duties.<sup>45</sup>
- g. The Code attempts to ensure transparency in the functioning and performance of IPs to ensure that the resolution process is concluded within the timelines prescribed hence it should be followed by the RP.<sup>46</sup>

## **8. Remuneration & Costs**

- a. IP must charge reasonable fee commensurate with the reasonable work to be undertaken, and shall not inconsistent with applicable regulations.<sup>47</sup>
- b. The mode of charging remuneration shall be consistent with the applicable regulations.<sup>48</sup>
- c. Fee as per Regulation 4 of Liquidation Process Regulations, 2016 is very clear on liquidator's fee and IP, by disregarding the provisions of the Regulation cannot display casual attitude and lack of his understanding of the law<sup>49</sup>
- d. RP shall always have reasonable and satisfactory justification for the CIRP costs for the appointment of various professionals.<sup>50</sup>
- e. IP is required to take an independent decision w.r.t. audit or any other matter rather than abdicating the authority in favour of CoC and allowing them to usurp RP's authority.<sup>51</sup>
- f. Absence of law does not entitle an IP to charge unreasonable fee which is not reasonable reflection of work undertaken by him.<sup>52</sup>
- g. Company cannot be termed as "professional" unless it does have any authorisation of a regulator of any profession to render any professional service, and its conduct and performance subject to oversight of any regulator of any profession.<sup>53</sup>

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<sup>44</sup> IBBI Disciplinary Committee Case No. IBBI/Ref-Disc. Comm./02/2018, Order dated 13.04.2018.

<sup>45</sup> IBBI Disciplinary Committee Case No. IBBI/DC/23/2020, Order dated 27.04.2020.

<sup>46</sup> IBBI Disciplinary Committee Case No. IBBI/DC/15/2019-20, Order dated 14.11.2019.

<sup>47</sup> IBBI Disciplinary Committee Case No. IBBI/DC/16/2019, Order dated 17.04.2019; NCLT Hyderabad Bench in C.P. (IB) 4322/9/HDB/2017, Order dated 22.11.2017.

<sup>48</sup> IBBI Disciplinary Committee Case No. IBBI/DC/08/2018, Order dated 23.08.2018.

<sup>49</sup> IBBI Disciplinary Committee Case No. IBBI/DC/22/2020, Order dated 21.04.2020.

<sup>50</sup> IBBI Disciplinary Committee Case No. IBBI/DC/23/2020, Order dated 27.04.2020.

<sup>51</sup> IBBI Disciplinary Committee Case No. IBBI/DC/23/2020, Order dated 27.04.2020.

<sup>52</sup> IBBI Disciplinary Committee Case No. IBBI/DC/07/2018, Order dated- 23.08.2018.

<sup>53</sup> IBBI Disciplinary Committee Case No. IBBI/DC/26/2020, Order dated 08.06.2020.

## Terms Used/Acronyms

AA	Adjudicating Authority (NCLT)
AFA	Authorization for Assignment
AR	Authorized Representative
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
COC	Committee of Creditors
CPE	Continuing Professional Education
FC	Financial Creditor
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code, 2016
IM	Information Memorandum
IP	Insolvency Professional
IPA	Insolvency Professional Agency
IPE	Insolvency Professional CD/entity
IRP	Interim Resolution Professional
IU	Information Utility
LLP	Limited Liability Partnership
NCLT	National Company Law Tribunal
OC	Operational Creditor
RP	Resolution Professional
SEBI	Securities and Exchange Board of India