

Peer Review Policy

INTRODUCTION

The objective of Insolvency and Bankruptcy Code 2016 (IBC), as an economic beneficial legislation is to provide effective legal framework for resolution of distressed businesses by reorganising such businesses. IBC's first order objective is rescuing a company in distress and liquidation can be viewed only as the last resort. The second order objective is maximising value of assets of the company and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders. IBC provides for bifurcating the interests of the company from that of its promoters to ensure revival and continuation of the company by protecting it from its own management.

Insolvency professional (IP), in the capacity of Interim Resolution Professional (IRP)/Resolution Professional (RP) or Liquidator is one of the key pillars as envisaged under IBC, for achieving the said objectives. The legal framework under IBC requires an IP to establish fair and transparent conduct of insolvency resolution process, casting upon an IP, inter alia, following responsibilities reflective of qualitative aspects in such processes (in a non-exhaustive manner):

Provisions under IBC, 2016

- a) Section 17 and Section 18 require that the IRP/RP is vested with the powers of the board of directors of the Corporate Debtor (CD). The officers and managers of the CD shall report to the IRP, providing him access to documents and records of the CD. The IRP/RP shall act and execute in the name and on behalf of the CD, all deeds, receipts, and other documents and take such actions, in the manner and subject to such restrictions, as may be specified by the Board.
- b) Section 20 requires that the IRP/RP shall make every endeavour to protect and preserve the value of the property of the CD and manage its operations as a going concern. IRP/RP shall have the authority to appoint professionals, to enter into contracts on behalf of the CD or to amend or modify the contracts or transactions, to raise interim finance, to issue instructions to personnel of the CD as may be necessary for keeping the CD as a going concern and to take all such actions as are necessary to keep the CD as

a going concern.

- c) Section 23 requires RP to conduct the entire Corporate Insolvency Resolution Process (CIRP) and manage the operations of the CD during such process. Further RP is required to continue to manage the operations of CD after the expiry of such process, until an order approving the resolution plan under sub-section (1) of Section 31 or appointing a liquidator under Section 34 is passed by the Adjudicating Authority (AA). Further, in case there is a change in IRP to RP or from RP to RP/Liquidator, the incumbent IP shall provide all the information, documents and records pertaining to the CD in his possession and knowledge to the successor IP.
- d) Section 28 requires IRP/RP, during the CIRP, to take prior approval of the Committee of Creditors (CoC) for certain actions.
- e) Section 29 requires that IRP/RP shall provide to the resolution applicant access to all relevant information in the form of Information Memorandum (IM) in physical and electronic form to formulate a resolution plan.
- f) Section 30 requires that the IRP/RP shall examine each resolution plan received by him and shall present the same to the CoC for approval.
- g) As per Section 208(2), an IP is obliged to take reasonable care and diligence while performing his duties, to comply with all requirements and terms and conditions specified in the byelaws of the Insolvency Professional Agency (IPA) of which he is a member; to allow the IPA to inspect his records; to submit a copy of the records of every proceeding before the AA to the Insolvency and Bankruptcy Board of India (IBBI or Board) as well as to the IPA of which he is a member; and to perform his functions in such manner and subject to such conditions as may be specified.

Provisions as per Code of Conduct under Schedule I of IBBI (IP) Regulations

- h) Clause 5 provides that an IP must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.

- i) Clause 12 provides that an IP must not conceal any material information or knowingly make a misleading statement to the IBBI, the AA or any stakeholder, as applicable.
- j) Clause 13 provides that an IP must adhere to the time limits prescribed in the IBC and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.
- k) Clause 15 provides that an IP must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
- l) Clause 16 provides that an IP must maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

Monitoring by Insolvency Professional Agency (IPA)

- m) The Code/IBC under Section 204(c) mandates monitoring by IPA of the performance of IPs with respect to legal compliance and empowers IPAs to call for information and records.
- n) Clause 8 of IBBI (Model byelaws and Governing Board of IPAs) Regulations 2016, provide for constitution of Monitoring Committee by an IPA. Further, clause 15 of such regulations provide for formulation of Monitoring Policy by an IPA for the purpose.
- o) The objective of monitoring of IPs is to ascertain whether the conduct of IPs is in overall interest of the stakeholders, CD as going concern and to ensure that the position of trust held by IPs is not abused by them and in cases where it is, to ensure appropriate action is taken.

Inspections of IPs by IBBI and IPA

- p) Section 196(1) of the IBC empowers IBBI to carry out inspections and investigations, monitor the

performance and call for any information or records, inter alia, from IPs.

- q) As per Section 208 (2) (c) of the IBC, IPAs are authorized to conduct the inspection of IPs enrolled with it.
- r) Further as per Clause 18 of the Code of Conduct an IP must appear, co-operate and be available for inspections and investigations carried out by the IBBI, any person authorised by the IBBI or the IPA with which he is enrolled.

In view of many duties and responsibilities cast upon IPs, it is of paramount importance for an IP, whether part of an IPE or not, to observe and maintain high standards of quality in connection with any professional assignment. Such approach shall enthruse confidence in other stakeholders about IP's services on one hand and support IP to face any regulatory or legal challenge, on the other. Moreover, IP should be seen to be following such high standards of quality from third person's perspective. In this connection, an independent review of services by third person, often a peer-practitioner rather than a regulator, can serve the desired purpose. This Peer Review mechanism is a proactive, and pre-emptive measure by IPs to enthruse confidence in stakeholders and regulator. Though this mechanism is proposed to be voluntary for smaller sized practitioners, it is proposed to make the mechanism mandatory for certain category of IPs as mentioned elsewhere in this policy document.

CONCEPT AND SCOPE OF PEER REVIEW

The term 'peer' means a person of similar standing. The term 'review' means re-examination or retrospective evaluation of the subject matter. In generality, for a professional, the term "peer review" would mean review of the work done by a professional, by another member of the same profession with similar standing.

Peer review is basically an examination of a professional's performance or practices in a particular area by other professional in the same area. The objective of the exercise is to benchmark the professional services under review to help improving performance, decision making, adoption of best practices and standards including ethics, compliance with relevant laws, established standards and principles. The system relies heavily on mutual trust among the professional involved, as well as their shared confidence in the process.

The peer review is a discussion among equals, not a hearing by a superior body that will hand down a judgement or punishment. This makes it a more flexible tool, a professional may be more willing to accept criticism, if both sides know it does not commit them to a rigid position or obligatory course of action.

Peer Review process is based on the principle of benchmarking while systematically reviewing the procedures adopted and records maintained in compliance with the IBC and rules, regulations, guidelines, circulars issued thereunder, while carrying out professional services and responsibilities by IPs to ensure and sustain quality.

IP's Peer review is the evaluation of work of the IP under review by one or more IP members with similar competence. Such peer review focuses on reviewing the performance of IP, by seeing whether:

- (a) Complying with technical, professional and ethical standards as applicable including other regulatory requirements thereto;
- (b) Putting in place proper systems including documentation thereof, to amply demonstrate the transparency and quality services to all stakeholders; and
- (c) Preparation of Reports/Time-sheets, office infrastructure, usage of technology, assessment of professional fee, knowledge upgradation, communication with stakeholders, engagement of professionals, support services from IPEs/professionals, preservation of records, etc.

Moreover, a peer review process may aid stakeholders in building reliability and credibility of the professional services rendered by the respective IP appointed for a particular assignment under IBC. Peer review is primarily directed towards ensuring as well as enhancing the quality and standardized (to the extent possible) professional services by IPs. Peer Review is to be conducted by an independent evaluator known as a Peer Reviewer.

While carrying out regular/event-based inspections of members by IIPI, the Inspection Authority shall accord due regard to successful peer-review having been undertaken by the concerned reviewed IP, subject to fulfilling requirements of inspection policy and other guidelines as prescribed by IBBI. However, during the course of peer review, IIPI shall not be directly involved but shall have access to questionnaire, reports (provisional/final) between the reviewed and reviewer IPs, as provided for in this policy document.

OBJECTIVES

The purpose of the Peer Review Policy is to provide a framework for planning, performing, reporting and administration of the Peer Review processes. Peer Review process is intended to review and benchmark the quality control framework of the IPs of IIPI as well as proper and consistent application of such control frameworks across engagement samples selected for review. Peer Review is to be undertaken by IPs on voluntary or compulsory basis as prescribed in this policy document.

The main objective of Peer Review is to benchmark the activities undertaken by the professional members of IIPI under IBC and broadly includes the followings:

- (a) Adhering to the provisions of the IBC, rules, regulations and guidelines issued thereunder, the byelaws, the Code of Conduct and directions given by IBBI/ Governing Board of IIPI or any other Statutory Body;
- (b) Complying with Technical, Professional and Ethical Standards as applicable including other regulatory requirements thereto; and
- (c) Putting in place proper systems including documentation thereof, to amply demonstrate the transparency and quality services to all stakeholders;
- (d) Preparation of Reports/Timesheets, office infrastructure, usage of technology, assessment of professional fee, knowledge upgradation, communication with stakeholders, engagement of professionals, support services from IPEs/professionals, preservation of records, etc.

In this policy the framework and terms of reference under which Peer Review is to be conducted, have been specified. The implementation of the objectives of this policy is to be ensured both in letter and spirit during a Peer Review Process.

DEFINITIONS

In this policy, the following terms have the meanings attributed below:

- (a) *“Assignment” means professional engagement under the IBC in the capacity of an IRP or RP or Liquidator or Voluntary Liquidator or Bankruptcy Trustee or Authorized Representative (AR).*
- (b) *“Byelaws” means Byelaws of the Indian Institute of Insolvency Professionals of ICAI (IIPI) adopted based on the IBBI (Model Byelaws and Governing Body of*

Insolvency Professional Agencies) Regulations 2016;

(c) “Code/IBC” means the Insolvency and Bankruptcy Code, 2016;

(d) “Governing Board” means the Board of Directors of IIIPI constituted under clause 4 of the Byelaws of IIIPI;

(e) “IBBI” means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016;

(f) “IIIPI” means the Indian Institute of Insolvency Professionals of ICAI (IIIPI), a section 8 Company, registered with Insolvency and Bankruptcy Board of India;

(g) “Member” means an individual who is enrolled with IIIPI and/or registered with IBBI;

(h) “Peer Review” means an examination and review of the systems and procedures to determine whether the same have been put in place by the IP members of IIIPI for ensuring the quality of professional services as envisaged by the provisions of the Code rules, regulations, guidelines issued there-under, the bye-laws, the Code of Conduct, directions, standards and best practices as applicable and whether the same were consistently applied during the assignment/period under review;

(i) “Peer Reviewer” means an IP member of IIIPI empanelled on the Peer Reviewers' expert panel specifically constituted by IIIPI;

(j) For definition of other terms used in this policy document but not defined under this clause, the Code and/or Regulations made thereunder should be referred to.

ROLE OF IIIPI IN CONDUCTING PEER REVIEW

This Peer Review policy shall be applicable to all IP members who wish to subject themselves to peer review on voluntary basis. The Peer Review would be carried out only by the reviewer-members of the IIIPI, on voluntary or compulsory basis as prescribed in this policy document.

The Role of IIIPI in conducting peer reviews by professional members, shall be of a facilitator by providing framework for empanelling Peer Reviewers, reporting mechanism, payment of fees and certification in respect of peer reviews, as outlined in following paras. The functioning of peer review policy and mechanism shall be monitored by nodal officer under supervision of Monitoring Committee of IIIPI. Therefore, the policy framework (voluntary/compulsory) for peer review as provided by IIIPI shall enable an IP to:

- Initiate the peer review of services undertaken during specified past period, on voluntary basis or compulsory basis;
- Depending upon the criteria viz. handling or having handled ten or more CIRP/Liquidations undertaken during specified past period for peer review (upto 3 years), initiate the peer review of services on compulsory basis. The initial criterion for compulsory peer review as above, shall be reviewed for lowering such criteria, from time to time.
- Enlisting the services of a Peer Reviewer from the panel of IIIPI;
- Pay the cost for such review to Reviewer IP, after clearance of report from IIIPI; and
- Get the certificate from IIIPI after having carried out such review successfully.

.....to be continued.

