MONITORING POLICY

OF

INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALSOF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

*(Pursuant to sub clause 15 of Clause VIII of Schedule of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15 of Bye-Law VIII of Bye-Laws of Insolvency Professional Agency)*

***(Approved by Monitoring Committee on 4th September 2024 Approved by Governing Board on 21st January 202)***

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1. PREAMBLE

Indian Institute of Insolvency Professional of ICAI (hereinafter referred to as IIIPI) is a public limited company registered under Section 8 of the Companies Act, 2013.

IIIPI had been awarded with the registration certificate as the First ever Insolvency Professional Agency of India by then Hon’ble Finance Minister Late Shri Arun Jaitley on 28th November 2016.

Pursuant to sub clause 15 of clause VIII of Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with sub clause 15 of clause VIII of Bye Laws of IIIPI ,the Insolvency Professional Agency shall have a Monitoring Policy to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Insolvency & Bankruptcy Code, rules, regulations and guidelines issued there-under, the bye-laws, the Code of Conduct and directions given by the Governing Board.

2. DEFINITIONS

In this policy, unless the context provides otherwise:

1. “Assignment” means any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorized representative or in any other role under the Code.
2. “Code” means Insolvency and Bankruptcy Code, 2016;
3. “Governing Board” means Board of Directors as defined under Section 2(10) of the Companies Act, 2013 of IPA.
4. “IBBI” means Insolvency and Bankruptcy Board of India.
5. “IPA” means any person registered with the Board under Section 201 as an Insolvency Professional Agency.
6. “Insolvency Professional” means a person enrolled under section 206 with an Insolvency Professional Agency and registered with the Board as an Insolvency Professional under section 207.
7. “Monitoring Committee” means a Committee constituted under sub clause 8 of Clause V of Schedule of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.
8. “Monitoring Officer” means nodal officer of IPA designated by Committee for monitoring the performance of professional.
9. “Professional Member” means an Insolvency Professional enrolled with IPA.

The words and expressions used and not defined in the policy but defined in Code shall have the same meaning as assigned to them in Code.

3. OBJECTIVES

Insolvency Professional Agencies (IPAs) are required to monitor the insolvency professionals as prescribed in the Code.

* Section 196(2)(n) requires the model bye laws of IPAs to provide for the manner of monitoring and reviewing the working of insolvency professionals who are its members.
* Section 204 of the code provides for the functions of IPAs which inter-alia includes monitoring the performance of its professional members (i.e. IPs).
* IBBI (Model Bye Laws and Governing Board of IPAs) Regulations 2016 mandates constitution of Monitoring Committee. It requires an IPA to have a Monitoring Policy which would include frequency of monitoring, performance evaluation of members, etc.
* The Code also requires insolvency professionals to submit certain information to IPAs/IBBI under Section 208(2)(d); Section 31(3)(b) of the Code required Insolvency Professional to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board; Regulation 16 of IBBI (Model Bye Laws and Governing Board of IPAs) Regulations,2016 provides that a professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.
* Code of Conduct of insolvency professionals under first schedule of IBBI (Insolvency Professionals) also provides inter-alia that the insolvency professional should perform his work with honesty, integrity, objectivity and impartiality.
* To monitor compliance Forms as applicable for Corporate Insolvency Resolution Process (CIRP), Liquidation, Voluntary Liquidation (VL) and all other assignments as specified/introduced by IBBI through its regulations, circulars, notifications and guidelines from time to time. (proposed changes)

Accordingly, the policy sets out the approach to:

1. Monitor and evaluate the performance of its professional members with regard to the assignments undertaken by them.
2. Collect information about the conduct of its professional members and their compliance with the Code and rules, regulations, guidelines, circulars issued thereunder.
3. Develop systems and procedures to facilitate monitoring of professional members.

The policy is applicable to all the professional members of IIIPI irrespective of the fact whether they have undertaken assignments under the Code or not.

4. CORE PRINCIPLES

The core principles underlying the policy are:

1. Monitoring of professional members shall be carried out with due regard to their privacy.
2. Monitoring of professional members shall be carried out on a non-discriminatory basis.
3. Confidentiality of information received from professional members should be maintained during monitoring except when disclosure of information is required by the IBBI or by law.

5. MONITORING COMMITTEE

IIIPI has its Monitoring Committee in place. The Committee consists of a Chairman, which will be an Independent Director and minimum of two other members, which are appointed by the Governing Board of IIIPI.

# Roles and Responsibilities

Pursuant to the provisions of Part V of the Schedule under the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Body of Insolvency Professional Agencies) Regulations 2016, a Monitoring Committee is set up to ensure adherence to the Code including rules and regulations there under by reviewing the information and records submitted by the Professional Member(s) enrolled with IPA.

The roles and responsibilities of Monitoring Committee of IIIPI are as follows:

1. To review the information and records maintained by professional members.
2. To evaluate the performance of professional members.
3. To call for additional information from professional members with regard to the assignment undertaken by them as and when required.
4. To issue advisory/warning/caution/reprimand letters to the professional members in case of non- compliance of monitoring requirements of the Code.
5. To order for inspection of professional member(s) or of their record with regard to the assignment undertaken by them as and when required.
6. To refer matter to Disciplinary Committee where the action of professional member warrants disciplinary action.
7. To amend the policy as and when required.
8. To perform any other function as may be incidental to the monitoring of Insolvency Professionals.

# Imposing fee on minor defaults by IP

The monitoring committee be authorized to impose fee on the procedural delays/defaults by the IPs, for swift resolution and, to reduce unnecessary burden on the Disciplinary Committee, as follows: -

1. Late filing fee.: A fee of Rs.1000/- (One thousand rupees only) for each instance of infraction/lapse, as mentioned below:
2. Compounding fee: Total compounding fees with respect to multiple instances of infraction/lapse shall be subject to maximum of Rs. 10000/- (Ten thousand rupees only).
3. Issue Advisory/warning/caution/reprimand letters

The aforesaid shall be applicable to the following defaults/non-compliances:

* + Forms & disclosures submitted beyond timelines.
	+ Blank and incomplete forms & disclosures submitted.
	+ Non submissions of forms & disclosures
	+ Acting in contravention to IBC 2016, Rules, Regulation, Circular/Guidelines issued by IBBI/IIIPI from time-to-time basis.
	+ Defaults by IPs identified based on sample analysis.

6. MONITORING FRAMEWORK

# Information to be Submitted

The Insolvency Professionals are required to report on each assignment they undertake under the Insolvency & Bankruptcy Code. IIIPI will monitor, analyse and evaluate all its professional members in the following manner.

# Classification of data required for Monitoring

* + - 1. Desktop Monitoring
				1. Event Based reporting
				2. Time Based reporting
				3. Half Yearly return and w.e.f 01st October 2024, information of assignments to be submitted through Master Data Utility portal on IIIPI website.
				4. Other Time-Based Reporting
			2. Inspection

# Desktop Monitoring:

* 1. **Event based reporting –**Event based reporting relates to occurrence of specific activity and information in connection therewith.

As per section 208(2)(d) of the Code, Every Insolvency Professional shall submit a copy of the records of every proceeding before the Adjudicating Authority, to the IBBI as well as to IPA of which he is a member.

* The members shall submit Compliance forms along with enclosures thereto as applicable for Corporate Insolvency Resolution Process (CIRP), Liquidation, Voluntary Liquidation (VL) and all other assignments as specified/introduced by IBBI through its regulations, circulars, notifications and guidelines from time to time on IBBI website.

Accordingly, every professional member of IIIPI shall submit information of every new assignment through Master data utility within 5 days on IIIPI website or as specified by IIIPI on time-to-time basis.

For assignments for which the IBBI has not yet notified any compliance forms like Pre Pack Insolvency Resolution Process, Personal Guarantors to Corporate Debtors and Authorized Representatives, the members shall submit the following by way of an email on iiipi\_monitoring@icai.in on occurrence of any event as specified below:

|  |  |  |
| --- | --- | --- |
| **Name of the Event** | **Appointment as** | **Suggested List of documents to be submitted** **(To the extent applicable)** |
| Personal Guarantor to Corporate Debtor | Resolution Professional / Bankruptcy Trustee | 1. Copy of petition
2. Copy of written consent in Form A filed to AA
3. Copy of Order admitting application and appointing Resolution Professional/Bankruptcy Trustee
4. List of Claims received and verified
5. Final List of Creditors
6. Copy of the application/s filed by the RP including application for withdrawal of process
7. Copy of statement of affairs of the guarantor
8. Copy of Minutes of Committee
9. Copy of Re-payment plan
10. Copy of Preliminary Report, Progress Reports and Final Report
11. Copy of Discharge Order
12. Others
 |
| Authorized Representative(AR) | AR | 1. Consent given for being appointed as AR,
2. Copy of the instructions received from the financial creditor he represents.
3. Others
 |
| Prepackaged Insolvency Resolution Process | RP | 1. 1. Copy of consent given for being appointed as RP.
2. Copy of petition.
3. Copy of order admitting Prepackaged Insolvency Resolution Process and appointing as Resolution professional.
4. Copy of Form P8, confirming that the CD is eligible for PPIRP.
5. Copy of Public Announcement.
6. Copy of list of claims (including updated list of claims if any).
7. Copy of Agenda, Notices, and Minutes of the meetings of CoC.
8. Copy of Resolution Plans.
9. Copy of compliance certificate in Form P12.
10. Other documents under section 208 (2) (d) of The Insolvency & Bankruptcy Code Act, 2016.
11. Copy of the Repayment Report
12. Others
 |

* 1. **Time Based Reporting-** Time based reporting relates to scheduled or periodic submission of information as defined in the Code. Every Member will be required to report each assignment by submitting the following information on “Master Data Utility” portal on IIIPI website or as specified by IIIPI from time to time.
* *Report on appointment of IRP/RP/Liquidator/Authorized Representative Bankruptcy Trustee* *or* any other role under the Code by Adjudicating Authority-Every member shall add the assignment within 5 days on Master Data Utility.
* *Report Status update of the activities as below for each assignment added as aforesaid on Master Data Utility-**Every member shall within 05days from the end of the month update status of the assignment on Master Data Utility*. The list given below is illustrative but not exhaustive –
	+ Date of Public Announcements
	+ Brief Information about new assignment
	+ Number and process of existing assignments being handled by the member.
	+ Brief note on adequacy of resources to handle new and existing assignments.
	+ Status of Assignments
	+ Extension/Exclusion in the timelines of the assignments
	+ Report of conclusion of assignment.
	+ Implementation of Resolution/Repayment Plan- whether resolution plan

implemented successfully/partially/failed.

* + Others, if any
* *Relationship disclosures in terms of C*lauses 8A, 8B, 8C and 8D of the ‘Code of Conduct’ specified in First Schedule to IBBI (Insolvency Professionals) Regulations, 2016, read with clause 6 (3) in Schedule to the Model Bye Laws Regulations IBBI(Please note that, assignments where the due date for the submission of relationship disclosure was prior to 09-11-2022, the same were governed by *IBBI Circular No. 5/2018 dated 16th January 2018)* - Every member will be required to submit the necessary disclosures within 03 days of triggering of each event as specified in the circular on IIIPI website or as specified by IBBI on time to time basis.
* Cost and Other Expenses disclosures in term of IBBI Circular No. 013/2018 dated 12th June 2018- Every member will be required to submit the cost and other expenses disclosures within 07 days of his demitting office as IRP/RP on IIIPI website or as specified by IBBI on time-to-time basis.
* Submission of compliance Forms on IBBI website within the defined timelines as applicable for CIRP, Liquidation, Voluntary Liquidation and all other assignments as specified/introduced in Code and/or by IBBI through its Regulations, Circulars, Notifications and Guidelines The Insolvency Professional), shall file the forms, along with the enclosures thereto, on an electronic platform of the Board (available on www.ibbi.gov.in) as per the timelines stipulated against each form.
* *Other Circulars as issued by IIIPI and IBBI* – Member will be required to comply with the requirements of all the circulars/directions issued by IBBI and IIIPI from time to time.

An IP shall access the said platform with the help of username and password/OTP provided by the IBBI /IIIPI and upload / submit the Forms/Information, along with relevant enclosure and records as applicable, after affixing DSC or after e-signing as applicable.

* 1. **Half Yearly Return** – Pursuant to sub clause 16 of Clause VIII of Schedule of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with sub clause 16 of Clause VIII of Bye-Laws of Insolvency Professional Agency, every professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year online on IIIPI website.

 The existing format of HYR applicable till 30th Sept 2024 has been dropped and the Professional Member shall submit aforesaid information through the existing Master Data Utility Portal on IIIPI website, as specified in detail on Point no. 6 of this policy, under the head Desktop Monitoring, which includes- a. Event-Based Monitoring and b.Time-Based Monitoring i.e. as follows:

|  |  |
| --- | --- |
| **Reporting Tenure** | **Last Date of submission** |
| **For New Assignments** | Every member shall add the assignment within 5 days on Master Data Utility. |
| **For Existing Assignments**  | Every member shall within 05days from the end of the month update status of the assignment on Master Data Utility. |

**For Existing Defaulters (HYR not submitted up starting from periods ending March 2019 to September 2024)**:

1. Members have to file it along with a nominal fee of Rs. 1000 per period plus GST.
2. Their **Authorisation for Assignment (AFA)** will only be issued or renewed after submission

of HYR due and not filed till 30th Sept 2024.

1. The names of non-compliant members may be displayed on the IIIPI website.
	1. Other Time-Based Reporting: The Member will be required to report within 24 hours the following instances on email ids: ip\_monitoring@icai.in and ip.afa@icai.in
	* Any warning or penalties or strictures imposed by the competent Authority
	* Intimation of legal action against the member

# Inspection

In pursuance of the monitoring objective, the monitoring committee of IIIPI may carry out the on- site visit at the registered corporate office of the professional members. Committee may select the professional member to be inspected on the following two criteria:

# Trigger Basis

1. **Random Basis**

**Trigger Basis**

Under this criterion, on-site visit may be carried out of the following during a financial year:

1. Professional Member(s) flagged under Desktop monitoring.
2. Professional Member(s) handling multiple assignments.
3. Professional Member(s) making regular non-compliance under the Code.
4. Professional Member(s) against whom complaint has been received.
5. Professional Member(s) identified by IBBI or Governing Board or Monitoring Committee.
6. On receipt of any order/direction of court or tribunal or Board that directs inspection or makes adverse observations / remarks against the professional members;
7. Such other event as may be deemed fit by the committee.

**Random Basis**

Under this criterion IPA may randomly identify the professional members having assignments (other than those identified under trigger basis) during a financial year for the purpose of on-site visit/online.

It will be carried out as a sample on the basis of an Annual Inspection Plan, by shortlisting IPs on sample basis as per the Inspection Policy of the agency.

Where the professional member holds no appointment as an Insolvency Professional or has not taken up any assignment in a specified period, in that case on-site visit may be undertaken at the discretion of the Monitoring Committee.

The inspections will be carried out on the basis of the Inspection policy of the IIIPI.

The report of the inspection will be put up by the Inspecting Authority to the Monitoring Committee, which would take appropriate steps/action, as warranted.

# Manner / Format of Submission of Information

Information will be submitted by Members online on the IIIPI website through Master Data Utility

portal and/or email id iiipi\_monitoring@icai.in, IBBI website in the prescribed format/list along with enclosure thereto.

# Obligations to comply with the Monitoring Policy

1. Every Professional registered with IIIPI is obliged to comply with the requirements of the Monitoring Policy.
2. The Monitoring Committee shall review the information and records submitted by the IP with the objective of monitoring the professional activities and conduct of each member.
3. Falsification, misreporting or non-reporting of information required under the Monitoring Policy or sought separately by the Monitoring Committee, or any other competent authority may lead to initiation of Disciplinary Proceedings against the member.
4. In case of breach of requirements of the monitoring policy or if otherwise warranted in the opinion of the committee, the matter along with the reasons for the reference may be referred by them to the disciplinary committee for necessary examination and suitable action against the member.

7. Use and Analysis of Information and Records

IIIPI shall submit a report to IBBI in the manner specified by the Board with information collected during the monitoring process.

8. Storage of information

The data so collected shall be stored and recorded in a physical and/or digital manner for a period of 8 years, having due regard for:

* 1. Ensuring the privacy of members and confidentiality of information received, except when disclosure of information is required by the Board or by law or with the consent of the member,
	2. in a non-discriminatory, and
	3. With proper safeguards, including Disaster Recovery Mechanism procedures.

9. Evaluation of Members

The information obtained from members shall be analyzed to verify whether the transactions conducted were in compliance with the Code, Regulations and other applicable laws.

The information collected from the members will be evaluated on the Quantitative and Qualitative parameters.

# Quantitative Parameters-

* + 1. Frequency of submission of reports
		2. Delay in submission of information
		3. Deviation from timelines
		4. No. of warning /strictures/Penalties imposed.
		5. No. of Disciplinary cases initiated, if any, with outcomes
		6. No. of grievances raised, if any, with outcomes
		7. Outcome of Inspection(s) if any

# Qualitative Parameters-

* + 1. Nature of condonation sought, if any, and adjudicating authority’s response
		2. Effectiveness and timeliness of follow up measures
		3. Quality of reporting to NCLT
		4. Quality of Interaction with stakeholders
		5. Implication and impact of grievances received, if any
		6. Outcome of steps taken for Resolution Process

The above list of quantitative and qualitative parameters is an inclusive list and not an exhaustive list.

10. Review of the Monitoring Policy

The implementation of the Policy will be monitored and reviewed by the Monitoring Committee at semi-annual intervals and biennially by the Governing Board of IIIPI.

The Monitoring Policy may be amended from time to time by the Governing Board and will be remain in force till further instructions of the Governing Board or IBBI.