

ch-3 Professional and Ethical Practices for insol. Practitioners

Regulatory Framework

- The Insolvency and Bankruptcy code, 2016
- The IBBI (Insolvency Professional) Reg, 2016
- The IBBI (Insolvency Res. Process For C.P.) Reg, 2016
- The IBBI (Model Buy Laws and Gov. Board of I.P.A)



- The IBBI (Insolvency Professionals) Reg, 2016 →
 - The code of conduct.

⇒ Functions and obligations of insolvency professionals. (sec. 208)

where any insolv. Resolⁿ, Fresh start → Funⁿ of I.P to take such actions in the ↓ matters.



- A Fresh start order process ch. II of Part III
- Individual insolvency Resolution Process - under ch III of P-III
- corporate insolvency resolⁿ Process of ch -II of Part -II
- Individual bankruptcy Process under ch IV of Part -III and.
- Liquidation of a corporate or Firm under ch -III of Part -II

Every insolvency professional shall abide by the following code of conduct -



- To take reasonable care & diligence while performing his duties.
- To comply with all requirements and terms and conditions specified in the by Laws.
- To allow IPA to inspect his records.
- To submit a copy of records of every proceeding before the AA.
- To function perform his Funⁿ in such manner as may be specified.

⇒ The code of conduct -

- 1) Integrity and objectivity.
- 2) Independence and impartiality.
- 3) Professional competence.
- 4) Representation of correct facts and correcting misapprehensions
- 5) Timeliness.
- 6) Info. management.
- 7) confidentiality.
- 8) occupation, employability and restrictions
- 9) Remuneration and costs.
- 10) Gifts and hospitality

IBBI (Insolvency Professionals) Regulations, 2016.



- This regulations makes provision for the examination and registration of insolvency professionals with the IBBI.

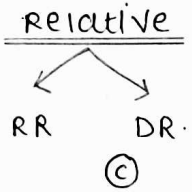
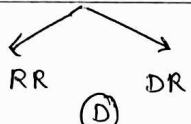


- Also make provisions for the disciplinary proceeding against the I.Pro as well as prescribe the code of conduct for insolvency professionals.

The code of Conduct.

Sry No.	code of conduct	Explanation.
1	<u>Integrity and objectivity</u>	<ul style="list-style-type: none"> → I.Pro must maintain integrity by being honest and <u>straight forward</u> in all <u>prof. relationships</u> → <u>Integrity, Reputation and character</u> are also <u>pre-requisites</u> for being considered as fit and proper for registration as I.Pro. → <u>objectivity requires I.Pro not to compromise professional or business judgements</u> because of <u>bias, coercion, conflict of interest or undue influence of others whether directly or indirectly</u> → The I.Pro must visibly <u>demonstrate his lack of bias</u> by - <ul style="list-style-type: none"> • <u>Being transparent in all his decisions</u> • <u>Being collaborative and consultative with all participants of coc</u>
2.		<ul style="list-style-type: none"> → I.Pro must not represent any <u>fact / situation that would bring disrepute to the profession</u> → I.Pro must <u>disclose the details of any conflict of interest</u> to the stakeholders whenever he comes across such conflict of int during assign. → I.Pro → <u>appointed as I.R.Pro / R.Pro / Lic. or bankruptcy trustee</u> should not itself acquire <u>directly / indirectly any of the assets of debtor nor (relative ⊗)</u>
2	<u>Independence and Impartiality.</u>	<ul style="list-style-type: none"> → R.Pro must maintain complete independence in its professional relationships. → An I.Pro or their relatives must not acquire a debtor's assets during <u>Liaⁿ or bankruptcy</u>, unless <u>objectivity remain unaffected & board app. is obtain</u>

→ Relationship shall mean any one or more of the following 4 kinds of relationships at any time during the 3 years preceding the appointment of other professionals.

kinds of Relationship	Nature of Relationship
<u>Revenue Relationship</u> (A)	I.Prof or other prof. has derived 5% or more of his / its gross revenue → from Prof. services to the related party.
<u>Direct Relationship.</u> (B)	I.Prof or other prof. as the case may be is the sh. hold. / Dir / Kmp / Partner of the related party
<u>Relative</u>  (C)	where a relative of the insol. Prof or other prof has a relationship with of kind A or B with related party - Relative :- spouse, parents, parents of spouse, sibling of self and spouse, children).
<u>Work Relative.</u>  (D)	where I.Prof. or other Prof. is P/Dir of a Co, Firm / LLP, such as an IPA or reg. valuer the rel ⁿ of kind A, B or C of every P/Dir of such Co/LLP/Firm with the related party.

→ An insol. Prof. shall ensure timely and accurate disclosures by themselves and any appointed professionals, confirming to their agency that all appointments are made at arm's length.

→ He shall not influence decision of creditor, debtor, stakeholders for undue or unlawful gain for itself or its related parties and shall not adopt any illegal or improper means to achieve any mala fide obj.

3. <u>Professional competence</u>	I.Prof. must <u>maintain and upgrade his Prof. knowledge and skills</u> to render competent Prof. services. I.Prof. Play the role of <u>regulator's eyes and ears</u> into the working of the assignments.
4. <u>Representation of correct facts and correcting misapprehⁿ</u>	An insolvency Prof. <u>must promptly inform concerned persons</u> under the code of any <u>misapprehension or wrongful consideration</u> of fact that comes to their notice. An I.Prof must not conceal material facts or knowing mislead the board, AA, stakeholders.

→ An insolvency Professional shall not take up an assignment if he or his associates are not independent as per code's regⁿ in relation to the corpo. Person, debtor and its related parties.

→ An I-Pro must disclose any personal / pecuniary relationship with stakeholders u/s 53 or 178, and the CD, by declaring it to the applicant, coc and appointing person as soon as he becomes aware.

→ An I-Pro must disclose to the coc and his IPA if he was employed with or on the panel of any FC of the CD, and the IPA (insolv. Prof. Agency) shall publish it on its website.

→ An I-Pro must disclose any relationship with the corpo. debtor, other engaged professionals, fin. crs, interim fin providers or prosp. resolⁿ app. to his IPA within the time specified ↓

Rel ⁿ with insolv. Prof. with	Discl. → w- 3 Days of -
• Corporate Debtor.	→ <u>his appointment.</u>
• Reg. Valuer / accountant Legal Prof / other Prof.	→ <u>Appointment of the Prof.</u>
• Financial creditors	→ <u>The Constitution of coc</u>
• Interim Fin Providers.	→ <u>Agreement with interim Fin. Providers.</u>
• Prosp. resol ⁿ applicants.	→ <u>Supply of info. memo.</u>
• IF rel ⁿ with any of the above, comes to notice or arise subsequently.	→ <u>of such notice or arise</u>

→ An insolv. Prof → disclose → Relationship of any other Professionals engaged by it within a time specified as under.

Rel ⁿ of the other Prof. with	Discl. → w- 3 days of.
• Insolvency Prof.	→ app. of other Prof
• corpo. debtor.	→ app. of the other Prof.
• Fin. creditors.	→ constitution of coc
• interim Fin providers	→ agreement → int. Fin Provider or 3 days of app. of other Prof w.e. is later.
• prospective resol ⁿ applicant.	→ supply of info memo → appli or 3D of app. of Prof → later

→ If R.Pro. finds any misapprehension or wrong fact during CIRP through own analysis or forensic audit they must inform stakeholders promptly. The R.Pro. must not conceal mat. facts or mislead st.hol. like coc / R. appli. as a board officer. R.P must remain unbiased.

⑤ Timeliness.

→ An I.Pro must follow the timelines under the code and related regulations, plan actions carefully, and communicate promptly with stakeholders to ensure timely discharge of duties.

⑥ Information management.

- I. pro. must ensure that all communicⁿ to the st.hold. made well in advance in simple / clear language.
- I. pro. must ensure that he maintains written contemporaneous records for any decision taken and info and evidence in support of such decision.
- must not make any private communication with any of the stakeholders unless required by the code
- must appear, co-operate and be available for inspections and investigations carried out by board
- must provide all info and records as may be required by the board or the IPA → he enrolled.
- must be available and provide info. of any periodic study, research and audit conducted - board

⑦ Confidentiality.

- I. pro. must ensure that confidentiality of the info. relating to the insolv. resolⁿ process is maintained all times.
- However he can disclose any info. with the consent of relevant parties or req. by Law.

⑧ Gifts and Hospitality

- An I. Pro or his relative must not accept\$ gifts or hospitality which undermines or affects his independence as an insolv. professional.
- Also he shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person.

⑨ Occupation
employability &
restrictions

- I. Pro must refrain from accepting too many assignments. He should not take more than 10 assignments at a time and only 3 of them can have admitted claims over ₹ 1000 crore to ensure proper time & attention to each case.
- must not engage in any employment when he holds a valid authorisation for assignment or when he is undertaking an assignment
- An I. pro and their relatives shall not accept any employment except through open competitive recruitment - with successful resolution applicant CD, their related parties or any creditor holding over 10% voting power for one year after the process ends.
- shall not engage or appoint any of his relative or related parties for or in connection with any work relating to any of his assignment
- an I. pro must not provide any services for any assignment handed by their relatives or related parties.

⑩ Remuneration
and cost.

- An insolv. Prof. must charge transparent, reasonable fees that reflect the work done and follow applica regulations.
- An I. Pro must disclose the fees paid payable to IP entity and engaged professionals to their agency which will publish it on its website.
- I. Pro. shall raise bills or invoices in its name towards its fees and such fees shall be paid to it through banking channel.
- I. Pro. shall not accept any fees or charges other than those which are disclosed to and approved by the person fixing its remuneration.
- I. Pro must disclose all process related costs to stakeholders and ensure they are reasonable.