

## **Insolvency and Bankruptcy Board of India**

### **Subject: Regulations for Inspection and Investigation**

The Board registers and regulates insolvency professionals (IPs), insolvency professional agencies (IPAs), and information utilities (IUs). It also specifies regulations relating to transactions and activities undertaken by them under the Code. It is, therefore, necessary that the Board regulates and monitors conduct of IPs, IPAs and IUs. Section 196 of the Insolvency and Bankruptcy Code (Code) reads as under:

*“196. (1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—*

*.....*

*(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;*

*(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;*

*(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;*

*..*

*(m) promote transparency and best practices in its governance;*

*...*

*(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;*

*...”*

2. Chapter VI of Part IV provides for inspection and investigation. Section 218 empowers the Board, either on a receipt of a complaint or otherwise, to direct inspection or investigation. It empowers the Board to make regulations to provide for time and manner of inspection and investigation. Section 218 is reproduced hereunder:

*“218. (1) Where the Board, on receipt of a complaint under section 217 or has reasonable grounds to believe that any insolvency professional agency or insolvency professional or an information utility has contravened any of the provisions of the Code or the rules or regulations made or directions issued by the Board thereunder, it may, at any time by an order in writing, direct any person or persons to act as an investigating authority to conduct an inspection or investigation of the insolvency professional agency or insolvency professional or an information utility.*

*(2) The inspection or investigation carried out under sub-section (1) of this section shall be conducted within such time and in such manner as may be specified by regulations.*

*.....”*

3. Section 219, which envisages issue of a show cause notice on completion of inspection and investigation, reads as under:

*“219. The Board may, upon completion of an inspection or investigation under section 218, issue a show cause notice to such insolvency professional agency or insolvency professional or information utility, and carry out inspection of such insolvency professional agency or insolvency professional or information utility in such manner, giving such time for giving reply, as may be specified by regulations.”*

4. Inspection and Investigation are standard means to verify facts as to compliance with applicable provisions of law. Based on such verification, appropriate enforcement actions, if required, are initiated. Since inspection and investigation have potential to cause disruptions to business of service providers and also to add to costs and the outcome of such inspection and investigation could be an enforcement action, there should be clear governance principles to

minimise the pains of inspection and investigation to concerned stakeholders and also to avoid unwarranted enforcement actions, as required under section 196(1)(m).

5. The Code does not distinguish clearly between inspection and investigation. It provides for an investigation authority to conduct inspection and investigation. It is proposed to provide for two separate means, namely, inspection and investigation, for verification of facts. While investigation will mostly be undertaken if there is an apprehension of contravention of the Code, inspection will be undertaken mostly as a matter of policy. The Code envisages inspection and investigation of IPs, IPAs and IUs. It is proposed to cover inspection and investigation of IPEs, which are recognised by the Board under regulations.

6. Broadly, for the purpose of investigation (in this para investigation includes inspection, but excludes routine inspections),

I. The Board should

- Be satisfied of the need for investigation;
- Identify the objective of the investigation with specific reference to the alleged violation and facts;
- Identify an investigating authority comprising an officer or a team of officers;
- Define the scope of investigation in terms of persons, records, activities, places, etc.;
- Specify time frame for commencement and completion of investigation;
- Set up arrangements for review and monitoring progress of investigation;
- Issue preventive orders, if necessary, during an investigation;
- Issue an order to appoint an investigating authority and specify terms of investigation; and
- Keep the investigation confidential.

II. The Investigating Authority should:

- Inform the person under investigation of its rights;
- Provide the reasons for requiring presence of a person or collecting a record;
- Endeavour to cause the least burden on the person under investigation or any third party whose cooperation is required;

- Keep the investigations confidential;
- Keep the Board informed of the progress from time to time;
- Obtain comments of the person under inspection on its prima facie findings, and the basis for such view; and
- Submit investigation report to the Board.

III. A person under investigation or any third person having record or information should cooperate with investigating authority.

IV. On submission of the report of investigation,

- The Board should conclude the investigation only if it is satisfied that the investigating authority has conducted investigation and submitted the report of investigation as per its order. If not, it may direct the investigating authority to address the deficiencies in the investigation or may appoint another investigating authority to conduct investigation.
- The Board should close investigation by an order and inform the person under investigation, if there is no adverse finding and the Board is satisfied of the investigation.
- The Board should consider the investigation report promptly and approve issue of notice for initiating appropriate enforcement action if it finds that there has been any contravention of any provision of law.

V. While considering the inspection report or investigation report, the Board should take into account the following factors, among others:

- (a) the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the person under investigation;
- (b) the consequences and impact of the alleged contravention, including-
  - i. unfair advantage gained by the person under investigation as a result of the alleged contravention, and
  - ii. loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; and
  - iii. the conduct of the person under investigation after the occurrence of the alleged contravention, and prior to the alleged contraventions.

VI. The Board should assign every notice to Disciplinary Committee for disposal.

7. Keeping the above in view, draft Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 (**Annexure 'A'**) have been prepared. The Governing Board is requested to consider and approve the same with or without modification.

**GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, [●DAY], [●JUNE], 2017**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

**NOTIFICATION**  
New Delhi, the [●June], 2017

**No. IBBI/2017-18/GN/REG013.** In exercise of the powers conferred under sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely-

**CHAPTER I**

**PRELIMINARY**

**1. Short title, commencement and application.**

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Inspections and Investigations) Regulations, 2017.
- (2) These regulations shall come into force on the date of their publication in the Official Gazette.
- (3) These regulations shall apply to inspection and investigation of service providers.

**2. Definitions.**

- (1) Unless the context otherwise requires,-
  - (a) “associated person” means a proprietor, partner, director, officer, or an employee of a service provider, a professional or valuer engaged by a service provider or any other person acting for or on behalf of a service provider under inspection or investigation;
  - (b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
  - (c) “Disciplinary Committee” means a committee of whole time member(s) constituted by the Board under section 220(1) of the Code;  
*Provided that the whole time member(s) in the Disciplinary Committee have not been associated with the investigation or inspection, based on which the notice has been issued.*
  - (d) “electronic form” shall have the same meaning as assigned to it in section 2(r) of the Information Technology Act, 2000 (21 of 2000);
  - (e) “Investigating Authority” means an officer or a team of officers of the Board which has been directed to act as investigating authority to conduct an investigation of a service provider;

- (f) “Inspecting Authority” means an officer or a team of officers of the Board which has been directed to act as inspecting authority to conduct an inspection of a service provider;
- (g) “noticee” means a service provider or an associated person who is alleged to have contravened any provision of the Code or rules and regulations made thereunder;
- (h) “record” means the books of accounts, registers, documents, call records, and other records, whether maintained in electronic form or otherwise, of a service provider and its associated person;
- (i) “section” means section of the Code; and
- (j) “service provider” means insolvency professional agency, insolvency professional, insolvency professional entity or information utility.

(2) The words and expressions used and not defined in these regulations, but defined in the Code, shall have the same meaning assigned to them in the Code.

## **CHAPTER II**

### **INSPECTION**

#### **3. Inspection by the Board.**

- (1) The Board shall conduct inspection of such number of service providers every year as may be decided by the Board from time to time.
- (2) Without prejudice to provisions of sub-regulation (1), the Board may conduct inspection of a service provider under section 218.
- (3) The Board may, for the purposes of this regulation, by an order, direct an inspecting authority to conduct an inspection of records of a service provider for any purpose, including the purposes specified under sub-regulation (4).
- (4) The purposes referred to in sub-regulation (1) include:-
  - (a) to ensure that the records are being maintained by a service provider in the manner required under the relevant regulations;
  - (b) to ascertain whether adequate internal control systems, procedures and safeguards have been established and are being followed by a service provider to fulfill its obligations under the relevant regulations;
  - (c) to ascertain whether any circumstances exist which would render a service provider unfit or ineligible;
  - (d) to ascertain whether the provisions of the laws and the directions issued there under are being complied with;
  - (e) to inquire into the complaints received from clients or any other person on any matter having a bearing on the activities of a service provider;
  - (f) such other purpose as may be deemed fit by the Board in furtherance of the objectives of the Code.
- (5) The order referred to in sub-regulation (3) shall contain-
  - (a) scope of inspection;
  - (b) composition of inspecting authority;

- (c) timelines for conducting the inspection;
- (d) reporting of progress in inspection;
- (e) submission of interim inspection report, if any; and
- (f) submission of inspection report.

(6) The Board and the Inspecting Authority shall make every effort to keep an inspection confidential and to cause the least burden on or disruption to the business of the service provider under inspection.

#### **4. Conduct of Inspection.**

(1) The Inspecting Authority shall serve a notice of inspection to the service provider at least ten days before the commencement of inspection:

*Provided* that where the Inspecting Authority is satisfied that the notice will cause undue delay in inspection or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

(2) The Inspecting Authority may require the service provider or an associated person to submit records, as may be required, before the commencement of inspection.

(3) The Inspecting Authority may visit the offices of the service provider for conducting the on-site inspection.

(4) It shall be the duty of every associated person of the service provider, which is being inspected, to produce to the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority with such statements and information relating to its activities within such time as the Inspecting Authority may require.

(5) The service provider shall allow the Inspecting Authority to have access to the premises occupied by such service provider or by any other person on its behalf and also extend facility for examining any records in the possession of the service provider or any such other person and also provide copies of records or other material which in the opinion of the Inspecting Authority are relevant for the inspection.

(6) The Inspecting Authority shall, in the course of inspection, be entitled to examine on record statements of any associated person of the service provider.

(7) It shall be the duty of every associated person of the service provider to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection.

#### **5. Interim Inspection Report.**

(1) The Inspecting Authority shall submit an interim inspection report, if required by the Board.

(2) The Inspecting Authority may submit an interim inspection report if it considers appropriate keeping in view the nature and progress of inspection.



(3) If the Board is satisfied from the interim inspection report that there is a gross violation of the provisions of the Code and rules and regulations made thereunder by the service provider and immediate action under sub-section (2) of section 220 is warranted, the Board shall refer the matter to the disciplinary committee for appropriate action.

(4) On consideration of the interim inspection report, the disciplinary committee may pass an interim order with appropriate directions to the service provider.

(5) The interim order referred to sub-regulation (4) shall lapse on expiry of 90 days.

## **6. Inspection Report.**

(1) The Inspecting Authority shall send a copy of draft inspection report to the service provider requiring comments of the service providers within 15 days from receipt of the draft inspection report.

(2) The Inspecting Authority shall submit a copy of the draft inspection report to the Board.

(3) The Board shall examine the inspection report as to whether inspection is complete and satisfactory or requires further inspection and advise the Inspecting Authority accordingly within 15 days of receipt of draft inspection report.

(4) After considering the comments of the service provider and taking into account advice of the Board, the Inspecting Authority shall prepare inspection report and submit it to the Board.

## **CHAPTER III**

### **INVESTIGATION**

## **7. Investigation by the Board.**

(1) The Board may conduct an investigation of a service provider under section 218.

(2) The Board may, for the purposes of this regulation, by an order, direct an investigating authority to conduct an investigation of the affairs of a service provider and to report thereon to the Board.

(3) The order referred to in sub-regulation (2) shall contain the following particulars:

- (a) scope of investigation in terms of records, activities, places, and persons;
- (b) composition of investigating authority;
- (c) timelines for conducting investigation;
- (d) reporting of progress in investigation;
- (e) submission of interim investigation report, if any; and
- (f) submission of investigation report.

(4) The Board and the Investigating Authority shall make every effort to keep investigation confidential and to cause the least burden on or disruption to the business of the service provider under investigation.

(5) The Board may, at any time, modify the order referred to under sub-regulation (2) to enlarge the scope of investigation or other terms of investigation, for reasons to be recorded in writing.

## **8. Conduct of Investigation.**

(1) The Investigating Authority shall serve a notice of investigation to the service provider at least ten days before the commencement of investigation:

*Provided* that where the Investigating Authority is satisfied that the notice will cause undue delay in investigation or there is an apprehension that records of the service provider may be destroyed, mutilated, altered, falsified or secreted, after the notice is served, it may, for reasons to be recorded in writing, dispense with such notice.

(2) The Investigating Authority may require the service provider or an associated person to submit records as may be required, before the commencement of investigation.

(3) The Investigating Authority may visit the offices of the service provider for conducting the on-site investigation.

(4) It shall be the duty of every associated person of the service provider, which is being investigated, to produce to the Investigating Authority such records in his custody or control and furnish to the Investigating Authority with such statements and information relating to its activities within such time as the Investigating Authority may require.

(5) The service provider shall allow the Investigating Authority to have complete access to the premises occupied by such service provider or by any other person on its behalf and also extend facility for examining any records in the possession of the service provider or any such other person and also provide copies of records or other material which in the opinion of the Investigating Authority are relevant for the investigation.

(6) The Investigating Authority shall, in the course of investigation, may examine on oath or record statements of any associated person of the service provider in relation to the affairs of his business and for that purpose may require any of those persons to appear before it personally.

(7) Notes of any examination referred to in sub-regulation (6) shall be recorded and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) It shall be the duty of every associated person of the service provider to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation.

(9) The Investigating Authority may keep in its custody any record produced to it up to six months and thereafter shall return the same to the person by whom or on whose behalf the records were produced:

*Provided* that it may call for these records again if it considers necessary and shall give *certified* copies of these to the person by whom or on whose behalf these were produced, if required by him.

(10) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the records of, or relating to, a service provider or an associated person in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the competent court having jurisdiction for an order for the seizure of such records.

(11) After considering the application under sub-regulation (10) and hearing the Investigating Authority, if necessary, the competent court may, by order, authorise the Investigating Authority –

- (a) to enter, with such assistance, as may be required, the place or places where such records are kept;
- (b) to search that place or those places in the manner specified in the order; and
- (c) to seize records, it considers necessary, for the purposes of the investigation:

(12) The Investigating Authority may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him in search and seizure under the order under sub-regulation (11) and it shall be the duty of every such officer to comply with such requisition.

(13) Every search or seizure shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

## **9. Interim Investigation Report.**

(1) The Investigating Authority shall submit an interim investigation report, if required by the Board.

(2) The Investigating Authority may submit an interim investigation report if it considers appropriate keeping in view the nature and progress of investigation.

(3) If the Board is satisfied from the interim investigation report that gross violation of the provisions of the Code and rules and regulations made thereunder has been committed by the service provider and immediate action under sub-section (2) of section 220 is warranted, the Board shall refer the matter to the disciplinary committee for appropriate action.

(4) On consideration of the interim investigation report, the disciplinary committee may pass an interim order with appropriate directions to a service provider.

(5) The interim order referred to sub-regulation (4) shall lapse on expiry of 90 days.

## **10. Investigation Report.**

- (1) The Investigating Authority shall submit a copy of the draft investigation report to the Board.
- (2) The Board shall examine the investigation report as to whether investigation is complete and satisfactory or requires further investigation and advise the investigating authority accordingly within 15 days of receipt of draft investigation report.
- (3) After taking into account advice of the Board, the Investigating Authority shall prepare investigation report and submit it to the Board.

## **CHAPTER IV**

### **CONSIDERATION OF REPORT**

## **11. Consideration of Report.**

- (1) The Board shall consider the inspection report received under regulation 6 or investigation report received under regulation 10 promptly.
- (2) If the Board, after consideration of the report under sub-regulation (1), is of the *prima facie* opinion that sufficient cause exists to take actions under section 220 or 236(2), it shall issue a show-cause notice in accordance with regulation 12 to the service provider or an associated person and in any other case, close the inspection or investigation, as the case may be.

## **12. Show cause notice.**

- (1) The show-cause notice shall be in writing and shall state-
  - (a) the provisions of the Code under which it has been issued;
  - (b) the details of the alleged facts;
  - (c) the details of the evidence in support of the alleged facts;
  - (d) the provisions of the Code, rules or regulations allegedly violated;
  - (e) the actions or directions that the Board proposes to take or issue if the allegations are established; and
  - (f) the time within which the noticee may make written submission.
- (2) For the purposes of sub-regulation 1(e), the Board shall take into account the following factors, among others:
  - (a) the nature and seriousness of the alleged contraventions, including whether it was deliberate, reckless or negligent on the part of the noticee;
  - (b) the consequences and impact of the alleged contravention, including-
    - (i) unfair advantage gained by the noticee as a result of the alleged contravention, and
    - (ii) loss caused, or likely to be caused, to clients or any other person as a result of the alleged contravention; and
    - (iii) the conduct of the noticee after the occurrence of the alleged contravention, and prior to the alleged contraventions.

- (3) The show cause notice shall provide at least 21 days to the noticee to make a written submission.
- (4) The show cause notice shall state that if a notice fails to respond under sub-regulation within the given time, it shall be disposed of based on material available on record.
- (5) The show-cause notice shall enclose copies of relevant documents and extracts of relevant portions from the report of investigation or inspection, or other records.
- (6) A show-cause notice issued shall be served on the noticee-
  - (a) by sending it to the noticee at its registered office, by registered post with acknowledgement due; and
  - (b) by an appropriate electronic form to the email address provided by the service provider to the Board.

### **13. Disposal of Show cause notice.**

- (1) The Disciplinary Committee, after providing an opportunity of being heard to the noticee, shall dispose of the show-cause notice by a reasoned order.
- (2) The Disciplinary Committee shall dispose of the show-cause notice within a period of six months of the issue of the show-cause notice.
- (3) The order under sub-regulation (1) may provide for-
  - (a) closure of show cause notice without any direction;
  - (b) warning;
  - (c) any of the actions under section 220(2) to (4);
  - (d) a reference to the Board to take any action under section 220(5) or 236(2), or
  - (e) any other action or direction as may be considered appropriate.
- (4) The order under sub-regulation (1) shall not become effective until thirty days have elapsed from the date of issue of the order, unless the Disciplinary Committee states otherwise in the order along with the reasons for the same.
- (5) The order under sub-regulation (1) shall be issued to the noticee immediately, and be published on the website of the Board.
- (6) If the order under sub-regulation (1) suspends or cancels the registration of a service provider, the Disciplinary Committee may, if it considers fit, require the service provider to-
  - (a) discharge pending obligations, if any;
  - (b) continue its functions till such time as may be directed, only to enable clients to shift to another service provider; and
  - (c) comply with any other directions.

## **CHAPTER V**

## RESTITUTION

### **14. Restitution.**

- (1) Wherever a direction under section 220(4) has been issued, the Board shall endeavour to realize the amount of disgorgement expeditiously.
- (2) The Board shall invite claims by a public announcement from persons who have suffered loss on account of the contravention underlying the direction under section 220(4) seeking restitution from the disgorged amount, as soon as disgorged amount is realized.
- (3) The persons referred to in sub-regulation (2) shall submit claims in the Form A within 30 days of the public announcement.
- (4) The Board shall scrutinise the claims and prepare a list of valid claims within 30 days of the last date for receipt of claims.
- (5) The Board shall disburse the disgorged amount proportionately among the claimants within 30 days of preparation of the list of valid claims.

## FORM A

Claim under Order No... dated under section 220(4) of the Code  
(Under Regulation 14 of the Insolvency and Bankruptcy Board of India (Inspections and  
Investigations) Regulations, 2017)

Sl. No.	Description	Particulars
1	Name and Address of the Claimant	
2	Identity of the Claimant a. Aadhaar No b. PAN c. Bank Account No. Name of Bank and Branch to which money is to be remitted	
3	Please explain how you have lost money on account of contravention under the direction under section 220(4)	
4	Please show computation of loss suffered by you	

### Verification and Affirmation

I hereby verify and affirm that the contents as above are true and correct to my knowledge and belief and no material fact has been concealed.

(If the amount of claim exceeds Rs.10,000, this verification and affirmation shall be done before a Notary)

(Signature of the Claimant)

Dr. M. S. Sahoo  
Chairperson  
Insolvency and Bankruptcy Board of India