



STATEMENT OF BEST PRACTICES

CONFIDENTIALITY

I. INTRODUCTION

Statements of Best Practices are documents issued for providing guidance as to the best practices to be adopted by Insolvency Professionals registered under the Insolvency and Bankruptcy Code, 2016 (“**Code**”).

This Statement sets out the fundamental principles of confidentiality which an Insolvency Professional is required to comply with pre and post the initiation of the Corporate Insolvency Resolution Process (“**CIRP**”).

Rule 7 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“**IPR**”) stipulates the conditions which govern the registration of an Insolvency Professional, wherein Rule 7 (2) (h) provides that the Insolvency Professional shall abide by the Code of Conduct specified in the First Schedule to the IPR, which includes complying with the fundamental principle of confidentiality as stated in the following section.

II. CONFIDENTIALITY

1. GENERAL PRINCIPLES

- (i) The fundamental principle of confidentiality is that an insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.
- (ii) Personal information acquired by the Insolvency Professional, both before and during an appointment, that is not directly relevant to the insolvency or commercial information relating to the affairs of third parties, should be kept confidential, unless it is the expectation that the information is not confidential.
- (iii) Confidentiality should be maintained in respect of the resolution plan for the restructured company, and in respect of the negotiations conducted to reach the resolution plan. Confidentiality is key to a successful restructuring, especially as the resolution plan provides whether all or part of the employees and/or all or part of the assets of the restructured company will be preserved.
- (iv) The Insolvency Professional is entitled to any information relating to the Corporate Debtor which the Corporate Debtor itself would have been entitled to and from anyone who holds such information.



- (v) Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the Insolvency Professional or third parties

2. SIGNIFICANT SITUATIONS TO PRESERVE CONFIDENTIALITY

- (i) The information relating to the Corporate Debtor and its affairs during the CIRP may be commercially sensitive, confidential or subject to obligations owed to third parties such as trade secrets, research and development information and customer information and therefore, any use of such confidential information needs to be carefully considered by the Insolvency Professional and must be used only in accordance with law.
- (ii) Resolution Plans received by the Insolvency Professional from different parties should be kept confidential and the same shall only be shared with the Committee of Creditors.
- (iii) In cases or situations where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.
- (iv) Insolvency Professionals should also be careful not to enter into new obligations of confidence, such as non-disclosure agreements, that might have an impact on transparency in information sharing or communication with interested parties, other than as commercially reasonable and in accordance with law.

3. SAFEGUARDS TO MAINTAIN CONFIDENTIALITY

- (i) The Insolvency Professional may enter into non-disclosure agreements, subject to the condition that the non-disclosure agreement would not in any manner lead to non-compliance with the General Principles stated above and in carrying out duties as required under the Code.
- (ii) The Insolvency professional should make best endeavours to document all initial assessments, investigations and conclusions, including any conclusion that determines that further investigation or action is not required or feasible, and also any other decision.
- (iii) Post appointment, the Insolvency Professional should ensure there are procedures in place to prevent access to confidential information (for instance, strict physical separation of insolvency teams, and confidential and secure data filing).
- (iv) The Insolvency Professional should ensure there are clear guidelines for individuals including key managerial personnel within the company on issues of security and confidentiality, including requiring such key managerial personnel to sign confidentiality agreements.



- (v) Confidentiality should be maintained by the Insolvency Professional when hiring external advisors including registered valuers, lawyers or any other professionals. Confidentiality or non-disclosure agreements may be entered into with such advisors.
- (vi) Liquidation valuation report by the two registered valuers should only be shared with the Committee of Creditors and the contents of the report shall be treated as confidential information. Further, the Insolvency Professional shall maintain confidentiality by ensuring that the two valuers are independent of each other and in no manner discuss with each the valuation report.
- (vii) The video-conferencing, etc. provided by the Insolvency Professional for meetings of the Committee of Creditors should be through secured/protected computer systems. The Insolvency Professional shall also ensure that the identification and authorization of persons is checked before they can participate in the meetings of the Committee of Creditors.