

## Disciplinary Mechanism - Frequently Asked Questions

### Q.1. What is 'professional or other misconduct'?

Chapter V of the Company Secretaries Act, 1980 incorporates the provisions regulating the conduct of the members of the ICSI. The expression "professional and other misconduct" is defined under Section 22 of the Company Secretaries Act, 1980.

Pursuant to Section 22 of the Company Secretaries Act, 1980, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under Sub-Section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

There are two Schedules to the Company Secretaries Act, 1980 viz. the First Schedule and the Second Schedule. The First and the Second Schedule contains acts or omissions of professional and other misconduct in relation to Company Secretaries. The first Schedule is divided into four parts and the Second Schedule is divided into three parts.

### Q.2. Who is a member of the Institute for the purposes of Misconduct under the Company Secretaries Act, 1980?

"Member" means an associate or fellow member of the Institute and includes a person who was a member of the Institute on the date of the alleged misconduct, although he has ceased to be a member of the Institute at the time of filing the complaint, initiation of the inquiry or thereafter.

### Q.3. Which authorities are dealing with the complaints/information of professional or other misconduct?

**Director (Discipline):** As per Section 21(1) of the Company Secretaries Act, 1980, the Council of the Institute by notification designates an officer of the Institute as Director (Discipline).

**Board of Discipline and Disciplinary Committee:** As per Section 21A and 21B of the Company Secretaries Act, 1980, the Board of Discipline and Disciplinary Committees are the adjudicating authorities for the information /complaints of professional or other misconduct.

**Appellate Authority:** Pursuant to Section 22E of the Company Secretaries Act, 1980, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing upon him any of the penalties referred in sub-section (3) of Section 21A & 21B of the Company Secretaries Act, 1980 may prefer an appeal to the Appellate Authority within 90 days from the date on which the order is communicated to him.

### Q.4. Who establishes the Disciplinary Directorate?

The Council by notification has established the Disciplinary Directorate under Section 21 of the Company Secretaries Act, 1980, headed by the Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. In order to make investigations under the provisions of the Company Secretaries Act, 1980, the Disciplinary Directorate shall follow such procedure as may be specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct in each case and shall place the same before the Board of Discipline or the Disciplinary Committee, as the case may be, depending upon the Schedule or provision of the Company Secretaries Act, 1980 to which the case relates, for taking further decision by these authorities.

### Q.5. What is the constitution of the Board of Discipline?

The Council constitutes a Board of Discipline under Section 21A of the Company Secretaries Act, 1980, consisting of - (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer; (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of Sub-Section (1) of Section 16; (c) the Director (Discipline) shall function as the Secretary of the Board.

Where the Director (Discipline) is of *prima facie* opinion that a member is guilty of any *professional or other misconduct* mentioned in the First Schedule, he shall place the matter before the Board of Discipline. Where the Director (Discipline) is of *prima facie* opinion that there is no case, he shall place the matter before the Board of Discipline.

### Q.6. What is the constitution of the Disciplinary Committee?

The Council constitutes a Disciplinary Committee under Section 21B of the Company Secretaries Act, 1980, consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance, or accountancy. The Council may constitute more Disciplinary Committees as and when it is considered necessary.

Where the Director (Discipline) is of opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

**Q.7. What actions can be taken by the Board of Discipline against a member of the Institute found guilty of professional or other misconduct under the Company Secretaries Act, 1980?**

The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it. The Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Board of Discipline is of the opinion that a member is guilty of a *professional or other misconduct* mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely-

- Reprimand the member;
- Remove the name of the member from the Register up to a period of three months;
- Impose such fine as it may think fit which may extend to rupees one lakh.

**Q.8. What actions can be taken by the Disciplinary Committee against a member of the Institute who is found guilty of professional or other misconduct under the Company Secretaries Act, 1980?**

The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified. Where the Disciplinary Committee is of the opinion that a member is guilty of a *'professional or other misconduct'* mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely -

- Reprimand the member;
- Remove the name of the member from the Register permanently or for such period, as it thinks fit;
- Impose such fine as it may think fit, which may extend to rupees five lakhs.

**Q.9. What is the constitution of the Appellate Authority?**

The Appellate Authority has been established by the Central Government in terms of Section 22A of the Company Secretaries Act, 1980, Section 22A(1) of the Chartered Accountants Act, 1949 and Section 22A of the Cost and Works Accountants Act, 1959.

Section 22A of the Company Secretaries Act, 1980 deals with the Constitution of Appellate Authority. The Appellate Authority constituted under Sub-Section (1) of Section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of the Company Secretaries Act, 1980 subject to the modification that for clause (b) of said Sub-Section (1), the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council, for the Appellate Authority for the purposes of the Company Secretaries Act, 1980.

The Appellate Authority is headed by a Chairperson, who is or has been a judge of a High Court, two former members of the Council of each of the three Institutes (i.e. two former members of the Council of the ICSI with reference to Section 22A of the Company Secretaries Act, 1980) and two nominees of the Central government having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

**Q.10. Who can file an appeal and what is the time limit for filing an appeal with the Appellate Authority?**

Section 22E of the Company Secretaries Act, 1980 deals with Appeal to Authority. Any member of the ICSI aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in Sub-Section (3) of section 21A and Sub-Section (3) of Section 21B of the Company Secretaries Act, 1980, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Appellate Authority. The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorized by the Council, within ninety days. The Appellate Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

**Q.11. What orders can be passed by the Appellate Authority?**

The Appellate Authority gives an opportunity of being heard before passing any order. The Appellate Authority may after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under Sub-Section (3) of Section 21A and Sub-Section (3) of Section 21B of the Company Secretaries Act, 1980 and may -

- Confirm, modify or set aside the order;
- Impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

- c) Remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- d) Pass such other order as the Authority thinks fit.

**Q.12. What powers are given to the Appellate Authority, Disciplinary Committee, Board of Discipline, and the Director Discipline under the Company Secretaries Act, 1980?**

As per Section 21C of the Company Secretaries Act, 1980, for the purposes of an inquiry under the provisions of the Company Secretaries Act, 1980, the Appellate Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

**Q.13. What are the amendments to the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007?**

The Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 provides for the procedures to be followed by the Director (Discipline), Board of Discipline and Disciplinary Committee.

The Central Government vide notification dated 10<sup>th</sup> November, 2020, amended the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, provides for e-filing of complaints, documents, services of notices, letters, summons etc. conducting e-hearing of cases, and payment of fees, cost, fine etc. through electronic mode.

**Q.14. What is the procedure for filing a complaint against the member of the Institute?**

A complaint against a member of the Institute or a firm registered with the Institute under the Company Secretaries Regulations, 1982 can be filed under Section 21 of the Company Secretaries Act, 1980 in Form I, in triplicate before the Director (Discipline), in person or by post or courier or through electronic mode.

Written information containing allegation or allegations against a member of the Institute, or a firm registered with the Institute under the Regulations, received in person or by post or courier or through electronic mode, shall be treated as information under Section 21 of the Act and shall be dealt in accordance with the provisions of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

On receipt of such information, the sender of the information, including the Central Government, any State Government, or any statutory authority, shall in the first instance, asked whether he or it would like to file a complaint apprising - (a) that relatively longer time is taken for disposal of any information than the complaint; (b) that the person giving information will not have the right to be represented during the investigation or hearing of the case; and (c) that the Institute will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders.

**Q.15. How the anonymous information is dealt with by the Disciplinary Directorate?**

Pursuant to sub rule (3) of Rule 7 of the Rules, any anonymous information received by the Disciplinary Directorate will not be entertained.

**Q.16. What is the fee for filing a complaint against a member of the Institute?**

Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee of Rs. 2500/- (as per the Company Secretaries Regulations, 1982). The fee shall be paid through electronic mode or in the form of a demand draft in favour of "The Institute of Company Secretaries of India" payable at New Delhi. The fee once paid shall not be refunded.

**Q.17. What is the process of registration of a complaint?**

The complaint sent by post or courier or through electronic mode shall be deemed to have been presented to the Director (Discipline) on the day on which it is received in the Disciplinary Directorate or uploaded on portal. Every complaint received by the Directorate shall be acknowledged by electronic mode or through ordinary post together with an acknowledgement number. The Director or an officer or officers authorized by him shall scrutinize the complaints so received. If on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in the rules. If a complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director (Discipline) may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine. However, no additional fee shall be payable if the complaint is resubmitted after rectification of defect. If the complainant fails to rectify the defects within the time allowed under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Director (Discipline) shall form the opinion that there is no *prima facie* case.

If the subject matter of a complaint in the opinion of the Director (Discipline) is substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take further action for clubbing of such cases, as per the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**Q.18.What is the procedure after registration of a complaint?**

After registration of complaint received under Section 21 of the Act, the Director (Discipline) or an officer authorized by him, shall within sixty days of the receipt of a complaint, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that Respondent at his professional address.

The Respondent shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward a written statement in his defense. On receipt of the written statement, if any, the Director (Discipline) may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director (Discipline), forward his rejoinder on the written statement.

On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director (Discipline) may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate. If no reply is sent by the respondent within the time allowed or by the complainant within the time allowed, the Director (Discipline) shall presume that the respondent or the complainant have nothing further to state and take further action as per the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**Q.19.How the request for withdrawal of the complaint is dealt with?**

Where a complainant withdraws the complaint, the Director (Discipline) shall place the same before the Board of Discipline or the Disciplinary Committee, which, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint. However, in case the Director (Discipline) has not yet formed his *prima facie* opinion on such a complaint, he shall place the same before the Board of Discipline, and the Board of Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal.

**Q.20.What is the Time limit on entertaining complaint or information?**

Rule 12 of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, deals with the time limit on entertaining complaint or information. Where the Director (Discipline) is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, the Director (Discipline) may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Company Secretaries Act, 1980. The Board of Discipline may, if it agrees with the opinion of the Director (Discipline) that there is no *prima facie* case, close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

**Q.21.What is the *prima facie* opinion of the Director (Discipline)?**

The Director (Discipline) shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both. The Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

**Q.22.What is the procedure after the Director (Discipline) formed his *prima facie* opinion?**

Where the Director (Discipline) is of the opinion that a member is guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980, he shall place the matter before the Board of Discipline which is constituted by the Council of the Institute under Section 21A of the Company Secretaries Act, 1980; and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980 or in both the Schedules, he shall place the matter before the Disciplinary Committee which is constituted by the Council of the Institute under Section 21B of the Company Secretaries Act, 1980.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie*

case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Board of Discipline or the Disciplinary Committee, as the case may be, directed the Director (Discipline) to further investigate the matter, the Director (Discipline) shall further investigate the case and shall place his Further Investigation Report for consideration before the Board of Discipline or Disciplinary Committee, as the case may be.

Where the Board of Discipline or the Disciplinary Committee disagreed with the *prima facie* opinion of the Director (Discipline) that the member is guilty of professional or other misconduct, the case will be closed, and the Order will be passed. Where the Board of Discipline or the Disciplinary Committee agreed with the *prima facie* opinion of the Director (Discipline) that the member is not guilty of professional or other misconduct, the case will be closed, and the Order will be passed.

### **Q.23. What is the procedure followed by the Board of Discipline and the Disciplinary Committee?**

Where the Board of Discipline or the Disciplinary Committee, as the case may be, agreed with the *prima facie* opinion of the Director (Discipline) that the member is *prima facie* guilty of professional or other misconduct, a copy of *prima facie* opinion of the Director (Discipline) and particulars or documents relied upon by the Director, if any, during the course of formulation of *prima facie* opinion, will be sent to parties asking them to submit written statement on the same and rejoinder thereon.

The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it. The Disciplinary Committee shall be guided by the principles of natural justice and shall follow the procedure as laid down, for dealing with all cases before it.

The Presiding Officer shall fix a date, hour and place of hearing and shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it to make oral submissions, if any. On the date of hearing, if the respondent does not appear either in person or through his authorized representative, the Board of Discipline, or the Disciplinary Committee, as the case may be, may proceed *ex-parte* and pass such orders as it may think fit or direct fresh notice to be served. The Board of Discipline or the Disciplinary Committee, as the case may be, may adjourn the hearing at any stage of hearing, as it may think fit.

The Board of Discipline shall consider the written representations, including the written statements, rejoinder and supporting documents, and the oral submission, if any made by the Director, the complainant, and the respondent, and arrive at a

finding on whether the respondent is guilty or not of any professional or other misconduct.

The Disciplinary Committee during the first hearing, shall read out the charges to the respondent along with the summary of *prima facie* opinion arrived at by the Director and ask the respondent whether he pleads guilty to the charge or charges made against him. If the respondent pleads guilty, the Disciplinary Committee shall record the plea and take action to pass its Order. If the respondent does not plead guilty then the Disciplinary Committee shall fix a date for examination of witnesses and production of documents. The Disciplinary Committee may permit the cross-examination of the witness. On the date so fixed, the Disciplinary Committee shall proceed to take all such evidence as may be produced by the Director, including oral examination of witnesses and production of documents. Thereafter, the complainant shall be given an opportunity to present additional evidence, if any. The respondent shall then be called upon for his defense and to produce his evidence. If the respondent applies to the Disciplinary Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Disciplinary Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing. The witnesses summoned at the instance of the complainant, or the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing. After evidences is presented, the Director and the respondent shall present their arguments before the Disciplinary Committee. If the complainant feels that any vital argument has been left out by the Director, he may present the argument, after convincing the Disciplinary Committee of the same. The Disciplinary Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct. The Disciplinary Committee may, at any stage of the proceedings, adjourn the hearing.

On arriving at a finding that the respondent is guilty of professional or other misconduct, the Board of Discipline, or the Disciplinary Committee shall give the respondent an opportunity to be heard before passing any order. If the respondent does not appear, it shall presume that he has nothing more to represent before it and shall pass orders. On arriving at a finding that the respondent is not guilty of professional or other misconduct, the Board of Discipline, or the Disciplinary Committee, as the case may be, shall pass orders closing the case. The Board of Discipline or the Disciplinary Committee shall send, free of charge, to the Director, respondent and the complainant, a certified copy of the final order.