

**Complaints of “Professional or other Misconduct” under the Company Secretaries Act, 1980 read with the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**

1. The Council of the Institute by notification in Gazette of India has established the Disciplinary Directorate under section 21 of the Company Secretaries Act, 1980 (the Act), headed by the Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
2. For the purposes of this Act, 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.
3. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
4. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court - For the purposes of an inquiry under the provisions of this Act, the 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 the following matters, namely:— (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.
5. In order to make investigations under the provisions of the Act, 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.
6. Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Procedure for filing a complaint

1. A complaint under Section 21 of the Act against a member of the Institute or a firm registered with the Institute under the Company Secretaries Regulations, 1980 (the Regulations) shall be filed in prescribed Form I, in triplicate or through electronic mode before the Director (Discipline) in person or by post or courier or through electronic mode.
2. However, 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 ordinary post together with an acknowledgement number.
3. A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.
4. A complaint filed by or on behalf of any statutory authority, such as Reserve Bank of India or Securities and Exchange Board of India, shall be authorised by an officer holding a post equivalent to the post of Joint Secretary in the Government of India and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.
5. A complaint filed by or on behalf of a company or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the firm.
6. In the case of a bank or financial institution, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institution, shall be deemed to be the specific resolution passed by the bank or financial institution concerned, for the purposes of these rules.

7. In case of complaints filed by any Government, statutory authority, bank or financial institution, a change in the name of complainant at any later stage, shall be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant.

#### Fee for filing a complaint

1. 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 prescribed by the Council through the Regulations.
2. The fee shall be paid through electronic mode or in the form of a demand draft drawn on any bank in India in favour of 'the Institute of Company Secretaries of India' payable at the place where the Directorate is situated, presently New Delhi.
3. The fee once paid shall not be refunded. However, no additional fee shall be payable if the complaint is resubmitted after rectification of defect.

#### Registration of complaint

1. The Director or an officer or officers authorized by the Director, shall endorse on every complaint the date on which it is received or presented and the Director or the officer or officers so authorized, shall sign on each such endorsement.
2. 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.

#### Clubbing of complaints

1. If the subject matter of a complaint is, in the opinion of the Director, 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 any of the following action, as the case may be,—
  - if such a previous complaint is still under the examination of the Director, then the new complaint may be clubbed with the previous complaint and in such case the fact may be conveyed to the first complainant, new complainant and respondent respectively.
  - if *prima facie* opinion has been formed by the Director in such a previous complaint and the case is pending before the Board of Discipline or the Committee, then the Director shall bring the new complaint before the Board of Discipline or the Committee, as the case may be, and the latter shall either club the complaint with the previous complaint or close it or ask the Director to deal with it as a separate complaint, as it deems fit.
  - if orders have already been passed by the Board of Discipline or the Committee on such a previous complaint, then the Director shall present the new complaint before the Board of Discipline for its closure:
2. However, even in case where the new complaint is clubbed with a previous complaint, only the first complainant would be the complainant for the purposes of investigation under the rules.

#### Rectification of Defects of a complaint

1. 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.
2. If, the complainant fails to rectify the defect or defects within the time allowed under the Rules, the Director (Discipline) shall form the opinion that there is no *prima facie* case and present the complaint before the Board of Discipline for its closure. The Board of Discipline may, after the presentation of the complaint by the Director under the Rules, either agree with the opinion of the Director and pass an order for the closure; or disagree with the opinion of the Director and advise him to further investigate the matter.

### Withdrawal of a complaint

1. The Director, on receipt of a letter of withdrawal of a complaint by the complainant, shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or Committee, as the case may be, 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.
2. However, in case the Director 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.

### Information

1. Any 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, by the Directorate, which is not in Form I under the Rules, shall be treated as information received under Section 21 of the Act and shall be dealt with in accordance with the provisions of these rules.
2. On receipt of such an information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him of, the following information,—
  - that relatively longer time is taken for disposal of any information than the complaint;
  - that the person giving information will not have the right to be represented during the investigation or hearing of the case;
  - that the Institute will be under no obligation to inform the sender the information of the progress made in respect of the information received including the final orders:
3. However, where the sender of the information is the Central Government, any State Government or any statutory authority, a copy of final order shall be sent to such sender.
4. Anonymous information received by the Disciplinary Directorate will not be entertained by the Disciplinary Directorate.

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