

POSH IC Questionnaire for CONDUCT

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I. Internal Committee

Q1: What is an IC?

A. IC, or Internal Committee is the internal redressal mechanism required to be formed under the POSH Act to accept and investigate the complaints of sexual harassment at a Workplace.

Q2. What is the position of IC as a judicial body?

A. IC has been awarded the same powers as of the Civil Court under the Code of Civil Procedure, 1908.

Q3. What are the Civil court powers vested to the Internal Complaint Committee?

A. The IC can summon and enforce the attendance of any person, and examine them under oath, require the discovery and production of documents and initiate any other matter which may be prescribed under the law.

Section 11(3).

Q4. Why is IC formed?

A. IC has been appointed the designated body under POSH Act 2013, to investigate the cases registered under workplace sexual harassment. No other committee or body is authorized to investigate POSH case within an organization.

Q5. What are the duties of IC/IC members?

A. The duties of IC include receiving the complaints of sexual harassment, initiate the inquiry and submit the findings from the inquiry done, Direct the employer to undertake required actions and Submit an annual report in the prescribed format.

Q6. What should be the composition of IC?

A. ICC should comprise of a Presiding Officer/Chairperson who shall be the senior most female employee of the organisation, not less than 2 members among employees who had prior experience in social work or legal knowledge and an External member from amongst non-government Companies or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

Section 4(2)

Q7. Is there a hierarchy in the IC member composition?

A. Yes. The Chairperson or Presiding Officer is the signing authority for the Annual Compliance Reports and all investigation related documentation. Additionally, no IC meeting shall take place in the absence of the Chairperson or Presiding Officer.

Q8. What is the criteria for selecting an IC - Presiding Officer/Chairperson?

A. An IC Chairperson can only be a female employee of and above Managerial level within the organization. They should carry professional experience of 5 or more years of or possess some knowledge and understanding of this Act or preferably have previous experience of being an IC member.

Q9. What is the criteria for selecting an IC member?

A. An IC member should carry professional experience of 5 or more years of or possess some knowledge and understanding of this Act or preferably have previous experience of being an IC member.

Q10. What is the criteria for selecting an External member?

A. An External member should be a professional who has worked in the field of compliance advisory of this Act for at least 3 years or who has actively participated in the activities of ICC activities as an External Member or Any professional with at least 5 years of total work experience. **A necessary must is to ensure that the External Member has no conflict of interest which can affect their fair and bias judgment and guidance during the investigation.**

Q8. How many members should be there in an IC?

A. The ICC shall consist of minimum of four members. (*Section 4(2)*)

Q9. Can there be more than 4 members in an IC?

A. Yes, there can be more than 4 members in an IC.

Q10. Is it mandatory for all members of the IC to be employees of the Company?

A. No, out of the minimum 4 members, 3 members should be the internal employees of the organization (**Please refer to the definition of Employees provided in the Act/internal POSH policy of the organization**). The External Member, however, must be an outside member and should **not** fall in the category of Employees as defined.

Q11. Can a contractual or part-time Employee become part of an IC?

A. Yes, only if it is not possible to find an eligible member from the full time Employees.

Q12. What is (if there is) the gender ratio required to be maintained in IC member composition?

A. At any given point in time, at least 50% or half of the member composition should be women.

Section 4(2)

Q13. What am I supposed to do as an IC member?

A. As an IC member, you are required to familiarize yourself with the internal POSH policy thoroughly as you would be guiding the employees. Be empathetic while dealing with employees. Exercise complete confidentiality while investigating the case i.e. do not discuss the case in open space, do not disclose the details of the case with any member outside the quorum even after leaving the IC. Ensure to attend all the capacity building sessions organized to enhance your knowledge in the subject area and lastly always ensure to remain fair and transparent while investigating a case.

Q14 . Do we need a separate IC at each branch office or location of operation?

A. Yes, an IC should be constituted at every branch office or location of operation with 10 or more Employee. HR of the organisation shall be responsible for ensuring the formation of IC at those branch or office locations.

Section 4

Q15 . What if there is no senior woman available to Act as a Presiding Officer/Chairperson at all locations for separate ICs?

A. If there is no senior woman available at any location in the Company, the Presiding Officer/Chairperson of another IC can be appointed and kept common.

Q16 . Who will select and appoint the internal members for the IC composition?

A. IC member nominations and appointment will be made by the HR which would be approved by the management of the company by passing Board Resolution.

Q17 . Who will select and appoint the external members for the IC composition?

A. IC member nominations and appointment will be made by the HR which would be approved by the management of the company by passing Board Resolution. .

Q18. Will I get any additional support after being appointed as IC member?

A. You will be provided with orientation program to acclimatize yourself in the role of IC member. Further, capacity building sessions will also be conducted to enhance and provide in-depth understanding of the nuances pertaining to POSH and your role as an IC member.

Q19. What resources will be provided to IC members?

A. The IC members will be provided with a safe infrastructure to ensure that the investigations are conducted in a safe and confidential manner. Further, the organisation would also ensure to provide storage space (physical or virtual) to make sure that all the files and documents pertaining to POSH is kept properly and can be kept for longer period of time.

Q20. How long are IC members for any location appointed for?

A. Tenure of any IC member is up to 3 years.

Section 4(3)

Q21. Can an IC member continue beyond three-year tenure?

A. No. However, as an exception, a member can continue till a replacement is found which should not exceed 3 months.

Q22. How will Employees get to know about the composition of IC members and ways to reach them?

A. To ensure that each employee of the organisation is aware of the IC members and its composition, the HR of the organisation would circulate information related to IC members in the Policy, emails, other notification through notices, posters, and sessions by HR.

Section 19(b) and 19(c)

Q23. Can an IC member be asked to leave or step down before the completion of their tenure?

A. Yes. The grounds for removal from the committee includes breaching confidentiality and disclosing information related to complaint, the parties involved and investigation progress. Apart from this, if any member is convicted or accused of any offence under any law or found guilty of an offence under any of the disciplinary proceedings or has abused their position or continued membership in the ICC to be prejudicial to the public interest. Under all the earlier mentioned circumstances, the IC member can be removed by HR by passing a board resolution. Any member leaving will be asked to sign the Non-Disclosure Undertaking at that time.

Q24. Is it required for IC members to step down if they identify a potential conflict of interest in a specific investigation?

A. Yes, in the instances when the IC member identifies themselves in a case/situation where there is conflict of interest between them and the parties involved in the case, the IC member will have to excuse/recluse themselves from that particular investigation. This is important that IC should be unbiased, impartial and transparent.

Q23. Who will these IC members report to?

A. IC is an independent body with powers of Civil Court and does not report internally to any function or position.

Section 11(3)

Q24. Are ICs members required to undergo any training?

A. Yes, being an IC member is an important responsibility. Thus, the first level of training is organised by HR to ensure that the members are oriented and made aware about their roles and responsibilities and the Do's and Don't's related to their role. After that the forthcoming capacity

building training are primarily organised to enhance the knowledge of the IC members on the various aspects related to their role and POSH Act, 2013 to so that they can discharge their roles and responsibility effectively and efficiently.

Section 19(c)

Q25. How will the on-boarding happen for any individual who is selected as an IC member?

A. Each member will undergo a formal on-boarding process including the following within SEVEN days of their appointment - A formal letter of appointment with a primer on the assignment as an ICC member, Copy of the Policy to be shared with the member and Orientation on the functional aspects of ICC including member introductions, documentation procedures and other aspects governing ICC activities. HR team would ensure that the above on-boarding steps are followed.

Q26 . Can a member choose to resign from the IC during their term of appointment?

A. Yes. A member of an ICC may choose to resign voluntarily, only due to project re-assignment, or if a member is leaving the Company. Member will be required to sign a Non-disclosure Undertaking.

Q27. Who will receive the resignation letter?

A. HR will receive the resignation letter from the member and also initiate the member replacement process.

Q28 . What is the process of handover post resignation?

A. Any member of IC at the time of resignation, will be needed to handover all primary and associated documents of IC that they possess or have knowledge of to the Presiding officer/Chairperson. They would need to wipe any data related to cases from their mobile as well as system.

II. Accepting Complaint

Q29 . Who will receive the complaint first?

A. On the CONDUCT platform, the IC Chairperson would be the first one to receive the complaint once filed by the Complainant. After going through the complaint, the IC Chairperson shall then appoint quorum. The quorum would only be able to view the complaint further.

Q30 . What is a quorum and what is the gender composition of a quorum?

A. A quorum is a set of IC members who are being appointed to investigate a particular case. The minimum number of members in a quorum should be 3 and out of 3, atleast 50% of the members should be female.

Q31 . Can there be more than 3 members in a quorum?

A. Yes. More than 3 members can be part of quorum basis the availability of other IC members.

Q32 . Which all members presence in the quorum is mandatory?

A. The Presiding officer and the External members are the mandatory part of the quorum. Third member can be selected from the remaining IC members.

Q33 . Once a quorum is appointed can they be changed?

A. No. the quorum cannot be changed once appointed by the Presiding officer. The quorum members have to ensure that they attend each case investigation meetings. They cannot be replaced in any of the meetings.

Q34 . Can investigation meetings be conducted without the presence of all quorum members?

A. No. In any scenario if all the quorum members are not available for a meeting, the meeting cannot be conducted and if conducted, the meeting would be invalid as per the act.

Q35. Can IC receive complaints of sexual harassment only?

A. Yes. IC can receive and provide redressal ONLY to complaints of sexual harassment at workplace. The details of what may constitute as sexual harassment at workplace is already part of your organization's POSH Policy.

Q36. What should IC member/s do if they identify that a complaint does not qualify as a complaint of sexual harassment at workplace as defined under the Policy and the Act?

A. IC member upon concluding this after initial review should document the same and officially forward the complaint and Complainant to the HR Department (HR).

Q37. What is the process of assessing whether a complaint is eligible to be accepted formally and investigated by the IC?

A. On receipt of a complaint, IC members should identify three things, namely: if the conduct is sexual in nature or has a sexual connotation associated with it falling in the category of definition of sexual harassment as provided in the Act; if the conduct happened in a place which qualifies as per the definition of “workplace” under the Act; and lastly, if the Complainant and/or Respondent belong to the Company.

Q38. Who can bring complaint to an IC?

A. A complaint can be made to the ICC by an Aggrieved (woman) or in case if the organization has adopted a gender neutral policy then any employee who recognises themselves with a gender other than female may also raise a complaint.who is part of the Company as a fulltime, part time, contractual, volunteer, intern, ad-hoc, vendor. Even a woman visitor/client harassed by an Employee of the Company, can approach the IC.

Q39. Can a man or an individual from other gender file a complaint with IC?

A. Yes, considering that the internal Policy on the Act adopted at your organisation is gender-neutral, the IC can accept complaint from non-women individuals of the same association i.e. fulltime, part time, contractual, volunteer, intern, ad-hoc, vendor, visitor or client.

Q40. Can a former Employee of the Company file a complaint of sexual harassment to IC?

A. Yes, if it is against an existing Employee of the Company and within the time period as mentioned under the law.

Q41. Can IC receive complaint from an Employee complaining about third party sexual harassment at workplace?

A. Yes, in such instances, the IC will forward such complaints to the IC of the third party harasser's workplace.

Q42. What if there is no IC constituted at the third party harasser's workplace?

A. In such instance, IC of the Company shall forward the matter to the Local Complaints Committee (external body) located in the district where the third party harasser's workplace is located.

Section 6(1)

Note: The matter will be handled through the LCC ONLY when the Complainant in the said case is a Woman. For other scenarios, internal HR will take the matter forward.

Q43 . What is the role of the Management in such situations?

A. The Management of the Company will extend all necessary and reasonable support required to the woman Employee, including helping her to initiate police action, if she chooses to do so.

Q44. What is the time period in which a complaint of sexual harassment can be accepted by the IC?

A. Any complaint should and can be brought to the notice of the IC within 90 days of its occurrence. In situations where the conduct was repetitive, this time period shall be calculated from the latest incident and its time frame.

Section 9(1)

Q45. Can IC accept complaints which have crossed the time period of 90 days?

A. In specific situations where IC feels that the reason mentioned by the Complainant is valid to provide justification for the delay, IC can take up the complaint up to 6 months of the incident.

Section 9(1)

Q46. What can be done for situations where a complaint is older than 90 days (and additional 90 days of discretion), where the Complainant still wishes to file the complaint with the IC?

A. The IC may at its own discretion take up such complaints. However, since the complaint was not submitted within the timeframe prescribed by the Act, any order or recommendation made by IC, may be open to challenge in Courts. Please note that this is no longer under the purview of the POSH Act, 2013 and any action recommended by the IC should not be considered a legal mandate.

Q47. In case of stalking, outraging the modesty of a woman, attempt to rape and rape, can IC file the complaint with the Police?

A. No, IC cannot file the complaint on behalf of the Aggrieved. However, if the Complainant wants to file a complaint with the Police, IC will recommend the Management to provide all reasonable support towards this. However, the IC proceedings of internal investigation should continue in parallel.

Section 11(1)

Q48. What should an IC do if a Complainant or Respondent files a criminal/civil proceeding in the Court against each other or the Company?

A. This will not affect the IC investigation and IC will continue with its investigation and complete it as per the procedure under the Act.

Q49. What should IC do if an Employee, who has voluntarily resigned, taken full and final settlement from the Company, sends a complaint to IC about a sexual harassment that they experienced during their tenure in the Company?

A. If the time frame of the complaint falls under ninety days and additional ninety days (as per ICs collective discretion), and the Respondent is still part of the Company, then the IC should initiate the investigation process.

Q50. Will the Complainant who has exited the organisation and their final settlement has also been completed in the organisation, be allowed to enter the Company premises where the IC proceedings are to be conducted?

A. Yes. As a Complainant, they should be provided with such necessary support, including transportation to attend the hearings of IC. It is the IC quorum who has to ensure that such support are being properly extended to the Complainant.

Q51. How should IC handle instances where a harassment case is reported on the last working day of the Respondent?

A. In such instances, IC can initiate an investigation and if required (based on its discretion as an interim measure), stop the release of the Respondent from the Company.

Q52. How will IC continue with their investigation proceedings in the situations where a Respondent or Complainant intends or plans to leave the Company during an on-going investigation?

A. When IC receives a specific complaint, they should intimate HR of the involved parties (keeping everything else confidential) without disclosing the details of the matter and ensure that the resignation of the parties (if already applied) is put on hold.

Q53. Can an IC force an ex-Employee (as a Respondent, Complainant or Witness) to come for investigation proceedings?

A. IC can summon an individual to appear for investigation proceedings. However, in the absence of cooperation from any party during the course of an investigation, IC can terminate the inquiry proceedings or give an ex-parte decision, i.e. after three proper communications on asking any party to show, and their unavailability, IC, within 15 days of the last notice can pass their decision based on their own investigation.

Rule 7(5)

Q54. Can an IC be made involved by another IC or LCC in an investigation?

A. Yes. An IC of another Company, or a LCC may reach out to the IC in situations when Respondent is an Employee of their Company. IC shall render all possible support towards proper redressal activities.

Note: LCC and cross company IC applicability only occurs when the Complainant is a woman.

Q55. In instances where the Complainant or Respondent is from a different Company, which IC needs to take primary responsibility for receiving and investigating the complaint?

A. In such instances, the responsibility of executing the investigation is shared between both ICs. However, the primary obligation lies with the IC where the Complainant has submitted the complaint.

Q56. What is the format for submitting complaint to IC?

A. CONDUCT as a platform has a guided process of raising the complaint to ensure that the complaint received has all the essential information as required in order for IC to investigate the case. Once a complaint is filed through the platform, you as an IC Chairperson will be notified via email notification and if appointed in a quorum will be able to view the complaint.

Q57 . Is it important to make complaints in writing only?

A. Yes. All complaints have to be made in writing and no verbal complaints can be investigated by the Committee.

Section 9(1)

Q58. Can an IC accept a written complaint by anonymous source?

A. The Act prohibits any acceptance of an anonymous complaint, irrespective of the degree of offence.

Q59. Can a Complainant request the IC to keep their identity disclosed from the Respondent?

A. No. IC cannot accommodate such requests from the Complainant as it contradicts the principles of natural justice guidelines that an IC is required to follow. If the other party is

unaware of the identity, they would not be able to prepare a response or rebuttal against the allegations raised against them. Thus, it is important for both parties to disclose their identities along with identities of the witnesses.

Q60. What is Principle of Natural Justice?

A. Principle of Natural justice mean providing both the pair equal and fair chance to put forward their points related to the case i.e. the person accused of sexual harassment must be given adequate opportunity to be heard, to cross examine the Complainant, bring forth relevant evidence related to their defence and is entitled to know the reasons for the decision taken by the Internal Complaints Committee (ICC).

Q61 . What steps are to be followed by any team/team head/Employee/manager/function head, if they receive a potential complaint of sexual harassment through an anonymous or known source?

A. In such instances, the concerned party shall share the details of IC and direct the Aggrieved (recommended to be done in writing), to reach out to them directly.

Q62. Can individual IC members receive verbal complaints from a Complainant?

A. In instances when an IC member is approached with a complaint, IC member should advise the individual to send an email to IC's official email address.

Q63. Can IC member be part of one-to-one meetings with either a Complainant, Respondent or a Witness involved in a complaint or investigation?

A. No official conversation should happen at an individual level and if ever, any such interaction happens then it should be documented with a valid reason associated with the same.

Q64. What should be done if a Complainant is incapable of making a complaint in writing?

A. ICC shall render all reasonable assistance to the Complainant for making the complaint in writing from their end as it cannot initiate any formal investigation unless it has received a complaint in writing.

Section 9 (1)

Q65. In what all scenarios can IC receive and accept complaints from any other source other than the Aggrieved?

A. The IC can receive and accept the complaint from other sources other than the Complainant only in scenarios when either the Complainant is unable to make complaint due to physical incapacity or due to mental incapacity or if the Complainant has passed away or due to any other reason due to which the Complainant is unable to raise complaint.

Q65. Who all can raise a Complaint on behalf of the Complainant if the Complainant is unable to raise because of physical incapacity? What is the pre-requisite for raising such complaint?

A. The complaint can be filed by relative or friend, co-worker, An officer of National Commission for Women or State Women's Commission (only if the Complainant is a woman) or any person who has knowledge of the incident. The only pre-requisite for raising a complaint on behalf of the Complainant is that they should have a written consent of the Complainant.

Q65. Who all can raise a Complaint on behalf of the Complainant if the Complainant is unable to raise because of mental incapacity?

A. The complaint can be filed by relative or friend, a special educator, a qualified psychologist or psychiatrist, Guardian or authority under whose care Complainant is receiving treatment or any person who has knowledge of the incident jointly with any of the individuals mentioned.

Q65. Who all can raise a Complaint on behalf of the Complainant if the Complainant is unable to raise because of any other reason? What is the pre-requisite for raising such complaint?

A. The complaint can be filed by anyone who has knowledge of the incident. The only pre-requisite for raising a complaint on behalf of the Complainant is that they should have a written consent of the Complainant.

Q65. Who all can raise a Complaint on behalf of the Complainant if the Complainant has passed away? What is the pre-requisite for raising such complaint?

A. The complaint can be filed by one who has knowledge of the incident or the legal heir of the Complainant. The only pre-requisite for raising a complaint on behalf of the Complainant is that they should have a written consent of the Complainant.

III. Analyzing Complaint

Q66. What are the elements to be included before concluding that the complaint received is complete?

A. The written complaint submitted by the Complainant must contain detailed description of the incident(s) [containing, among others- date(s) of the incident(s), timings, Respondent's name, working relationship between the parties, place of incident(s)]. The written complaint is recommended to be accompanied by supporting documents (if any) and details of the witness(s) that the Complainant may refer to during the proceedings to back the allegations as brought forward in the complaint. However, in instances where the evidences and witnesses are not mentioned, the complaint shall also be accepted.

Rule 7(1)

Q67. Can IC move forward with an incomplete complaint?

A. IC should inform the Complainant to provide the missing information from the initial complaint received. To facilitate this process, IC can provide the Complainant with the copy of format of the complaint. This is a necessary and crucial step of the investigation and IC functioning and should not be ignored.

Q68. To what extent can the IC guide the Complainant in filing the complaint and filling out the details?

A. Most of the times, Complainant would not be able to categorize and identify witness/es and evidence/s in their support. Additionally, Complainant may struggle with respect to providing the dates and locations with respect to the incident/s alleged. It is important and advised that IC members guide them on the importance of providing all the details at this stage instead of

providing them at a later stage. IC member/s can guide the Complainant to any extent as long as they remain unbiased and do not allow their narrative and words influence Complainant.

Q69. Is it necessary for IC meetings (internal) or with the concerned parties to happen in person and in the presence of the required quorum ONLY?

A. Yes. All IC meetings, as much practically possible, shall happen in person, in the presence of the required quorum and documented well. In instances, when IC members required for a specific meeting are not able to meet in person, they can have these discussions using tools such as audio call, video call, whatsapp group, any other group chat forum, or any other technology that facilitates the interaction in a convenient manner. However, it is critical that all interactions are documented and maintained well in IC records.

Q70. If the Act says that the period of investigation for a complaint is 90 days, when does that period actually start? From the day IC receives a complaint, or from the day IC receives an official written complaint?

A. The period of 90 days gets activated from the day IC gets an official written complaint.

Q71. What is the role of other departments such as HR, Legal and Reporting Managers in such instances? If required, can IC include these functions in providing any assistance?

A. IC as a vital, internal, redressal body, with the powers of the civil court can seek assistance of the above departments and may even include the Management.

Note: The powers of the civil court for IC are only limited to situations when the complaint is from a Woman.

Q72 . What should be assessed before IC can take the complaint forward?

A. The IC must check if the incident of sexual harassment is covered under the Act or if the incident happened at the workplace as defined by the Act and the Policy. The IC must also check if the Complainant and the Respondent involved in the case are being covered under the purview of the Act and the company's policy. Lastly IC should check the time for raising the

complaint i.e. if the complaint is raised within defined timeline of 3 months and additional 3 months. (Note: There may be instances when ICC may at its own discretion, decide to take up a complaint beyond the timeline of 90 days. These are unique cases and should be supported by valid reasons of delay from the Complainant's side.)

Q73 . How can IC assess whether the incident/s alleged are covered under the purview of the Act?

A. IC shall take reference from the directives provided in the Act where it describes sexual harassment acts. Additionally, in the scenarios when the IC is unable to clearly identify, IC must look into the factors like - whether the conduct was sexual in nature, and, if so, whether such conduct was unwelcome or not; and/or that their objection to such conduct would disadvantage them in connection with their employment including [hiring, dismissal, performance appraisal, promotion/demotion, assignments, monetary appraisal] evaluation, grading, recruitment or promotion; or if the conduct in question creates a hostile working environment.

Keeping in mind the above-mentioned additional factors, the IC can decide.

Q74. How can the IC assess if the incident of sexual harassment happened at the workplace as defined by the Act and the Policy?

A. IC should ensure that the location/s mentioned in the alleged complaint were an outcome of the professional requirement of the role/s of the respective parties (Complainant or Respondent). Any incident of sexual misconduct between two individuals, who are engaged in a personal association, which occurred at the Company's Workplace, will be undertaken by the IC at its own discretion.

Q75. How can the IC assess whether the Complainant or Respondent are covered under the purview of the Act & this Policy?

A. IC can refer to the definitions of the Complainant and Respondent as provided in the Policy for this.

Q76. What should be the next step if the complaint prima facie falls within all the categories i.e. incident happened in the workplace with the employee of the organisation within defined timeline and the incident has the sexual connotation to it as per the act and the Complainant is a current Employee of the Company?

A. The ICC will move on the next steps as defined further in this Manual i.e. forming a quorum keeping atleast 50% female members as gender balance in mind and then call the Complainant for a meeting with the ICC. The Complaint Management section of the CONDUCT platform will guide you to the steps to be taken when investigating a case.

Q77 . What should be the next step if the complaint prima facie falls within all the categories i.e. incident happened in the workplace with the employee of the organisation within defined timeline and the incident has the sexual connotation to it as per the act and the Complainant is an ex-Employee of the Company?

A. If the Complainant is an ex-employee and their ID has been deactivated on the CONDUCT Platform so first the IC would need to collaborate with the Admin of the CONDUCT Platform to onboard the ex-employee by sending invite on the Complainant's personal email id. Then the Complainant would need to be guided on raising a complaint and then the steps mentioned in the Case Management section of the platform needs to be taken. Please ensure to deactivate the ID of the Complainant after the case investigation is completed.

Q78. What should be the next step if the complaint prima facie falls within all the categories i.e. incident happened in the workplace, within defined timeline and the incident has the sexual connotation to it as per the act and the complaint is by a visitor/client?

A.If the Complainant is a visitor then first the IC would need to collaborate with the Admin of the CONDUCT Platform to onboard the ex-employee by sending invite on the Complainant's personal email id. Then the Complainant would need to be guided on raising a complaint and then the steps mentioned in the Case Management section of the platform needs to be taken. Please ensure to deactivate the ID of the Complainant after the case investigation is completed.

Q79. How long do I have to investigate the case?

A. As per the POSH Act, ICC needs to complete the investigation in 90 working days.

Q80. What should be the next step if the ICC determines that the complaint brought by the Complainant does not contain anything which points to a prima facie case of sexual harassment which happened at the workplace or can be a case of workplace harassment?

A. The complaint will be transferred to the location's HR Head for taking it forward through appropriate redressal procedure.

Q81. Is there any need to meet the Complainant and conduct any meeting if the ICC cannot determine a prima facie case of sexual harassment which happened at the workplace from the content of the complaint itself?

A. Yes. In such case, the ICC will conduct at least one meeting with the Complainant to assess all the facts properly, determine the exact nature of the complaint and take the next steps.

Q82. Is there any internal assessment required as per the guidelines of the Act before the ICC begins any preliminary or formal investigation into a complaint received?

A. Yes. Each member of IC will be required to sign a waiver on conflict of interest with respect to the parties of the complaint before proceeding further.

IV. Internal meetings

Q83. After a complaint is analyzed and accepted what should be the next step?

A. The quorum members then schedule an internal meeting to go through the complaint together and identify the gap and missing detail in the complaint and compile questions that they would be asking with the parties.

Q84. Is it mandatory to schedule internal meetings before meeting with the parties?

A. It is not mandatory but advisable to schedule internal meetings before meeting with the parties so that all the members can share their observation from last meetings and can clearly decide on further actions to be taken/questions to be asked in the case investigation.

Q85. Is there any specific duration for which the Internal meetings should be scheduled?

A. No. There is no specific duration for which these internal meetings needs to be scheduled. It could be as short as a 15 minutes quick meeting before meeting the parties.

Q86. Do these internal meetings needs to be documented?

A. Yes. Since the ICC investigation process is a legal process, each and every meeting and discussion among the quorum members as well as with parties needs to be documented and acknowledged by the parties involved.

V. Meeting the Complainant

Q87. What are the specific pointers that IC should ensure in the first meeting with the Complainant?

A. In the first meeting with the Complainant, the first and foremost thing that IC needs to ensure is introducing the quorum to the Complainant then informing the Complainant about the inquiry process and their rights and duties. Inform the Complainant about the interim measures available to them and if the Complainant wants any interim measure, then the ICC should ask the Complainant to give a request for the same in writing in the meeting itself.

Next, to ensure that the Complainant has covered, mentioned and informed every minute details related to the complaint and confirm the complaint is a prima facie case of sexual harassment at workplace. it is necessary to hear the Complainant's version of events. After this, the IC will then have to inform the Complainant about the process of conciliation available and the provision available to them to go the police if they wish to initiate a police procedure on the complaint brought forward.

VI. Conciliation

Q88 . Can two parties come to a settlement after a complaint is filed and accepted by the IC?

A. The Act gives the Complainant the recourse to settle the matter between the Complainant and the Respondent through conciliation.

Section 10(1)

Q89. When can conciliation happen?

A. The Complainant should be provided with the option of conciliation before the initiation of formal investigation and should be executed only with Complainant's approval.

Section 10(1)

Q90 . Is it needed to have the approval of both parties for a conciliation to happen?

A. Yes, a successful conciliation will require the agreement between both parties. It is important to note that the IC should never force or coerce the Complainant towards settling the matter through conciliation. The process of conciliation is initiated only if the Complainant agrees to the process.

Q91. What should IC do if the terms of the conciliation are not acceptable to the Respondent?

A. IC shall proceed with the formal investigation.

Q92 . What should IC do if the process of conciliation is successful?

A. If the conciliation is successful, then the ICC will prepare its inquiry report, containing the terms of settlement agreed upon by the parties. If a settlement is arrived at, the ICC shall record the same, provide a copy to the Complainant and the Respondent and forward it to the Management for implementation. There shall be no further inquiry conducted by the ICC and the case shall stand closed. However, any criminal proceedings filed by the Complainant under IPC or any other law for the offences under the IPC or any other law in force will continue, independent of the settlement arrived through the ICC.

Section 10(2)

Q93. What could be the possible terms of settlement under conciliation for IC's reference?

A. Sample terms of conciliation may typically specify that the Respondent apologizes for their prior conduct towards the Complainant or that the Complainant agrees to withdraw all legal proceedings with respect to the instances of Sexual Harassment in question. However, the Complainant reserve their right to initiate fresh proceeding, in case the Respondent continues to harass the Complainant subsequently. Apart from that, the settlement may also specify details pertaining to the future course of conduct between the Respondent and the Complainant - for example, whether they agree to interact and collaborate (in personal or professional capacity) in future on a need basis, pointers on manner of collaboration at workplace, transfer of any of the parties involved, among others and any other recommendations that may be made by ICC towards the Respondent, for eg. issuance of written warning, or any other counselling that the Respondent may undergo among others.

Q94. Does it happen that the Respondent does not fulfill the terms of the conciliation? If yes, what necessary steps can IC take?

A. If the Complainant informs the ICC that the Respondent has not complied with the terms and conditions as specified in the settlement, then the ICC shall proceed to initiate a formal inquiry into the complaint.

Section 11

Q95 . Can monetary compensation be one of the output of conciliation?

A. No monetary compensation can be made part of conciliation terms.

Section 10(1)

VII. Formal Inquiry

Q96. When will a formal inquiry be initiated?

A. If the Complainant does not choose the process of conciliation, or if the conciliation fails, then the formal inquiry has to be initiated.

Q97. What is the first thing IC should consider before initiating a formal inquiry?

A. Before initiating a formal inquiry, if the Complainant had not made any special request with respect to interim measure earlier, the IC should present them again with the options and take necessary measures to implement them.

Section 12(1)

Q98. What is the importance of implementing interim measure?

A. Implementation of interim measure ensures that the Complainant does not further undergo any mental stress or trauma that they already experience due to the incident mentioned in the complaint. It further ensures that the Complainant does not face any retaliation from the Respondent/(s) in the workplace and the work environment of the organization is not disturbed.

Q99 . What are the possible recommendations that can be made by the IC for interim measures?

A. Interim measure recommendations may range from transferring the Complainant or the Respondent to a different department/office; or granting leave to the Complainant up to a period of three months (wherein the leave granted to the Aggrieved woman under the Act is in addition to the leaves the woman would be entitled to otherwise); or in instances where the Complainant and Respondent are in a subordinate and senior authority working association, a temporary reassignment shall be made to avoid daily contact between the two. Lastly, grant any other relief to the Complainant as prescribed under law.

Section 12(1)

Q100 . How should interim measures be implemented and executed?

A. IC should send a written recommendation of the interim measure decision to the Management and facilitate the implementation. The duty of executing the interim decision of the ICC lies on the Management of the Company who shall assign it further to the appropriate authorities/HR

internal to the Company for implementing the recommendations and provide a status report of such implementation to the ICC.

Q101. Is it possible that the Complainant may not want to take the leave and instead would want to continue their work? In such situations, can the Complainant request that instead the Respondent be sent on a paid leave?

A. Yes it may happen. However, in such situations, IC need to find a way to reach a situation where the Respondent may also continue their regular work without feeling discriminated against.

Q102. What if both parties are crucial members of the Company with respect to their roles and contribution? In such cases, can the IC decide not to offer and execute the options provided by the law under interim measures?

A. In any instance, if the Aggrieved/Complainant wishes to opt for a specific interim measure, IC must comply as not briefing them about their option under interim measure or not implementing it will be considered as violation.

Q103 . What does an inquiry process entail?

A. The ICC inquiry process starts with ascertaining the facts of the matter, verifying and ascertaining the truth in the allegations mentioned in the written complaint, reviewing the documentary evidence, interviewing witness/es and recording statements in the matter and concluding the inquiry with the final inquiry report. The principles of maintaining timeline, maintaining documentation and conducting the inquiry process as per principles of natural justice [Rule 7(4)] is fundamental to a legal inquiry process being conducted.

Q103 . What are the steps to be taken when initiating a formal enquiry?

A. After assessing and accepting the complaint, ICC initiates the investigation by sending a confirmation to the Complainant that their complaint is being investigated. Parallely, the next step is to form a quorum (minimum 3 member, atleast 50% female, participation of Presiding officer and External member is mandatory). After quorum formation, the IC shall then send

across a copy of the written complaint to the Respondent to respond to the allegations to be replied to by the Respondent within a 10-days period. *Rule 7 (2) and (3)*. After sending that, internally the quorum then will discuss the complaint, prepare timeline for meetings, identify the witnesses(if possible), act on the interim measure(if already identified by the ICC). Then the ICC shall then meet with the parties involved in the case - Complainant, Respondent & Witnesses(if any). During the individual meetings with parties, both the parties should be informed about their rights to cross examine when meeting them so that if any of the parties wishes to, the same can be scheduled. Right to cross-examine is one of the fundamental principles of ensuring natural justice during the investigation process and not providing the opportunity of cross examine may result in impacting the fairness of the proceeding and may impact the legal validity of the inquiry/investigation process conducted by ICC.

After the above meetings, the committee shall then meet for sharing their final observation and for final decision contemplation.

Q104. What is cross examination?

A. Cross examination means the questioning of the witness or any party during a trial, hearing, or questioning by the party opposing the one who asked the person to testify in order to evaluate the truth of that person's testimony.

Q105. What are the guidelines with respect to the process of cross examination?

A. When conducting a cross examination meeting between the parties, IC needs to keep in mind that the process of cross examination does not involve making the parties sit across each other and question each other. It does not involve parties mutually levelling charges against each other or engaging in a verbal duel but what it involves is one party putting questions to the other party (on the facts of the matter or any statement/testimony made by the party) to evaluate the truth in the statement/testimony.

Q106 . Can any of the parties refuse to participate in the process of cross examination?

A. Yes. The ICC needs to determine whether the Complainant or the witnesses produced by the Complainant are in the position to participate in verbal cross-examination without any intimidation. It is also crucial to identify that the Complainant is willing to participate in person for this process.

Q107 . When can IC proceed with the process of cross examination?

A. It is only if the ICC feels that the Complainant (is willing) or Witness/es are in the position to freely depose without any fear, the Respondent can be permitted to have verbal cross examination.

Q108. In case the Witness(es) or the Complainant refused to participate in a cross examination meeting, how can IC proceed?

A. In such instance, ICC can adopt any other method through which the Respondent can contradict or correct the statements made by the Complainant. One method that can be described is that the Respondent can cross examine the Complainant/Witness/es through a questionnaire submitted to the ICC, which can be presented by the ICC to the concerned person during a meeting.

Q109. Can parties refuse to appear on the dates of IC meetings?

A. Yes, they can, provided with reasonable justifications. IC has a maximum timeline of 90 days to conclude an investigation. However, considering the gravity of an incident (left at the collective discretion of the IC), they can be rigid with its timelines and the parties will need to adhere to the same.

Q109. Can IC prohibit either of the parties from using/bringing their mobile phone or any other recording device to the IC meetings?

A. Yes. IC investigations being a judicial in nature commands a decorum and IC can declare investigation rooms to be a no-mobile zone.

Q110. Can IC meet the parties separately or they have to meet the parties together?

A. IC can meet the parties separately and need not meet them together unless a process of cross-examination is to be executed.

Q111 . Who decides on the need of the cross-examination?

A. Cross-examination is part of the process outlined by the Act and is a right of both the parties towards each other including any witness who is brought out in the investigation. However, the only exclusion exists for the Aggrieved, where if they are not willing to face the Respondent directly, then they can excuse herself from an in-person cross examination. However, the process will still be executed.

Q112. What are the guidelines on infrastructure for IC when it comes to conducting its investigation meetings?

A. IC meetings must happen in a safe and confidential environment, where IC can do justice to the confidentiality guidelines of the Act. In order to achieve this, IC can either create such space in the Company, or if required (in cases where such venue is not available internally), conduct its meetings outside the Company.

Q113. What happens after the quorum meets all the parties?

A. Quorum member then conduct a final decision making meeting where they share their observations throughout the case. The meeting generally finalize if the case is concluded as a POSH case, if the allegations raised are proven or not and basis observation what action they would want to take against the parties. It would also include any specific recommendation that they might want to extend to the management to ensure no further instances occurs.

VIII. Inquiry Report

Q114 . When should the IC prepare and submit its inquiry report?

A. Once the ICC completes the inquiry process from its side, i.e. all parties have presented their respective versions of the alleged incidents and submitted necessary evidences and witnesses, and IC has examined all possible aspects of the alleged incident, it shall prepare and submit an inquiry report to the Management with its findings and recommendations.

Section 13(1)

Q115. Is there any timeline in which IC should submit this report?

A. IC should submit this report within 10 days of completion of inquiry.

Section 13(1)

Q116. Who is responsible for the preparation and submission of this report?

A. It is the collective responsibility of the IC members to prepare the report. However, the final approval and submission shall be made by the Presiding Officer.

Q117. Is IC required to submit the inquiry report to either of the parties?

A. It is mandatory for the ICC to provide a copy of the inquiry report to the concerned parties, i.e. the Complainant and Respondent.

Section 13(1)

Q118. What should be included in the inquiry report?

A. The inquiry report should contain narration of the incident(s); description of the evidence (if any) which supports or contradicts or is not substantial to prove the incident; statement(s) of the Complainant, Respondent, Witness/es or any relevant information that may be determined during interviews of the above-mentioned persons or their cross examination; an analysis of the information; findings; and recommendations made by the ICC.

Q119 . What are the recommendations IC can make in its inquiry report?

A. If the IC arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend in writing to the Management of the Company to take action against the Respondent, which may include a written apology from the Respondent, a letter of warning may be placed in the personal file of the Respondent, reprimand or censure, immediate transfer or suspension without pay, termination from service, withholding of pay rise or increments, undergoing a counselling session or carrying out community service.

Q119 . Is monetary compensation also part of IC recommendation if proven guilty?

A.Yes. IC may also recommend payment of compensation to the Complainant by the Respondent.

Q119 . How will the IC determine the amount to be paid as compensation by the Respondent?

A.For the purpose of determining the sum to be paid, the IC shall take into account the mental trauma, pain, suffering and emotional distress caused to the Complainant, the loss in the career opportunity (caused to the Complainant) due to the incident(s) of sexual harassment, medical expenses incurred by the Complainant for physical treatment or counseling and lastly the feasibility of such payment being made in lump sum or in installments.

Q119 . In what ways can the monetary compensation be collected from the Respondent when they are proven guilty and are still employed in the organisation?

A.If the Respondent is still employed with the Company, the decided amount of monetary compensation can be deducted from their salary;

Q119 . In what ways can the monetary compensation be collected from the Respondent when they are proven guilty and are not employed in the organisation?

A.If the Respondent is no longer employed by the Company then the Respondent has to pay the amount to the Complainant directly and if the Respondent fails to do so, then the IC can ask the

District Officer (appointed under the Act) of the district of appropriate jurisdiction / where Company is located, to recover the sum as an arrears of land revenue.

Q119 . In the scenario when the allegations raised against the Respondent is not proven that what recommendations will be given by the IC?

A.In the event that the IC arrives at the conclusion that the allegation against the Respondent has not been proved, it shall recommend to the Management of the Company that no action is required to be taken in the matter.

Section 13(2)

Q119 . In the scenario when the complaint raised against the Respondent is found to be frivolous or from a malicious intent or the complaint includes forged/misleading documents then what will the IC recommend?

A.The Act provides that the false or malicious intent on part of the Complainant shall be established post an inquiry in accordance with the procedure prescribed, before IC recommends any action. In cases where the IC arrives at a conclusion that a false or malicious complaint has been filed or false evidence has been provided, the Committee will need to conclude the existing investigation and may initiate a fresh inquiry against the Complainant and only then recommend actions against the Complainant.

Section 14

IX. Post Inquiry

Q120 . Who will IC submit the Final Report to?

A. IC will submit the final report to the Management.

Q121 . Who will implement the recommendation of the IC from the inquiry report?

A. The management can direct the HR further to act upon and enforce the recommendation of the ICC within 60 days of its receipt.

Q122 . Is a status report on implementation required to be provided back to IC?

A. Yes. Within ten days of implementation, a report on the implementation shall be provided back to IC for its internal records.

Q123. Can the management change the decision of the IC and its inquiry report?

A. No. The Management cannot change/suggest changes/send the report back to IC for review as per the POSH Act. The recommendations mentioned by IC in its inquiry report cannot be changed by anybody, except a higher court of appeal (as mentioned in Section 8 below) or any other higher court.

Q124. Can the management inquire about the proceedings of the IC during an on-going investigation?

A. No. The Act puts a strong emphasis on maintaining confidentiality of IC investigation proceedings and any individual who is not part of an IC and its investigation should not be made privy to the details of an investigation. However, an overview on the status can be shared without disclosing details of the names, witness/es, and content of the findings.

Q125. What does the Act say about maintaining confidentiality?

A. Any circulation of the contents of the complaint made, identity and address of Complainant, witnesses, Respondent, information regarding conciliation or inquiry process, actions taken, recommended, shall not be made public, published or made known to press, media or public in any manner. Information regarding the justice may be disseminated without disclosing any information that may lead to the disclosure of the identity of the Complainant (woman), Respondent and witness/es. The Act provides for a fine of INR 5,000 to be levied on any person who does not maintain confidentiality of the proceedings and leaks any sensitive information.

Section 16 and Rule 12

Q126. Can either of the parties appeal towards the decision of the IC?

A. Yes. Any person Aggrieved (Complainant or Respondent) by the recommendations related to the quantum or nature of penalties made by the IC, or the non-implementation of such recommendations by the Management, may file an appeal to the Appellate Authority in accordance with the Act and Rules within three (3) months from the date of the final inquiry report. (Such appellate authority is the respective Central Government Industrial Tribunal-cum-Labour Court appointed in various States).

Section 18

Note: The above is applicable ONLY in instances where the Complainant is a woman.

Q127. Can an IC reopen an investigation once it has completed it?

A. No. An IC is expected to conclude its investigation only after ensuring that it has followed the due process as mandated by the Act and its guidelines and provided sufficient time to all parties to present their case and also provided all reasonable assistance in procuring the evidence/s.

X. Non-adherence and Consequences

Q128. What actions shall be taken against the organisation if they do not adhere to the guidelines mentioned under the Act?

A. The Act lays down very strict adherence to its guidelines and has prescribed subsequent consequences. If the organization is found to not adhere the guidelines related to all the aspects of IC activities with respect to its constitution, member selection, documentation, timelines, confidentiality, manner of investigation, and reporting then a monetary fine which may extend to INR 50,000; or the fine of INR 50,000 on repeat offence; and/or cancellation of business license or registration in case of repeat offence.

Section 26

Q128. What actions shall be taken against the IC(individually or collectively) if they do not adhere to the guidelines mentioned under the Act?

A.In case an ICC member is found to be violating any of the duties mentioned in Section 13, actions may be taken against them by the Management of the Company which may include Disciplinary action as the Company's Code of Conduct; and/or fine equivalent to a month's salary and/or dismissal from the ICC/Company. It is crucial to take note that IC members are the custodians of the intent and objective of the POSH Act, 2013 in this company. Any violation, and disregard for the guidelines of the law in maintaining documentation, records, timelines, conduct, approach towards an investigation, biased behavior and more will call for severe consequences as mentioned hereby.

Q129. Are IC members personally liable for their actions for the decisions taken during their tenure?

A. No. IC members will be functioning as a unit and all decisions and actions will be considered as a collective decision of this body.

Q.130 Is a Company required to submit any report?

A. Yes. An Annual Compliance Report should be submitted by the IC to both, the Company and the District Officer.

Section 21(1)

Q131 When should this report be submitted?

A. IC should prepare and submit this report each calendar year latest by January 31of next calendar year.

Section 21(1)

Q132. What should be included in the Annual Compliance Report?

A. The Annual Compliance Report shall include number of complaints of sexual harassment received in a year; number of complaints disposed off during the year; number of cases pending for more than ninety days; number of workshops or awareness programme against sexual harassment carried out; and nature of action taken by the Employer.

Section 21

Note: In preparation of these reports it must be noted that ONLY those complaints should be mentioned which have been received by women complainant.

Q133. If a Company has multiple ICs, does it need to submit Annual Compliance Report in different districts and locations?

A. Yes. Every IC must submit their Annual Compliance Report in their respective Districts.