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## VAISH ASSOCIATES, ADVOCATES

### POLICY FOR PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

- 1 This Anti-Sexual Harassment Policy (“**Policy**”) of Vaish Associates (“**Firm**”) has been issued in compliance with the provisions of “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” (“**Act**”) and the rules framed thereunder as well as directions of the Hon’ble Supreme Court of India in the case of *Vishaka and Others vs. State of Rajasthan and Others*.
- 2 **Objective:** The Policy’s objective is to (i) protect Employees (*as defined hereinafter*) against Sexual Harassment (*as defined hereinafter*); (ii) prevent and redress Sexual Harassment complaints; and (iii) provide a workplace where equitable treatment is afforded to every Employee irrespective of gender and hierarchy.

The Firm is committed to providing a work environment that is safe and secure, free from the fear of Sexual Harassment for all Employees. The Firm does not tolerate any form of sexual harassment and is committed to take all necessary steps to ensure that the Employees are not subjected to any form of Sexual Harassment.

- 3 **Applicability:** The Policy is applicable to the Employees and deals with all the incidents and complaints of Sexual Harassment at Workplace (*as defined hereinafter*), arising out of or during the course of Employee’s employment/engagement with Firm including while the Employees are liaising with Firm’s clients or suppliers or any other business associates in the course of work assignments/business transactions. The Policy shall be deemed to be incorporated in the service conditions of all Employees.

#### 4 **Interpretation:**

- a. ‘**Employee**’ means any person engaged at a Workplace for any work of Firm. Such person may be employed/engaged on regular, temporary, ad hoc or daily wage basis, either directly or through an agent or a contractor or consultant. It does not matter (i) whether or not such person is working for remuneration or on voluntary basis or otherwise; and (ii) whether the terms of employment are express or implied.

Further, for the purpose of this Policy only, the term ‘Employee’ shall include a permanent employee/staff, partners, associates, advocates, co-workers, contract workers, probationers, trainees/interns or called by any other such name.

- b. “**Workplace**” includes the office premises of Firm as set out in **Schedule 1** and any place visited by the Employee arising out of or during the course of any assignment including transportation provided by Firm for undertaking such journey.
- c. “**Partners** or “**management of Firm**” means the committee (other than Internal Complaints Committee) comprising of partners of Firm.

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- d. All capitalized terms used in this Policy and not defined herein but which are defined in the Act or rules thereunder shall have the meanings respectively assigned to them therein.
- e. In the case of any inconsistency between the provisions of this Policy and the provisions of the Act or rules, the latter shall prevail.

## 5 What constitutes Sexual Harassment?

“**Sexual Harassment**” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of Sexual Harassment may amount to sexual harassment: (i) implied or explicit promise to Employee of preferential treatment in employment; or (ii) implied or explicit threat to Employee of detrimental treatment in employment; or (iii) implied or explicit threat about Employee’s present or future employment status; or (iv) interference with work or creating an intimidating or offensive or hostile work environment for the Employee; or (v) humiliating treatment of the Employee likely to affect the Employee’s health or safety.

**Explanation:** For the purpose of the Policy: (i) Sexual Harassment could be done by a person either singly or in group with others; (ii) Sexual Harassment could be directed to either male or female Employees; (iii) any aggrieved Employee who alleges to have been subjected to any act of Sexual Harassment shall be referred to as “**Complainant**” and a person against whom the Complainant has made a complaint shall be referred to as “**Respondent**”; and (iv) a hostile work environment may be created either through verbal acts or nonverbal acts.

Please refer to **Schedule 2** for illustrative forms of Sexual Harassment that may take place in Workplace.

## 6 What to do in case an incident of Sexual Harassment occurs?

- a. When incident(s) of Sexual Harassment takes place, the Complainant must disapprove the respondent’s behaviour immediately and ask the respondent to behave decently. It is clarified that non-compliance with this sub-clause does not lessen in any way the right of the Complainant from seeking remedies as provided under the Act, its rules, the Policy and any other remedy available to the Complainant.
- b. The Complainant should keep a record of incidents (*dates, times, locations, possible witness, nature of sexual harassment, the Complainant’s response, etc.*). It is not mandatory to have a record of events to file a complaint, but a record can strengthen the Complainant’s case and help the Complainant to remember the details over time, in case the complaint is not filed immediately.
- c. If the Sexual Harassment does not stop or if the Complainant is not comfortable with addressing the respondent directly, the Complainant should submit a formal written complaint to the Internal Complaints Committee (“**ICC**”) in the manner as set out in Clause 8 below.

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## 7 **The ICC and rules governing its constitution:**

- a. Firm has constituted the ICC to consider and redress the complaints of Sexual Harassment.
- b. Two ICCs, one each for New Delhi and Mumbai offices of Firm have been constituted. For the purpose of jurisdiction of the ICC, the Employees of Bengaluru office shall come within the scope of ICC of Mumbai office of Firm. For avoidance of doubt, it is clarified here that any reference to ICC in this Policy shall mean ICC of the relevant office under whose scope the Employee comes.
- c. The details of the ICC and the rules governing the constitution are set out in **Schedule 3**.

## 8 **How to submit a complaint?**

- a. The Complainant must submit a written complaint of Sexual Harassment to the ICC. There is no specific format for the complaint and therefore it can even be in the form of a letter.
- b. The complaint must clearly set out the Complainant's name, department, division and location of Workplace, name of the Respondent and all the details of the incident(s) of Sexual Harassment.
- c. Wherever possible, the Complainant must (i) provide corroborating documents/proof in support of the complaint; and (ii) list of witnesses and their addresses, if any, who witnessed the incident(s) of Sexual Harassment. However, mere inability to substantiate a complaint or provide adequate proof of such alleged incident will not (i) prevent the ICC to conduct an inquiry; or (ii) cause the ICC to consider the complaint as frivolous or malicious.
- d. The Complainant must submit 6 (six) copies of the complaint in sealed envelope to any member of the ICC. Alternatively, the Complainant can even send the complaint by an e-mail to the ICC on email ID iccdelhi@vaishlaw.com - e-mail id for New Delhi ICC or iccmumbai@vaishlaw.com - e-mail id for Mumbai/Bengaluru ICC (as the case may be) or to any member of the ICC of the relevant office (along with the supporting documents and list of witnesses, if any) at the earliest point of time.
- e. Preferably, the written complaint must be submitted immediately as and when the incident of Sexual Harassment occurs. However, if for any reason the Complainant does not submit the written complaint immediately, the Complainant can submit written complaint within 3 (three) months from the date of occurrence of the incident or last of the incidents when more than one incident of Sexual Harassment took place.
- f. The ICC may, for reasons to be recorded in writing, extend the time-limit not exceeding 3 (three) months, if it is satisfied that the circumstances were such that prevented the Complainant from filing the complaint within the aforesaid period.
- g. If the complaint cannot be made in writing, any member of the ICC shall render all reasonable assistance to the Complainant for making the complaint in writing.

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- h. Where the Complainant is unable to make a complaint on account of physical or mental incapacity or death or otherwise, the legal heir or any person as set out in Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“**Rules**”) can make a complaint.

**9 Are there any reliefs that the ICC may grant during pendency of inquiry under this Policy?**

During the pendency of the inquiry, on a written request made by the Complainant, the ICC may recommend the management of Firm to:

- a. Transfer the Complainant or the Respondent to any other Workplace of Firm; or
- b. Grant leave to the Complainant up to a period of 3 (three) months. This leave will be in addition to any other entitled leave; or
- c. Grant such other relief to the Complainant as may be decided by the ICC as per the Act and the Rules; or
- d. Restrain the Respondent from reporting on the work performance of the Complainant or writing confidential report, and assign the same to another Employee.

Upon receiving the recommendation of the ICC under this clause, the management of Firm shall implement them and send a report of such implementation to the ICC.

**10 Whether any protection is afforded to the Complainant and others involved in matter?**

- a. Firm shall ensure that the Complainant (*except for the Complainant who has made malicious allegations or knowing that allegations are untrue*) shall not be put to any form of disadvantage or shall not be subject to any form of retaliation/reprisal/reprimand. Any retaliation/reprimand/reprisal meted to the Complainant or where the Complainant is put to disadvantage merely because of submitting the complaint will be subject to disciplinary action.
- b. Firm will ensure that the Complainant, the Respondent, the witnesses or any other person participating in the proceedings under the Policy is not victimized or discriminated against while dealing with complaints of Sexual Harassment.
- c. For avoidance of doubt, any person who abuses the procedure set out in the Policy will be subject to disciplinary action.

**11 What is the process that ICC must follow upon receiving complaint and before initiating inquiry?**

- a. On receiving the complaint, if the ICC needs any clarifications/explanations from the Complainant, any member(s) of the ICC may hold preliminary meeting with the Complainant. Such meeting shall be held within 7 (seven) working days from the date of receipt of the complaint.

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- b. Within 7 (seven) working days of the receipt of the complaint, the ICC shall send one of the copies received from the Complainant to the Respondent.
- c. If the Complainant submits a request to settle the matter between the Complainant and the Respondent through conciliation, the ICC shall assist the parties to arrive at settlement through conciliation.

**12 What process ICC will follow if the Complainant is willing to settle matter through conciliation after submitting a complaint to ICC?**

- a. The ICC may, before initiating an inquiry and at the request of the Complainant, take steps to settle the matter between the Complainant and the Respondent through conciliation.
- b. Where a settlement has been arrived during the conciliation proceedings, the ICC shall record the settlement so arrived and provide copies of the same each to the management of Firm, the Complainant and the Respondent. For avoidance of doubt, no monetary settlement shall be made as a basis of conciliation. Firm will take action as specified in the recommendation by the ICC.
- c. Where a settlement has been arrived under conciliation, the ICC shall not conduct any further inquiry.

**13 What process the ICC will follow if (i) the Complainant does not opt for conciliation or (ii) where the conciliation proceedings were initiated on Complainant's request but the same failed or (iii) the Respondent commits breach of any term or condition of the settlement arrived through conciliation?**

The ICC shall follow the below process:

- a. Ask the Respondent to submit a written reply to the complaint along with a list of documents and names and addresses of witnesses, if any, within 10 (ten) working days from the date (i) the complaint was received by the ICC; or (ii) on which conciliation proceedings fail; or (iii) the Complainant informs the ICC that any term or condition of the settlement arrived under conciliation proceedings has not been complied with by the Respondent.
- b. The ICC shall provide the Complainant, a copy of the written reply submitted by the Respondent within 7 (seven) working days from the date of receipt of such written reply from the Respondent.
- c. The ICC shall make inquiry into the complaint in accordance with the principles of natural justice. The ICC will allow both the parties to explain their case in detail. For this purpose both the parties shall be given notice of at least 2 (two) working days. Both the parties (Complainant and Respondent) will also be required to submit the evidences in support of their statements.

For conducting inquiry, ICC shall have the powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely (i) summoning and enforcing the attendance of any person and examining on oath; (ii) requiring the discovery and production of documents; and (iii) any other matter as may be prescribed by Act and the Rules.

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- d. The ICC shall have the right to terminate the inquiry proceedings or to give ex-parte decision on the complaint, as the case may be, if the Complainant or the Respondent fail, without sufficient cause, to present herself/ himself for 3 (three) consecutive hearings convened by the Presiding Officer of the ICC. Such termination or ex-parte order shall not be passed without giving an advance 15 (fifteen) days' notice in writing to the concerned party.
- e. The parties shall not be allowed to bring any legal practitioner to represent them in the proceedings before the ICC.
- f. In conducting the inquiry, a minimum of 3 (three) members of the ICC including the Presiding Officer shall be present.

**14 Whether ICC prepares any inquiry report and provides recommendation? What steps the management of Firm shall take upon receiving the report and recommendations?**

- a. The ICC shall complete the inquiry within reasonable period but not beyond 90 (ninety) days and communicate its report of findings and its recommendations for action to the management of Firm within a period of 10 (ten) days from the date of completion of the inquiry. A copy of the report shall also be given to the Complainant and the Respondent.

For avoidance of doubt, it is clarified that the period of 90 (ninety) days begin from the date (i) the Complainant does not opt for conciliation; or (ii) where the conciliation proceedings are initiated but fail; or (iii) the Respondent commits breach of any term of settlement arrived through conciliation.

- b. If the allegations as set out in the complaint are not proved against the Respondent, no action will be recommended by the ICC against the Respondent.
- c. If the allegations as set out in the complaint are proved against the Respondent, the ICC will recommend to the management of Firm:
  - (i) to take any action including written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the services of the Respondent or directing the Respondent to undergo a counseling session or carrying out community service;
  - (ii) to deduct, from the salary or wages or retainership fee of the Respondent, such sum as it may consider appropriate to be paid to the Complainant or Complainant's legal heirs. For the purpose of determining the sum to be paid, the ICC would consider: (1) the mental trauma, pain, suffering and emotional distress caused to the Complainant; (2) the loss caused to the Complainant in career opportunity due to the incident of Sexual Harassment; (3) medical expenses incurred by the Complainant for physical or psychiatric treatment; (4) the income and financial status of the Respondent; and (5) feasibility of such payment in lump sum or in installments by the Respondent to the Complainant.

If Firm is unable to make such deduction from the wages or salary of the Respondent due to the Respondent being absent from duty or cessation of employment, the ICC may direct the Respondent to pay such sum to the Complainant.

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- d. The Partners shall act upon the recommendations of the ICC within 60 (sixty) days of its receipt. An extraordinary meeting of the Partners will be convened (video/audio conferencing permitted) for this purpose and appropriate disciplinary action against the offender will be taken immediately thereafter.

It is clarified that where the Respondent is a partner of Firm, the other remaining partners will constitute management of Firm in order to take appropriate actions on the recommendations of the ICC. Any partner who believes that his/her objectivity may be compromised for any reason may apply to the management of Firm to recuse himself/herself from acting upon the recommendations of the ICC. In such eventuality, the other remaining partners will constitute the management of Firm. Also, if at least 3 partners believe that the objectivity of a certain partner may be compromised for any reason while implementing the recommendations of the ICC, such partners may request the said partner to recuse himself/herself.

- e. The process flow-chart involved in redressing any Sexual Harassment complaint is provided under **Schedule 4**.

#### 15 **What is the punishment for false or malicious complaint or false evidence furnished by Complainant?**

- a. Where the ICC comes to the conclusion that the allegation(s) made against the Respondent is/are malicious or the Complainant or any other person making the complaint has made the complaint knowing it to be false or the Complainant or any other person making the complaint has produced any forged or misleading document, it may recommend the management of Firm to take any action including asking written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the services of the Complainant or directing the Complainant to undergo a counseling session or carrying out community service.
- b. Mere inability to substantiate a complaint or provide adequate proof will not attract any action against the Complainant.
- c. The malicious intent on part of the Complainant shall be established after an inquiry by the ICC.
- d. Further, in the event of a malicious complaint, the Complainant will not be entitled to any remuneration during the period of extra leave, if any, allowed pursuant to the Policy. If the Complainant has already received the remuneration for the period of extra leave and where such complaint is subsequently found to be malicious, Firm shall be entitled to deduct the said amount of remuneration from subsequent salary/wages payable to the Complainant.
- e. **Action against witness in case of false evidence:** Where the ICC arrives at a conclusion that during the inquiry any witness gave false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take any action including asking a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the services of the witness or directing the witness to undergo a counseling session or carrying out community service.

#### 16 **Whether an aggrieved party can prefer appeal?**

A party aggrieved with the recommendations made by the ICC, or the non-implementation of the recommendations of the ICC, as the case may be, may prefer an appeal within a period of 90 (ninety) days from the date ICC issues the recommendations in accordance with the provisions of the Act and the Rules.

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**17 Confidentiality:**

- a. Any concerns can be expressed or reporting can be made without any fear of retaliation.
- b. Confidentiality of the identity of the involved parties including witnesses, if any, will be maintained by all parties including the ICC members. However, the identity of the Complainant will be revealed to the Respondent and the witnesses of the Respondent for the purpose of conducting inquiry.
- c. Furthermore, management of Firm or the ICC may disseminate any information regarding the justice secured to any Complainant without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the Complainant or witnesses or the Respondent.
- d. All records of complaints, including contents of complaint, contents of reply, contents of minutes of meetings, results of investigations, reports and other relevant material will be kept confidential by Firm except where disclosure is required under any applicable law or under directions of any government authority/court of law.

**18 Amendments to the Policy:**

Based on Firm's experience of working of the Policy, the management of Firm may make necessary amendments in the Policy. Further, the ICC may also make recommendations to the management proposing amendments in the Policy.

**19 General:**

- a. In case of any ambiguity or any gap in the Policy, decision taken by the ICC shall be final and binding on all the parties. The ICC shall be guided by the provisions of the Act and the Rules thereunder as well as decisions of courts/tribunals for this purpose.
- b. For the purpose of this Policy, any correspondence or communication to be submitted in writing can also be provided by way of an email, provided the recipient of such correspondence or communication acknowledges the receipt of the same.



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## **Schedule 1**

### **Details of Firm's Workplace**

1. New Delhi Office: 1<sup>st</sup>, 9th & 11th Floor, Mohan Dev Building, 13, Tolstoy Marg, New Delhi - 110001 (India);
2. Mumbai Office: 106, Peninsula Centre, Dr. S. S. Rao Road, Parel, Mumbai - 400012 (India);
3. Bengaluru Office: 105 -106, Raheja Chambers, #12, Museum Road, Bengaluru – 560001 (India).

For avoidance of doubt, it is clarified that the act of Sexual Harassment need not occur only at the aforesaid Workplace. It could occur even in any of the following places: (i) social event organized by Firm; (ii) during work-related travel; (iii) at a client's premises; (iv) at training events, business lunches or dinners, promotional campaigns or public relations events with clients or prospective partners; or (v) during the course of work-related phone conversations or communications via electronic media.

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## Schedule 2

### Illustrative forms of Sexual Harassment

1. Insults or taunts of a sexual nature;
2. Deliberately brushing up against someone;
3. Unwelcome touching, hugging or kissing;
4. Staring or leering;
5. Unwanted or persistent requests to go out;
6. Suggestive or lewd jokes, comments or innuendos or sharing sexual anecdotes or jokes about male/female genders;
7. Making sexual comments about appearance, clothing, or body parts;
8. Telling lies or spreading rumors about a person's personal sex life or sexual orientation;
9. Making offensive comments about someone's sexual orientation or gender identity;
10. Suggesting that a person socializes or provides sexual favours to a senior/client of the opposite sex for professional benefit;
11. Whistling at someone or cat calls;
12. Sending sexually explicit pictures, videos, posters, screen savers, e-mails, twitters, SMS or instant messages; or
13. Any behaviour that would constitute an offence under the criminal law, namely- physical assault, indecent exposure, sexual assault, stalking or obscene communications.

*Note: For victims, it is important to remember that there may be a fine line between poor judgment and Sexual Harassment. A colleague may be saying or doing something without any intent to offend and without realizing that the conduct may amount to Sexual Harassment. If you are the victim of any type of Sexual Harassment, recourse under the Policy is available. However, one should also exhibit resilience. If someone tells you a naughty joke and if you don't like it, tell him/her to shut up. This may be enough to put an end to the problem. If the person still insists or harasses you, then escalate it.*

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### Schedule 3

#### The ICC and rules governing constitution of the ICC

1. Every member of the ICC shall hold office for a period not exceeding 3 (three) years, from the date of their nomination by Firm.

2. Details of members of the ICC for New Delhi office:

Sr. No.	Name and Designation	Contact details
1.	Ms. Poonita Harsh Kundra, Presiding Officer	<a href="mailto:poonitaharshkundra@vaishlaw.com">poonitaharshkundra@vaishlaw.com</a>
2.	Ms. Sulekha Kaul, Member	<a href="mailto:sulekha@vaishlaw.com">sulekha@vaishlaw.com</a>
3.	Ms. Tejasvi Jain, Member	<a href="mailto:tejasvi@vaishlaw.com">tejasvi@vaishlaw.com</a>
4.	Mr. Aditya Vohra, Member	<a href="mailto:aditya@vaishlaw.com">aditya@vaishlaw.com</a>
5.	Mr. Kaustubh Prakash, Member	<a href="mailto:kaustubh@vaishlaw.com">kaustubh@vaishlaw.com</a>
6.	Ms. Urmi Chudgar, External Member	<a href="mailto:Urmi.chudgar@gmail.com">Urmi.chudgar@gmail.com</a>

3. Details of members of the ICC for Mumbai and Bengaluru office:

Sr. No.	Name and Designation	Contact details
1.	Ms. Sandhya Iyer, Presiding Officer	<a href="mailto:sandhya@vaishlaw.com">sandhya@vaishlaw.com</a>
2.	Ms. Supriya Majumdar, Member	<a href="mailto:supriya@vaishlaw.com">supriya@vaishlaw.com</a>
3.	Mr. Krishna Kishore, Member	<a href="mailto:krishna@vaishlaw.com">krishna@vaishlaw.com</a>
4.	Mr. Shrinivas Sankaran, Member	<a href="mailto:shrinivas@vaishlaw.com">shrinivas@vaishlaw.com</a>
5.	Ms. Urmi Chudgar, External Member	<a href="mailto:Urmi.chudgar@gmail.com">Urmi.chudgar@gmail.com</a>

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4. At least one-half of the total number of members of the ICC will be women and shall consist of following members:
  - (i) A Presiding Officer (PO): A woman engaged/employed at a senior level at Firm.
  - (ii) Not less than 2 (two) members from Employees committed to the cause of women/legal knowledge/experience in social work.
  - (iii) Any one member familiar with issues relating to sexual harassment from amongst NGOs/associations committed to the cause of women.
5. Any ICC member who believes that his/her objectivity may be compromised for any reason may apply to the management of Firm to recuse himself/herself from any proceedings of ICC. The management of Firm will consider whether or not to accept such requests and if accepted, shall appoint a replacement ICC member for the particular proceeding in accordance with the law and/or this Policy and notify all concerned parties. Further, if majority members of the ICC believe that the objectivity of a certain member may be compromised for any reason during the proceedings, the ICC may request the said member to recuse himself/herself from such proceedings.
6. It is clarified that where any member of the ICC is the Respondent, the management of Firm will appoint a replacement ICC member for the particular proceeding in accordance with the law and/or this Policy and notify all concerned parties. If such ICC member is found guilty under this Policy, such member shall be removed from the ICC and any vacancy so created shall be filled by fresh nomination in accordance with the provisions of the Act/Rules.
7. An ICC member (other than member from amongst NGOs/associations committed to the cause of women) shall cease to be a part of the ICC upon him/her ceasing to be Employee of Firm.

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**Schedule 4**

**Inquiry process flow-chart**

