

Insolvency and Bankruptcy Board of India

Subject: Amendment to the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

1. IBBI invited comments from stakeholders on the regulations notified under the Code. It was indicated that the comments received till 31st December, 2018, would be processed together and following the due process, the regulations shall be modified to the extent considered necessary. It was also noted that it would be the endeavour of the IBBI to notify modified regulations by 31st March, 2019 and bring them into force from 1st April, 2019.

2. The above invitation sought comments on the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the IBBI (Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Information Utilities) Regulations, 2017. A total of 26 comments were received on these three regulations. The comments which are relevant are enclosed as **Annexure A**. Additionally, Indian Institute of Insolvency Professionals of ICAI (IIP ICAI), an IPA registered with the Board also made some suggestion regarding amendment to the regulations. These have been considered and only one of these suggestions is meaningful and is to be pursued through amendment of regulation, this is given below:

Sl. No.	Extract of Regulations	Comments of Stakeholders	Views of the Division
Suggestion of IIP ICAI on Regulation 5(8) of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016,			
1.	An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier	It is suggested that provisions u/s149(10) of CA 2013 be retained since IIP1 is incorporated as a company: “Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive year on the Board of a company but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board’s report”	The IPA is a front-line regulator where public stake is much higher as compared to a company engaged in pure commercial operations. The proposal is similar to the provisions for comparable organisations like stock exchanges. The proposal may not be accepted. However, the upper age limit of seventy-five years to serve as an Independent Director may be incorporated in the regulations so as to align with Regulation 24(3) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

In line with the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, similar change is proposed for IBBI (Information Utilities) Regulations, 2017. Further some additional changes are being proposed based on feedback on difficulties in implementation of regulations, received from NeSL- the only IU registered with IBBI.

Sl. No.	Extract of Regulations	Comments of Stakeholders	Views of the Division
Regulation 9(7) of the IBBI (Information Utilities) Regulations, 2017			
1.	An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier	None	The upper age limit of seventy-five years to serve as an Independent Director may be incorporated in the regulations so as to align with Regulation 24(3) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.

Regulation 21 of the IBBI (Information Utilities) Regulations, 2017

2.	<p>21. Information of default.</p> <p>(1) On receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information.</p> <p>(2) On completion of the processes of authentication and verification under sub-regulation (1), the information utility shall communicate the information of default, and the status of authentication to registered users who are- (a) creditors of the debtor who has defaulted; (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.</p>	<p>NeSL has given the following feedback, regarding difficulties in implementing this regulation:</p> <p>The corporate debtor is unlikely to accept reported default. Accordingly, completion of the 'process of verification and authentication' needs to be described in the Regulations. In the absence of a laid down procedure for completion of authentication and verification process, the intended benefits of Regulation 21 will not accrue to other creditors on occurrence of a default.</p> <p>The process of verification and authentication will be completed with the IU recording authentication by the debtor with either acceptance or dispute of the default, or after the expiry of the period of authentication as specified under Technical Standard</p>	<p>It is now proposed to specify the processes of authentication and verification as under:</p> <p>On receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information in the following manner:</p> <p>i. Information of the submission of default by the creditor shall be successfully delivered to the designated computer resource (as provided in IT Act, 2000) of the debtor in the following order of preference:</p>
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		Guidelines, as deemed authentication, as the case may be.	<ul style="list-style-type: none"> a. registered with the IU by the debtor, failing which. b. that recorded with any other statutory repository as approved by IBBI, failing which c. that communicated in the Form C submitted for the default, failing which d. that through RPAD (Registered Post with A/D)/Speed Post to only one communication address from the preference as established above for the designated computer resource. ii. The process of verification and authentication will be completed with the IU recording authentication by the debtor with either acceptance or dispute of the default. On the expiry of the period of authentication as specified under the Technical Standard guidelines, the information shall be deemed to have been authenticated.
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3. Cost Benefit Analysis of the proposed amendment is enclosed as **Annexure-B**.
4. The draft regulations giving effect to the above proposals are at:
 - a. the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2019 (**Annexure C**),
 - b. the IBBI (Information Utilities) (Amendment) Regulations, 2019 (**Annexure D**).
5. It is submitted for consideration and approval by the Governing Board.

Annexure A

Sl. No.	Extract of Regulations	Comments of Stakeholders	Views of the Division
1	2	3	4
Comments of Stakeholders on IBBI (Insolvency Professional Agencies) Regulations, 2016			
No relevant suggestions on IBBI (Insolvency Professional Agencies) Regulations, 2016			
Comments of Stakeholders on IBBI (Information Utilities) Regulations, 2017			
1.	General	It is requested that IBBI shall suitably amend or strengthen the IU regulations so that the Banks and Financial Institutions are mandated to adhere to the regulations to Operationalize the concept of IU companies.	IBC, 2016 already provides for the same.
2.	General	The networth requirement of INR fifty crore is significantly high. The same should be brought down to twenty-five crore rupees	Rationale for providing a net worth of 50 crores was to ensure entry of serious players in the market with capacity for investment in IT infrastructure and capabilities.
3.	Regulation 8(2) (a)	Shareholding Structure: The regulations should be amended so that the Indian Promoters can still hold 51% of the paid-up share capital or voting power even after 3 years from the registration of the Company.	Regulations now provide that the Indian Promoters may hold not more than 10% subject to exceptions provided in Regulation 8(1).
4.	Regulation 8	Regulation 8 of (IU) Regulations 2017, prescribes the shareholding structure of the Information Utility Company. Accordingly, the Individual promoters or Promoter group Indian Companies cannot hold more than 10% of the paid-up share capital or voting po	The exceptions are provided for government company; stock exchange; depository; bank; insurance company; and public financial institution
5.	Regulation 20(1)	Home buyers are now financial creditors. As such amount borrowed by real estate	The Form C provided for in Schedule to IBBI (Information Utilities) Regulations, 2017

		companies from them is a financial debt. Form C prescribed may be suitable modified to accommodate information relating to debt owed to home buyers.	provides that "Information may be accepted in this form with such modifications as the information utility deems fit". Accordingly, NeSL has modified the Form C
Comments of Stakeholders on IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016			
6.	Nomination of an Independent Director (ID) by IBBI from a list proposed by the IPA. (Suggested by IIP ICAI)	<p>The list could be manipulated to provide a pre-determined outcome.</p> <p>It may be a better option for the selected ID to be referred for Fit and Proper approval to IBBI. In case of any infirmity, the name could be reverted by IBBI and fresh recommendations invited.</p>	This is similar to the provisions for comparable organisations like stock exchanges. Hence, no amendment proposed.
7.	Appointment of a Managing Director (MD) in the age band of 55-60 years upto a max age of 65 years. (Suggested by IIP ICAI)	<p>IIP1 has a CEO with a contracted tenure up to August 2020. However, he has attained 65 years of age in Dec. 2018. As such, clarity is required about his term of office.</p> <p>While CA 2013 prescribes MD's upper age limit of 70 years, this is not applicable if a higher age limit is approved by a Special Resolution of AGM/EGM or approved by Central Govt., as applicable.</p>	
8.	The appointment, renewal of appointment and termination of service of the MD shall be subject to prior approval of IBBI. (Suggested by IIP ICAI)		MD takes unpleasant decisions under the Code, regulations and bye-laws. Often his decisions may not promote commercial interests of the IPA. He must not be

9.	The MD shall be liable for removal or termination of services by the Governing Board, with the prior approval of IBBI. (Suggested by IIP ICAI)	Removal of MD should be the responsibility of the appointing authority ie. the Governing Board, under advice to IBBI and prior approval may be obtained, in specified instances.	vulnerable to pressures. His appointment and removal must go through a due process. No amendment proposed.
10.	IBBI may suo motu remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after giving a reasonable opportunity of being heard. (Suggested by IIP ICAI)	Removal of MD should fall within the power structure of the appointing authority, ie, the IPA. This may be exercised by IBBI only in exceptional circumstances, which may be cited.	

Annexure B

Cost - Benefit analysis of the proposed amendments

Amendment to the Regulations		
Amendment	Cost	Benefit
<p>A. IBBI (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2019</p> <p>In the principal regulations, in regulation 5, for sub-regulation (8), the following sub-regulation shall be substituted, namely: -</p> <p>“(8) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy five years, whichever is earlier.”</p>		Will enable the IPA to have access to a larger talent pool.
<p>B. IBBI (INFORMATION UTILITIES) (AMENDMENT) REGULATIONS, 2019</p> <p>In the principal regulations, in regulation 9, for sub-regulation (7), the following sub-regulation shall be substituted, namely: -</p> <p>“(7) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy-five years, whichever is earlier.”</p>		Will enable the IU to have access to a larger talent pool.
<p>C. IBBI (INFORMATION UTILITIES) (AMENDMENT) REGULATIONS, 2019</p> <p>. In the principal regulations, in regulation 21, after sub-regulation (2), the following sub-regulations shall be inserted, namely: -</p> <p>“(3) On receipt of information of default, an information utility shall expeditiously undertake the processes</p>		The amendment in the Regulation 21 will ensure that the intended benefits of this regulation accrue to creditors on occurrence of a default.

Amendment to the Regulations		
Amendment	Cost	Benefit
<p>of authentication and verification of the information in the following manner:</p> <p>i. Information of the submission of default by the creditor shall be successfully delivered to the designated computer resource (as provided in IT Act, 2000) of the debtor in the following order of preference:</p> <p>a. registered with the IU by the debtor, failing which,</p> <p>b. that recorded with any other statutory repository as approved by IBBI, failing which</p> <p>c. that communicated in the Form C submitted for the default, failing which</p> <p>d. that through RPAD (Registered Post with A/D)/Speed Post to only one communication address from the preference as established above for the designated computer resource.</p> <p>ii. The process of verification and authentication will be completed with the IU recording authentication by the debtor with either acceptance or dispute of the default. On the expiry of the period of authentication as specified under the Technical Standard guidelines, the information shall be deemed to have been authenticated.”</p>		

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY**

ANNEXURE C

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi,March, 2019

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2019

IBBI/2018-19/GN/REG __ - In exercise of the powers conferred by sections 196, 203 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the principal regulations, in regulation 5, for sub-regulation (8), the following sub-regulation shall be substituted, namely: -

“(8) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy five years, whichever is earlier.”

Dr. M. S. Sahoo
Chairperson
Insolvency and Bankruptcy Board of India

Note: the Insolvency and Bankruptcy Board of India (Model Bye – Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG001 on 22nd November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 421 dated 21st November, 2016 and these have been amended previously on 11th October, 2018.

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi,March , 2019

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) (AMENDMENT) REGULATIONS, 2019

IBBI/2018-19/GN/REG __-In exercise of the powers conferred by section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the principal regulations, in regulation 9, for sub-regulation (7), the following sub-regulation shall be substituted, namely: -

“(7) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy-five years, whichever is earlier.”

3. In the principal regulations, in regulation 21, after sub-regulation (1), the following sub-regulations shall be inserted, namely: -

“1 (A) The processes of authentication and verification of the information of default shall be undertaken by the information utility in the following manner:

i. Information of default shall be successfully delivered by hand delivery or by post or by electronic means to the debtor in the following order of preference:

- a. Details of debtor registered with the IU by the debtor himself, failing which,
- b. Details of debtor recorded with any other statutory repository as approved by IBBI, failing which
- c. Details of debtor communicated in the Form C submitted for the default.

ii. The process of verification and authentication shall be considered to have been completed with the IU recording authentication by the debtor with either acceptance or dispute of the default; or on the expiry of the period of authentication as specified under the Technical Standard guidelines.”

Dr. M. S. Sahoo
Chairperson
Insolvency and Bankruptcy Board of India

Note: the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published vide notification No. IBBI/2016-17/GN/REG009 on 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, and were subsequently amended vide No. IBBI/2017-18/GN/REG016 dated 29th September, 2017, vide No. IBBI/2017-18/GN/REG 029 dated 27th March, 2018 and vide no. IBBI/2018-19/GN/REG034 dated 11th October, 2018.