

Insolvency and Bankruptcy Board of India

Subject: Amendments in the IBBI (Insolvency Professionals) Regulations, 2016

While considering the Board Note No. 007/2018 in its meeting on 15th March 2018, the Governing Board desired further inputs on proposals relating to turnover based fees proposed on insolvency professionals and insolvency professional entities, recognition fee on insolvency professional entities, and surcharge for Professional Development Fund.

Responsibilities of IBBI

2. The Insolvency and Bankruptcy Board of India (IBBI / Board) was established on 1st October, 2016 under the Insolvency and Bankruptcy Code, 2016 (Code). It is a key pillar of the ecosystem responsible for implementation of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. It has regulatory oversight over the Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities. It writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It has recently been tasked to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of the Code. It has been designated as the ‘Authority’ under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the country. Section 196 of the Code enumerates specific responsibilities on the Board. The effective discharge of these responsibilities requires commensurate resources.

Income from Services

3. The IBBI currently levies fee as under:

Service Provider	Fee (Rs. lakh) for Registration / Recognition	Recurring Fee (Rs. lakh) / Year
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Under the Insolvency and Bankruptcy Code, 2016		
IP	00.10	*00.02
IPA	10.00	05.00
IPE	00.00	00.00
IU	#50.00	50.00
Under the Companies (Registered Valuers and valuation) Rules, 2017		
Registered Valuer		
Individual	00.05	00.00
Partnership/Company	00.10	00.00
Registered Valuer Organisation	01.00	00.00

*10,000 for five years; # Application fee is Rs.5 lakh

4. The realisation by the IBBI from fee has been as under:

(Amount in Rs. lakh)

Service Provider	2016-17	2017-18	2018-19 (31 st May)
Under the Insolvency and Bankruptcy Code, 2016			
IP	59.10	167.30	00.00
IPA	30.00	15.00	05.00
IPE	00.00	00.00	00.00
IU	00.00	65.00	00.00
Under the Companies (Registered Valuers and valuation) Rules, 2017			
Registered Valuer:	00.00	00.00	00.00
Individual			
Partnership/Company			
Registered Valuer Organisation	00.00	00.00	03.00
Total	89.10	247.30	08.00

5. A regulator usually starts levying fees at a low rate initially and increases it to appropriate level over time. It levies fees on a lower base (number and volume of transactions being less in initial years) which increases as the market size grows. While the base as well as the rate is low, it needs to incur huge capital expenses in the initial years. Faced with a low income and

high expenses in the initial years, a regulator generally depends on exogenous contribution. The IBBI has been relying on Government for grants in initial years.

6. However, the IBBI needs to be reasonably self-sufficient in the long run. Its expenses need to be borne by those who benefit from its services. The Code till recently allowed the IBBI to levy fee only for registration of IPs, IPAs and IUs. It was doubtful if the IBBI could levy fee based on turnover and thereby benefit from a growing market. The recent Ordinance has explicitly allowed the IBBI to levy fee or other charges for carrying out the purposes of this Code, including fee for registration and renewal of IPs, IPAs and IUs, similar to provisions in the SEBI Act, 1992, IRDAI Act, 1999 or the PFRDA Act, 2013.

Regulatory Practice

Financial Conduct Authority (FCA), United Kingdom

7. The FCA levies three types of fee, namely authorisation fee, change in authorisation fee and periodic fee from the firm they authorise. It calculates the amount of fee based on three bases: the type of regulated activity of the firm, the amount of business undertaken by the firm, and the cost it incurs to regulate the activity. Further details are placed at **Annexure-A**.

Securities Exchange Commission (SEC), United States of America

8. The SEC levies fee to recover the costs. Each national securities exchange pays a fee @ \$15 per \$ 1 million of aggregate amount of sales of securities transacted on such exchange. Similarly, each national securities association pays a fee @ \$15 per \$ 1 million of aggregate amount of sales transacted by or through a member of such association. Further details are at **Annexure-B**.

Securities and Exchange Board of India (SEBI), India

9. As per SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, every stock broker/clearing member/ self-clearing member is required to pay a fee in respect of the securities transactions, including off-market transactions undertaken by them at the specified rates. Part B, Schedule V of the said regulations giving further details is at **Annexure-C**. SEBI also levies a regulatory fee annually from every recognised stock exchange based on its annual turnover. Chapter II of the SEBI (Regulatory Fee on Stock Exchanges) Regulations, 2006 giving further details is at **Annexure-D**.

Contemporary Thinking

Financial Sector Legislative Reforms Commission (FSLRC)

10. The FSLRC argued that a regulator should be funded primarily through fees as it ensures that financial stakeholders (who are the main beneficiaries of regulated markets) bear the cost of regulation instead of the cost being spread across the entire budget of the Government. It recommended that regulators be empowered to charge three different types of fees: (a) Flat fees for registration: This fee should be as small as possible to ensure that it does not prevent entry of new financial firms. (b) Fees dependant on the nature of the transaction: This type of fee will vary depending on the nature of financial business being carried out. For example, if the cost of regulating an insurance firm is higher than the cost of regulating a brokerage firm, the fees levied on the insurance firm should be higher. (c) Fees dependent on the number or value of transactions: This type of fee will vary depending on the frequency and size of transactions. For example, a brokerage firm may have to pay fees depending upon the number of transactions it carries out. Similarly, an insurance firm would be charged depending on the number of insured contracts it executes. Further details are at **Annexure-E**.

Bankruptcy Law Reforms Committee (BLRC)

11. The BLRC believed that as a good practice the Board should fund itself from the fees collected from its regulated entities. However, the industry of regulated professionals and entities focused on bankruptcy and insolvency will develop over time, while the Board will require to perform its supervisory functions from the start. It recommended that the Board be funded through a mix of government support and fees collected from regulated entities. Further details are at **Annexure-F**.

Ministry's Working Group on Building the Insolvency and Bankruptcy Board of India

12. The Working Group felt that in the initial phase of the building up of the IBBI and its credibility, budgetary grants from Government will be the main source of funding. In a few years, the contours of the bankruptcy intermediation industry will become visible. The revenues of regulated entities will become visible. At that point, IBBI will enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses. The fee will be analogous to the charges that SEBI enforces upon securities firms which are implemented at the level of the exchanges.

The Working Group supported this relying on the practice of the FCA. Further details are **Annexure-G**.

Hon'ble Supreme Court of India

13. The power to levy fee and the basis of fee was contested when SEBI levied turnover based fee on stock brokers in the matter of BSE Brokers Forum, Bombay & Ors. Vs. Securities & Exchange Board of India & Ors. The Order dated 1st February 2001 of the Hon'ble Supreme Court of India is at **Annexure-H**. The Hon'ble Court reasoned: *"The Board (i.e. SEBI) is an autonomous body created by an Act of Parliament to control the activities of the securities market in which thousands of members of gullible public will be investing huge sums of money. Therefore, there is every need for a vigilant supervision of the activities of the market and for that purpose if the Statute intends that the necessary funds should be met by collection of fees from the securities market itself then the said levy cannot be questioned on the ground that the monies required for the capital expenditure of the Board should be met by the Government of India."*

14. The Hon'ble Court observed: *"...From the enumeration of the above provisions of the Act, Rules and Regulations, it is clear that the Board is empowered to collect two types of fees, namely, the fee under Section 11(2)(k) for carrying out the purposes of Section 11 and a fee for the purpose of registering the applicants under Section 12(2) of the Act. The quantum of fee to be paid is fixed under Schedule III of the Regulations as provided under the Act. Therefore, there is no room to attack the levy on the ground that the same is not authorised by law..."*

15. The Hon'ble Court referring to its previous judgments passed in other matters, further noted: *"...though the fee must have relation to the services rendered, or the advantages conferred, it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee is being paid. It held that if one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied..."*. *"...the test of correlation of the collection with the services rendered is to be reckoned at the aggregate level and not at the individual level..."*. *"Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled... It is also not necessary that the services to be*

rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd. (supra), if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the Statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone.”

16. The Hon’ble Court further noted: “the Statute also mandates that the Board should regulate the business of stock exchanges and other securities market. It also mandates that the Board shall promote and regulate self-regulatory organisations prohibiting fraudulent trade practices and insider trading, promote investors education and training of intermediaries, regulate the acquisition of shares and take-over of companies, undertake inspection, inquiries and audits of the stock exchanges, mutual funds and other persons associated with the securities market, conduct research in furtherance of the obligations cast on the Board and over and above all, it has the obligation to perform such functions as are delegated to it by the Central Government under the SCR Act, 1956. It is seen that in furtherance of these requirements of the Statute, the Board requires substantial sums of money towards capital expenditure in the form of acquiring office premises, residential premises, office equipments and to provide the necessary facilities for inducting the information technology in its day-to-day functions...Once the levy is in public interest and connected with the larger trade in which the contributories are involved then confining the services only to the contributories does not arise...we are of the opinion that since the amount collected under the impugned levy is being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to contributories i.e. the petitioners would not make the levy invalid...From the material on record, it is seen that approx. 50 per cent of the total expenditure to be incurred by the Board would be on brokers related services and from amongst all the players in the share market brokers form a distinct and separate class as compared to others including other

intermediaries. Therefore, in our opinion, there is nothing wrong in either classifying the brokers as a separate class for the subject of levy based on their annual turnover because the volume of transaction of the brokers has a direct bearing on the regulatory expenses of the Board. Hence, this classification has a direct nexus with the object to be achieved.”

17. The Apex Court, while clarifying the nature of fees charged by SEBI from brokers based on their annual turnover in the above matter, observed: *“It cannot be disputed that the annual turnover of a broker is not the subject matter of the levy but is only a measure of the levy. In other words, the fee is not being levied on the turnover as such but the fee is being levied on the brokers making their annual turnover as a measure of the levy which is a fee for regulating the activities of the securities market and for registration of the brokers and other intermediaries in the said market. Therefore, it is futile to contend that such levy would be either a tax or a fee on turnover. It is a settled principle in law that if the State has the authority to impose a levy then it has a wide discretion in choosing the measure of levy provided, of course, it withstands the test of reasonableness.....Therefore, if the impugned levy adopts a measure which is either similar to the one adopted while levying turnover tax or income-tax, the impugned levy ipso facto by adoption of such measure, would not become either an income-tax or a turnover tax or even a fee on income or a fee on turnover.....Therefore, it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income.”*

Proposed Fee Structure

18. The IPs and IPEs earn a fee linked to size of a process. For example, higher the size of a process, the higher is the amount of fee earned by the IP. The IBBI monitors and regulates the processes as well as the IPs and IPEs. It is therefore, reasonable that the IBBI levies a percentage of fee earned by the IPs and IPEs to defray its own costs. The fees may be levied on following three basis:

- a. **Fixed:** Low, lumpsum fee at the time of registration of IPs and recognition of IPEs;
- b. **Variable:** An ad valorem fee which is a percentage of the annual fee earned by IPs and IPEs from their services under the Code; and
- c. **Event-based:** A nominal fee for providing specific services, e.g., a fee may be levied on change/ up-dation of address on IPE's request or filing of a form or record by an IP.

19. It is, therefore, proposed to levy the fee, in addition to fee being currently levied, as under:

a. An IP may be required to and pay:

- (i) a fee @ 1% of its turnover from its services under the Code on accrual basis; and
- (ii) a surcharge @ 10% of the fee towards the Professional Development Fund to be maintained by the IBBI for use for development of the profession of IPs

b. An IPE may be required to pay:

- (i) a recognition fee of Rs.50,000;
- (ii) a fee @ 1% of its turnover from support services under the Code on accrual basis;
- (iii) a surcharge @ 10% of fee towards the Professional Development Fund to be maintained by the IBBI for use for development of the profession of IPs; and
- (iv) a filing fee of Rs.2000 for recording a change in directors/partners.

20. The IPs and IPEs may submit the fee and surcharge on fee as above by 30th April of the succeeding year along with a statement of annual turnover in the respective specified Forms. A draft of the Amendment is at **Annexure I**.

21. The proposal is placed for consideration of the Governing Board.

ANNEXURE-I

**GAZETTE OF INDIA
EXTRAORDINARY
PART III, SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, _____ JUNE, 2018**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, ____ June, 2018

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2018

IBBI/2018-19/GN/REG0__ - In exercise of the powers conferred by sections 196, 207 and 208 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 (Insolvency Professionals) Regulations, 2016 namely:-

1. These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2018.
2. They shall come into force from the date of publication in the Official Gazette.
3. In the principal regulations, after regulation 7, the following regulations shall be inserted, namely:-

“7A. **Fee.**- (1) An insolvency professional shall pay a fee which shall be one percent of turnover from his services as an insolvency professional in the preceding financial year to the Board by 30th April every year.

(2) An insolvency professional shall pay a surcharge which shall be ten per cent of the fee paid under sub-regulation (1) towards the professional development fund of the Board.

(3) The fee under sub-regulation (1) shall be accompanied by an audited annual statement of turnover in Form E.”.

4. In the principal regulations, in regulation 12, for sub-regulation (2), the following sub-regulation shall be substituted, namely: -

(2) A person eligible under sub-regulation (1) may make an application for recognition as an insolvency professional entity to the Board in Form C of the Second Schedule to these Regulations, along with a non-refundable application fee of fifty thousand rupees payable to the Board.”.

5. In the principal regulations, after regulation 12, the following regulation shall be inserted, namely:-

“12A. **Fee.**- (1) An insolvency professional entity shall receive such amount of fees and in such manner for its support services to insolvency professionals as may be approved by the committee of creditors.

(2) An insolvency professional entity shall pay a fee which shall be one percent of turnover from its services to insolvency professionals in the preceding financial year to the Board by 30th April every year.

(3) An insolvency professional entity shall pay a surcharge which shall be ten per cent of the fee paid under sub-regulation (2) towards the professional development fund of the Board.

(4) The fee under sub-regulation (2) shall be accompanied by an audited annual statement of turnover in Form F.”.

6. In the principal regulations, for clauses (b) and (c) of sub-regulation (2) of regulation 13, the following clauses shall be substituted, namely: -

“(b) inform the Board, within seven days, when an insolvency professional ceases to be its director or partner, as the case may be, along with a fee of two thousand rupees;

(c) inform the Board, within seven days, when an insolvency professional joins as its director or partner, as the case may be, along with a fee of two thousand rupees; and;”.

7. In the principal regulations, the following shall be inserted after regulation 14, namely: -

“CHAPTER VI

15. **Professional Development Fund.** – There shall be formed a Fund to be called the Professional Development Fund, which shall be used by the Board for development of profession of insolvency professionals.”.

8. In the principal regulations, after Form D, the following Form shall be inserted, namely:

“FORM E

[Under Regulation 7A(3) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]

To

The General Manager, (IP Division)

Insolvency and Bankruptcy Board of India

Subject: Annual statement of turnover of insolvency professional.

Sir / Madam,

1. I, [Insert name] hereby submit the annual statement of turnover from my services as an insolvency professional in the financial year [insert financial year].
2. I, [insert name], hereby affirm that –
 - i. all information contained in this application is true and correct in all material respects and
 - ii. no material information relevant for the purpose of this application has been suppressed.
3. My turnover for the financial year [Insert financial year] is Rupees..... from my services as an insolvency professional on accrual basis.

4. The details of turnover, process wise are as under:

Sl. No.	Name of Debtor	Services rendered as (IRP / RP / Liquidator / Trustee)	Total accrued remuneration (In Rs.)
1			
2			
n			
Total			

Attachments:

- A. Evidence of deposit/payment of fee at the rate one percent of aforesaid turnover as applicable.
B. Evidence of deposit/payment of surcharge at the rate ten percent of fee as applicable.

Yours faithfully,

(Name)

(Registration Number)

Place:

Date:

Audited by

Signature and Seal of the Auditor.”.

9. In the principal regulations, after Form E, the following Form shall be inserted, namely:

“FORM F

[Under Regulation 12A(4) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]

To

The General Manager (IPE Division)

Insolvency and Bankruptcy Board of India

Subject: Annual statement of turnover of insolvency professional entity.

Sir / Madam,

1. I, being duly authorized for the purpose, hereby submit the audited statement of turnover of [Insert name of insolvency professional entity] from support services rendered to insolvency professionals during the financial year [insert financial year].
2. I, on behalf of [insert name of entity], hereby affirm that –
 - i. all information contained in this application is true and correct in all material respects and
 - ii. no material information relevant for the purpose of this application has been suppressed.
3. The turnover of [Insert name of insolvency professional entity] for the financial year [Insert financial year] is Rupees....., for the support services as an insolvency professional entity on accrual basis.
4. The details of turnover, process wise are as under:

Sl. No.	Name of Debtor	Name of IP appointed as IRP/RP/Liquidator/Trustee	Details of Services rendered	Total accrued remuneration (In Rs.)
1				
2				
n				
Total				

Attachments:

- A. Evidence of deposit/payment of fee at the rate one percent of aforesaid turnover as applicable.
- B. Evidence of deposit/payment of surcharge at the rate ten percent of fee as applicable.

Yours faithfully,

(Name)

(Registration Number)

Place:

Date:

Audited by

Signature and Seal of the Auditor.”.

(Dr. M. S. Sahoo)

Chairperson

[ADVT . - _____]

Note: The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 were published in the Gazette of India Extraordinary vide notification No. IBBI/2016-17/GN/REG003 on 29th November, 2016 and were subsequently amended by Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018 vide notification number IBBI/2017-18/GN/REG027 dated 27th March, 2018.



Fees and levies

First published: 08/05/2015 | Last updated: 12/09/2017

Find out about the fees we charge and what they cover, and the levies we collect for organisations that are part of the regulatory system.

We are independent of Government. To finance our work we charge fees to:

- the firms we authorise
- some other bodies such as recognised investment exchanges or registered firms

There are 3 types of fee:

- application, when you ask us to authorise your firm
- change to permissions, when you want to change a permission for an authorised activity
- annual (periodic), which is payable each year

There is also a matrix of application fees for firms applying for **consumer credit activities**.

We also collect fees and levies to pay for the costs of the:

- Prudential Regulation Authority
- Financial Ombudsman Service
- Financial Services Compensation Scheme
- Money Advice Service
- Financial Reporting Council
- Pensions Guidance Service
- Illegal Money Lending Team

You can find our rules on fees in the Fees Manual section of the Handbook.

Fees to apply for authorisation

If you wish to register with us or get authorised, we will charge you an application fee.

The fee is not refundable, even if your application is unsuccessful.

If you apply to be authorised, the amount of the fee will depend on the:

- regulated activities your firm wishes to carry on
- complexity of your application

These are 3 of the main application fees:

- £1,500 – straightforward application
- £5,000 – moderately complex application
- £25,000 – complex application

There is also a [matrix of application fees](#) for firms applying for **consumer credit activities**.

If you apply to change your firm's legal status, we will charge you 50% of the relevant application fee.

If your application is complex, we will charge you the full application fee.

Fees to change permissions

We charge a fee to change (vary) a permission, for example, where a firm wants to start arranging mortgages.

If the change puts you in an additional fee-block from your existing one, we will charge you 50% of the relevant [authorisation application fee](#).

If the change in permission does not put you into an additional fee-block, there is a fee of £250.

We will not charge you if you wish to reduce your permissions.

Read more about [fee-blocks](#) in Chapter 4, Annex 1A of the [Handbook](#).

Annual fees

How we calculate your fee

The amount we charge you will depend on:

- the type of regulated activities your firm carries out (fee-blocks)
- the extent of your firm's activities (amount of business undertaken)
- how much it costs us to regulate these types of activities

Read more information about [how we calculate your fees](#).

How and when we collect your fees

We will invoice you between July and September each year. We will issue a single invoice covering your FCA fee plus fees and levies for any other regulatory organisations, as appropriate.

Where your total fees exceed £50,000 in the previous year, we will invoice you for 50% of that fee in April. This is called our 'on account' fee.

Read about our [annual fee cycle](#).

You can also read our [latest consultation papers and policies on fees](#).

When to pay

You must pay by the due date, which is 30 days from the date of the invoice we send you.

How to pay

[Find out how to pay](#).

Contact us

- email: fcafees@fca.org.uk
- post: Revenue Department, Financial Conduct Authority, 25 The North Colonnade, London E14 5HS
- See all ways to [contact us](#)

Further information

Read our information on [fees and levies for consumer credit firms](#).

G:\COMP\SEC\SECURITIES EXCHANGE ACT OF 1934.XML

SECURITIES EXCHANGE ACT OF 1934

[References in brackets [] are to title 15, United States Code]

[As Amended Through P.L. 115-141, Enacted March 23, 2018]

AN ACT To provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—REGULATION OF SECURITIES EXCHANGES**SHORT TITLE**

SECTION 1. [78a] This Act may be cited as the “Securities Exchange Act of 1934”.

NECESSITY FOR REGULATION AS PROVIDED IN THIS TITLE ¹

SEC. 2. [78b] For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities ex-

¹Section 7 of the Insider Trading and Securities Fraud Enforcement Act (15 U.S.C. 78b note; P.L. 100-774) contained the following additional provisions:

SEC. 7. SECURITIES LAWS STUDY.

(a) **FINDINGS.**—The Congress finds that—

- (1) recent disclosures of securities fraud and insider trading have caused public concern about the adequacy of Federal securities laws, rules, and regulations;
- (2) Federal securities laws, rules, and regulations have not undergone a comprehensive and exhaustive review since the advent of the modern international, institutionalized securities market;
- (3) since that review, the volume of securities transactions and the nature of the securities industry have changed dramatically; and
- (4) there is an important national interest in maintaining fair and orderly securities trading, assuring the fairness of securities transactions and markets and protecting investors.

(b) **STUDY AND INVESTIGATION REQUIRED.**—

(1) **GENERAL REQUIREMENT.**—The Securities and Exchange Commission shall, subject to the availability of funds appropriated pursuant to subsection (d), make a study and investigation of the adequacy of the Federal securities laws and rules and regulations thereunder for the protection of the public interest and the interests of investors.

(2) **REQUIRED SUBJECTS FOR STUDY AND INVESTIGATION.**—Such study and investigation shall include an analysis of—

- (A) the extent of improper trading while in possession of insider information, such as trading with advance knowledge of tender offers or forthcoming announcements of material financial information;
- (B) the adequacy of surveillance methods and technologies of brokers, dealers, and self-regulatory organizations;
- (C) the adequacy of cooperation between the Federal, State, and foreign enforcement authorities concerning securities laws enforcement; and
- (D) impediments to the fairness and orderliness of the securities markets and to improvements in the breadth and depth of the capital available to the securities markets, and additional methods to promote those objectives.

Continued

means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

SEC. 31. [78ee] TRANSACTION FEES.

(a) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the annual appropriation to the Commission by Congress.

(b) EXCHANGE-TRADED SECURITIES.—Subject to subsection (j), each national securities exchange shall pay to the Commission a fee at a rate equal to \$15 per \$1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) transacted on such national securities exchange. (NSC)

(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED AND LAST-SALE-REPORTED SECURITIES.—Subject to subsection (j), each national securities association shall pay to the Commission a fee at a rate equal to \$15 per \$1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association. (NSA)

(d) ASSESSMENTS ON SECURITY FUTURES TRANSACTIONS.—Each national securities exchange and national securities association shall pay to the Commission an assessment equal to \$0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction. (NSC + NSA)

(e) DATES FOR PAYMENTS.—The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid—

(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

(2) on or before September 25, with respect to transactions and sales occurring during the period beginning on the pre-

ceding January 1 and ending at the close of the preceding August 31.

(f) EXEMPTIONS.—The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

(g) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee or assessment rates applicable under this section for each fiscal year⁹⁰ not later than 30 days after the date on which an Act making a regular appropriation to the Commission for such fiscal year is enacted, together with any estimates or projections on which such fees are based.

(h) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this section shall be applied pro rata to amounts and balances of less than \$1,000,000.

(i) DEPOSIT OF FEES.—

(1) OFFSETTING COLLECTIONS.—Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(2) GENERAL REVENUES PROHIBITED.—No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(j) ADJUSTMENTS TO FEE RATES.—

(1) ANNUAL ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d) of this section) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.

(2) MID-YEAR ADJUSTMENT.—Subject to subsections (i)(1)(B) and (k), for each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than March 1, adjust each of the rates appli-

⁹⁰The required fees for fiscal year 1997 are set forth in the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Division A, Title I, Sec. 101(a), Title V, Securities and Exchange Commission, Salaries and Expenses. Pub. L. No. 104-208.

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

NEW DELHI, 27 SEPTEMBER, 2013

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 27th September, 2013

SECURITIES AND EXCHANGE BOARD OF INDIA

(STOCK BROKERS AND SUB-BROKERS)

(SECOND AMENDMENT) REGULATIONS, 2013

No. LAD-NRO/GN/2013-14/25/24775 — In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, namely,—

1. These regulations may be called the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2013.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992,—
 - I. regulation 2 shall be re-numbered as sub-regulation (1);
 - II. in regulation 2, -
 - (i) the opening statement shall be substituted with the following:

" 2(1) In these regulations, unless the context otherwise requires, - "

(ii) in the substituted sub regulation (1), -

(A) for clause (ad), the following shall be substituted, namely,-

“(ad) "clearing corporation" shall mean a clearing corporation as defined in clause (d) of sub-regulation (1) of regulation 2 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012;"

(B) for clause (ae), the following shall be substituted, namely,-

"(ae) "clearing member" shall mean a clearing member as defined in clause (e) of sub-regulation (1) of regulation 2 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012;"

(C) for clause (ca), the following shall be substituted, namely, -

“(ca) "proprietary trading member" means a stock broker who trades in the debt segment of the recognised stock exchange, exclusively on its own account or as permitted by its sectoral regulator;"

(D) for clause (fa), the following shall be substituted, namely,-

"(fa) "self-clearing member" means a member of a clearing corporation who is also a stock broker and clears and settles trades on its own account or on account of its clients only;"

(E) for clause (gb) the following shall be substituted, namely,-

"(gb) "stock broker" means a person having trading rights in any recognised stock exchange and includes a trading member;

(F) clause (gd) shall be omitted;

(G) clause (h) shall be omitted;

III. after substituted sub-regulation (1), the following new sub-regulation shall be inserted, namely, -

"(2) Words and expressions used and not defined in these regulations but defined in the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be." ;

IV. for Chapter II, the following shall be substituted, namely, -

"CHAPTER II

REGISTRATION OF STOCK BROKERS

Application for registration.

3. (1) No person shall act as a stock broker, unless he seeks a certificate of registration from the Board for each stock exchange in which he seeks to operate:

Provided that no separate registration shall be required for a clearing member registered with the Board to operate as a stock broker in the stock exchange which has promoted the clearing corporation of which he is a clearing member.

(2) An application for grant of a certificate of registration as a stock broker shall be submitted to the Board in Form A of Schedule I through the stock exchange(s) of which he is admitted as a member.

(3) The stock exchange(s) shall forward the application form to the Board as early as possible but not later than thirty days from the date of its receipt.

Furnishing of information, clarification.

4. (1) The Board may require the applicant, or the concerned stock exchange, to furnish further information or clarifications, regarding the trading, settling or dealing in securities and matter connected thereto, to consider the application for grant of a certificate.

(2) The applicant or, its principal officer shall, if so required, appear before the Board for personal representation.

Consideration of application for grant of registration.

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-

- (a) is eligible to be admitted as a member of a stock exchange;
- (b) has the necessary infrastructure like adequate office space, equipments and man power to effectively discharge his activities;
- (c) has any past experience in the business of trading or dealing in securities, as the case may be;
- (d) has been subjected to disciplinary proceedings under the rules, and bye-laws of a stock exchange, or enforcement action under securities laws, with respect to his business as a stock-broker involving either himself or any of his partners, directors or employees;
- (e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;
- (f) has any financial liability which is due and payable in terms of the Act, the Securities Contracts (Regulation) Act, 1956 or rules and regulations thereunder;
- (g) has obtained certification in terms of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 or as may be specified by the Board;
- (h) satisfies the minimum networth and deposit requirements as specified in Schedule VI, for the segment for which membership or approval is sought.

Procedure for registration.

6. The Board may, after consideration of the application under regulation 3 and on being satisfied that the applicant has complied with the conditions laid down in regulation 5 grant a certificate of registration in Form D to the stock-broker, and send an intimation to that effect to the stock exchange(s) of which it is a member.

Procedure where registration is not granted.

7. (1) Where an application under regulation 3, does not fulfil the requirements mentioned in regulation 5, the Board may reject the application after giving a reasonable opportunity of being heard.

(2) The refusal to grant the registration certificate shall be communicated by the Board within thirty days of such refusal to the applicant and to the concerned stock exchange stating therein the grounds on which the application has been rejected.

(3) An applicant whose application has been rejected by the Board under sub-regulation (2), may apply within a period of thirty days from the date of receipt of such intimation, to the Board for reconsideration of its decision.

(4) The Board shall reconsider an application made under sub-regulation (3) and communicate its decision as soon as possible in writing to the applicant and to the concerned stock exchange.

Payment of fees.

8. Every applicant eligible for grant of a certificate of registration as a stock broker shall pay such fees and in such manner as specified in Schedule III or Schedule V as the case maybe:

Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

- (a) the stock broker holds the membership of any stock exchange;
- (b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;
- (c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;
- (d) he shall pay fees charged by the Board in the manner provided in these regulations;

- (e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;
- (f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and
- (g) he shall at all times maintain the minimum networth as specified in Schedule VI.

Approval for operation in segments of stock exchange.

10. (1) Approval for operating in segments of a stock exchange shall be granted by the concerned stock exchange.

(2) A stock broker registered with the Board, who desires to operate in any segment(s) of the stock exchange of which it holds a membership, shall apply to the concerned stock exchange, in the manner specified by the Board.

(3) A clearing member registered with the Board, who desires to operate in any segment(s) of the stock exchange which has promoted the clearing corporation, of which he is a member, shall apply to the concerned stock exchange in the manner specified by the Board.

(4) On receipt of an application under sub-regulation (2) or sub-regulation (3), the stock exchange shall, on being satisfied with the compliance of provision of the regulations and other relevant eligibility requirements specified by the Board, grant approval for operation in any segment(s) and shall inform the Board about such grant of approval." ;

V. after Chapter II, the following new Chapter shall be inserted, namely-

"CHAPTER II-A

REGISTRATION OF CLEARING MEMBERS

Application for registration.

10A. (1) Any person who desires to act as a clearing member, shall seek a certificate of registration from the Board for each clearing corporation in which he seeks to operate:

Provided that no separate registration shall be required for a stock broker registered with the Board to operate as a clearing member in the clearing corporation which is promoted by the stock exchange of which he is a member.

(2) An application for grant of a certificate of registration as clearing member shall be submitted to the Board in Form AD of Schedule I through the clearing corporation(s) of which he is admitted as a member.

(3) The Clearing Corporation(s) shall forward the application form to the Board as early as possible but not later than thirty days from the date of its receipt.

Applicability of Chapter II.

10B. The provisions of Chapter II shall be applicable *mutatis mutandis* to registration of a clearing member, except as otherwise provided."

Payment of fees.

10C. Every applicant eligible for grant of a certificate of registration as a clearing member shall pay such fees and in such manner as specified in Schedule III or Schedule V as the case maybe:

Provided that the Board may on sufficient cause being shown permit the clearing member to pay such fees at any time before the expiry of six months from the date on which such fees become due.

Approval for operation in segments of clearing corporation.

10D. (1) Approval for operating in any segments of a clearing corporation shall be granted by the concerned clearing corporation.

(2) A clearing member registered with the Board, who desires to operate in any segment(s) of the clearing corporation of which it holds a membership, shall apply to the concerned clearing corporation in the manner specified by the Board.

(3) A stock broker registered with the Board, who desires to operate in any segment(s) of the clearing corporation promoted by the stock exchange of which he is a member, shall apply to the concerned clearing corporation in the manner specified by the Board.

(4) On receipt of an application under sub-regulation (2) or sub-regulation (3) , the clearing corporation shall, on being satisfied with the compliance of provision of the regulations and other relevant eligibility requirements specified by the

Board, grant approval for operation in any segment(s), and shall inform the Board about such grant of approval." ;

VI. Chapter III-A, Chapter III-B and Chapter III-C shall be omitted;

VII. after regulation 28 the following new Chapter shall be inserted, namely-

**"CHAPTER VII
MISCELLANEOUS**

Power to remove difficulties.

29. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars.

Power to specify procedures, etc. and issue clarifications.

30. For the purposes of implementation of these regulations and matters incidental thereto, the Board may specify norms, procedures, processes, manners or guidelines as specified in these regulations, by way of circulars to recognised stock exchange(s) and recognised clearing corporation(s)."

VIII. in Schedule I, -

(i) for Form A, the following shall be substituted, namely-

"FORM A

[Regulation 3]

**Application Form for Registration as Stock Broker with Securities and Exchange Board
of India**

Table 1:

Sl. No.	Particulars	Details
1	Name of Member with Code No.	
2	Trade name of Member	
3	Name of the Stock Exchange/ segment of which the applicant is the member	
4	Date of admission to exchange/ segment	
5	Address of Member	
6	Fax Number(s), Phone Number(s) of office and residence and email address	
7	Form of Organization—Sole proprietorship, partnership, corporate body, financial institution	
8	Net worth along with supporting document	

Table 2: Details of proprietor/ partners/ directors

Sl. No.	Names	Age	PAN	Educational Qualifications	Experience in derivatives trading or securities market, as applicable

Table 3: Details of membership in other stock exchanges

Sl. No.	Name	Stock Exchange with code no.	SEBI Registration No.

Table 4: Details of sales personnel or approved user who has passed any certification programme

Sl. No.	Name	Date of test	Percentage	Certificate No.

Other details:

1. Please furnish a copy of the memorandum and articles of association or the partnership deed, as the case may be.
2. If the applicant is applying for self-clearing membership, the applicant must provide a letter from concerned Clearing Corporation confirming that the application is prima facie in order and approval for self-clearing membership shall be given once SEBI registration is granted as stock broker.
3. If the applicant intends to clear and settle his trades through a clearing member, the applicant is required to furnish the name and details of the clearing member along with a copy of MoU/ agreement/ contract with them for the same.
4. Whether the application is accompanied by a requisite fee as per Schedule V of the Regulations as applicable to the applicant.

Undertaking:

5. Whether the applicant or its director or partners, any time convicted of any economic offence? If so, furnish the details.
6. Whether the applicant or its directors or partners, declared insolvent or declared defaulter by any exchange? If so, furnish details.
7. Whether the applicant or its directors or partners at any time subjected to any proceedings or penalty by the Board under SEBI Act or any of the regulations framed under the SEBI Act? If so, furnish the details.
8. Whether any disciplinary action has been initiated/ taken or penalty has been imposed by SEBI/ stock exchange(s)/ clearing corporation(s) or any other regulatory authority? If yes, furnish details. Also provide the details of corrective steps taken thereon.

Declaration:

I declare that the information given in this form is true and in the event of any information furnished is false, misleading or suppression of facts, my certificate of registration is liable to be cancelled by SEBI without assigning any reasons whatsoever.

Dated.....

Signature

RECOMMENDATION OF THE STOCK EXCHANGE

This is to certify that is a member of this Stock Exchange and is recommended for registration with the Securities and Exchange Board of India.

Signature :

Name :

Designation :

"

(ii) after Form AC, the following new Form shall be inserted, namely,-

"FORM AD

[Regulation 10A]

Application Form for Registration as Clearing Member with Securities and Exchange Board of India**Table 1:**

Sl. No.	Particulars	Details
1	Name of Member with Code No.	
2	Trade name of Member	

3	Name of the Clearing Corporation of which the applicant is the member	
4	Date of admission to Clearing Corporation	
5	Address of Member	
6	Fax Number(s), Phone Number(s) of office and residence and email address	
7	Form of Organization—Sole proprietorship, partnership, corporate body, financial institution	
8	Net worth along with supporting document	

Table 2: Details of proprietor/ partners/ directors

Sl. No.	Names	Age	PAN	Educational Qualifications	Experience in derivatives trading or securities market, as applicable

Table 3: Details of membership in other clearing corporations

Sl. No.	Name	Clearing Corporation with code no.	SEBI Registration No.

Other details:

1. Please furnish a copy of the memorandum and articles of association or the partnership deed, as the case may be.
2. Whether the application is accompanied by a requisite fee as per Schedule V of the Regulations as applicable to the applicant.

Undertakings:

3. Whether the applicant or its director or partners, any time convicted of any economic offence? If so, furnish the details.
4. Whether the applicant or its directors or partners, declared insolvent or declared defaulter by any exchange? If so, furnish details.
5. Whether the applicant or its directors or partners at any time subjected to any proceedings or penalty by the Board under SEBI Act or any of the regulations framed under the SEBI Act? If so, furnish the details.
6. Whether any disciplinary action has been initiated/ taken or penalty has been imposed by SEBI/ stock exchange(s)/ clearing corporation(s) or any other regulatory authority? If yes, furnish details. Also provide the details of corrective steps taken thereon.

Declaration:

I declare that the information given in this form is true and in the event of any information furnished is false, misleading or suppression of facts, my certificate of registration is liable to be cancelled by SEBI without assigning any reasons whatsoever.

Dated.....

Signature

RECOMMENDATION OF THE CLEARING CORPORATION

This is to certify that is a member of this Clearing Corporation and is recommended for registration with the Securities and Exchange Board of India.

Signature :

Name :

Designation :

"

(iii) Form AB, Form AC, Form DA, Form DB and Form DC shall be omitted;

(iv) for Form D, the following shall be substituted, namely, -

"FORM D

[Regulations 6 and 10B]

CERTIFICATE OF REGISTRATION

In exercise of the powers conferred by sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992, read with the rules and regulations made thereunder, the Board hereby grants a certificate of registration to..... a member of the stock exchange/ clearing corporation, as a stock broker/proprietary trading member/ clearing member / self-clearing member for carrying on the activities of buying, selling or dealing in securities/ clearing and settlement of trades and for carrying on such other activities as are permitted by such exchange(s)/ clearing corporation subject to the conditions prescribed therefor, from time to time, by the Board.

Registration number allotted is as under:

.....

This certificate shall be valid till it is suspended or cancelled in accordance with the Regulations.

Date :

By order

For and on behalf of Securities and Exchange Board of India

"

IX. in Schedule III, for clause IV, the following shall be substituted, namely-

" IV. Non-applicability to stock brokers governed by Schedule V.

The provisions of this Schedule shall not apply to stock brokers to whom Schedule V applies, from the time when it becomes so applicable."

X. after Schedule IVB, the following new schedules shall be inserted, namely,

"SCHEDULE V

Payment of Fees by Stock Brokers/ Clearing Members/ Self-Clearing members

[Regulation 10(1)]

PART A

APPLICABILITY

1. This Schedule shall apply to stock brokers in cash segment from the following points of time:

(a) All stock brokers who are granted registration by the Board on or after the first day of October, 2006 — upon grant of such registration;

(b) All stock brokers who were granted registration by the Board on or after the first day of April, 2006, but before the first day of October, 2006 — from the first day of October, 2006;

(c) All stock brokers who have not completed five financial years from the date of grant of registration by the Board, as on the thirty first day of March, 2006 — upon completion of ten financial years from the date of grant of registration by the Board;

(d) All stock brokers who have completed five financial years from the date of grant of registration by the Board, as on the thirty first day of March, 2006 — upon completion of the current block of five financial years, within the meaning of item I(1)(c) of Schedule III;

(e) All stock brokers falling under sub-clause (c) or (d), who opt in accordance with clause 2 of this Schedule — from such time as may be specified by the Board.

2. Stock brokers falling under sub-clause (c) or (d) of clause 1 may opt to pay fees in accordance with this Schedule before completion of the relevant time periods mentioned in those sub-clauses, by exercising an option in writing to that effect and communicating it to the Board, in such manner and within such time as may be specified by the Board.

PART B

CHARGE OF FEES

3. (1) On and from the applicability of this Schedule, every stock broker/ clearing member/ self clearing member shall pay to the Board in accordance with Part C, a fee in respect of the securities transactions including off-market transactions undertaken by them, at the rates mentioned below:

Segment	Rate/ Amount (in ₹)			Remarks
	Stock Broker	Clearing member	Self-clearing member	
Cash	0.0001 per cent of the price at which the securities are purchased or sold (₹ 10 per crore)	*	*	All sale and purchase Transactions in securities other than debt securities.
Equity derivatives	0.0001 per cent of his turnover (₹ 10 per crore)	50,000/-	50,000/-	Explanation.—(A) The expression 'turnover' shall include the value of the trades executed by the stock broker on the concerned segment of the recognized stock exchange and of the trades settled on the expiration
Currency derivatives	0.0001 per cent of his turnover (₹ 10 per crore)	50,000/-	50,000/-	

Interest rate derivatives	0.000025 per cent of his turnover (₹ 2.5 per crore)	50,000/-	50,000/-	of the contracts. (B) In case of options contracts, 'turnover' shall be computed on the basis of premium traded for the option contracts and in case where the option is exercised or assigned, it shall be additionally computed on the basis of notional value of option contracts exercised or assigned.
Debt	0.00001 per cent of his turnover (₹1 per crore) <i>Explanation.</i> —For the purpose of this clause, the expression 'turnover' shall include the aggregate value of the trades executed, including both sale and purchase transactions, by the stock broker including the proprietary trading member on the debt segment of the recognized stock exchange.	50,000/-	50,000/-	The fee shall not be applicable for clearing member or self-clearing member in case the said clearing member or self-clearing Member is already a clearing member or self-clearing member in any other segment and is paying fee, as specified in this Part, for such segment.

* As may be specified by the Board from time to time

(2) A clearing member/ self-clearing member shall pay a fee of ₹ 50,000 every year till his registration is in force, in the manner specified below:-

- (a) for the first financial year along with the application for registration;
- (b) for the subsequent financial years before 1st June of that financial year.

4. Nothing in clause 3 shall affect the liability of any stock broker to pay fees under Schedule III, which accrued before this Schedule became applicable to him and such fees shall be paid as per the relevant provisions of Schedule III as if they had not ceased to be applicable to him.

PART C

MANNER OF PAYMENT AND RECOVERY

5. (1) Every recognized stock exchange shall collect from every stock broker in cash segment, the fee payable under clause 3 in respect of—

- (a) securities transactions entered into by him in that stock exchange; and
 - (b) off-market transactions entered into by him which are reported to that stock exchange,—
- in accordance with the provisions of its bye-laws.

Explanation.—The Board may specify the manner in which fees shall be collected from stock brokers who report the same transactions to different stock exchanges in which they are members, under clause (b).

(2) Every recognized stock exchange shall collect from every stock broker in any segment other than cash segment, the fee payable under clause 3 in respect of turnover in the relevant segment of that stock exchange in accordance with the provisions of its bye-laws.

(3) The fee collected by a recognized stock exchange under sub-clause (1) or (2) of this clause during a calendar month shall be paid by the stock exchange to the Board by the fifth working day of the following calendar month.

(4) All recognized stock exchanges shall maintain such registers and furnish such returns or information to the Board in respect of the fee collected under this Schedule, as may be specified by the Board.

(5) Without prejudice to sub-clause (4), a recognized stock exchange shall also be liable to furnish such information or explanations to the Board as may be required by it in respect of fee collected or liable to be collected under this Schedule.

6. A stock broker who also acts as a clearing member/ self-clearing member shall pay the annual fee separately, as applicable to each category as specified in clause 3 above.

7. (1) Nothing contained in clause 5 shall affect the primary liability of a stock broker/ clearing member/ self-clearing member to pay the fees under clause 3 or shall preclude the Board from recovering any such fee remaining unpaid by any stock broker/ clearing member/ self-clearing member directly from him.

(2) Where due to the stock broker's/ clearing member's/ self-clearing member's default any fee which was liable to be paid on his behalf under clause 5 remains unpaid or is paid belatedly, he shall, without prejudice to any other action that may be taken under the Act, rules or regulations, pay an interest of 15 per cent per annum for every month of delay or part thereof to the Board.

(3) Every stock broker/ clearing member/ self-clearing member shall be liable to furnish such information or explanations to the Board as may be required by it in respect of fee paid or payable under this Schedule.

8. The financial year shall mean the year commencing from 1st April and ending on 31st March of the following year.

9. For the purposes of this Part, the obligations cast on recognised stock exchanges and stock brokers shall, *mutatis mutandis*, apply to recognised clearing corporations and clearing members/self-clearing members also.

SCHEDULE VI
Networth and Deposit requirements for Stock Brokers/ Clearing Members/ Self-Clearing members
[Regulation 5(h), 9(g)]

APPLICABILITY, MANNER OF PAYMENT AND RECOVERY

1. The stock broker shall have a net-worth and shall deposit with the stock exchange a sum as may be specified by the Board/ Stock Exchange for the relevant segment from time to time.
2. The clearing member/ self-clearing member shall have the minimum networth and shall deposit the minimum sum specified hereunder or a higher amount with the clearing corporation promoted by the respective stock exchange in the manner specified from time to time.
3. The quantum of networth and deposit to be maintained by the stock broker/clearing member shall be as specified in the Table provided in this Schedule.
4. The quantum of deposit to be maintained by the stock broker/clearing member shall be separately calculated segment wise.
5. The quantum of networth to be maintained by the stock broker/clearing member shall be collectively reckoned for all segments. It therefore means that if a stock broker/clearing member has a networth which is higher, then he may not be required to maintain separate networth for the other segments requiring lower networth.

TABLE ON NETWORTH AND DEPOSIT

Segment	Stock Broker (in ₹)		Clearing member (in ₹)		Self clearing member (in ₹)	
	Networth	Deposit	Networth	Deposit	Networth	Deposit
Cash	*	*	*	*	*	*
Equity Derivatives	*	*	3 crore	50 lakh	1 crore	50 lakh
Currency Derivatives	1 crore	*	10 crore	50 lakh	5 crore	50 lakh
Debt	50 Lakh (including for proprietary trading member)	*	3 crore	*	1 crore	*

* As may be specified by the Board from time to time

Explanation.- For the purposes of this Schedule, 'networth' shall mean paid up capital, free reserves and other securities approved by the Board from time to time but shall not include fixed assets, pledged securities, value of member's card, non-allowable securities (unlisted securities), bad deliveries, doubtful debts and advances (debts or advances overdue for more than three months or debts or advances given to the associate persons of the member), prepaid expenses, losses, intangible assets and 30% value of marketable securities:

Provided that the deposit requirement specified for the debt segment shall not be applicable when a clearing member clears and settles all the trades only on gross basis for both securities and funds, without using settlement or trade guarantee fund:

Provided further that where the stock broker, clearing member or self-clearing member in the debt segment, is also regulated by a sectoral regulator other than the Board, the networth shall be computed in the manner as specified by such sectoral regulator."

- XI. Schedule IIIA, Schedule IV, Schedule IVA and Schedule IVB shall be omitted.

U.K. SINHA

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

1. Securities and Exchange Board of India (Stock Brokers and Sub-Brokers)

Regulations, 1992, the Principal Regulations, was published in the Gazette of India on October 23, 1992 vide S.O. No. 780 (E).

2. The Principal Regulations were subsequently amended on:

(a) November 28, 1995 by the SEBI (Payment of Fees) (Amendment) Regulations, 1995 vide S.O. No. 939 (E).

- (b) January 5, 1998 by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 1998 vide S.O. No. 13 (E).
- (c) January 21, 1998 by SEBI (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 1998 vide S.O. No. 75 (E).
- (d) December 16, 1998 by SEBI (Stock Brokers and Sub-Brokers) (Third Amendment) Regulations, 1998 vide S.O. No. 1078 (E).
- (e) July 6, 1999 by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 1999 vide S.O. No. 541 (E).
- (f) March 14, 2000 by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2000 vide S.O. No. 234 (E).
- (g) March 28, 2000 by SEBI (Appeal to Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No. 278 (E).
- (h) August 30, 2000 by SEBI (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2000 vide S.O. No. 787 (E).
- (i) May 29, 2001 by SEBI (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No. 476(E).
- (j) November 15, 2001 by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2001 vide S.O. No. 1128 (E).
- (k) February 20, 2002 by SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2002 vide S.O. No. 220 (E).
- (l) September 27, 2002 by SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No. 1045 (E).
- (m) September 23, 2003 by the SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2003 vide S.O. No. 1095 (E).
- (n) November 20, 2003 by the SEBI (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2003 vide F. No. SEBI /LAD /20795 /2003.
- (o) March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398(E).
- (p) August 1, 2006 by the SEBI (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2006 vide S.O. No. 1235 (E).
- (q) September 7, 2006 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2006 vide S.O. No. 1447 (E).
- (r) September 25, 2006 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Third Amendment) Regulations, 2006 vide S.O. No. 1600(E).

- (s) May 26, 2008 by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Notification No. LAD-NRO/GN/2008/11/126538.
- (t) August 11, 2008 by the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) (Amendment) Regulations, 2008 vide Notification No. LADNRO/GN/2008/20/134766.
- (u) June 29, 2009 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2009 vide Notification No. LADNRO/ GN/2009- 10/11/167759.
- (v) November 19, 2009 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2009 vide Notification No. LADNRO/GN/2009-10/21/183853.
- (w) April 13, 2010 by the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) (Amendment) Regulations, 2010 vide Notification No. LADNRO/GN/2010-11/06/1097.
- (x) April 6, 2011 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2011 vide Notification No. F. No. LAD – NRO/ GN/ 2011 – 12/01/11486.
- (y) April 19, 2011 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2011 vide Notification No. LAD/NRO/GN/2011-12/03/12650.
- (z) August 17, 2011 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2011 vide Notification No. LAD-NRO/ GN/2011-12/19/26273
- (za) April 5, 2013 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2013 vide Notification No. LAD-NRO/GN/2013-14/01/8129

THE GAZETTE OF INDIA**EXTRAORDINARY****PART II SECTION 3 SUB SECTION (ii)****PUBLISHED BY AUTHORITY****SECURITIES AND EXCHANGE BOARD OF INDIA****NOTIFICATION****Mumbai, the 14th December 2006****SECURITIES AND EXCHANGE BOARD OF INDIA****(REGULATORY FEE ON STOCK EXCHANGES) REGULATIONS, 2006**

S.O. No. 2097(E). In exercise of the powers conferred by Section 30 read with clause (k) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:-

**CHAPTER I
PRELIMINARY****Short title and commencement**

1. (1) These regulations may be called the Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) Regulations, 2006.
- (2) They shall come into force on the first day of January 2007.

Definitions

2. (1) In these Regulations, unless the context otherwise requires:-

- (a) **Act** means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) **Board** means the Securities and Exchange Board of India established under provisions of section 3 of the Act;
- (c) **company** means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);
- (d) **financial year** means the period of twelve months commencing on the first day of April every year;
- (e) **quarter** means the period of three months commencing on the first day of April, July, October and January of each financial year;
- (f) **recognised stock exchange** means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); and
- (g) **regulatory fee** means fees levied by the Board under these regulations for carrying out the functions under the Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

- (2) All other words and expressions used but not defined in these regulations, but defined in the Act or in the Companies Act, 1956 (1 of 1956) or in Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the rules and the regulations made thereunder or in the scheme, shall have the same

meanings respectively assigned to them in such Acts or the rules or the regulations made thereunder, or any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II

LEVY AND PAYMENT OF REGULATORY FEE ON STOCK EXCHANGES

Regulatory fee on stock exchanges

3. On and from the commencement of these regulations, there shall be charged on every recognised stock exchange, a regulatory fee payable to the Board, at such rates and within such time as is mentioned in regulation 4.

Rate of regulatory fee

4. (1) A recognised stock exchange having an annual turnover mentioned in column (2) of the following Table shall pay to the Board, within thirty days of conclusion of the relevant financial year, an amount mentioned in the corresponding entry in column (3) of the said Table:

Sl. No. (1)	Annual Turnover (Rupees in crores) (2)	Amount of fee (Rs.) (3)
1.	Less than or equal to 10,000	1,00,000/-
2.	More than 10,000 but less than or equal to 1,00,000	10,00,000/-
3.	More than 1,00,000 but less than or equal to 5,00,000	50,00,000/-
4.	More than 5,00,000 but less than or equal to 10,00,000	1,00,00,000/-
5.	More than 10,00,000	[1] [Rs1,00,00,000 plus 0.00006% of the annual turnover in excess of Rs. 10,00,000 crores, subject to a maximum of Rs.20,00,00,000.]

Explanation: For the purposes of this sub-regulation, the expression ♦ annual turnover ♦ shall mean the aggregate value of the transactions which took place on the recognised stock exchange during the relevant financial year:

[2] [Provided that for a period of two years from the date of commencement of Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) (Amendment) Regulations, 2015, a regional commodity derivatives exchange shall pay to the Board, an annual regulatory fee of fifty thousand rupees, within thirty days of conclusion of the relevant financial year.] ♦

(2) A recognised stock exchange shall also pay to the Board, within fifteen days of end of each quarter of a financial year, an amount equal to ten per cent of the aggregate of listing fees collected by it from issuers whose securities are listed on it, during that quarter:

provided that the fees due under sub-regulation (2) in respect of the last quarter of a financial year may be paid within thirty days of conclusion of the quarter, together with the fees due under sub-regulation (1).

Explanation: For the purposes of this sub-regulation, the expression ♦listing fees♦ shall mean all fees collected by a recognised stock exchange from any company or other entity whose securities are listed thereon, towards listing of such securities.

Manner of payment of fee

5. (1) The fee mentioned in regulation 4 shall be paid by a recognised stock exchange by means of a demand draft drawn in favour of the ♦Securities and Exchange Board of India♦, payable at Mumbai and shall be accompanied by a statement of computation of the fees.

(2) The statement of computation of fees mentioned in sub-regulation (1) shall be certified to be correct by a chartered accountant.

CHAPTER III MISCELLANEOUS

Other duties of recognised stock exchanges

6. (1) Every recognised stock exchange shall maintain such registers and furnish such returns or information to the Board in respect of its annual turnover, the listing fees collected by it and the fee paid or payable under these regulations, as may be specified by the Board.

(2) Without prejudice to sub-regulation (1), a recognised stock exchange shall also be liable to furnish such information or explanations to the Board as may be required by it in respect of its regulated functions and the fee paid or payable under these regulations.

(3) Where due to the default of the recognised stock exchange, any fee which was liable to be paid under regulation 4 remains unpaid or is paid belatedly or is short-paid, it shall, without prejudice to any other action that may be taken under the Act, rules or regulations, pay an interest of fifteen per cent per annum on the amount remaining unpaid or belatedly paid or short-paid, for every month of delay or part thereof to the Board.

**M. DAMODARAN
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA**

[1] Substituted for figure "2,00,00,000" by SEBI (Payment of Fees) (Amendment) Regulations, 2014, w.e.f. 23-05-2014.

[2] Inserted by SEBI (Regulatory Fee on Stock Exchanges)(Amendment) Regulations, 2015, w.e.f. 28-09-2015



Government of India

Report of the
Financial Sector Legislative Reforms Commission

Volume I: Analysis and Recommendations

March 2013

Table of Recommendations 3.6 Role of the review committee

The Commission recommends that the non-executive members of the board of a regulator form a special committee called the *review committee*. This committee will discharge the following functions:

1. Oversight of compliance of the regulator with the governing laws;
2. Maintaining whistle-blower policies about violations of process within the office of the regulator;
3. Ensuring that all board meetings are held in compliance with the law and all meetings are minuted and votes are recorded by creating a report;
4. Creating a system to monitor compliance of the office of the regulator with the decisions of the board through reporting systems; and
5. Reviewing all risk management policies of the board of the regulator.

The review committee will make its observations in a report which will be annexed to the annual report of the regulator. The objective of this procedure is to ensure greater transparency in the functioning of the board of the regulator.

at the level of the board of the regulator. In particular, it is extremely difficult to identify persons who can represent the interests of the common Indian household. Similarly, special fields of financial service may require the regulator to gain expertise in specific areas, such as, insurance, algorithmic trading, detailed analysis of data, etc. The Commission proposes that these issues should be addressed by creating advisory councils to advise the board of the regulator (see Table 3.7).

3.5. Resource allocation of the regulator

Financial sector regulation is a resource intensive function. The sophisticated character of financial markets coupled with rapid innovations in products and processes make it necessary for the regulator to have the capability and resources to keep pace with developments in the sector. The need for financial independence is one of the primary reasons for creating an independent regulator – it allows the regulator to have the required flexibility and human resources that are more difficult to achieve within a traditional government setup.

As the regulator is empowered to hold assets independently, it can create physical infrastructure dedicated to the enforcement of financial regulations. These resources can be scaled up and modified quickly. Being independent of the Government also allows the regulator to develop its own recruitment criteria and processes, which are necessary for mobilising required human resources. The Commission notes that the provisions governing financial independence of the regulators are wide and have worked till now. Therefore, the Commission is of the opinion that there is no need to substantially modify them.

The present financial laws allow regulators to charge fees from the regulated entities to cover their costs of functioning. In certain cases the Government has also provided

Table of Recommendations 3.7 Advisory councils

The Commission recommends creation of advisory councils to advise the board of the regulator. The councils will be created by the board of the regulator (unless specifically created by the law). The composition and functioning of the advisory councils will be as follows:

1. *Composition:*
 - (a) Include experts in the field for which it has been created; and
 - (b) Include persons with relevant experience in the area of finance.
 2. *Functions:*
 - (a) Inform the board about issues in the specific areas for which they have been constituted; and
 - (b) Create a report on all draft regulations published by the regulator stating the council's views.
-

Table of Recommendations 3.8 Principles governing regulator's resources

1. The regulator should be funded through fees levied on the financial firms.
2. The regulator should have the freedom to allocate the resources in the manner that it considers most appropriate to meet its regulatory objectives.
3. The Government may loan money to the regulator to offset initial setting up costs. However, apart from this the involvement of the Government in the financial matters of the regulator should be minimal.

initial grants or loans to regulators as a corpus to start their operations. Table 3.8 covers the recommendations of the Commission on the principles governing the finances of the regulator. It includes the recommendation that the regulator should be funded primarily through fees.

Allowing the regulator to fund itself from fees collected from regulated entities has the following advantages:

1. It ensures that financial stake-holders, who are the main beneficiaries of regulated markets, bear the cost of regulation instead of the cost being spread across the entire budget of the Government.
2. It creates operational efficiency for the regulator. As the financial market grows, the number of transactions and firms increase and that increases the resource flow into the regulator. In turn, the regulator can increase its spending on enforcement, inspections and other functions which help improve the confidence of users.
3. It helps achieve freedom from Government rules on pay and budgeting, and thus facilitates the hiring of experts.
4. It helps address issues of conflict of interests in a context, where, in addition to other dimensions of political economy, the Government is the owner of many regulated entities in the form of public sector financial firms.

The Commission recognises that the power to impose fees on regulated entities leads to cost on all consumers of financial services and therefore the draft Code provides certain guiding principles on the charging of fees instead of simply empowering the regulator to make the collection (see Table 3.9). It is particularly important to ensure that the imposition of fees should not impose an undue burden on regulated firms or transfer the cost of regulating one class of firms or transactions to others. To pursue this policy, the Commission recommends that regulators be empowered to charge three different types of fees.

1. **Flat fees for registration:** This fee should be as small as possible to ensure that it does not prevent entry of new financial firms.
2. **Fees dependant on the nature of the transaction:** This type of fee will vary depending on the *nature* of financial business being carried out. For example, if the cost of regulating an insurance firm is higher than the cost of regulating a brokerage firm, the fees levied on the insurance firm should be higher.
3. **Fees dependent on the number or value of transactions:** This type of fee will vary depending on the frequency and size of transactions. For example, a brokerage firm may have to pay fees depending upon the number of transactions it carries out. Similarly, an insurance firm would be charged depending on the number of insured contracts it executes.

As noted earlier, regulatory independence requires that the Government's right to intervene in the financial matters of the regulator is kept at a minimal. The Commission therefore recommends that the Government must only control the salary and perquisites of the members of the board of the regulator. The board should in turn be responsible for maintaining adequate staff and expertise to meet its statutory objectives within its financial capacity. The board should therefore be charged with the responsibility of designing a set of Human Resources (HR) practices that are conducive to the accomplishment of its regulatory objectives.

Table of Recommendations 3.9 Principles governing the charging of fees by the regulator

The legal provisions empowering the regulator to charge fees will incorporate the following aspects:

1. The regulator should charge fees only to cover expenses and keep adequate reserves;
 2. Fees should be charged only through regulations made after following the legislative processes specified in the draft Code;
 3. The regulator should clearly explain the fees it is charging and demonstrate that the fee is not disproportional to the cost for the regulator;
 4. Applying the principle of proportionality, the regulator should place higher financial burdens on firms that have more transactions, and thereby increase its work load and functions; and
 5. The regulator should break up the fees into different categories.
-

Table of Recommendations 3.10 Performance measurement and reporting

The allocation of resources by the regulator is intrinsically tied to the performance of the regulator. Therefore the Commission recommends the following principles for the measurement of the regulator's performance and financial reporting:

1. The regulator should create two annual reports:
 - (a) Audited report which is comparable to traditional financial reporting; and
 - (b) Performance report which incorporates global best practice systems of measuring the efficiency of the regulatory system.
 2. The performance report should use modern systems of measuring each activity of the regulator as objectively as possible.
 3. Performance systems must require the regulator to create and publish performance targets.
 4. All performance measures must be published in the annual report.
 5. Performance measurement system should be reviewed every three years to incorporate global best practices.
-

3.6. Performance assessment and reporting

The Commission noted that the present system of financial accounting of the regulator is focused primarily on the reporting of expenditures incurred by the regulator under various heads. This, according to the Commission, does not constitute a sufficient test of the fulfilment of *regulatory objectives* or the assessment of the regulator's *performance*. Therefore, there is need to require regulators to adhere to a more comprehensive system of measuring their performance.

Measurement systems for assessing the performance of regulators should include an assessment of the regulator's processes on metrics such as, the time taken for granting an approval, measurement of efficiency of internal administration systems, costs imposed on regulated entities and rates of successful prosecution for violation of laws. Adopting such an approach would constitute a departure from the present system where most financial regulators focus on measuring the activities of regulated entities and financial markets as a standard for their own performance. The Commission noted that while these measurements are important, measurement of various activities undertaken by the regulator will provide much greater transparency and accountability.

The measurement of activities of the regulator also needs to be tied with the financial resources spent by the regulator to carry out those activities. A system which merely measures the expenses of the regulator was therefore considered to be inadequate and the Commission recommends a move towards tying the measurement of regulatory activities and the expenditure incurred for it as a crucial link for improving regulatory governance. Accordingly, the Commission recommends the following measurement processes for the regulator (Table 3.10):

1. **Budgeting Process:** This process will measure the allocation of resources by the regulator for its different objectives and try to assess the regulator's performance in pursuing each objective in

The report of the
Bankruptcy Law Reforms Committee
Volume I: Rationale and Design

November 2015

Box 4.7: Drafting instructions for rules on the exercise of executive functions by the Board

The Code will define the process for exercise of the executive functions of the Board. These include the process for:

1. Disposal of applications;
2. Grant of approvals, including licensing or registration;
3. Inspections, which may be routine or special;
4. Investigation of violations of regulations;
5. Proving violation of regulations to the judicial officers (by leading evidence);
6. In the case of successful prosecution before the administrative law department, suggesting enforcement actions; and
7. Compounding of offences with the involvement of the administrative law department.

Box 4.8: Drafting instructions for rules on the exercise of administrative law functions by the Board

1. The Board will designate one of its members as an administrative law member.
2. The Board may create a special class of officers called administrative law officers.
3. The Code will define the process to be followed by the Board to exercise its administrative law function including the process to be followed in investigations.
4. The Board may, through regulations, lay down the procedure to be followed for the discharge of administrative law functions by the Board.

4.1.11 Framework for penalties

When the Board is convinced that the accused is guilty of a violation, he needs a framework through which punishments can be imposed. The Code provides that the Board may impose monetary penalties or cancel or suspend the registration of the insolvency professional, insolvency professional agency or information utility as the case may be.

4.1.12 Appeals against actions of the regulator

The Committee deliberated on which forum would be better equipped to decide appeals from the Board's orders. The Committee concluded that appeals from the Board's orders should lie before the NCLAT. An aggrieved party should have a statutory right to appeal to the Supreme Court from the order of the NCLAT.

4.1.13 Obtaining resources and spending them

Insolvency and bankruptcy regulation, especially for individuals, is likely to be a resource intensive function. The Board should be equipped with the capability and the resources required to perform a wide range of functions and is responsible for building and maintaining the credibility of the bankruptcy and insolvency resolution process. There is need for financial independence which allows the Board to have the required flexibility and human resources that are more difficult to achieve within a traditional

government setup. This will enable the Board to hold assets independently and to develop its own recruitment criteria and processes, which are necessary for mobilising required human resources.

The Committee believes that as a good practice the Board should fund itself from the fees collected from its regulated entities. However, the industry of regulated professionals and entities focused on bankruptcy and insolvency will develop over time, while the Board will require to perform its supervisory functions from the start. As a result, there will be a period in which the Board will need to be funded by the government.

In the light of this, the Committee recommends that the Board be funded through a mix of government support and fees collected from regulated entities for the first five years after it comes into being.

The Committee also believes that government involvement in the financial matters of the Board should be minimal. Government must only control the salary and perquisites of the members of the Board.

Section 4.1.3 has defined the four objectives of the Board. Under the oversight of the board, each of these should be numerically measured. The budget process for each year should consist of a process between the management and the board, where the board proposes a set of targets and the management estimates the scale of expenditure required to achieve these targets.

Box 4.9: Judicial review of the administrative law functions of the Board

1. The substantive content of regulations should not be subjected to judicial review.
2. Process violations in the issuance of regulations should be the subject of appeal.
3. Orders against regulated persons (either information utilities or insolvency professionals) should be subject to appeal.
4. This appeal should lie before National Company Law Appellate Tribunal (NCLAT).

Box 4.10: Finances of the Board

1. The Board will be funded through a mix of fees levied on the IPs and IUs and Central Government grants. However, apart from this, the involvement of the Central Government in the financial matters of the Board should be minimal.
2. The Board will specify, through regulations, the scale of fees it will levy and collect as well as the manner of collection.
3. The Board should base its budget, on performance of the Board for the previous year in fulfilling its objectives, and the desired targets for the coming year.

BUILDING THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA

Establishment of Working Group

On 5th May, 2016, the Indian Parliament passed the Insolvency and Bankruptcy Code, 2016 (IBC), which received Presidential assent on 28th May, 2016. In order to plan the implementation of the law, the Ministry of Corporate Affairs constituted four working groups (WGs) in July 2016:

1. WG 1: Recommend the design of the IBBI,
2. WG 2: Recommend on the rules and regulations for Insolvency Professionals (IPs) and Insolvency Professional Agencies (IPAs),
3. WG 3: Recommend on the rules and regulations for the insolvency and liquidation process,
4. WG 4: Recommend on the rules and regulations for Information Utilities (IUs).

This is the report of the WG 1 on the design of the IBBI. This was established as follows.

Members

- M. S. Sahoo, Member, Competition Commission of India (CCI), Chairman of the Working Group.
- P. K. Nagpal, Executive Director, Securities and Exchange Board of India (SEBI)
- Ravi Narain, Vice Chairman, National Stock Exchange (NSE)
- Susan Thomas, Assistant Professor, Indira Gandhi Institute of Development Research (IGIDR)
- Rakesh Tyagi, Director, Ministry of Corporate Affairs (MCA)

Terms of reference

1. To give recommendations on:
 - (a) the organisation structure of the IBBI, keeping in view the powers and functions to be performed by it under Section 196 and 197 of the IBC as well as structures of other regulators like SEBI.
 - (b) The process within the IBBI to discharge powers and functions, inter alia, with respect to registration, policy/regulation making, enforcement (monitoring, investigation, imposition of penalties and grievance redressal) for IPAs/IPs/IUs, general regulation making for substantive and procedural matters for Part II and Part III of the IBC as well as supportive functions of administration, finance and accounts, data/information management and communication.

- (c) Committees to be constituted under Section 197 of the IBC.
 - (d) Officers and supporting staff required by the IBBI to perform its functions and the source/manner of recruitment.
 - (e) Infrastructure, including space and information technology requirements of the IBBI.
 - (f) Budgetary support required by the IBBI for the remaining part of 2016-17 and full year 2017-18.
2. Suggest draft rules/regulations/guidelines for the officers and employees of the IBBI in order to enable its immediate functioning on constitution.

functioning so as to feed back into improvements of their functioning.

Regional organisational structure

Section 188 of the IBC provides that the head office of the board of IBBI will be in the National Capital Region, and the board shall have offices at other places in India. However, in examining the functions of the IBBI, only the executive functions of monitoring and investigations, and the quasi-judicial functions may require physical regional infrastructure over time. This would happen if there is very large number of IPAs and IUs that spread over the length and the breadth of the country.

Even so, these functions can most likely be effectively administered over the wide geographic region of India with the use of technology. A physical presence of the IBBI is only required if there is need for more responsive physical action in carrying out incognito monitoring of functions, or for physical intervention in fraudulent behaviour on the part of IPs in specific cases.

Thus, the Working Group recommendation is that the IBBI may have regional offices only if there is clear evidence that it is required, and only if it can be well established that the requirement cannot be met using technology.

If such an office needs to be set up, there should be a minimal and focussed staffing pattern, and a larger focus on the use of IT systems to ensure that the regional offices are fully integrated with the information flows of head quarters.

The *personnel requirement* should be between two to three personnel from the Licensing, Monitoring and Investigative department, and around two administrative support personnel. The office infrastructure should emphasise a well supported hearing center that is continuously online, and office space to accommodate a staff strength of under eight persons.

Financing of the IBBI

In the initial phase of the building up of the IBBI and its credibility, budgetary grants from the Government of India will be the main source of funding.

In a few years, the contours of the bankruptcy intermediation industry will become visible. The revenues of regulated entities will become visible. At that point, IBBI will enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses. The fee will be analogous to the charges that SEBI enforces upon securities firms which are implemented at the level of the exchanges.

Globally it is seen that once the regulated space becomes more established, there are three sources of fee revenue for the regulator.

We expect the same will happen for the IBBI as well, as follows:

- Initial licensing fees and annual fees from IPAs.

The initial fee may be a fixed fee and the annual fee may be linked to the membership strength of the IPAs. The license may be designed with limited maturity, after which the IPAs will have to reapply for the license and undergo a full scrutiny by the regulator.

- Initial and annual licensing fee from IUs. A similar framework that applies to a mixture of licensing and annual fees from the IPAs can apply to the IUs as well.

- A registration fee and a per case fee from IPs.

The registration fee may be a fixed charge, while the per case fee is charged as a percentage of the IPs case fees.

In each case, the fee charged is proportional to the cost that is imposed on the regulator. One example of a regulator which raises fees from regulated entities is the the Financial Conduct Authority (FCA) which is the securities markets regulator in the U.K. The FCA has a three tier structure of charging fees. They include fees depending upon the activity of the firm that is being regulated, the amount of business the firm undertakes in a given given, and the cost that it imposes on the FCA to regulate the activity.⁸

⁸ Source: The website of the FCA at <https://www.fca.org.uk/firms/fees>