

## **Insolvency and Bankruptcy Board of India**

### **Subject: The IBBI (Mechanism for Issuing Regulations) Regulations, 2018**

The Insolvency and Bankruptcy Code, 2016 (Code) is a modern economic legislation. Section 240 of the Code confers on the IBBI substantial powers of delegated legislation to carry out provisions of the Code.

2. Section 196 (1) (s) of the Code requires the Board to specify mechanism for issuing regulations, including the conduct of public consultation processes before notification of any regulation.

3. While considering the Board Note No. 028/2017 in its 5<sup>th</sup> meeting held on 15<sup>th</sup> May, 2017, the Governing Board advised that the process in the draft of regulations may be experienced before it is notified. It approved putting out draft regulations in public domain along with the economic analysis for comments.

4. Accordingly, the Board uploaded the draft of Regulations along with a cost benefit analysis on its website on 7<sup>th</sup> March, 2018 seeking comments from public, including stakeholders and the regulated by 31<sup>st</sup> March, 2018. In response, the Board received comments from 104 persons. Of these, comments from 11 persons relate to draft of Regulations. The balance were suggestions on Rules relating to registered valuers, which have since been forwarded to the Ministry of Corporate Affairs.

5. The comments on draft regulations and views of the Legal Affairs Division are placed are at

**Annexure A.** It is proposed to accept the following comments:

- a. In case of making regulations on urgent basis, the urgency may be reflected in the preamble of the regulations and once regulations are notified, the same regulation may not be re-notified after a period of 6 months.
- b. Draft regulations, which is drafted in legal language and format, may not make much sense to majority of stakeholders. For seeking comments, the Board may upload the proposed regulations in the form of a discussion paper.

6. Keeping the above in view, the draft regulations, which were put out for public comments, have been modified in track mode and placed at **Annexure B**.

7. It is submitted for consideration of the Governing Board.

Sl. No.	Draft Regulation / Issue	Name of Stakeholder	Comment	Views of Legal Division
1	1(1): These regulations may be called the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018	United Bank of India	The title of the Regulation may be modified as “These Regulations may be called the Insolvency and Bankruptcy Board of India (Mechanism for Issuing and <b>Amending</b> ) Regulations, 2018.	Issuing includes issue of regulations afresh or of amendment regulations. Usually, the title of regulation is crisp. Hence, not required.
2	3: The Board may make regulations to carry out the provisions of the Code with the approval of its Governing Board, in compliance with regulations 4 and 5.	United Bank of India	Regulation 3 may be modified as “The Board may make or amend regulations to carry out the provisions of the Code with the approval of its Governing Board, in compliance with regulations 4 and 5.	It is addressed in regulation 7.
3	4 (1): For the purpose of making regulations, the Board shall upload the following on its website seeking comments from the public:- .....	United Bank of India	Regulation 4 (1) may be modified as “For the purpose of making or <b>amending</b> regulations, the Board shall upload the following on its website seeking comments from the public.”	It is addressed in regulation 7.

4	Who to be consulted?	United Bank of India	The Financial Creditors/ Banks are major stakeholders and issuance / amendment of Regulation on any of the matter under the code will have major impact on the banks. Under such circumstances the financial creditor/ Banks, the major stake holder should be consulted in making / amending the regulations.	Financial Creditors/ Banks are being consulted. However, there are other stakeholders and members of the public, who may have valuable comments. The regulations should consider views of all stakeholders. In fact, section 196(1)(s) of the Code requires the IBBI to specify the mechanism for conduct of public consultations.
5	4 (2): The Board shall allow at least 21 days for public to submit their comments.	GNLU Centre	The time allotted is insufficient as there might not be possible to research in the time given and it is in inconsistency with International Standards. The Monetary Authority of Singapore gives a minimum of 30 days time and US Securities and Exchange Commission Rule making process allows a time period of minimum of 30days which can be extended to 65-70 days usually. The Board shall allow at least 30 days to invite public comments which might be extended to 45 or 70 days.	In the initial years, the regulations need to evolve faster to address the emerging issues. A matured legal framework can afford longer duration for consultation. Further, the IBBI has another web-based platform seeking comments on the existing regulations throughout the year. This permits enough time for research, the details of which are at: <a href="http://ibbi.gov.in/webfront/public_comment.php">http://ibbi.gov.in/webfront/public_comment.php</a> . Hence 'at least 21 days' may be retained.
		Mr. Praveen K.	The time for public consultation should be at least 30 days after put up on IBBI website.	
6	4 (3): The Board shall consider the public comments received and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations.	GNLU Centre	The Monetary Authority of Singapore has been constantly following the procedure of addressing each and every comment on its proposals. This has immensely helped in bringing transparency along with encouragement within the public to give their proposals. Providing specific responses to all comments made to IBBI will also help in informing the participants whether their comment are taken into account. The Board shall consider the public comments and upload the same on its website along with a specific	These are opposite suggestions. Specific comments on each comment is costly and at times, impractical, given that the number of stakeholders of bankruptcy in India is too huge. The jurisdictions like Singapore are not comparable in this respect.

			statement of its response on each and every comment made, not later than date of notification of regulations.	Public consultation is not substitute for engaging with the Advisory Committee. Public consultation enables collective choice, brings in transparency and objectivity and ensures that the regulations are informed by the legitimate needs of those interested in and affected by regulations. The IBBI has three Advisory Committees and a few Working Groups for expert advice and opinion.
		Mr. Rajesh IR, South Indian Bank	Being country like India, which constitute 17.74% of the world total population and if we are opening a platform for inviting comments/ public consultation for making regulations, it will definitely lead to multiple comments from various sectors of the society which is inclusive of experts and vice versa. Practically, it is very difficult for the board to consider all the public comments and uploading the same on the website along with a general statement of its response because being voluminous and time consuming process and may not come to a finality in the near future. Hence it is advisable to form a special advisory committee consisting of eminent personalities from various sectors, across the country. The proposed regulation can be placed before such committee and their opinion can be sought instead of calling for comments from the public at large.	
		CPL- Ops Team, Axis House	Feedback from public on the draft regulation should be made disclosed by IBBI stating the reason for accepting or rejecting the feedback.	
7	4 (6): Without prejudice to provisions in this regulation, the Board may consult stakeholders and	Allahabad Bank	Under Regulation 4(6) of the draft Regulation the words "along with comments/feedback received from Public" may be inserted after the words "advisory committees".	Depending on the urgency and importance of the matter, public can be consulted before the Advisory Committee or after. However, consultation with the Advisory Committee is not mandatory while consultation with public is
		United Bank of India	We suggest for Modifying the Regulation 4 (6) as "without prejudice to provisions in this	

	advisory committee, as it may consider appropriate for making regulations.		regulation, the Board may consult stakeholder and advisory institutions for making / amending regulations	mandatory. The comment will make the process unduly rigid.
		Mr. Praveen K.	Any consultation with the stakeholders and advisory committees should be through the public consultation process and not through separate meetings or round tables to prevent the stakeholders and advisory committees influencing the outcomes and regulations as follows. Also any form of non-formal contact or communication with select stakeholders/ service providers should be completely avoided as they are likely to influence the regulations to suite their individual interest.	It (amending) is addressed in regulation 7.  Public consultation is not substitute for engaging with the Advisory Committee. The deliberations in the Advisory Committee are intensive and insightful. Besides, there are layers of objectivity and transparency.
8	6 (1): Where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Chairperson, without following the provisions under	GNLU	The urgency must be recorded in writing and to be reflected in the Preamble of the Regulations. The Regulations once promulgated must not be re- promulgated after expiry of 6 months. The board shall not re-promulgate any regulation with the object of defeating any procedure under these regulations.	We may agree. Urgency may be reflected in the regulations. Further, such regulations may not be reissued without following the due procedure.
		United Bank of India	The Regulation 6 may be modified as “where the board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing Regulations as the case may be with the approval of Chairperson and in consultation with the Banks/ Financial Institutions, without following the other provisions under this Chapter, if it considers that time required for compliance with those provisions would defeat	It is to meet an urgent need which does not permit time for consultation. Further, it is not fair to consult only one set of stakeholder.

	this Chapter, if it considers that time required for compliance with those provisions would defeat the objective sought to be achieved or cause delay in redressing the problem or market failure		the objective sought to be achieved or cause undue delay in redressing the problem or market failure.”	
		Nathan Economic Consulting India Pvt. Ltd.	There is no need of making regulation on urgent and without going through the process of consultation. If there is urgency, then the timeline may be reduced and quicker consultation process may be adopted. In such cases, the draft regulations may dispense with and intention to address a problem and how IBBI intends to address it can be broadly outlined in a short consultation papers so that stakeholders have opportunity to participate in the process	In the evolving insolvency regime, urgent matters need to be addressed urgently.
		ICICI Bank	The proposed Regulation should provide a mechanism for receiving suggestions on issues where regulation is required to be drafted or existing regulations are required to be amended. It is advisable that public feedback be invited on regulations/ amendments to regulations. Where regulation making is urgent, a shorter timeline to invite public comments, say 7 days, may be considered. In the event this shorter timeline is also not feasible, a reasoned decision may be taken by the Chairperson.	There exists a mechanism for receiving suggestions from stakeholders on a continuously: <a href="http://ibbi.gov.in/webfront/public_comment.php">http://ibbi.gov.in/webfront/public_comment.php</a> .
9	9 (1): The Board may provide for a scheme for general or specific clarification or guidance on the	Corporation Bank	The Regulation states that the clarification or guidance given by the Board shall not be binding on the Board. In our opinion any guidance or clarification given by the Board should be binding on them. Therefore, said regulation may be modified accordingly.	The proposal is on the lines of Guidance Schemes of various other authorities. The Board does not render professional advice in a specific matter. Wherever it is necessary, the Board may give a general clarification or guidance for the benefit of everybody.

	provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be binding on the Board and shall not be construed as determining of any question of fact or law.	Nathan Economic Consulting India Pvt. Ltd.	IBBI can use the Explanatory memorandum while framing regulations. Relying on explanatory memorandum may make it unnecessary for “Guidance on Law”. TRAI has used it.	
10	General Issue	GNLU	Since there is no particular format or template for suggestions, the board shall frame a specific template time to time for inviting comments from the public. This template shall necessarily contain: (a) Name of the proposer (b) Contact details of the proposer but proposer shall not be bound to provide details of (a) & (b), if he wishes not to.	A template for making public comments on regulations is already provided on website of the Board and is available at <a href="http://ibbi.gov.in/webfront/public_comment.php">http://ibbi.gov.in/webfront/public_comment.php</a> .
11	General Issue	GNLU	(1) Like TRAI, The Board shall after replying to each public comment, open for a counter-comments session till 7 days. Such a clause should also be inserted in IBBI Rules. (2) Any comments then received shall also be published on the website.	In the initial days of evolution of law, this will slow down the evolution.
12	General Issue	GNLU	Other regulators i.e. SEBI and TRAI has process by consultation / discussion paper. The board should also adopted that process and also adopt global practices. The AERA begins the process	We may agree. Discussion paper prosing regulations may serve the purpose better.



			with consultation paper which is placed on its website seeking feedback, comment and suggestion along with name of parties. Thus, coming out with consultation/ discussion papers, specific replies to the comments of participants, acknowledging their feedback and taking into consideration practices adopted by regulators abroad must be explored by IBBI while formulating regulations.	When regulations are amended, foot notes detailing the provisions as existed before amendment are indicated.
		Mr. Jesintha, IP Bangalore	The text of the Regulation is generally in the format as “In the Regulation....., in sub regulation....., in clause ....., in sub clause....., for the words “...” , the words”....” shall be substituted. The stakeholders are expected to refer back the previous regulations on the matter, the basic Code and amendments to the Code and insert / delete/ modify/ substitute/ correct the provisions, before applying them.	
13	General Issue	GNLU	The AERA publishes the minutes of the meeting with the stakeholders, the same approach should be taken care by IBBI.	This is outside the scope of proposed regulations.
14	General Issue	Mr. Jesintha, IP Bangalore	If, technically feasible, the Regulation released by other regulator such as RBI, SEBI having a bearing upon IBC may be furnished as a kind of addendum to the suggested version of regulations, giving it even more totality	
15	General Issue	Mr. Harish V	Whether this new Regulation (Mechanism for Issuing Regulations) will be applicable retrospectively to the regulation already by the IBBI prior to this Regulation (Mechanism for Issuing Regulations)	Unless specified otherwise, every law applies prospectively.

16	General Issue	CPL- Ops Team, Axis House	Clarity should be provided by IBBI regarding committee which framed the regulation, internal approval sought, etc. before uploading the draft document asking for public comments on the same.	This is outside the scope of regulations. However, the discussion paper invariably indicates the process followed.
17	General Issue	CPL- Ops Team, Axis House	The “Draft IBBI (Mechanism for Issuing Regulations) Regulations, 2018 publication” is to make all the stakeholders aware about the proposed framework for issuance of regulations, in a transparent manner. Garnering feedback from all stakeholders on the issuance of Regulation is good initiative considering the fact that the IBC is new legislation and regulations would be required to be issued more frequently.	Noted.
18	General Issue	Nathan Economic Consulting India Pvt. Ltd.	IBBI should include open house discussions as part of the process of except HR and housekeeping matters.	This is outside the scope of regulations. IBBI usually holds a few round tables with stakeholder before notifying regulations.
19	General Issue	Nathan Economic Consulting India Pvt. Ltd.	The IBBI can also resort to a two-stage consultation process if the subject matter is of grave importance and requires one additional round of consultation. In this case, the consultation paper has to be exhaustive, reflecting and importance of the subject, best international practices and raise question at the end of the paper.	This is addressed in regulation 4(4). Certain situations may require second round of consultation.

**GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, [●DAY], [●JUNE], 2018**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
NOTIFICATION**

New Delhi, the [●June], 2018

No. IBBI/2017-18/GN/REG0....~~12~~.--- In exercise of the powers conferred by clause (s) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations, namely:-

**CHAPTER I**

**PRELIMINARY**

**1. Short title and commencement.**

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 201~~7~~<sup>8</sup>.
- (2) Save as otherwise provided, these regulations shall come into force on the date of their publication in the Official Gazette.
- (3) These regulations shall not apply to regulations made by the Board in respect of organizational matters.

**2. Definitions.**

- (1) In these regulations, unless the context otherwise requires,-
  - (a) "Advisory Committee" means an advisory committee constituted by the Board under section 197 of the Code;
  - (b) "Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016); and
  - (c) "Governing Board" means the Board of Members constituted under sub-section (1) of section 189 of the Code.
- (2) Words and expressions used and not defined in these regulations but defined in the Code shall have the meanings respectively assigned to them in the Code.

## CHAPTER II

### MAKING OF REGULATIONS

#### 3. Making regulations.

The Board may make regulations to carry out the provisions of the Code with the approval of its Governing Board, in compliance with regulations 4 and 5.

#### 4. Public Consultation.

(1) For the purpose of making regulations, the Board shall upload the following on its website seeking comments from the public:-

- (a) a discussion paper outlining ~~draft of~~ proposed regulations;
- (b) the specific provision of the Code under which the Board- proposes regulations;
- (c) a statement of the problem that the proposed regulation seeks to address;
- (d) an economic analysis of the proposed regulations;
- (e) a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- (f) the manner of implementation of the proposed regulations; and
- (g) the manner, process and timelines for receiving comments from the public.

(2) The Board shall allow at least 21 days for public to submit their comments.

(3) The Board shall consider the public comments received and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations.

(4) If the Governing Board decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process under this regulation.

(5) The regulations shall be notified promptly after it is approved by the Governing Board and the date of their enforcement shall ordinarily be after 30 days from the date of notification unless a different date is specified therein.

(6) Without prejudice to provisions in this regulation, the Board may consult stakeholders and advisory committees, as it may consider appropriate for making regulations.

#### 5. Economic Analysis.

(1) The Board shall cause an economic analysis of the proposed regulations to be made.

(2) The economic analysis shall cover the following:-

- (a) expected costs to be incurred by, and the benefits that will accrue to, the society, economy, stakeholders and the Board, both directly and indirectly on account of the proposed regulation; and
- (b) how the proposed regulations further strengthen the objectives of ~~would facilitate in enforcement of the provisions of~~ the Code.

## 6. Urgent regulations.

Where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Chairperson, without following the provisions under this Chapter, if it considers that time required for compliance with those provisions would defeat the objectives sought to be achieved or cause undue delay in redressing the problem or market failure subject to the condition that the urgency is reflected in the long title to the Regulations.

(2) The regulations made under sub-regulation (1) shall remain in force for a period of six months from the date of notification unless approved by the Board in accordance with these regulations.

(3) The regulations once issued under sub-regulation (1) willshall not befurther re-issued under the said sub-regulation.issue.

## CHAPTER III

### AMENDMENT AND REVIEW OF REGULATIONS

## 7. Amendment of Regulations.

An amendment to any regulations shall be made in compliance with the provisions of Chapter II.

## 8. Review of Regulations.

The Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view-

- (a) its objectives;
- (b) its outcome;
- (c) experience of its implementation;
- (d) experience of its enforcement and the related litigation;
- (e) global best practices, if any;
- (f) its relevance in the changed environment; and
- (g) any other factor considered relevant by the Board.

## 9. Guidance on law.

The Board may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be binding on the Board and shall not be construed as determination of any question of fact or law.

(1) —This regulation shall come into force on 1<sup>st</sup> April, 2018 1<sup>st</sup> July, 2018.

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