

Insolvency and Bankruptcy Board of India

Subject: Amendment to Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017

The Governing Board in its 3rd meeting held on 16th January 2017 (Board Note No. 10/2017) had approved the Insolvency and Bankruptcy Board of India (Delegation of Power and Functions) Order, 2017 (hereafter “DoP”). In its meeting held on 1st December 2017, pursuant to the delegation of powers and functions by the MCA under section 247 of the Companies Act, 2013 to the IBBI, the Governing Board had approved the amendments to the said DoP to add a separate part (Part C) to deal with delegations in respect of registered valuers (RVs) and registered valuer organisations (RVOs). An updated DoP shall be placed on the table.

2. The IBBI notified the Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 on 7th December 2017. These Regulations deal with grievances and complaints against service providers, namely, Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities. The DoP presently does not provide for delegation of powers and functions in respect of grievances and complaints against service providers.

3. Section 236 of the Code reads as under:

***236. Trial of Offences by Special Court.** - (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.*

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

.....”

The IBBI is required to file a complaint before the Special Court in accordance with section 236 of the Code. It may also file a complaint *suo motu* based on material available on record. However, it may not be prudent for the IBBI to forward every complaint it receives to

the Special Court without due application of mind. The DoP is silent as to the levels where decision to file a complaint shall be taken.

4. Chapter IV, Rule 16 of the Companies (Registered Valuers and Valuation) Rules, 2017, which deal with complaints against RVs and RVOs, is reproduced below:

“16. Complaint against a registered valuer or registered valuers organisation -
A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fee of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.”

The separate chapter added to DoP does not provide for delegation of powers and functions in respect of grievances and complaints against RVs and RVOs.

5. The Governing Board in its fourth meeting held on 21st March, 2017 had felt that there is scope for improving items at Sl. No.15 and 18 of the DoP and these may be considered when the order is reviewed.

6. With emergence of more clarity, it has become necessary to refine certain delegations.

7. The following changes in DoP are proposed:

Reference	Existing Description of Power or Function	Proposed Description of Power or Function	Existing Delegation	Proposed Delegation
Part B				
B. Oversight and Enforcement, Item 11	Signing of Certificate of Registration	Signing of Certificate of Registration / Recognition	GM	GM
B. Oversight and Enforcement, Add Item 11A	New	11A. Complaints and Grievances a. Assignment of Unique Number [regulation 5(2)] b. Seeking Additional Information [regulation 6(1) and 7(1)] c. Closure of grievance [regulation 6(3), 7(3), and 7(4)] d. Direction to Service Provider [regulation 6(4)] e. Review [regulation 7(5)] f. Refund of fees [regulation 7(8)]	New	AM AM DGM ED ED DGM
B. Oversight and Enforcement, Add Item 12A	New	12A. Complaints under section 236 a. Gathering information relating to complaints b. Formation of opinion if there exists a prima facie case c. Satisfaction for filing complaint	New	AM DGM ED
C. Establishment Matters Item 15 (clause 9)	Defending Orders of Appellate Authority before the CIC	No change	CPIO	ED (Law)
C. Establishment Matters	Seeking Co-operation from an	Seeking / Giving Co-operation from / to an	ED	WTM

Item 18 (clause 9)	International Association or Foreign Agency / Country	International Association or Foreign Agency / Country		
C. Establishment Matters Item 25 (clause 1)	Satisfaction of the need for any goods or services to be procured and authorisation to initiate the procurement process	Satisfaction of the need for any goods or services to be procured and authorisation to initiate the procurement process a. < Rs.10,000 b. ≥ Rs.10, 000	WTM	ED WTM
C. Establishment Matters Item 25 (clause 14)	Administrative Approval for Procurement after the Price and Vendor identified following due process as per GFSR a. ≥ 100 b. ≥ 10 < 100 c. ≥ 01 < 10 d. ≥ 0.25 < 1.0 e. < 0.25	Administrative Approval for Procurement after the Price and Vendor identified following due process as per GFR (in lakh) a. ≥ 100 b. ≥ 10 < 100 c. ≥ 01 < 10 d. ≥ 0.25 < 1.0 e. < 0.25	Chairperson WTM ED (Est) CGM (Est) DGM (Est)	No change
Part C				
Part C Add Item 4	New	4. Complaints against RVs and RVOs a. Seeking Additional Information b. Closure of Complaint c. Reference RVO in respect of a complaint against a RV	New	AM DGM DGM