Insolvency and Bankruptcy Board of India

Sub: Amendments to the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

1. The IBBI had received certain suggestions, both formally and informally, seeking a review of certain aspects of the IBBI (Information Utilities) Regulations, 2017, hereinafter referred as 'IU Regulations'. The Governing Board considered these suggestions in its meeting held on 22nd July, 2017 and felt that the IU Regulations need to be in compliance with the FDI Policy/FEMA, which provides for such norms for credit information companies, market infrastructure institutions, credit rating agencies, etc. and not in the regulations under the Code.

2. The Governing Board had, however, advised that public comments may be invited on the following proposed changes in IU regulations for its consideration:
   (a) Irrespective of foreign holding norms, 50% of directors of the Board of an information utility (IU) may be Indian nationals and resident Indians.
   (b) Regulation 8 (2) may allow a person - Indian or foreign - to hold up to 51% of the paid-up equity share capital or total voting power of an IU up to three years. However, if that person is well-diversified, it may be allowed to hold up to 100%.

3. Accordingly, public comments on the proposed changes were invited. A summary of public comments as received by the IBBI is placed as **Annexure – A**.

4. It is observed that there are strong comments for and against both the proposed changes. On consideration of these, it is suggested as under:
   (i) Given that IUs are public institutions and they are holding information as a custodian, its control should be with resident Indians. Therefore, the IU regulations may provide that the majority of directors on the Board of an IU shall be resident Indian nationals.
   (ii) In the interest of developing a competitive vibrant IU industry, a person - Indian or foreign - may be allowed to hold up to 51% of the paid-up equity share capital or total voting power of an IU up to three years. However, if that person is well-diversified, that is, a listed company or a company where no individual, directly or indirectly, or persons acting in concert, holds more than 10% equity, may be allowed to hold up to 100% of the paid-up equity share capital or total voting power of an IU up to three years.

5. There are broadly two models in financial market: (i) foreign holding is allowed up to 49% in market infrastructural institutions, namely, stock exchanges, depositories and clearing corporations; (ii) foreign holding is allowed without any limit for credit information companies, and credit rating agencies. It may be useful to have a cautious approach when the industry is about to develop.

6. The Governing Board is requested to consider the suggestions at Para 4 for amending the IBBI (Information Utilities) Regulations, 2017 and Para 5 for taking up with appropriate authorities.

Annexure 'A'

PUBLIC COMMENTS

Pursuant to the notice inviting public comments on the proposed changes as issued by the Board on 16th August, 2017, the Insolvency and Bankruptcy Board of India is in receipt of a number of public comments on the IBBI (Information Utilities) Regulations, 2017.

The Board is in receipt of public comments from the following persons:

[redacted]

S. No	Proposed Changes	Comments
1.	50% of directors of the Board of an IU maybe Indian nationals and resident Indians	[redacted] 1. No Comment [redacted] 1. Regulation 9 of IU Regulations does not specifically provide or mandate the appointment of resident or non-resident individuals in the Board of Directors. Hence, provisions of companies Act, 2013 as applicable to a public limited company should also apply on IUs 2. Greater transparency shall be ensured if majority of the directors are from India itself since the Governing Board shall continue to monitor the management of IU on a regular basis and shall be responsible for acts and deed of the IU. The continued presence of resident directors will also ensure meeting the timely compliance requirements by IUs. In view of the above, the proposed amendment of having at-least 50% of the directors of the Board of an IU as Indian Nationals is a welcome move

		[redacted] 1. No Comment [redacted] 1. Provisions of Companies Act, 2013 should apply to Companies operating as IUs. IBBI should not restrict the flexibility of the investors to elect directors who bring the required expertise to the Board of an IU, regardless of the nationality of the director. [redacted] 1. Impact of such amendment would nullify the effect of deletion of Regulation 3(e) of the IU Regulations 2. Conditions separate from Companies Act 2013 need not be imposed [redacted] No Comment
2.	Regulation 8(2) may allow a person – Indian or foreign – to hold up to 51% of the paid-up equity share capital or total voting power of an IU up to three years. However, if that person is well diversified, it may be allowed to hold up to 100%	[redacted] 1. IBBI has a regulator has the privilege to set a cap on FDI for entities under their areas of supervision. The discussion paper does not state any reason for giving up so such a prerogative. 2. Regulations are being proposed to be diluted in a short while since they were issued in March 2017 3. FDI in MIIs in security market is capped at 49%, it seems odd that 100% FDI regime is being thought of and justified for IUs that deal with more sensitive credit data than depositories. 4. In the background of the recent Supreme Court judgment where individual privacy to possession and sharing has been recognised as a fundamental right, a uniform decision on limits of FDI across the MIIs in the financial sector may be considered. 5. Indian technology companies are serving global corporations with their computing prowess thus technology transfer through investments into institutions has little support for arguments in favour of enhanced FDI

		6. IU industry shall store data representing Economic India. The liberalisation (in FDI) cannot imply the country's economic and sovereign interests being exposed to foreign ownership without the principle of reciprocity. 7. 100% FDI even if well diversified appears to be out of sync with the present developments- both national and international. Identifying beneficial ownership of foreign holdings, whether in adverse hands or not, always was and will remain difficult. Such vital sovereign interests cannot be ignored when we at best have a fig leaf of control over MNCs. 8. Our deep concern arises from the fact that the IU data is critical, sensitive and of legal value relating to individuals and corporates which aggregates to vital economic data for the entire country. This information could be misused for directing economic strategies against the country's interest. 9. IU is a novel institutional intervention introduced in India to address the delay in civil courts, in addressing insolvency resolution and is therefore a quasi-sovereign role unlike the judicial system its operations are routine that do not warrant any special technology from overseas. [redacted] 1. Prejudice to the purpose of IU Infrastructure may be caused as it is crucial that there exists and be present at all times in India, the management of an IU which could be held accountable to and be approached straightforward in case of any discrepancy 2. Protection of data is an intrinsic feature that IUs are obliged to undertake and assure. Data collected and stored by IU pertains to privileged personal information submitted voluntarily by individuals and entities. Giving the control and management of IUs to foreign entities would put the security of sensitive financial information of our country at the plausible risk of breach. 3. If control is given to foreign entities, it will be difficult to keep track of the ultimate beneficial owner. Also, such a foreign entity will not be amenable to the jurisdiction of IBBI or Indian courts. 4. Allowing foreign entities to have controlling interest in IUs may result in violation of fundamental rights of citizens of the country i.e. the right to privacy.

		5. India has the expertise to deliver technical support and services. Thus, when proficient technical expertise is already existing in India, giving redundant advantage to foreigners is neither reasonable nor a criteria to allow foreign participants to have controlling stake. 6. The foreigners should not be allowed to have controlling stake in IUs especially until the industry is mature and has had regulatory experience. [redacted] 1. Cap on shareholding for individual shareholders who are regulated by SEBI/RBI and have track record in information services should be done away with. 2. As for "*person which is well diversified*", it is suggested that for such purposes public listed entities be included in the definition 3. The three years limitation clause should may be reconsidered to allow the IU to be self - sustaining and capable of delivering its long-term objectives. 4. CRAs in India have a track record of stable operations over long-term period in compliance to regulatory requirements and across varying market conditions. For the reference to specific entities under Clause 8 of the Regulations, provision has been made for exchanges, banks, insurance companies irrespective of their holdings being public or private to hold up-to 25% in IU. CRAs may be considered in regard of the said clause as specified persons. 5. The suggested amendments will allow greater ownership flexibility and operational freedom to IUs as the IU framework is unique and would evolve over a period of time. [redacted] 1. Concentrated shareholdings in an IU nay be at odds with the objective of ensuring that the IU be freely accessible to all stakeholders including potential competitors of investors in an IU. 2. Modify the proposal to let investors own equity/voting rights for a longer period of time which is consistent with established regulatory practice as seen in intermediaries such as depositories where equity/voting rights have no sunset clause and require the controlling investor to retain 51% at all times. This is more likely to incentivise the investor to continuously invest in innovation. 3. A single investor may be permitted to have a dominant shareholding for a longer period of time to cover the cost of setting up an economically viable IU in a competitive environment.

		[redacted] 1. The term "*well diversified*" would need a specific definition since it could be interpreted subjectively leaving room of ambiguity. It would assist applicants to factor in all conditions before constituting an IU. 2. Regulation 8(1) is in contradiction to Regulation 8(2) of the IU regulations and with the proposed changes under the discussion paper. In light of the proposed changes, it would also be noteworthy to provide for a similar exemption in Regulation 8(1) 3. The restriction of 3 years may also be considered to be deleted. As a precedent, the FDI Limit for CICs as well as CRAs is 100% and these are not subject to any time-period threshold. [redacted] 1. The amendment should clearly state whether the allowability up-to 100% is also for three years or not. Else it is possible for interpretation that non-residents can hold 100% eternally in the IU.