

Insolvency and Bankruptcy Board of India

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

The Governing Board, in its meeting on 26th June, 2018 had suggested that a note on governance of IPAs may be brought up for its consideration.

2. Accordingly, a discussion paper titled “Governance of Insolvency Professional Agencies and Information Utilities” was put out on 14th August, 2018 seeking comments of the stakeholders. A copy of the said paper is at **Annexure A**.

3. The proposals made in the discussion paper, comments of the stakeholders thereon, and the views of the Division on the comments of the stakeholders are presented as under:

Sl. No.	Proposal in Discussion paper	Comments of Stakeholders	Views of the Division
1	2	3	4
I. Insolvency Professional Agencies			
A. Organisation			
i	A company limited by shares is eligible for registration as an IPA	Section 200 does not envisage generation of profit. Thus, the profit generated by an IPA has to be used for the objects for which the IPA is created and not for distribution of dividend and for any other purpose.	Section 200 enumerates the principles to be considered by the IBBI while granting registration to an IPA. It does not explicitly envisage whether an IPA should be making profit or not. The Code envisages multiple

		The Insolvency Professional Agencies are basically Self-Regulatory Organisations (SROs) for regulation and development of members. The most suitable form of entity for such SROs is Section 8 Company.	<p>IPAs. The stakeholders must have a way to distinguish one from the other. That means that the IPAs need to compete to provide better services. The BLRC was of the opinion that the regulatory structure be so designed that competition is promoted amongst the multiple IPAs to help achieve efficiency gains. This implies that the IBBI should not limit the IPA structure to a ‘for profit’ or ‘not-for-profit’ company. It should be left to market.</p> <p>The level playing field envisaged under competition law implies that irrespective of the nature of market participant, (for example, whether a PSU or private enterprise) everyone must be treated alike. The proposal is to treat everyone on the same level playing field and it is for the market participants to decide their own business model. In any case, the existing IPAs have first mover advantage. The proposal may be accepted.</p>
		Insolvency Professional Agency should be Section 8 company.	
		There will not be a level playing field for statutory bodies such as ICSI, ICAI and ICAI (Cost), which is against the objective of competition law.	
B. Shareholding			
i	At least fifty-one per cent of the paid-up equity share capital of an IPA is held by public.	ICSI IIP, IPA of ICAI and ICAI (cost) are the wholly owned subsidiaries of their respective parent professional bodies which are statutory bodies under the act of parliament. The concept of public-private shareholding does not arise.	<p>The proposal allows Government or a statutory regulator to acquire or hold, directly or indirectly, up to one hundred per cent of the paid-up equity share capital of an IPA.</p> <p>The proposal may be accepted.</p>

ii	No person resident in India shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an IPA.	No comments.	It may be made 'no person' instead of 'no person resident in India' to cover all persons.
iii	<p>The following persons may, however, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of an IPA:</p> <p>(a) a stock exchange; (b) a depository; (c) a banking company; (d) an insurance company; (e) a public financial institution; and (f) a multilateral financial institution.</p> <p>Government or a statutory regulator may, acquire or hold, directly or indirectly, up to one hundred per cent of the paid-up equity share capital of an IPA.</p>	No comments.	The proposal may be accepted.
iv	No person resident outside India, directly or indirectly, either individually or together with persons acting in concert, shall acquire or hold more than five per cent of the paid-up equity share capital in an IPA.	No comments.	The existing provision that not more than 49% of share capital is held by persons resident outside India may continue.
v	<p>The following persons may, however, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent of the paid-up equity share capital of an IPA:</p> <p>(a) a foreign stock exchange;</p>	No comments.	

	(b) a foreign depository; (c) a foreign banking company; (d) a foreign insurance company; and (e) a foreign commodity derivatives exchange		
vi	The combined holding of all persons resident outside India in the paid-up equity share capital of an IPA shall not exceed, at any time, forty-nine per cent of its total paid up equity share capital.	No comments.	
vii	No person shall, directly or indirectly, acquire or hold equity shares of an IPA unless he is a fit and proper person.	No comments.	A person holding more than 5% of share capital or voting rights may be required to be a fit and proper person.
C. Board Composition			
i	The governing board of an IPA shall include: (a) shareholder directors; (b) independent directors; and (c) managing director.	Independent Director provisions should be in line with the Companies Act, 2013. Duties and responsibilities of the Independent director(s) shall be in line with the Companies Act, 2013.	The IPA is a front-line regulator where public stake is much higher as compared to a company engaged in pure commercial operations. The proposal is similar to the provisions for comparable organisations like stock exchanges. The proposal may be accepted.
ii	The chairperson shall be elected by the governing board from amongst the independent directors.	No comments.	The proposals may be accepted.
iii	The number of independent directors shall not be less than the number of shareholder directors in an IPA.	No comments.	
iv	The managing director shall be an ex-officio director on the governing board and shall not be included in either the category of independent directors or shareholder directors.	No comments.	
v	Any employee of an IPA may be appointed on the governing board in addition to the managing director, but such director shall be deemed to be a shareholder director.	No comments.	

vi	No insolvency professionals shall be on the governing board of an IPA	No comments.	The existing provision that not more than one fourth of the directors shall be insolvency professionals may continue.
vii	At least one independent director shall be present in the meetings of the governing board to constitute the quorum.	No comments.	The proposal may be accepted.
viii	The appointment and re-appointment of all shareholder directors on the governing board of an IPA shall be with the prior approval of the IBBI.	No comments.	Requirement of prior approval of the IBBI for appointment of shareholder directors may be avoided.
ix	The independent directors on the governing board of an IPA shall be nominated by the IBBI from a list of names proposed by the IPA.	<p>The nomination of independent directors on the Governing Board of IPAs should be exclusively vested with the shareholders and may be identified from the proposed registry of IDs to be maintained by MCA.</p> <p>IPA should have the freedom to appoint Independent Directors on the Governing Board sans requirement and stipulation of IBBI nominating such Directors from a list of names proposed by the IPA. IBBI may appoint nominee director on the board of IPA additionally.</p>	<p>The proposed regulations provide that an independent director shall be nominated by the IBBI from the list provided by the IPA.</p> <p>IBBI is a regulator. Having a nominee in the Board of regulated entities creates a conflict of interests.</p> <p>The proposal may be accepted.</p>
x	An individual may serve as an independent director of an IPA for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier. The second term may be subject to a satisfactory performance review of the first term by the governing board of the IPA. A cooling off period of three years may be applicable for an independent director to become a shareholder director in the same or another IPA.	No comments.	The proposal may be accepted.

D. Managing Director			
i	An IPA shall have a Managing Director.	Appointment of Managing Director should not be mandatory. Mandating appointment of MD for the IPAs would lead to avoidable additional cost and alternately instead it would be more prudent to bring the CEO on the board as an executive / whole time director.	MD sits on the Governing Board as well as in various Committees. He has overall responsibility to implement the Code and regulations and Bye-laws. A person who is not on the Board does not carry the stature and ability to do so.
ii	The Managing Director shall be an ex-officio member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee;		If CEO is taken on the board, he becomes Managing Director. The proposal may be accepted.
iii	An IPA may lay down eligibility criteria for appointment of Managing Director. An individual having any of the following qualifications and experience may be eligible to be Managing Director: a. CA, CS, CMA, LL. B. or Post Graduate in Economics/Business administration; b. Proven track record in industry or regulatory capacity; c. Industry experience of fifteen years in insolvency, banking, finance, insurance, securities or with a regulatory body, which may include at least 5 years as Managing Director or one level below the Board; d. Not more than 55 years on the date of joining.	Instead of prescribing tight norms of minimum age, term and conditions of appointment of the Managing Director, flexibility should be provided to the Governing Board of IPA/shareholders of the IPA, to lay down these norms, so that they are able to select the best person, suiting the requirements of the organisation and the regulator. The Maximum age at the time of joining could be 65 years and the maximum age to continue should be 75 years. Rationale- Upper age limit for appointment of Managing Director should be as per Companies Act, 2013. As per sec 196(3)(a) of the companies Act, 2013-(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who — is below the age	The proposed norms of eligibility, except age, is very open ended. Nevertheless, qualification may be dropped. IPA is a unique organisation. It is a regulator and a commercial entity. It needs a person with passion and energy to drive. It is suggested that the maximum age may be retained at 55, which can be relaxed by the Governing Board up to 60, after recording reasons for the same.
iv	An IPA shall, subject to the guidelines issued by the Board from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/appointment of the managing director.		It may be provided that an IPA shall, subject to the guidelines issued by the Board from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/appointment of the managing director. This may provide for:

v	The Managing Director may be selected through open advertisement in all editions of at least one national daily newspaper.	of twenty-one years or has attained the age of seventy years: Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; Thus, another term may be allowed to Managing Director by passing special resolution.	a. maximum age of 55 at the time of appointment, which can be relaxed by the Governing Board up to 60, after recording reasons for the same;
vi	Appointment and remuneration payable to a Managing Director may be approved by a Compensation Committee constituted by the Governing Board.	Appointment and remuneration payable to a Managing Director and other Key Managerial Personnel may be approved by Compensation Committee constituted by the Governing Board.	b. appointment through open advertisement, and c. compensation of MD to be approved by compensation committee.
vii	An individual may serve as Managing Director of an IPA for a maximum of two terms, each term of not less than 3 years and not exceeding 5 years or up to the age of 65 years, whichever is earlier. After the first term, the appointment process for Managing Director may be conducted afresh.	No comments.	The proposal may be accepted.
viii	The appointment, renewal of appointment and termination of service of the managing director of IPA shall be subject to prior approval of the IBBI.	The IPA should instead be given freedom to appoint and remove a person as per a laid down policy approved by the governing board.	MD takes unpleasant decisions under the Code, regulations and bye-laws. Often his decisions may not promote commercial interests of the IPA. He must not be vulnerable to pressures. His appointment and removal must go through a due process. The proposal may be accepted.
ix	The managing director shall be liable for removal or termination of services by the governing board of the IPA with the prior approval of IBBI for failure to give effect to the directions, guidelines and other orders issued by the IBBI, or the rules,		

	the articles of association, bye-laws and regulations of the IPA.		
x	The IBBI may <i>suo motu</i> remove or terminate the appointment of the managing director if deemed fit in the interest of insolvency regime after giving a reasonable opportunity of hearing.		
II. Information Utilities			
A. Board Composition			
i	The governing board of an IU may include: (a) shareholder directors; (b) independent directors; and (c) managing director;	No comments.	The proposal may be accepted.
ii	The number of independent directors may not be less than the number of shareholder directors in an IU;		
iii	The independent directors on the governing board of an IU may be nominated by the IBBI from a list of names proposed by the IU;		
iv	An individual may serve as an independent director of an IU for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier. The second term may be subject to a satisfactory performance review of the first term by the Governing Board of the IU. A cooling off period of three years may be applicable for an independent director to become a shareholder director in the same or another IU;	Neither the Ministry of Corporate Affairs (MCA) nor the Securities & Exchange Board of India (SEBI) have made upper limit of the Age as an absolute restriction for the Appointment/Retirement of the Public Interest Directors/ Independent Directors. Hence, the criterion of upper limit of age should not be made as the restriction on the Independent Directors of the IUs. Alternatively, if the IBBI may make the new regulation in line with the SEBI (LODR) which makes the appointment and continuation of Independent Directors conditional to passing a Special Resolution	The SEBI Board has approved similar proposal in its meeting on 21 st June, 2018 a copy of which is placed at Annexure B . The proposal may be accepted.

		after the said Directors attain the age of 75 years.	
v	At least one independent director may be present in the meetings of the governing board to constitute the quorum;	No comments.	The proposals may be accepted.
vi	The chairperson may be elected by the governing board from amongst the independent directors;		
vii	The managing director may be an ex-officio director on the governing board and may not be included in either the category of independent directors or shareholder directors;		
viii	Any employee of an IU may be appointed on the governing board in addition to the managing director, but such director may be deemed to be a shareholder director.		
B. Managing Director			
i	The appointment, renewal of appointment and termination of service of the managing director of an IU may be subject to prior approval of the IBBI;	Currently there is no provision for MD in the IU regulation and the proposed ones should be line with the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations.	The proposed provisions relating to Managing Director have been adopted from the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012. The proposal may be accepted. The provisions, as proposed above for IPAs, may be replicated for IUs.
ii	An IU may determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/ appointment of the managing director;	No comments.	
iii	The appointment of the managing director may be for a tenure of not less than three years and not exceeding five years;		
iv	The managing director may be liable for removal or termination of services by the governing board of the IU with the prior approval of the IBBI for		

	failure to give effect to the directions, guidelines and other orders issued by the IBBI, or the rules, the articles of association, bye-laws and regulations of the IU;		
v	The IBBI may <i>suo motu</i> remove or terminate the appointment of the managing director if deemed fit in the interest of IU or in public interest after giving a reasonable opportunity of hearing;		
vi	An IU may lay down eligibility criteria for Managing Director. An individual having any of the following qualifications and experience may be eligible to be Managing Director: a. CA, CS, CMA, LL.B. or Post Graduate in Economics/Business administration/ Information Technology/Computer Science; b. Proven track record in industry or regulatory capacity; c. Industry experience of fifteen years in insolvency, banking, finance, insurance, securities, information technology or with a regulatory body, which includes at least 5 years as Managing Director or one level below the Board; d. Not more than 55 years on the date of joining;		
vii	The Managing Director may be selected through open advertisement in all editions of at least one national daily newspaper;		
viii	An individual may serve as Managing Director of an IU for a maximum of two terms of up to 5 years each or up to the age of 65 years, whichever is earlier. After the first term, the appointment		

	process for Managing Director may be conducted afresh; and		
ix	Appointment and remuneration payable to a Managing Director may be approved by a Compensation Committee constituted by the Governing Board.		
C. General			
i	The existing IPAs and the IU may get one year to comply with the provisions proposed above.	No comments.	The proposal may be accepted.
D. Comments received on issues where public comments were not sought in the Discussion Paper			
i	Every model for its success needs some breathing period. It is requested to provide some breathing period for this model to settle down. Every promoter of IPAs (currently statutory bodies) is looking this business as pious obligation and responsibility posted on them for the benefit of industry/professionals and India in general.		It is two years the model was provided. The proposal does not replace the existing model. It builds further on that. For example, it does not prohibit section 8 companies to become IPAs. It allows others also compete.
ii	The provisions in relation to organizational structure, board composition, shareholding pattern and Managing Director as given in Securities contracts (Regulation) (Stock Exchanges and Clearing Corporations) regulations, 2012 cannot be broadly adopted. Rationale - The analogy that the structure of governance operative in stock exchanges can be considered as a close proxy for the proposed governance structure of IPAs is misplaced due mainly to the differences in the basic Genesis and organizational objectives of the two. Stock exchanges are for profit entities whereas IPAs are organized as not for profit entities.		In terms of responsibility, IPAs and Stock Exchanges are front line regulators. There is no requirement that a stock exchanges needs to be for-profit companies. Many were not-for-profit till recently. The law allows all forms and leaves it to market participants to choose what works for them.
iii	The IU Regulation have to be based on the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 and the level of Organization, shareholding including Foreign shareholding, Board Composition, and the appointment of the Managing Director should be more in line with what is allowed in a Stock Exchange, if not less.		The provisions relating to board composition and Managing Director have been adopted from the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.
iv	The FDI Limit should be not be increased from 49% to 100% and IUs should be kept at par with Stock Exchanges, Commodity Exchanges, Depositories and Clearing Corporations and limit should be capped at 49%.		This is a matter outside the Code. Hence not dealt here.

4. It is proposed to implement the proposals made in column 2 of the table under Para 3, with the following changes:
- a. the maximum age for appointment of Managing Director of IPAs may be retained at 55, which can be relaxed by the Governing Board up to 60, after recording reasons for the same; and
 - b. a director on the Governing Board of an IPA or IU, who has any direct or indirect interest, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Board or any of its Committees, shall as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Board or the Committee with respect to that matter.
5. The draft regulations giving effect to the above proposals are at:
- a. the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018 (**Annexure C**),
 - b. the IBBI (Insolvency Professional Agencies) (Amendment) Regulations, 2018 (**Annexure D**), and
 - c. the IBBI (Information Utilities) (Amendment) Regulations, 2018 (**Annexure E**).
6. It is submitted for consideration and approval of the Governing Board, with or without modifications.

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

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi,the , 2018

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2018

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

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018.

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

2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 2, in sub-regulation (1), clause (a) shall be re-numbered as clause (aa) thereof and before clause (aa) as so re-numbered, the following clause shall be inserted, namely: -

‘(a) “Board” means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188 of the Insolvency and Bankruptcy Code, 2016;’.

3. In the principal regulations, in regulation 5, for sub-regulation (6), the following sub-regulations shall be substituted, namely: -

“(6) Subject to prior approval of the Board, the Chairperson of the Governing Board shall be elected from amongst the independent directors.

(7) The Governing Board shall consist of-

- (a) shareholder directors;
- (b) independent directors; and
- (c) managing director.

(8) The number of independent directors shall not be less than the number of shareholder directors.

(9) The managing director shall be an *ex-officio* director on the Governing Board and shall not be drawn from independent directors or shareholder directors.

(10) Any employee of an insolvency professional agency may be appointed on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

(11) No insolvency professional shall be on its Governing Board.

(12) At least one independent director shall be present in the meetings of the Governing Board to constitute the quorum.

(13) An independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.

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

(15) The second term referred to in sub-regulation (14) may be subject to a satisfactory performance review of the first term by the Governing Board.

(16) A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another insolvency professional agency.

Explanation. - For the purposes of sub-regulations (2) to (4), any fraction contained is more than one-half, it shall be rounded off to the next higher number and not more than one-half shall be rounded off to the next lower number.”.

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

“5A. Managing Director - -

- (1) An insolvency professional agency shall have a managing director.
- (2) The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.
- (3) An insolvency professional agency shall, subject to the guidelines issued by the Board from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director.
- (4) The appointment of the managing director shall be for a tenure of not less than three years but not exceeding five years.
- (5) An individual may serve as managing director of an insolvency professional agency for a maximum of two terms or up to the age of sixty-five years, and after his first term, the process relating to appointment of the managing director shall be conducted afresh.
- (6) The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association, bye-laws or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.
- (7) The Board may *suo motu* remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after giving a reasonable opportunity of being heard.
- (8) The managing director shall be an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.
- (9) The managing director shall be selected through advertisement, on the website of the insolvency professional agency or, in all editions of at least one national daily newspaper.
- (10) The appointment and remuneration payable to a managing director shall be approved by a Compensation Committee constituted by the Governing Board.
- (11) An insolvency professional agency may lay down additional eligibility criteria for appointment of the managing director.

(12) An individual,-

(a) having requisite qualification as determined by the Governing Board,

(b) who is not more than 55 years of age,

(c) having fifteen years' of experience in insolvency, banking, law, finance, insurance, securities or with a regulatory body, which shall include at least five years as managing director or one level below the Board,

shall be eligible to be appointed as the managing director.

5B. Compliance. - Every insolvency professional agency registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with regulation 5A and item (e) of sub-clause (1) of clause 8 of the Schedule, within one year from the date of commencement of the said regulations.”.

5. In the principal regulations, in the Schedule, -

(i) in clause 8, in sub-clause (1) after item (d), the following item shall be inserted, namely: -

“(e) a Compensation Committee consisting of such members as it deems fit.”;

(ii) after sub-clause (2), the following sub-clause shall be inserted, namely: -

“(3) The insolvency professional who is a director of the Governing Board and who has any direct or indirect personal, pecuniary, contractual or other similar interest, in any matter that comes up for discussion in any meeting of any Committee of the insolvency professional agency or the Governing Board, shall make a disclosure to that effect to such Committee or the Governing Board, as the case may be, and shall not participate in any meeting of such Committee or the Governing Board.”.

Dr. M. S. Sahoo

Chairperson
Insolvency and Bankruptcy Board of India

Note: the Insolvency and Bankruptcy Board of India (Model Bye – Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG001 on 22nd November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 421 dated 21st November, 2016 and these have not been amended so far.

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

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the, 2018

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2018

IBBI/2018-19/GN/REG __- In exercise of the powers conferred by sections 196, 199, 200, 201, 203, 204 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 Professional Agencies) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) (Amendment) Regulations, 2018.

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

2. In the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as the principal regulations), for regulation 3, the following regulation shall be substituted, namely: -

“3. Eligibility for registration. - (1) A company limited by shares shall be eligible to be registered as insolvency professional agency, if-

(a) its sole object is to carry on the functions of an insolvency professional agency under the Code;

- (b) it has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016;
- (c) it has a minimum net worth of ten crore rupees;
- (d) it has a paid-up share capital of five crore rupees;
- (e) it is not under the control of any person resident outside India;
- (f) not more than forty-nine per cent. of its share capital is held, directly or indirectly, by persons resident outside India;
- (g) it is not a subsidiary of a body corporate through more than one layer; and
- (h) the applicant, its promoters, its directors and persons holding more than ten per cent. of its share capital are fit and proper persons.

Explanation 1.- The term “layer” in relation to a body corporate referred to in clause (g) means its subsidiary.

Explanation 2.- For determining whether a person is fit and proper under clause (h), the Board may take into account any consideration as it deems fit, including but not limited to the following criteria—

- (i) integrity, reputation and character,
 - (ii) absence of conviction and restraint orders,
 - (iii) competence including financial solvency and net worth, and
 - (iv) that at least fifty one per cent. of the paid-up equity share capital is widely held by the public.
- (2) No person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent. of the paid-up equity share capital in an insolvency professional agency.
- (3) The following persons may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid-up equity share capital of an insolvency professional agency-
- (a) an insolvency professional agency;
 - (b) a depository;

- (c) a banking company;
 - (d) an insurance company; and
 - (e) a public financial institution.
- (4) No person resident outside India, directly or indirectly, either individually or together with persons acting in concert, shall acquire or hold more than five per cent. of the paid-up equity share capital in an insolvency professional agency.
- (5) The following persons may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid-up equity share capital of an insolvency professional agency-
- (a) a foreign insolvency professional agency;
 - (b) a foreign depository;
 - (c) a foreign banking company;
 - (d) a foreign insurance company;
 - (e) a foreign commodity derivatives exchange; and
 - (f) multilateral institution.
- (6) The combined holding of all persons resident outside India in the paid-up equity share capital of an insolvency professional agency shall not exceed, at any time, forty-nine per cent. of its total paid-up equity share capital.
- (7) No person shall, directly or indirectly, acquire or hold equity shares of an insolvency professional agency unless he is a fit and proper person.
- (8) The Government or any statutory regulator may, directly or indirectly, acquire or hold such per cent. of paid-up equity share capital as may be decided, in any insolvency professional agency.

4. Compliance.-Every insolvency professional agency registered as on the date of commencement of Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with the provisions of regulation 3, within one year from the date of commencement of the said regulations.”.

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

Note: The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG002 on 22nd November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 420 dated 21st November, 2016 and these have not been amended so far.

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

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the , 2018

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) (SECOND AMENDMENT) REGULATIONS, 2018

IBBI/2017-18/GN/REG ___-In exercise of the powers conferred by section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018.

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

2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (hereinafter referred to as the principal regulations), in regulation 2, in sub-regulation (1), after clause (a), the following clause shall be inserted, namely: -

‘(aa) “Board” means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188 of the Insolvency and Bankruptcy Code, 2016;’.

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

“(2) The Governing Board shall consist of-

(a) shareholder directors;

(b) independent directors; and

(c) managing director.

(3) The number of independent directors shall not be less than the number of shareholder directors.

(4) An independent director shall be nominated by the Board from amongst the list of names proposed by the Governing Board.

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

(6) The second term referred to in sub regulation (6) may be subject to a satisfactory performance review of the first term by the Governing Board.

(7) A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another information utility.

(8) At least one independent director shall be present in the meetings of the Governing Board to constitute the quorum.

(9) The managing director shall be an *ex-officio* director on the Governing Board and shall not be drawn from the independent directors or shareholder directors.

(10) Any employee of an information utility may be appointed on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

(11) The Chairperson shall be elected by the Governing Board from amongst the independent directors.

Explanation.- For the purposes of sub-regulations (1) and (1A), any fraction contained is more than one-half, it shall be rounded off to the next higher number.”.

4. In the principal regulations, after regulation 11, the following regulations shall be inserted, namely: -

“11A. Managing director

- (1) An information utility shall have a managing director.
- (2) The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.
- (3) An information utility shall, subject to the guidelines issued by the Board, from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director.
- (4) The appointment of the managing director shall be for a tenure of not less than three years and not exceeding five years.
- (5) An individual may serve as managing director of an information utility for a maximum of two terms or up to the age of sixty-five years, and after his first term, the process relating to appointment of the managing director may be conducted afresh.
- (6) The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association, bye-laws of the information utility or on grounds of misconduct or incapacity to continue in office.
- (7) The Board may *suo-motu* remove or terminate the appointment of the managing director, if deems fit, in the interest of the stakeholders of the information utility or in the public interest, after giving a reasonable opportunity of being heard.
- (8) The managing director shall be selected through advertisement, on the website of the information utility or, in all editions of at least one national daily newspaper.
- (9) The appointment and remuneration payable to a managing director shall be approved by a Compensation Committee constituted by the Governing Board.
- (10) An information utility may lay down additional eligibility criteria for appointment of the managing director.
- (11) An individual,-
 - (a) having requisite qualification as determined by the Governing Board,
 - (b) who is not more than 55 years of age,

(c) having fifteen years' of experience in insolvency, banking, law, finance, insurance, securities or with a regulatory body, which shall include at least five years as managing director or one level below the Board,

shall be eligible to be appointed as the managing director.

11B. Compliance. - Every information utility registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018, shall comply with regulation 11A, within one year from the date of commencement of the said regulations.”.

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

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