

Insolvency and Bankruptcy Board of India

8th May, 2019

Discussion Paper

Subject: Amendments to:

- (i) the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017; and**
- (ii) the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.**

The institutional infrastructure under the Insolvency and Bankruptcy Code, 2016 (the Code) envisages four key pillars, namely, the Adjudicating Authority (National Company Law Tribunal and Debt Recovery Tribunal), the Insolvency and Bankruptcy Board of India (IBBI), the Information Utilities (IUs), and the Insolvency Professionals (IPs).

Authentication of Financial Information

2. An IU is registered under section 210 of the Code read with the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017. The National e-Governance Services Ltd. (NeSL) is the only IU registered with the IBBI.

3. Section 213 of the Code obliges an IU to provide **core services**. Section 3(9) of the Code defines core services to mean services for-

- (a) accepting electronic submission of financial information;
- (b) safe and accurate recording of financial information;
- (c) authenticating and verifying the financial information; and
- (d) providing access to financial information.

4. Financial information for the purpose of core services means

- (a) records of the debt of the person;
- (b) records of liabilities when the person is solvent;
- (c) records of assets of person over which security interest has been created;
- (d) records, if any, of instances of default by the person against any debt;
- (e) records of the balance sheet and cash-flow statements of the person; and
- (f) such other information as may be specified.

5. Section 214 prescribes the obligations of an IU in relation to core services. It shall

- (a) create and store financial information in a universally accessible format;
- (b) accept electronic submissions of financial information from persons who are under obligations to submit such information;
- (c) accept electronic submissions of financial information from persons who intend to submit such information;
- (d) meet minimum service quality standards;
- (e) get the information authenticated by all concerned parties before storing such information;**
- (f) provide access to the financial information to any person who intends to access such information;
- (g) publish statistical information; and
- (h) have inter-operability with other IUs.

6. IBBI has notified the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2016. Regulation 21 thereof provides as under:

(1) On receipt of information of default, an IU shall expeditiously **undertake the processes of authentication and verification of the information.**

(2) On completion of the processes of authentication and verification, **the IU shall communicate the information of default, and the status of authentication** to registered users who are-

(a) creditors of the debtor who has defaulted;

(b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

7. Thus, an IU is obliged to authenticate and verify the record of default and communicate the information along with the status of authentication.

8. The NeSL has represented regarding the difficulties in implementation of the aforesaid Regulation 21. It has indicated that a corporate debtor is unlikely to accept an event of default, reported by a creditor. Accordingly, completion of the 'process of authentication and verification' needs to be described in the Regulations. In the absence of a laid down procedure for completion of authentication and verification process, the intended benefits of Regulation 21 will not accrue to the creditors on occurrence of a default.

9. The Technical Committee of the IBBI considered this issue and recommended that where no action is taken by the debtor on receipt of information of default, the regulations need to provide appropriate procedural guidance, before the related technical aspects can be detailed out. Accordingly, suitable amendments may be made to regulation 21.

10. It appears that a defaulter is unlikely to accept default, which has been reported by a creditor. In that case, the process of authentication and verification would never be completed, and the information of default cannot be used.

11. Accordingly, it is now proposed to amend the Regulations to specify the processes of authentication and verification. It is proposed that the processes of authentication and verification of the information of default shall be undertaken by the IU in the following manner:

i. The IU shall ensure delivery of information of default either by hand delivery, by post or by electronic means to the debtor in person, at its postal address, or email address, as the case may be, as-

(a) registered with the IU by the debtor, failing which,

(b) recorded with any other statutory repository, as approved by IBBI, failing which,

(c) communicated in the Form C submitted for the default.

ii. The processes of authentication and verification shall be considered complete on the happening of any one of the following events-

| Authentication process completed on | Status / Outcome of authentication process |
|--|--|
| Acceptance of information of default by the debtor | Information authenticated. |
| Receipt of notice of dispute from the debtor. | Information not authenticated |
| Expiry of the period of authentication as specified under the Guidelines for | Information is deemed to be authenticated. |

| | |
|---|--|
| Technical Standards. For this purpose, the IU shall send at least three reminders to the debtor seeking authentication of the information of default. | |
|---|--|

iii. On completion of the processes of authentication and verification as above, the IU shall communicate the information of default, and the status / outcome of authentication, to registered users who are-

- (a) creditors of the debtor who has defaulted;
- (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

Upper Age for Independent Directors

12. Regulation 9 (7) of the IBBI (Information Utilities) Regulations, 2017 and regulation 5 (8) of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 provide that 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.

13. A representation has been received that the Companies Act, 2013 does not provide for the upper age limit for an independent director. Accordingly, the regulations should not provide for the same, since the IPA is incorporated as a company. It may be difficult to accept this as an IPA is not just another company, but a front-line regulator where public stake is much higher as compared to a company engaged in commercial operations. The existing Regulations are like the provisions for comparable organisations like stock exchanges. It may be advisable to allow a little leeway given that the IPAs need experienced individuals as independent directors.

14. The Advisory Committee on Service Providers considered this and recommended that 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-five years, whichever is earlier.

15. It may be mentioned that regulation 24 (3) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, which earlier provided the upper age limit of 70 years for independent directors of stock exchange and clearing corporations, has since been amended on 3rd October, 2018 to provide age limit of 75 years.

16. In view of the above, it is proposed to amend regulations to increase the upper age limit to 75 years for independent directors of IPAs and IUs.

Public Comments

17. The proposals in the preceding paragraphs aim at facilitating establishment of default and consequently early commencement of corporate insolvency resolution process when the prospect of revival of the debtor is higher. Further, the IPAs and IUs will have a better choice of individuals to join them as independent directors.

18. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on:

- (a) any specific para in this discussion paper; and

- (b) any specific regulations in the draft Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019 as at Annexure A; and
- (c) any specific regulations in the draft Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2019, as at Annexure B, by 30th May, 2019

19. Comments may be submitted electronically by 30th May, 2019. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select ‘Public Comments’, and then ‘Discussion Paper- IPA & IU Regulations’;
- (iii) Provide your Name, and e-mail ID;
- (iv) Select the stakeholder category, namely-
 - (a) Corporate Debtor;
 - (b) Personal Guarantor to a Corporate Debtor;
 - (c) Proprietorship firms;
 - (d) Partnership firms;
 - (e) Creditor to a Corporate Debtor;
 - (f) Insolvency Professional;
 - (g) Insolvency Professional Agency;
 - (h) Insolvency Professional Entity;
 - (i) Academics;
 - (j) Investor;
 - (k) Information Utility; or
 - (l) Others.
- (v) Select the kind of comments you wish to make, namely,
 - (a) General Comments; or
 - (b) Specific Comments.
- (vi) If you have selected ‘General Comments’, please select one of the following options:
 - (a) Inconsistency, if any, between the provisions within the regulations (intra regulations);
 - (b) Inconsistency, if any, between the provisions in different regulations (inter regulations);
 - (c) Inconsistency, if any, between the provisions in the regulations with those in the rules;
 - (d) Inconsistency, if any, between the provisions in the regulations with those in the Code;
 - (e) Inconsistency, if any, between the provisions in the regulations with those in any other law;
 - (f) Any difficulty in implementation of any of the provisions in the regulations; and
 - (g) Any provision that should have been provided in the regulations, but has not been provided; or
 - (h) Any provision that has been provided in the regulations but should not have been provided.And then write comments under the selected option.

- (vii) If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.
- (viii) You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on more comments and repeating the process outlined above from point 19 (v) onwards.
- (ix) Click 'Submit', if you have no more comments to make.

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

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, 2019**

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2019

IBBI/2019-20/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 further 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, 2019.

(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, in regulation 5, in sub-regulation (8), for the words “seventy years”, the words “seventy-five years” shall be substituted.

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 have been amended vide notification No IBBI/2018-19/GN/REG35..dated 11th October, 2018.

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

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION
New Delhi, 2019**

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) (AMENDMENT) REGULATIONS, 2019

IBBI/2019-20/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) (Amendment) Regulations, 2019.

(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, -

(a) in regulation 9, in sub-regulation (7), for the words “seventy years”, the words “seventy-five years” shall be substituted;

(b) for regulation 21, the following regulation shall be substituted, namely: -

“21. Information of default.

(1) On receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information.

(2) The processes of authentication and verification of the information of default shall be undertaken by the information utility in the following manner:

(i) information of default shall be successfully delivered either by hand delivery or by post or by electronic means to the postal address or the e-mail of the debtor as-

(a) registered with the information utility by the debtor; failing which

(b) recorded with any other statutory repository as approved by the Board; failing which,

(c) communicated in Form C of the Schedule.

(ii) The processes of authentication and verification of default shall be considered complete on the happening of any one of the following events, namely: -

- (a) acceptance of information of default by the debtor; or
- (b) receipt of notice of dispute from the debtor; or
- (c) the expiry of the period of authentication as specified under the Guidelines for Technical Standards, during which the information utility would have sent at least 3 reminders to the debtor to authenticate the information of default.

(3) On completion of the processes of authentication and verification under this regulation, the information utility shall communicate the information of default, and the status of authentication, to registered users who are-

- (a) creditors of the debtor who has defaulted;
- (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

(4) The communication under sub-regulation (2) shall provide the authenticated and verified information, duly segregated as under:

- (a) acceptance of information of default by the debtor;
- (b) receipt of notice of dispute from the debtor;
- (c) deemed authentication.”.

(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 by-

- (1) the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2017 Notification no. IBBI/2017-18/GN/REG016 dated 29th September, 2017;
- (2) the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2018 vide No. IBBI/2017-18/GN/REG 029 dated 27th March, 2018; and
- (3) the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018 Notification no. IBBI/2018-19/GN/REG34 dated 11th October, 2018.