

THE PUBLIC IS MORE FAMILIAR WITH BAD DESIGN THAN GOOD DESIGN.  
IT IS, IN EFFECT, CONDITIONED TO PREFER BAD DESIGN, BECAUSE THAT  
IS WHAT IT LIVES WITH. THE NEW BECOMES THREATENING, THE OLD RE-  
ASSURING.

PAUL RAND



# BUILDING THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

MINISTRY OF CORPORATE AFFAIRS  
GOVERNMENT OF INDIA



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# *Establishment of Working Group*

On 5th May, 2016, the Indian Parliament passed the Insolvency and Bankruptcy Code, 2016 (IBC), which received Presidential assent on 28th May, 2016. In order to plan the implementation of the law, the Ministry of Corporate Affairs constituted four working groups (WGs) in July 2016:

1. WG 1: Recommend the design of the IBBI,
2. WG 2: Recommend on the rules and regulations for Insolvency Professionals (IPs) and Insolvency Professional Agencies (IPAs),
3. WG 3: Recommend on the rules and regulations for the insolvency and liquidation process,
4. WG 4: Recommend on the rules and regulations for Information Utilities (IUs).

This is the report of the WG 1 on the design of the IBBI. This was established as follows.

## *Members*

- M. S. Sahoo, Member, Competition Commission of India (CCI), Chairman of the Working Group.
- P. K. Nagpal, Executive Director, Securities and Exchange Board of India (SEBI)
- Ravi Narain, Vice Chairman, National Stock Exchange (NSE)
- Susan Thomas, Assistant Professor, Indira Gandhi Institute of Development Research (IGIDR)
- Rakesh Tyagi, Director, Ministry of Corporate Affairs (MCA)

## *Terms of reference*

1. To give recommendations on:
  - (a) the organisation structure of the IBBI, keeping in view the powers and functions to be performed by it under Section 196 and 197 of the IBC as well as structures of other regulators like SEBI.
  - (b) The process within the IBBI to discharge powers and functions, inter alia, with respect to registration, policy/regulation making, enforcement (monitoring, investigation, imposition of penalties and grievance redressal) for IPAs/IPs/IUs, general regulation making for substantive and procedural matters for Part II and Part III of the IBC as well as supportive functions of administration, finance and accounts, data/information management and communication.

- (c) Committees to be constituted under Section 197 of the IBC.
  - (d) Officers and supporting staff required by the IBBI to perform its functions and the source/manner of recruitment.
  - (e) Infrastructure, including space and information technology requirements of the IBBI.
  - (f) Budgetary support required by the IBBI for the remaining part of 2016-17 and full year 2017-18.
2. Suggest draft rules/regulations/guidelines for the officers and employees of the IBBI in order to enable its immediate functioning on constitution.

## *Acknowledgements*

When a Working Group is tasked with a matter of such importance as the setting up of a new regulator, to be done in very short period of time, it is of essence is the ability to reach out to experts in the area and have faith that they will be willing to pitch in with advice and help.

The Working Group has benefitted immensely from such willing expert help. The IGIDR Finance Research Group, with Aditi Sachdev, Anjali Sharma and Bhargavi Zaveri, was the research secretariat for the committee. They were supported by advice and insights from Ashish Aggarwal, Anirudh Burman and Pratik Datta of NIPFP. They showed, once again, the value of intellectual institutions in the country who are able to shoulder such responsibilities and build a report of high quality.

There were others who contributed their advice freely when approached by the Working Group. Nikhil Shah of Alvarez & Marsal spent time with the Working Group answering questions about the working of the insolvency professionals and the process of insolvency systems outside India using his experience with resolving insolvencies globally. Vinod Kothari and Nidhi Parmar from Vinod Kothari & Company provided detailed notes on request from the Working Group that were useful for the deliberations of the Group.

Lastly, the members of the WG were exceedingly generous with their time, even during the weekends, in order to enable this report to be readied in as short a time as possible. But this acknowledgement would be incomplete if it did not include the tireless work of M. S. Sahoo who, at the inception of this Working Group, was appointed its Chairperson. Mr. Sahoo keenly felt the urgency of the bankruptcy reform, and galvanised all of us into prioritising the work, and applying ourselves in thorough meetings of sophisticated discussion. This report could not have been done without his leadership, and it is fitting that the baton now passes to him at IBBI.



## *Executive Summary*



# *Principles for organisation design*

In the contemporary Indian policy discourse, the defining concern is State capacity. There is a sense of implementation shortfall, with a gap between aspirations and outcomes from the agencies setup by the State. There is a need to diagnose the sources of difficulties of the conventional arrangements, improve upon the conventional methods, and aspire for higher performance.<sup>1</sup> Obtaining a high performance organisation requires sound design decisions on organisation design, processes and governance arrangements. This report sets forth an internally consistent strategy that views these three pillars as an interlocking whole, which would then induce high performance.

The starting point of any organisation is its stated objective, around which is put in place people and processes with which to most efficiently deliver the objective. The design of the organisation is about designing the structure of groups within the organisation, the roles and responsibilities of these groups, determining who has the responsibility of decision making and designing the processes that will be utilised for communication and information flows within each group and across groups. The complete statement of organisation design requires specification of processes, to a point where they can be given to a software developer who will then build a workflow system for how the organisation will function, down to the last detail.

A full organisation design comprises four elements:

1. Design of the organisation structure;
2. The roles and responsibilities of each role within the design.  
This will include the skills required, performance evaluation and incentives at each layer;
3. A detailed description of the processes to be followed;
4. A detailed information management system that can be used to record and process data about activities, tasks and outputs.

As a first step towards achieving an organisation design for the IBBI, we establish certain design principles.

<sup>1</sup> M. S. Sahoo. "Political economy of Neo-governments". In: *Chartered Secretary, ICSI* (Dec. 2012), pp. 1530–1544 discusses these problems in detail.

## *Principles*

### *Strengthen feedback loops*

In the private sector, the profit objective aligns interests and creates a continuous system of feedback. The political leadership has accountability through elections, while officials have job security. The officials in a government agency are immune to the incentives of profit (that create feedback loops for private firms) or elections (that create feedback loops for politicians). There is, then, the possibility of organisations run by officials becoming unaccountable, with officials pursuing self-interest.

The essence of public administration is the establishment of feedback loops with clarity of objectives, limited powers, formal processes governing the use of State power, an emphasis on the rule of law, and mechanisms for reporting and transparency.

### *Approximate versus optimal*

In the private sector, failures of organisation design have an impact upon investors, employees and customers. In the public sector, failures of organisation design have an impact upon the public at large. As the stakes are higher, a greater effort is called for, with care in organisation design, when compared with conditions in the private sector.

In the private sector, there is an emphasis on rapid launch with an approximate organisation design, knowing that the pressures of obtaining profits will generate continuous pressures to re-organise. In the private sector, organisations typically undergo a full organisation redesign every two to three years. In contrast, errors in organisation design in the public sector are less likely to get sorted out through internal feedback and pressures to address problems. Entrenched bureaucratic politics has induced a slow pace of redesign of State agencies.

This makes it important to achieve an optimal organisation design at the outset when creating an organisation in the public sector.

### *Separation of powers*

A regulator is a mini-State which fuses legislative, executive and judicial wings. This delegation of powers allows the government to give the responsibility of dealing with a specialised subject matter with greater capability and responsiveness than it can by itself. This is done in the hope that a regulator will be an expert body that can cope with rapid change in the market economy more efficiently and consistently.<sup>2</sup>

As has been known since the 17th century, arbitrary power is reduced through the separation of powers between each of the three

<sup>2</sup> These issues have been discussed in the Indian context in the *FSLRC Volume I* where Sections 2.4 and Chapter 3 focus on the governance framework and the design of the structure of the board of any financial sector regulator. Similar issues were also discussed during the work of the *Bankruptcy Law Reforms Committee*, in Section 4.1 of the *BLRC report: Volume I*.

wings of the State. The fusing of the three parts into a single regulatory agency poses a challenge for the construction of State capacity. As separation of powers is violated in the setting up of such a regulator, there is a greater danger of abuse of arbitrary power. Other things being equal, it is harder to achieve State capacity in a regulator, for this reason. To the extent that organisation design can achieve an internal separation of powers, this is desirable.

### *Implications*

These issues imply that:

1. To the extent that the legislative, executive and judicial function can be separated, this is desirable, as the separation of powers doctrine induces superior performance.
2. There must be a strong accent upon establishing feedback loops for self-improvement: clarity of objectives, limited powers, formal processes governing the use of State power, an emphasis on the rule of law, and mechanisms for reporting and transparency.
3. It is desirable to build an optimal organisation through a one time project, rather than starting with a minimal working structure and expecting to refine it through feedback.

### *Separation of powers*

A regulator is a mini-state as it subsumes the three functions that can be classified as executive, legislative and judicial. The Constitution of India establishes the desirability of separation between the executive, legislature and the judiciary. The constitutional principles of separation of the executive, legislative and judicial functions are applicable within State agencies.

In India, SEBI regulates the securities markets through regulations which are essentially quasi-legislative instruments. It licenses brokers and other securities market intermediaries and monitors them including investigations into possible violations. These are essentially its executive functions. It conducts hearings and awards punishments. These orders are quasi-judicial in nature. The *SEBI Act* does not, however, mandate a functional separation between its investigation officers and adjudication officers. While an investigation officer cannot adjudicate a case which she has investigated, one investigation officer can potentially adjudicate a case which a colleague-investigation officer has investigated. This dilutes the separation of powers between the investigation function and the adjudicatory functions.

FSLRC has recommended that hearings be conducted before Administrative Law Officers (ALOs), who would go on to write the order. All ALOs would be placed in a distinct Administrative Law

Wing of the regulator, with exclusive oversight by an Administrative Law Member (ALM). This would yield limited separation of powers in that the persons involved in conducting hearings and writing orders would not be involved in either legislative or executive functions.

Functional separation is found in many regulators outside India. Two such examples are the Securities Exchange Commission (SEC), the securities regulator in the U.S., and the Financial Conduct Authority (FCA), the regulator in charge of consumer protection in the U.K.

The SEC observes the functional separation of the executive from the quasi-judicial functions by appointing administrative law judges within the organisation, who perform the quasi-judicial functions of the SEC.

Similarly, when the FCA proposes to take an enforcement action, the investigation team hands over its report to a Regulatory Decisions Committee (RDC) consisting of practitioners and non-practitioners appointed by the board of the FCA. The RDC comprises practitioners and non practitioners, who all represent the public interest. The FCA staff who handle cases before they go to the RDC will not be involved in the RDC's decision making. Members of the RDC are appointed by, and are accountable to, the FCA board.

### *Feedback loops*

A regulator must build controls to strengthen internal and external accountability. Standard accountability mechanisms in the Indian context include laying of regulations and annual reports by the regulators before the Parliament. However, parliamentary oversight must be supplemented with concrete mechanisms about goals and review mechanisms.

*Goal setting* For each of the regulatory functions assigned to it, a regulator must have goals for performance. The board of the regulator must define the goals at the beginning of the year and then use them as a yardstick to measure its own performance as well as the performance of each of its departments.

We take the example of the bankruptcy regulator in the U.K., the Insolvency Service. The Insolvency Service sets annual targets which includes statements of finance and resources, adherence to processes and changes in processes, and statements on customer satisfactions. Since accountability is closely linked to transparency, it also reports its performance on its pre-determined goals in the annual report, which is a mixture of quantitative and qualitative measures.

Another example is the Office of Superintendent of Bankruptcy (Canada) (OSB), which sets timelines for performance of its

executive functions and displays them on its website as service standards.

These practices are encoded by FSLRC, are detailed in the FSLRC Handbook, and have a corresponding design in the Management Information System associated with monitoring compliance with the FSLRC Handbook.

*Internal and external review mechanisms* A regulator must have adequate internal review mechanisms to oversee the quality of its performance. This can comprise periodic internal audits by an audit committee comprising the non-executive members of the regulator. The report of the audit committee must be published with the annual report of regulator. The audit committee must be resourced with adequate staff that will communicate all relevant information in a true and faithful manner to the committee. The audit committee must specifically report on issues such as non-compliance by the regulator with the law, non-disclosure of data by the regulator, misappropriation of funds, etc. It may put in place a whistle-blower mechanism for reporting of irregularities within the regulator. This internal audit review mechanism must be built in the organisation design of the regulator.

Similarly, while the Comptroller and Auditor General (CAG) is empowered to audit the functioning of the regulator, an external review of the regulator's functioning must be periodically done by an external agency.<sup>3</sup>

As an example, in Canada, an independent research firm conducted a survey of the chief executive officers (CEOs) of federally regulated financial institutions (explore, for example, *OSFI Annual Report 2010-2011* to understand their perception of the performance of the Office of the Superintendent of Financial Institutions (OSFI)). A similar exercise is conducted in Australia through its *stakeholder surveys*, which includes both quantitative and qualitative methodologies. The quantitative survey involves an analysis of the information obtained from samples of the stakeholder population. The qualitative survey involves stakeholder consultations and structured conversations with a broad range of industry and community bodies to identify issues, themes and comments about the Australian Securities and Investment Commission (ASIC). Stakeholders give their opinion on whether the regulator has been able to achieve the priorities set to achieve the mandate.

<sup>3</sup> OECD. *The Governance of Regulators*. 2014. URL: <http://www.oecd.org/gov/regulatory-policy/the-governance-of-regulators-9789264209015-en.htm>.

## *Transparency*

Transparency about the functioning of a regulator involves two levels. One is transparency in the *functioning* of the regulator itself. The other is transparency in how the regulator interfaces with the regulated entities, the parties in the insolvency and bankruptcy

cases, the government and the public at large.

*Transparency in the functioning of the organisation* Transparency in the internal functioning of a regulator would imply that a robust standard of documentation is maintained about its internal functioning and the internal decisions taken. Since the regulator plays the role of the state, such documentation should be maintained at a level of detail that is sufficient to support an independent assessment of decisions taken by the regulator. For example, the simplest of these would be minutes of meetings of the board and committees.

*Transparency in interfaces* In order for the IBBI to be an effective regulator, it must create trust in the system for all stakeholders. The stakeholders in the insolvency and bankruptcy ecosystem that the IBC targets covers a large number of participants. They include all existing forms of creditors and debtors, as well as potential creditors and debtors; the professionals and institutions that are integral parts of the process of insolvency and bankruptcy resolution; foreign creditors and foreign firms that have business relations with domestic debtors, who are now given a clear role in the resolution process; the judges and courts as well as the departments of government and Parliament through which the law is implemented.

Transparency is the common mechanism through which the regulator can increase the confidence that stakeholders have in the system. Such transparency will include aspects such as:

- Publication of all regulations, comments received from the stakeholders in the course of consultations preceding the regulations, annual reports, all orders passed in relation to regulated entities, minutes of meetings of the board of the regulator, reports received from advisory committees of the board, internal and external audit reports, etc.
- High minimum standards for the annual reports of the regulator. For instance, the annual report must identify the goals determined by the board for the year and performance assessment in relation to the goals for the previous year. It must contain the internal audit report conducted by the audit committee, budget allocated to each goal set for the next year, etc. Similarly, the annual report must include a true and fair account of the financial affairs of the regulator, including a statement of expenditure. The financial statements must be in line with the standards prescribed for firms having public shareholders.

For example, Airport Economic Regulatory Authority (AERA) is an Indian regulator which complies with high standards of transparent financial reporting. The annual financial statements of AERA are made in accordance with the general reporting standards mandated under the *Companies Act*.

- Transparency with respect to data and information would imply publishing regular data on matters relating to insolvency and bankruptcy resolution. For example, this should include statistics on the time taken for such cases to resolve and the value recovered, at least. As an example, the Insolvency Service in the U.K. which regularly publishes data such as:
  - quarterly statistics on insolvencies of companies and individuals for every quarter, including information on the industry, sector, region, gender and age of debtors (in case of individual insolvencies), who triggered the insolvency;
  - statistics on enforcement actions taken by the Insolvency Service.
- Transparency in executive and quasi-judicial functions would require that the regulator document its decisions with reasons. Similarly, it would imply that transparency in process such as show cause notice must state the grounds of the proposed action and information on the basis of which the notice has been issued.

### *Responsiveness*

Regulation is not a one-size-fits-all approach and different strategies and approaches are required to address different risks. The operating environment and risks may change over time and regulators need to have a flexible and ongoing ability to assess such changes. This captures the essence of a responsive regulator. While *responsiveness* is a broad term encompassing responsiveness in all actions of the regulator, one of the principal components is holding effective consultations before making any regulation.

Some of the mechanisms that a regulator must employ to implement the principles of responsiveness, include:

- holding effective stakeholder consultations before issuing regulations;
- periodically and pro-actively review regulations issued by it from time to time.

An example of an Indian regulator that has implemented steps towards higher responsiveness compared to their regulatory peers is the Telecom Regulatory Authority of India, Telecom Regulatory Authority of India (TRAI).<sup>4</sup> TRAI regularly publishes on its website, all comments received from stakeholders in response to its consultation papers as well as counter-comments on the same page as the consultation paper itself. This facilitates multi-directional flow of information between the regulator and the stakeholders and amongst the stakeholders themselves, when regulations are being framed. The TRAI website allows stakeholders to upload their comments on a discussion paper directly. Once the period of

<sup>4</sup> Anirudh Burman and Bhargavi Zaveri. *Regulatory Responsiveness in India: A Normative and Empirical Framework for Assessment*. Tech. rep. Finance Research Group, IGIDR, Oct. 2016 create a measurement framework to compare the responsiveness of SEBI and TRAI, and find that TRAI rank significantly higher on responsiveness.

consultation is over, the discussion paper or draft regulations, comments and counter-comments are archived on the website of TRAI. This allows the public to explore its archives for each consultation paper and the comments received.

### *Sound office infrastructure*

For a high performance agency, the internal systems and support functions of the agency need to be well-managed, and continuously monitored, reviewed and updated. Low quality office infrastructure and IT systems are the source of important reductions of productivity of State agencies in India today. In these aspects, the private sector has high standards, which need to be reported.

## *Proposed structure of the organisation*

IBBI is envisioned as a statutory body empowered by Parliament to have legislative, executive and judicial powers. In order to design its organisation structure, we first analyse the work envisaged by *IBC* for IBBI. We go on to design the organisational structure for IBBI.

### *What IBBI will do*

The objectives of the IBBI are defined in the *IBC* and in the *BLRC report: Volume I*. The Preamble to the *IBC* states:

*to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.*

In order to meet these objectives, the *IBC* gives the IBBI legislative, executive and quasi-judicial powers. Section 196 of the *IBC* defines the powers and functions of the IBBI as:

1. *Specify law that spells out details about the working of the bankruptcy process.* At various points in the *IBC*, details of the process are to be specified by regulations. Hence, IBBI has to create capacity where officials will draft law.
2. *Regulate three private industries:* the *IBC* visualises three private competitive industries: Insolvency Professionals IPs, Insolvency Professional Agencies, IPAs and Information Utilities IUs. The IBBI is a full fledged regulator for these three industries, with legislative, executive and quasi-judicial functions.
3. *Statistical system and research:* The IBBI is required to build a public good of a fine grained database about the working of every insolvency and bankruptcy resolution case in the country (Section 196(1)(k) of the *IBC*). This includes details of every case including the working of all the insolvency professionals and information utilities involved. An example of the recommended information required can be seen in Box 4.2 of Section 4.1.5 of

the *BLRC report: Volume I*. This data is required by the public when undertaking bankruptcy and insolvency transactions.

The IBBI will also make this data available for research by external researchers, and help foster research that would create knowledge that would feed back into improving the working of IBBI.

### *Design considerations*

Organisational structure is the configuration of the hierarchical levels, the specialised departments and positions within an organisation, and the rules governing these arrangements. Performance evaluation and reward systems are additional key elements of organisational structure and must be designed carefully to promote the organisation's objectives.

The Working Group discussed the following set of principles to drive the organisational structure of the IBBI.

1. *Functional separation* : the quasi-legislative, quasi-executive and quasi-judicial functions must be separately organised (discussed in Section ). This was unanimously agreed on by the members of the Working Group.
2. *Functional specialisation* : Workgroups within the IBBI must be structured in a way that facilitates the development of human capital over time.
3. *Modern office* : Office infrastructure such as office space, workflow automation with a paperless office, etc. is a key enabler of high productivity.
4. *Organisational focus on high standards of accountability and transparency* : The organisation structure should be conducive to clarity of purpose, measurement of performance and thus accountability to the board and the public.

### *Proposed design*

Based on the principles laid out so far and the discussions within the Working Group, a organisation structure of the IBBI is proposed and presented in Figure 1.

At the top of the design sits *the Board* of the IBBI (further discussed in Section ). The structure of the Board has been laid out in the law, with the Chairman being the first among equals.

The board is a critical element of the sound working of a government agency. It is the site of the most important feedback loops. Reporting by the agency creates discomfort in the minds of private persons, which feeds into the working of the board through the social networks of the majority of independent directors. For this to

### The Insolvency and Bankruptcy Board of India

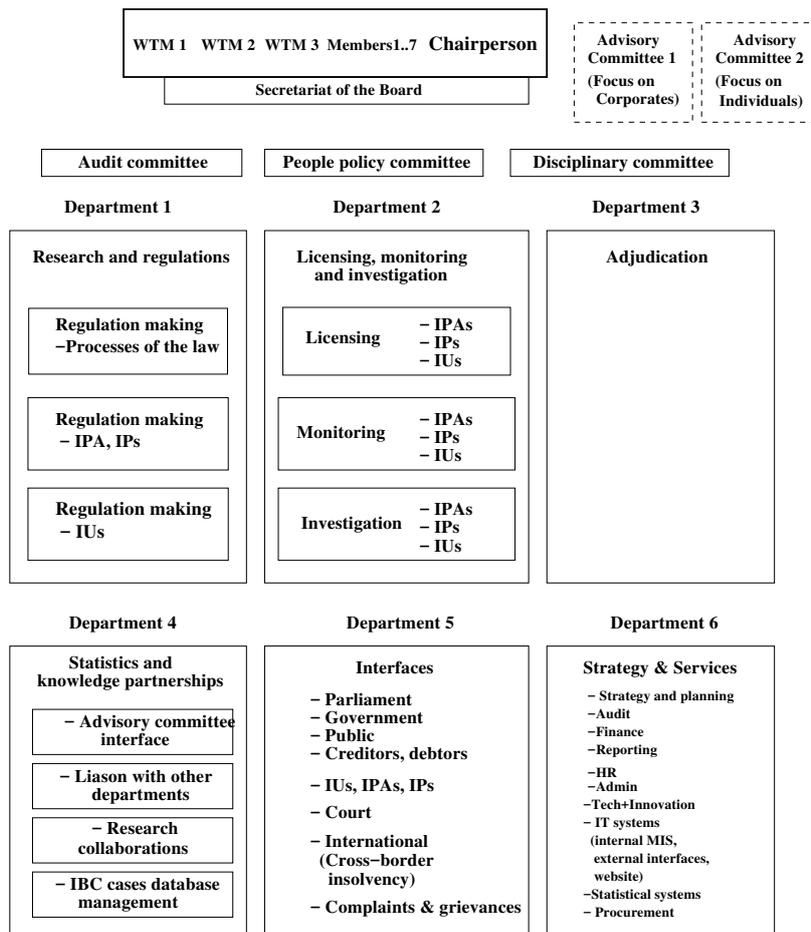


Figure 1: Proposed organisation structure of IBBI

take place, there has to be adequate reporting which will reveal the shortcomings of the agency, and the board must have the requisite powers.

In India, in the past, the boards of regulators have been largely structured as informal groups. Most boards of regulators are informal advisory groupings rather than formal empowered structures. This has made the working of the board idiosyncratic. The board is, then, not an institution: its role and behaviour changes sharply based on the identities present in it. At IBBI the effort should be to establish formal board processes. This would create the board as an institution, which would behave in a consistent way across staffing changes.

The Board is assisted by:

- At least two *Advisory Committees*, on corporate and individuals issues.
- Three *Executive Committees* – Audit, HR policy and Disciplinary.

Of these three committees, the *Disciplinary Committee* is mandated by law.

The organisational structure explicitly includes a *Secretariat of the Board* as part of the organisation support towards building a high-performance agency. The organisational design visualises six departments:

*Research and regulations* This department would perform the legislative functions, which would be driven by research.

*Licensing, monitoring and investigation* This department would perform the executive functions.

*Adjudication* This department would perform the quasi-judicial functions.

*Statistics and knowledge partnerships* This department would perform the statistical system functions envisaged in the law, and do contract-management for knowledge partnerships which are required for supporting all parts of the organisation and for producing public domain research.

*Interfaces* This department would be the single point of interface between the IBBI and the large number of counterparties which IBBI has to engage with.

*Strategy and Services* This department would run IBBI as a world class agency. It would also manage reporting and run a process of introspection and diagnosis, which is used for deciding strategy for improvement.

### *Comparison with existing organisations: example, SEBI*

The proposed structure has important similarities and differences compared to the current regulatory organisations in India, such as SEBI. At present, the organisational structure at SEBI is driven by the present market structure rather than functional clarity. For an example, applying the SEBI design to IBBI may suggest setting up one department for firm bankruptcy and another department for individual bankruptcy.

While this was set by the prevalent thinking at the time of its creation in the late 1980s, this structure has made the regulatory organisation vulnerable to changes in the market ecosystem. One such example of this has been the convergence of the commodity derivatives markets regulations into SEBI. This is still in process despite the legislation having been enabled in early 2015.

A striking feature of the SEBI organisation structure is the slow pace of change. Design decisions taken in the late 1980s and early 1990s are visible in the organisation diagram of 2016. This is in contrast with high performance organisations in the private sector, which fully redesign the organisation structure every two to three years.

A second reason can be the lack of clear accountability. For instance, currently, SEBI has two Whole Time Members (WTMs) on the SEBI Board. The organisational structure of SEBI is presented in Figure 2. Here, we see that the division of departments is not functional, but is driven by sectoral considerations. For example, one WTM is in charge of commodities derivatives markets, foreign portfolio investors and custodians. Another WTM is in charge of corporate finance, investment management and collective investment schemes. The proposed design for the IBBI focusses on functions – such as regulation making, licensing and monitoring, enforcement – rather than institutions – such as IPAs and IPs or IUs.

### *The Board and associated committees*

At a conceptual level, the work of the board of a government agency is the following:

1. *Assess the performance of the agency.* A well functioning board requires sound reporting and a majority of independent members.
2. *Diagnose problems.* This requires a constant process of analysis of shortcomings by a strategy group, which leads to strategic discussions at the board.
3. *Modify resource allocation and processes in order to address the problems.* This requires control of resources and processes at the level of the board.

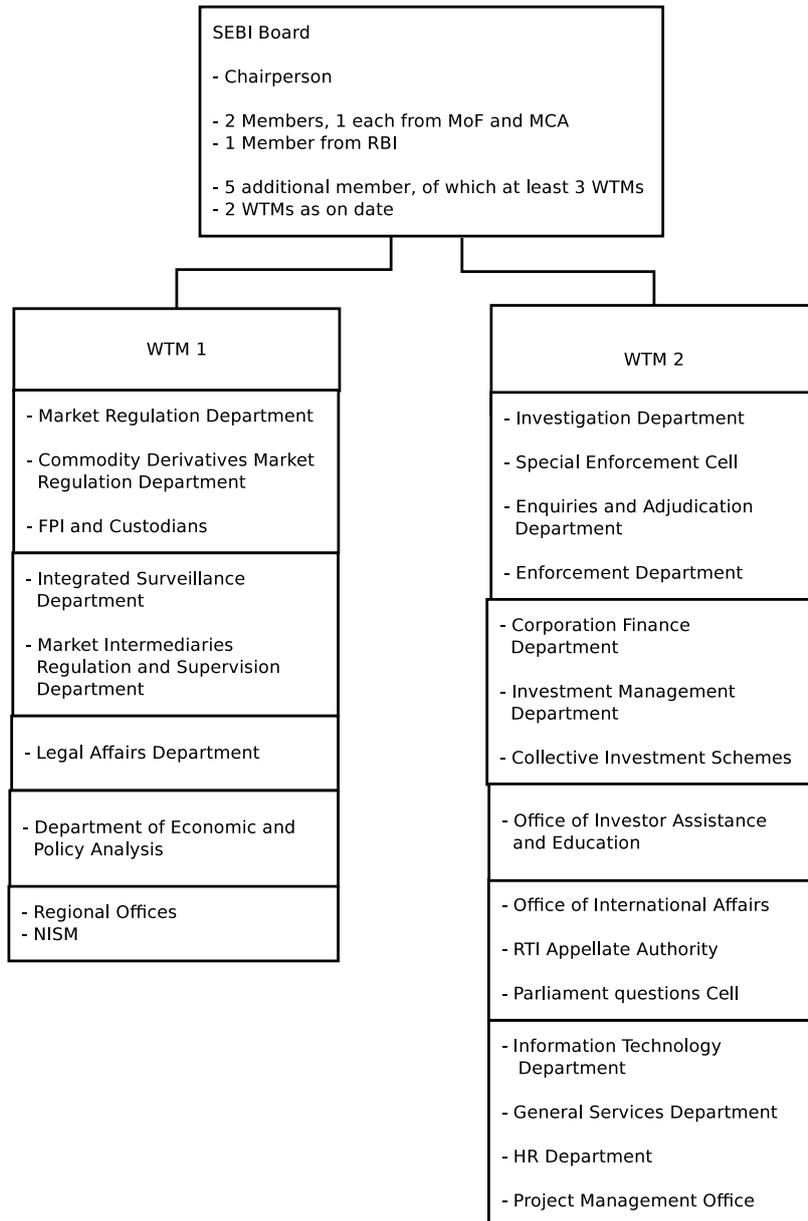


Figure 2: Organisation structure of SEBI

In addition to this, the board plays a critical role in the regulation-making process in well structured regulators, given the importance of the drafting of law when this power is placed with unelected officials.

The Board shapes the culture of the organisation, both explicitly through the performance evaluation framework and the code of conduct framework and implicitly through their decisions on rewarding good and bad performance at the level of individual personnel and at the level of departments and the overall organisation.

### *Board composition of the IBBI*

Section 189 of the *IBC* defines the constitution of the Board of IBBI. It provides that the Board will have:

1. a Chairperson;
2. four *ex-officio* members to be nominated by the Ministry of Law, Ministry of Finance, Ministry of Corporate Affairs and RBI.
3. five other members to be appointed by the Central Government, of whom *at least* three shall be whole time members.

The most important work of the board is the feedback loop of assessing performance, diagnosing sources of failure, and undertaking modifications of resource allocation and processes. As the WTMs are the managers of the organisation, they are likely to have a bias in favour of a rosy assessment. Nominee directors are likely to prioritise the interests of their institutions. Hence, for the sound working of regulators, the number of independent directors should exceed the sum of the number of WTMs and the number of nominee directors. This is the universally accepted principle for well functioning boards; if a board is to act as a check against incumbents, the incumbents must be a minority. This is, at present, not the case. The Working Group recommends that a future amendment of the law may address this problem.

At an intuitive level, the board is akin to the legislature of the organisation, while the WTMs and the chairperson are akin to the executive. The board must have a clear view of performance, and authorise the budget. It must control the legislative power of the regulator, i.e. development and issuance of regulations, and it must also control something akin to legislative power, the development and issuance of internal process manuals.

The Working Group also discussed the rules governing the salaries and allowance of the Chairperson and WTMs of the IBBI. These recommendations are presented in Appendix .

### *Role of the secretariat of the board*

The Secretariat will manage the calendar of meetings of the Board, organises logistics support and interfaces with the Finance unit of the *Department of Strategy and Services* for the budgeting of Board meetings for the year.

More importantly, the secretariat is responsible for operations of the formal processes of the board. Every sophisticated State agency has complex procedures about the working of the board, with a combination of Parliamentary law and rules for the working of the board made by the board itself. The Secretariat is responsible for managing the working of the board in compliance with these procedures. It is not possible to have a well functioning board without a strong Secretariat.

### *The chairperson*

1. The chairperson is the first among equals in the board, and takes the prime responsibility for the feedback loop of the board, i.e. the process of assessment of performance, diagnoses of failure, and modifications of resource allocation and processes.
2. Within the current organisation design, the Working Group proposes that three departments will report to the Chairperson:
  - (a) The department of *Strategy and Services* will report on the functioning of the IBBI,
  - (b) The department of *Interfaces*, which acts as a single point of communication between the IBBI and all stakeholders, and therefore is the department which monitors and manages external perception about how well the IBBI is carrying out its mandate, and
  - (c) The department of *Field research and knowledge partnerships* which monitors the economic outcomes and policy relevance of the law as being implemented by the IBBI.
3. In addition to this, the Chairperson is generally the public face of the regulator. The Chairperson is also the person that engages with senior staff of the government and other state agencies.

### *The committees of the IBBI Board*

In order to assist the Board in fulfilling its mandate, principles of sound corporate governance requires that some of the powers of the Board be delegated to Committees of the Board. In the case of the IBC,

*Mandatory committee: the Disciplinary Committee* Section 220 of the IBC provides that the board must constitute a *Disciplinary Committee* as provided in Section 220 of the IBC. This committee is

### Box 1: Jurisprudence governing one-person committees

Section 220(1) of the *IBC* requires the IBBI to constitute a disciplinary committee to consider the reports of the Investigating Authority submitted under sub-section (6) of section 218. This reads as “Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.” However, the law does not mandate that this committee should constitute more than one member. Neither does it prohibit a one-member disciplinary committee.

In this backdrop, where the *IBC* neither explicitly permits nor prohibits the possibility of a one-member disciplinary committee, can the word “committee” in section 220(1) of the *IBC* be interpreted to include a one-member committee? We present some legal precedents that suggests that this is permitted.

In *GOVT. OF ANDHRA PRADESH VS. K. SETHURAMAN* (AIR 1986 AP 170), the Registrar had the power under Andhra Pradesh Co-operative Societies Act, 1964 to appoint a person or persons to manage the affairs of the society. The Act defined the word ‘Committee’ as *the governing body of a Society by whatever name called, to which the management of the affairs of the society is entrusted*. The Court held that a person or persons appointed by the Registrar under the Act to manage the affairs of the society would constitute a ‘Committee’. Therefore, it is evident that a committee under Indian legal jurisprudence can constitute of only one member.

There are also foreign precedents that support the proposition of a single member committee. In *POLLOCK C.B. IN REYNELL VS. LEWIS* (16 LJ Ex. 30), the term ‘committee’ means *an individual, or body to which others have committed or delegated a particular duty, or who have taken on themselves to perform it, in the expectation of their act being confirmed by the body they profess to represent or act for*. Similarly, *KAY, J. IN RE SCOTTISH PETROLEUM CO.* [1882 (51) LJ Ch. 845 (846)] observed that, according to the commonplace meaning of the word, a ‘committee’ consists of *more persons than one*. But the word ‘committee’ means a person or persons to whom anything is committed.

to consider the reports of the Investigating Authority submitted under sub-section (6) of section 218, which reads as “Provided that the members of the disciplinary committee shall consist of whole-time members of the Board only.” The law does not mandate that this committee should constitute more than one member. Neither does it prohibit a one-member disciplinary committee. Judicial precedents supporting a one-person committee are presented in Box 1.

Thus, in this organisational design, the Disciplinary Committee will be comprised of one whole-time member of the board, who is also the reporting head of the *Adjudication* department, proposed in the organisational structure of the IBBI.

*Committees proposed for sound regulatory governance* In addition to the Disciplinary Committee, the following internal committees may be constituted, in line with good practices of regulatory

governance.

1. *Risk and Assurance committee/ Audit committee*

This committee will be responsible for overseeing the risks and controls of the IBBI. It reviews the regulator's compliance with the provisions of the *IBC* and with its own regulations and bye-laws. It will also review the operational and financial risk of IBBI functioning and the controls available to mitigate these risks. The report of an internal audit unit of the IBBI on risks, systems, processes and controls will be presented to this committee.

The committee will also review corrective actions taken by the IBBI to address any risks or control deficits identified by internal audit.

This committee will comprise the chairperson and the six part-time members of IBBI. From the *Strategy and Services* department, the head in charge of Finance and Audit will participate in the proceedings of this committee.

2. *People and capability committee*

This committee will be responsible for overseeing the HR policies and processes of IBBI to ensure that high quality personnel are attracted to the organisation. It will also review all major capital expenditure and capability enhancement programmes that IBBI undertakes.

While the implementation of these policies will be handled by the *Strategy and Systems* department of the regulator, this committee will be tasked with updating the policies from time to time, overseeing their effective implementation and spearheading human and technological capacity building initiatives within the organisation.

*Advisory committees* Section 197 of the *IBC* provides that the board of IBBI may constitute *advisory and executive committees* or such other committees, as it may deem fit, consisting of a Chairperson and such other members as may be specified by regulations.

The regulator is one more step away from the citizens. To bridge the democratic deficit, the following tools are generally used:

- the regulator has eminent citizens on its board as part time members,
- the regulator has a structured interaction with the legislature at least once a year,
- the regulations are made in consultation with the regulated and the public,
- the regulator has access to expert advice of learned advisory councils, and
- the Government gives directions to the regulator on matters of policy subject to legislative ratification.

Many statutes establishing regulators usually provide for constitution of standing advisory committees to serve, for the regulator, as a sounding board for emerging ideas and to lend professional wisdom and market knowledge.<sup>5</sup> Even where such provision does not explicitly exist, the regulators have voluntarily constituted advisory committees.<sup>6</sup> Such committees play a more important role in the initial days of a regulator when it does not have a strong repository of knowledge or much of regulatory capacity, but continue to serve a useful purpose over time as well, as new services, new products, new initiatives, new technologies continue to emerge and change the regulatory landscape.

In the Indian experience, advisory committees/councils have not had well defined mechanisms of functioning. They have been idiosyncratic, and their role has fluctuated depending on identities. FSLRC has argued<sup>7</sup> that as with the board, there is a need for greater codification of the role and working of advisory committees/councils, so that they become a part of the depersonalised institutional arrangement. Towards that objective, the Working Group proposes the following formal structure.

There are three sets of activities the IBBI will be dealing with. These are: (1) regulation and supervision of intermediaries, namely, IPs, IPAs and IUs, (2) regulating the corporate insolvency resolution process, and (3) regulating the individual insolvency resolution process. To ensure focus on these areas and for receiving market feedback on them, it will be useful to have three advisory committees, one each for these activities, that will give feedback to the Board.

These committees should have presence of reputed professionals demonstrated ability and expertise in these areas. In addition, the committee should also have eminent persons and independent experts who as members. These experts will enable views different from those of market professionals in this area to be brought forth and discussed.

However, in the initial stages, it is likely that matters related to the intermediaries will be specific to the context of the corporate or the individual insolvency process. Further, there is likely to be a small coterie of experts that have expertise specific to these areas (corporate, individual insolvency) rather than about the intermediaries themselves, since they are institutions that are yet to be developed.

Thus, at the start of the IBBI, a more practical set of advisory committees that can be put together are two: one for all matters related to insolvency and bankruptcy resolution for corporate cases, and another committee with a similar focus on individual cases.

Keeping in view the above rationale, it is proposed that:

- The IBBI will set up two standing Advisory Committee(s),

<sup>5</sup> An example is the Insurance Regulatory and Development Authority Act, 1999.

<sup>6</sup> For example, the SEBI Act, 1992 does not require constitution of any committee. SEBI has, however, constituted quite a few standing committees, namely, Primary Market Advisory Committee, Secondary Market Advisory Committee, Mutual Fund Advisory Committee, etc. Similarly, the Competition Commission of India has set up an Eminent Persons Advisory Group.

<sup>7</sup> In the draft *Indian Financial Code*, S.33 to S.35, i.e. Chapter 12, establishes advisory councils.

namely, (1) Corporate Insolvency and (2) Advisory Committee on Individual Insolvency.

- The IBBI may set up any other subject specific Advisory Committees as it considers expedient.
- An Advisory Committee shall comprise of two sets of Members:- (1) Professional Members, who are eminent practitioners and academicians in the relevant area; and (2) General Members who are eminent citizens not having any association with the area. The composition of these committees should be such that Professional Members shall not exceed two third of the strength of an Advisory Committee, and that no person will be a Member of more than one Advisory Committee at any point of time.
- The IBBI shall designate: (i) one of the General Members of the Advisory Committee as its Chairperson; and (ii) one of its senior officers from the *Field research and knowledge partnership* Department as Secretary to the Advisory Committee. The Secretary shall have right to speak, but not vote on any matter in meetings of the Advisory Committee.
- An Advisory Committee shall meet at such times and places as it considers expedient.
- 50% of the existing strength of the Advisory Committee shall constitute quorum for meetings of the Committee.
- A Member of the committee shall be paid such fees and allowances as may be specified by the Board from time to time.
- Subject to the above, the IBBI (Board Meeting) Regulations, 2017 shall apply *mutatis mutandis* to the meetings of the Advisory Committees.
- An Advisory Committee may advise the IBBI on any matter under its purview on its own and shall advise on any matter under its purview on a request from the IBBI.

### *Department of Research and Regulation*

This department will manage the quasi-legislative functions. The drafting of law, the legislative function, is a profoundly important function of regulators. Parliament delegates the power to write law to unelected officials in regulators. Every regulation is an intervention, the use of coercive power of the State to force private citizens to change their behaviour. Every regulation should be a formal process of hypothesis testing, where the regulator forms a theory about the world, articulates it clearly in terms of market failures and cost-benefit analysis, introduces the intervention, and measures the impact. For this to take place, research should be at the centre of regulation-making.

A sound regulation making process consists of the following steps:

1. A board agenda item (that could originate from any board member) posing a problem and proposing a regulation-making project must commence;
2. A discussion at the board, after which the regulation-making project obtains approval;
3. A research note analysing the problem and proposing an intervention, backed by evidence;
4. A draft regulation;
5. Analysis of costs and benefits;
6. The release of the three documents (concept note, draft regulation and cost benefit analysis) for public comment;
7. Analysis of comments and revision of the draft regulation based on this;
8. A board discussion and potentially an approval by the board;
9. Release of a new regulation.

The Department of *Research and Regulation* must be designed so as to perform well at this regulation-making process.

In order to carry out this function, the department will have units that will focus on the following key deliverables:

1. *Make regulations where required under the IBC*

The *IBC* requires the IBBI to make regulations in three areas: (1) for regulating IPs/IPAs, (2) for regulating IUs, and (3) for regulating the insolvency resolution procedure where the law provides for regulator to define process details.

2. *Ensuring the relevance of the regulations under the IBC*

The department will undertake a periodic review of the various aspects of functioning of the law to ensure that the objectives of the law are being met. It will review the regulations made by the IBBI to ensure that these remain aligned with the delivery of the overall objectives through time.

This will be done partly by benchmarking the law and its performance against international standards. There will also be a regular and periodic interaction with the advisory committees of the IBBI so as to facilitate external inputs as information signals that there are gaps that may emerge between the intent of the law and its implementation as measured by economic outcomes.

When such gaps arise, the department will conduct research to determine (a) the manner of the gaps, (b) the legislative changes required, and the improvement measures to be adopted. For this, it will seek inputs from all other functional and support

departments, from market participants and experts in the space of insolvency resolution.

The output of this deliverable will be in the form of a proposed change in regulation, a change in process or even a change in law. Proposed regulatory changes will then undergo a regulation making process. Process changes, if restricted to one department will be handed over to the respective functional department for implementation. If process changes involve multiple departments, these will be taken up for implementation by the unit in charge of liaising with other departments in the Field Research and knowledge partnerships department. Proposed changes in law will be referred to the appropriate Ministry for undertaking legislative changes.

3. *Provide guidance to participants on practical aspects of using the law and regulations*

The department will provide updated information and clarifications to market participants on various aspects of using the provisions of the IBC. This will improve awareness amongst market participants about: (1) the design of the law, (2) their rights and duties, (3) practical aspects of using the law, and (4) possible outcomes of the law and their impact on incentives.

This department requires *four functional units*:

1. Research
2. Regulation making function for processes in the law,
3. Regulations for IPAs and IPs,
4. Regulations for the IUs, and

All regulation-making work will originate from the Research group. Every regulation starts with a belief about how the ecosystem functions, an identification of a problem within such an ecosystem, and evidence-based claims about the nature of an intervention which will address this problem. The genesis of every regulation will lie in such a research base. Once the research group has established the functional thinking, the operation of the regulation-making process would take place in the remaining functional units of the department.

*Personnel specifications:* The department will have the personality of lawyers working for economists. It will require two kinds of employees:

1. Economics and finance, with a focus in the space of insolvency resolution and bankruptcy, of both firms and individuals.
2. Legal background with experience in drafting regulations and laws.

## *Department of Licensing, Monitoring and Investigation*

This department will manage most of the executive functions and will have three key deliverables:

### 1. *Licensing*

The department will receive all applications for licensing IPAs, IPs and IUs. It will also seek periodic disclosures and compliances from these entities, once they are licensed, to ensure that licensing conditions are being met on an ongoing basis.

In case of violation of licensing conditions, it can recommend a revocation of license, which will be taken up by the *Adjudication* department for hearing.

Lastly, the department will periodically review the licensing process and the eligibility criteria to ensure that these are up to date and suggest changes in process or licensing regulations, as may be required.

### 2. *Monitoring – the audit function*

The department will conduct a routine audit programme to monitor whether various aspects of the functioning of IPAs/IPs and IUs are in line with what the law visualises. This will be done through a combination of a comprehensive desk based audit and a sample on-site audit. If evidence of misconduct is found on the part of intermediaries, it will refer these to the *Investigation* unit for further action.

### 3. *Investigation*

This unit will conduct investigations arising out of two sources: (1) from cases identified during routine audits, and (2) from complaints received by the IBBI. For instance, when the Board of IBBI is required to appoint an Investigating Authority under Section 218 of the *IBC*, an officer of this department will be appointed as the required authority. Based on the outcome of the investigation, if any disciplinary action is to be taken, the case will be referred to the *Adjudication* department for hearing.

This department will have three units to carry out the three functions listed above:

1. *Licensing unit*, in charge of licensing of regulated intermediaries, IPAs/IPs and IUs.
2. *Monitoring unit*, in charge of monitoring the functioning of IPAs/IPs and IUs on an ongoing basis.
3. *Investigation unit*, in charge of investigating any cases of misconduct or fraud.

The department will develop expertise in the areas of both corporate and individual insolvency. As the case load grows, special focus groups on corporate and individual insolvency may be created.

*Personnel specification:* Two specialised skills will be needed to fulfill the mandate of this department. Those with:

1. Experience in designing and conducting audits, which requires skills and expertise of Chartered Accountants.
2. Experience in conducting investigations. This includes knowledge of conducting forensic audits, and can be a skill set that can be found from investigation personnel in other regulatory agencies.

### *Department of Adjudication*

This department will manage the quasi-judicial function of the IBBI.

*Deliverables:* Any order which affects the rights or liabilities of a regulated person must be passed only by the whole-time member in charge of the enforcement actions department of the regulator. This department will take disciplinary actions against regulated entities and enforce these actions. This includes hearing orders of enforcement action and passing them.

*Organisation design:* This department will be managed by the Whole Time Member (WTM) of the IBBI who is in charge of the *Disciplinary Committee*. It will comprise of support staff to manage the hearing process.

The *Adjudication* department must be kept at an arms-length from the other departments within the IBBI. For instance, the officers in the *Adjudication* department report only to, and should be appraised only by, the WTM in charge of the department. This WTM must report to the board and only the board may evaluate her performance.

*Personnel specification:* To fulfill its mandate this department will need personnel with:

1. Experience in dealing with administrative matters such as lawyers and judges.
2. Experience in case-handling such as supporting court and tribunal registries.

### *Department of Statistics and Knowledge Partnerships*

The law has placed certain statistical system functions upon IBBI. These must be optimally discharged, through a combination of

internal work and contracting-out. In addition, an ecosystem of internal and external researchers analysing that data is essential for IBBI.

For this, the Department of Statistics and Knowledge Partnerships is visualised, which will have two main tasks:

#### 1. *Managing the IBC case database*

IBBI is required to create a comprehensive database about all insolvency and bankruptcy cases, called the *IBC case database*. This database will be the repository of all the cases that have been resolved through the legal processes of the IBC, and will be source of the performance of the law. In addition, the records will also be the source of the use and performance of all the institutions created under the law – the individual insolvency professionals, their related agencies, as well as the information utilities.

The measures of the performance relating to speed of resolution and recovery will be calculated using this database. The IBBI is also required to make a database about all insolvency professionals and all insolvency professional agencies. The Department of *Statistics and Knowledge Partnerships* must setup contracts through which private information companies manage these databases.

These databases must be released to the public through open APIs. The philosophy should be that IBBI creates the public good of the database (through a set of contracts), and makes it available through open APIs. A large number of private persons and researchers would then directly access this data and put it to use.

#### 2. *Research about bankruptcy in India*

The mandate of the IBBI goes beyond just the power to make regulations. It focusses on monitoring and reporting on broader economic questions about progress in the efficiency of the insolvency and resolution process, and the state of the credit markets. This requires:

- Monitoring and reporting on the performance of resolution under the IBC. This requires tracking how the time to resolution or the recovery rates are improving over time. The performance of the three industries – IPAs, IPs and IUs – would also require research.
- Understanding the interface between IBC and other laws and regulation related to recovery under default, and how this effects the outcomes of speed and recovery under insolvency and bankruptcy. These can include the interface with specific laws such as SARFAESI and the regulations for banks definition and provision for non-performing assets, or with broader laws related to labour or other industrial disputes.

- The issues that are related to insolvency and bankruptcy and credit market features. These can be related to the regulations related to debt securities contracts under Companies Act, or the role of the Trustee in disclosure or participation in the Insolvency Resolution Process (IRP), or issues arising from FEMA that lays out constraints on foreign debt capital in participating in domestic credit markets.
- Issues related to problems of resolving cross-border insolvency problems. The IBC presently is a broad enabling framework, whereas there needs to be a lot more detail in the bilateral resolution of such a case.
- Understanding and monitoring differences between the resolution time, recovery and credit market growth in other jurisdictions, so that lessons from those jurisdictions can feed into the domestic policy discourse.

In order to carry out these functions, the department would manage a series of Knowledge Partnership contracts with external research organisations and a set of database management contracts with external database organisations. Greater details on knowledge partnerships are presented in Section ss:partnerships. The department itself would be a small core of contract managers who would simultaneously engage with the other departments of IBBI to understand their research requirements. They would also be in charge of dissemination of this research both within the organisation and outside.

*Personnel specifications:* The department will be staffed with experienced researchers and technical support staff.

### *Department of Interfaces*

All communications between IBBI and any other party is handled by this department. The functions of this department includes handling queries and clarifications from:

- Parliament
- Government bodies
- The public, as well as all RTI queries.
- The regulated entities, IPAs, IPs and IUs.
- Creditors
- Courts
- International queries (particularly on matters of cross-border insolvencies)
- All complaints and grievances.

1. *Receive and resolve complaints*

The department will be responsible for handling complaints on all matters under the law received by the Interfaces department. These may be by creditors or debtors against intermediaries, by intermediaries against the IBBI. This department will seek to set up transparent and time bound system for handling complaints. It will also seek to ensure that the regulated intermediaries – the IPAs/IPs and IUs – maintain a similar complaint handling system for their customers.

Some complaints can arise out of a lack of clarity about the law, or the implementation of the law. These are likely to be rapidly resolved by the Interfaces department itself. Complaints that require further investigation will be referred to the Investigation department.

2. *Resolve queries of a public nature*

This includes queries from Parliament and the Government, the beneficiary stakeholders of the IBC who are the creditors and debtors, and the general public. This unit will handle RTI queries as well. If the queries are in the nature of clarifications against regulations, these will be forwarded to the *Research and regulation* department. Other queries will typically be forwarded to the *Statistics and knowledge partnerships* department.

3. *Resolve queries from regulated institutions*

Queries in this category can be for:

- (a) *Research and regulation* department, which is of the nature of clarification on the law and regulations
- (b) *Licensing, Monitoring and Investigation* department, which can be queries on the status on a license application or a follow up on an audit process, or a matter related to investigations.
- (c) *Adjudication* department, which are queries related to the status of a hearing, or the outcomes.

4. *Resolve queries from court*

Typically, the court can call on the IBBI to supply a potential resolution professional to take over an insolvency case, where either the IRP has been admitted without a proposed resolution professional, or where there is a claim of misbehaviour on the part of the resolution professional in an active case.

5. *Resolve queries on matters of cross-border insolvency*

In such matters, the IBBI will play a role in coordinating a bilateral agreement on either a case that has been decided in a foreign jurisdiction court.

These can also be a matter where creditor or debtor seeks clarification on what action needs to be initiated between a relevant department in the Government or the relevant Court and the

foreign entity jurisdiction. For this, the unit will have to coordinate between the *Research and regulation* and the *Statistics and knowledge partnerships* department to decide the path forward.

### *Department of Strategy and Services*

This department is in charge of coordinating the implementation of all major cross-functional organisational initiatives and capital expenditure programmes. This department will be held accountable for the efficient and smooth functioning of the IBBI. In common with similar departments in other professional organisations, this department will have the following functional units:

1. *Strategy and Planning*: Understand the difficulties of the IBBI and of the Indian bankruptcy process. Diagnose the sources of failure. Engage with the board on modifications of resource allocation and processes so as to address the difficulties.
2. *Internal audit*: in charge of the conducting an periodic risk based audit programme for the IBBI and reporting the results of the same to the Risk and Assurance Committee of the Board.
3. *Finance*: in charge of the accounting, financial planning, financial control function of the IBBI.
4. *Reporting*: in charge of collecting and collating the Annual Report of the IBBI, as well as other reports at higher frequencies about the performance of the insolvency and bankruptcy resolution ecosystem.
5. *Human resources (HR)*: in charge of all personnel related matters such as recruitment, induction, compensation and benefits, performance management, grievance redressal and exit.
6. *Administration*: in charge of facility management for office locations and any non-IT procurement. It also acts as a liaison between the functional and the support departments on a day-to-day basis.
7. *Tech and Innovation*: designs information system to implement process flow and capture through the organisation, interfaces with all departments on requirements and problems of technology based delivery of services, provides research in the use of technology based solutions to improve process flow through the organisation.
8. *IT*: in charge of all IT strategy, procurement and support.
9. *Procurement*: in charge of the finance and commercial elements of all procurement for the agency.

At a conceptual level, the *Strategy and Services* department enables the efficient working of the other departments, and watches their

functioning so as to feed back into improvements of their functioning.

### *Regional organisational structure*

Section 188 of the *IBC* provides that the head office of the board of IBBI will be in the National Capital Region, and the board shall have offices at other places in India. However, in examining the functions of the IBBI, only the executive functions of monitoring and investigations, and the quasi-judicial functions may require physical regional infrastructure over time. This would happen if there is very large number of IPAs and IUs that spread over the length and the breadth of the country.

Even so, these functions can most likely be effectively administered over the wide geographic region of India with the use of technology. A physical presence of the IBBI is only required if there is need for more responsive physical action in carrying out incognito monitoring of functions, or for physical intervention in fraudulent behaviour on the part of IPs in specific cases.

Thus, the Working Group recommendation is that the IBBI may have regional offices only if there is clear evidence that it is required, and only if it can be well established that the requirement cannot be met using technology.

If such an office needs to be set up, there should be a minimal and focussed staffing pattern, and a larger focus on the use of IT systems to ensure that the regional offices are fully integrated with the information flows of head quarters.

The *personnel requirement* should be between two to three personnel from the Licensing, Monitoring and Investigative department, and around two administrative support personnel. The office infrastructure should emphasise a well supported hearing center that is continuously online, and office space to accommodate a staff strength of under eight persons.

### *Financing of the IBBI*

In the initial phase of the building up of the IBBI and its credibility, budgetary grants from the Government of India will be the main source of funding.

In a few years, the contours of the bankruptcy intermediation industry will become visible. The revenues of regulated entities will become visible. At that point, IBBI will enforce a fee upon all IPs, IPAs and IUs that will pay for its expenses. The fee will be analogous to the charges that SEBI enforces upon securities firms which are implemented at the level of the exchanges.

Globally it is seen that once the regulated space becomes more established, there are three sources of fee revenue for the regulator.

We expect the same will happen for the IBBI as well, as follows:

- Initial licensing fees and annual fees from IPAs.

The initial fee may be a fixed fee and the annual fee may be linked to the membership strength of the IPAs. The license may be designed with limited maturity, after which the IPAs will have to reapply for the license and undergo a full scrutiny by the regulator.

- Initial and annual licensing fee from IUs. A similar framework that applies to a mixture of licensing and annual fees from the IPAs can apply to the IUs as well.

- A registration fee and a per case fee from IPs.

The registration fee may be a fixed charge, while the per case fee is charged as a percentage of the IPs case fees.

In each case, the fee charged is proportional to the cost that is imposed on the regulator. One example of a regulator which raises fees from regulated entities is the the Financial Conduct Authority (FCA) which is the securities markets regulator in the U.K. The FCA has a three tier structure of charging fees. They include fees depending upon the activity of the firm that is being regulated, the amount of business the firm undertakes in a given given, and the cost that it imposes on the FCA to regulate the activity.<sup>8</sup>

<sup>8</sup> Source: The website of the FCA at <https://www.fca.org.uk/firms/fees>

# *Human resource policies*

Organisation structure, individual roles and responsibilities, processes and HR policies are the four pillars of effective organisation design. HR policies define and govern the way in which an organisation engages with its employees and vice versa. These lay the foundation for the manner in which organisations operate on a day-to-day basis.

## *Guiding principles*

A set of guiding principles define the basis on which HR policies are designed and implemented, for every organisation. Some principles are applicable to all types of organisations while some are specific to regulatory institutions. General principles includes integrity, fairness and equity, diversity, merit and role suitability, goal and performance orientation. Principles specific to regulatory agencies include a focus on public interest, maintaining regulatory independence, ensuring transparency, accountability and delegation of powers.

At the outset, the IBBI needs to define the basic principles that will form the core of all its people and organisational policies. These will form the basis on which specific HR policies are defined and include:

- Recruitment and selection
- Terms of employment, which include reporting arrangements, work timing, recording of presence/absence, leave, and flexibility of working arrangements, compensation (including salaries, allowances, perquisites, family benefits), deputation and secondment policies, training and job rotation, pension policy and retirement.
- Code of conduct including ethics, employee related IT policies, data protection and disclosures.
- Capability and performance management, which includes policies on performance evaluation, training and correction mechanisms
- Disciplinary actions

- Employee complaints and grievance redressal
- Employee exits, whether voluntary or involuntary and the policy on avoiding conflicts of interest in regulatory roles.

### *Recruitment and selection*

In order to grow a high performance agency, the IBBI needs to recruit personnel into various roles based on their skill, experience and their ability to perform in that role.

The first phase of employment for an organisation is always a challenge, and this is even more so for a regulatory agency. The IBBI has a highly visible and important role in operationalising the IBC, a law that has very high expectations on solving the problems of the non-performing assets at banks and of unlocking the credit markets for India. There are immense pressures on ensuring that the staffing at IBBI takes place swiftly, which exacerbates the challenges of the recruitment problems at IBBI. It is crucial that the challenge of staffing IBBI in the short-term are taken into account in parallel with the challenges of HR policies for a high-energy, high-performance agency that IBBI has to be in steady state.

### *Short term focus on deputation as a hiring channel*

In the initial set up phase, IBBI can either directly recruit staff from the market, or draw upon staff on deputation from various government departments, agencies and regulatory organisations who have the relevant skills and capability. Staff on deputation will have terms of service that are the same as in their parent entities.

As the organisation grows and the staffing process stabilises, internal recruitment will become a third source of recruitment.

A staff recruitment policy that attracts the best skills and capability will be one which remains focussed on the best person for the job, irrespective of the source. The equality of treatment must be visible in the rules and processes of the recruitment, and be seen to be fair to all.

### *Recruitment for different levels*

While in principle, recruitment policy should ideally be done through a process that is transparent to all employees of the IBBI as well as potential employees, most processes permit for some amount of discretion to the employer.

The following general process is proposed:

Stage 0 The Board will agree on a staffing structure for the overall organisation depending upon the functions required at each unit. This will be done in consultation with an expert agency that will identify eligibility criteria for each role.

Stage 1 Once the eligibility criteria has been agreed upon, the first step of the hiring process screens for a match between a candidate and a position based on basic eligibility criteria required for a position.

Stage 2 If there is a match in Stage 1, Stage 2 involves taking a written exam which will select for skills that are more specific to the functions that the position requires. This will be done online.

Similar to the Stage 1 process, this Stage acts to filter candidates for eligibility.

Stage 3 Stage 3 is the final stage, with an interview by a selection committee.

The first two stages of the process ideally ought to be an relatively automated process which can be readily deployed with little discretion. The experience and education that is required for a given grade must be built into the recruitment process documentation. A similar approach must be taken for the content and the intensity of the questions in the written exam.

Discretion is concentrated in Stage 3, and rests in the composition of the selection committee and the weight that the committee vote has over the eligibility and knowledge criteria of the first two stages. In this stage, how well the candidates character and aspirations fit within the desired culture of the organisation will be assessed. The amount of discretion to automatic action in the process will go up the higher level of the position within the IBBI is available for recruitment. The efficacy of Stage 3 rests on the composition of the selection committee.

### *Compensation policy*

It is recommended that at each level of the staffing structure, a percentage of the total compensation is linked to performance. This should increase as the level increases. In evaluating performance for the purpose of performance pay, weights should be assigned to the performance of the individual, the department as well as to the performance of the IBBI.

The proposed structure, that is presented in Table 4, is based on the principle that at lower levels, employees have control over their individual performance but very little control over the organisation performance. As employees progress up the hierarchy, they increasingly exercise control over the performance of the department and the organisation.

## *Performance evaluation*

### *Annual performance target setting*

At the start of every financial year, as part of its annual planning exercise, various departments of the IBBI will design their annual performance targets, coordinated with the HR unit at the *Strategy and Services* department. Departmental performance targets will be reviewed by the Chairperson with the head of the departmental head. As far as possible, performance targets should be designed as a set of measurable items. Based on these targets, roles and responsibilities will be allocated to employees within the various departments.

### *Measuring and evaluating performance*

The head of department will be responsible for evaluating and managing performance of the employees within their respective departments on an ongoing basis. A formal performance evaluation exercise will also be conducted annually by the HR unit. This report must have the oversight of the heads of department and the Chairperson. This is presented for review to the *People policy committee*, which will then determine the payouts of the performance pay component for each level.

It is strongly recommended that the IBBI have a clear policy to deal with both good and poor performance. In each annual performance evaluation, employees whose performance is deemed to be below satisfactory should be put through a fixed period program as a chance to improve their performance. If the employee performance is seen to not improve even after this, the case will be referred to the *People policy committee* for further action.

### *Training at the IBBI*

The policy must address training for new employees and online training for existing ones.

A new employee will be given two weeks of induction training on: (1) the design of the IBC, its functioning, (2) the organisation structure and design of the IBBI, its various functions, rules and regulations, and (3) on matters related to employee code of conduct and performance. This training module must be standardised and must undergo a period review and update. This can either be done by the HR unit or outsourced.

Ongoing training program for staff already employed at the IBBI must be developed based on departmental needs in coordination with the HR unit in *Strategy and Services*. The consolidated program must be presented to the *People policy committee* for approval, once a year.

### *Complaints, grievance redressal, discipline*

The HR unit must set up a complaints and grievance redressal cell to receive and resolve employee grievances. The functioning of this cell must be reviewed on an ongoing basis by the head of HR, on a periodic basis by the IBBI Chairperson and on an annual basis by the *People policy committee*. This is particularly important at the start of the organisation, in order to set the culture of the organisation.

Policies and complaint/grievance redressal on specific matters such as sexual harassment, and minority protection must be set up in line with the best practices in this area. The code of conduct and ethics should lay down a clear and transparent policy on employee conduct and discipline.

Violations must be reviewed by a three member disciplinary committee comprising of the HR head, the Chairperson and the respective departmental head. This committee will recommend punitive action, which may include termination of service. This must then be confirmed by the *People policy committee* for further action.

### *Exit*

An important part of HR policy is on handling exit. Employees may leave the IBBI on account of: (1) voluntary exit by employees, (2) retirement, (3) removal due to poor performance and (4) termination due to disciplinary action. Clear policies on the rights and responsibilities of employees in each of these cases must be formulated and made available in a clear and transparent manner. All decisions regarding (3) and (4) must be approved by the *People policy committee* of the IBBI Board.

### *Proposed people policies for IBBI*

The Working Group discussed the HR policies to be adopted by the IBBI based on the above principles, and their recommendations are presented in the following sections.

### *Staff structure*

The IBBI may adopt a staff structure with upto four levels of designations as shown in Table 1. Within each level, there are two grades proposed. This will effectively create a seven layer organisation structure. This can provide the benefits of a flat organisation while also providing a career progression path to employees.

All officers in the same grade will have the same designation irrespective of the department they work in. For example, a Grade C officer will have designation "Manager" whether he works in a

I - Junior Management	A Assistant Manager B <b>Deputy Manager</b>
II - Middle Management	C Manager D <b>Deputy General Manager</b>
III - Senior Management	E General Manager F <b>Chief General Manager</b>
IV - Top Management	G <b>Executive Director</b>

Table 1: Organisation levels at the IBBI

support department (HR, IT) or in a core department (Licensing, investigations).

In reporting hierarchy, officers in Stage I will report to officers in Stage II, officers in Stage II will report to officers in Stage III and so on. This hierarchy will function within a department, and ideally across departments also. For example a GM in department 1 will report to a CGM in department 1. He will not have direct reporting to a CGM in any other department, unless this is specifically provided for in the organisation design.

Each department organisational structure will be decided on the basis of its relative priority and work load. For example: the head of the Investigations department may be a CGM level employee while for Licensing, a GM level employee may be head or for HR a DGM level employee may be the head.

In general, as a policy, secretarial staff and other support staff such as drivers, peons, security guards, canteen staff will be outsourced from manpower outsourcing agencies. The only exception to this policy will be the secretarial staff for the WTMs and the Chairperson. These will be solely recruited from within the organisation, in order to preserve continuity in the support of the Board.

### *Skills and qualifications*

Function	Educational qualification
<b>General</b>	Qualified Insolvency professionals, Chartered Accountants (CA), Company Secretaries (CS), Cost Accountants (ICWA), LL. B., Masters in Business Administration, Masters in Commerce, Masters in Economics and qualified officers of the Indian Company Law Service (ICLS)
<b>IT</b>	B. Tech
<b>HR</b>	MBA, HR
<b>Legal</b>	L.L.B
<b>Research</b>	Masters or PhD in Economics, Statistics, Computer Science, Law, Finance and Public Policy

Table 2: Proposed qualifications for positions at IBBI

## Compensation

Compensation structure within the IBBI will be designed to attract appropriate talent required at various levels of the organisation. For the purpose of this design, the Working Group started with the SEBI compensation structure as a starting point. The proposed designations and their compensation is presented in Table 3.

	(Rs. lakhs per annum)
Assistant Manager	9
Deputy Manager	14
Manager	22
Deputy General Manager	27
General Manager	38
Chief General Manager	50
Executive Director	62
WTM	68
Chairperson	75

Table 3: Designations and remunerations

For each level, Table 3 presents the average CTC per annum. The average cost to company (CTC) per annum includes the basic pay and:

- dearness allowance, family allowance, local allowance, special allowance, grade pay and any other allowances,
- all contributions made by IBBI towards provident fund and superannuation fund, and
- cost of any entitlements such as petrol, car, driver, house, telephone, internet, education of children, medical insurance or any other that may be extended to the employee.

The HR unit of IBBI may choose to create bands around the average remuneration value at each level to manage intra-level variations, while keeping within the average value prescribed.

In keeping with the policy of having both a fixed wage and a performance-linked component in the compensation policy for the IBBI, the following compensation structure is proposed in Table 4 for the lower levels of the organisation. However, a fixed compensation is suggested for the higher levels.

The proposed design in Table 4 shows that 90% of the compensation for Assistant Managers is fixed, with 10% is linked to performance. For performance evaluation, 70% weight is given to individual performance, 20% to the performance of the department in which the employee works and 10% to the performance of the IBBI. This structure will be periodically reviewed by the *People policy committee* of the IBBI Board, rather than being fixed by regulation.

Personnel will be covered under the National Pension Scheme. All other terms of service, such as retirement age, code of conduct,

Table 4: Designations, performance pay and performance weights

	Performance pay (%)	Weights (in %) for		
		Individual	Department	Organisation
Assistant Manager	10	70	20	10
Deputy Manager	15	70	20	10
Manager	20	60	25	15
Deputy General Manager	25	60	25	15
General Manager	30	50	30	20
Chief General Manager	35	50	30	20

leave, LTC, reservation etc. shall be taken *mutatis mutandis* from terms of service on these matters used at SEBI.

### *Recruitment process*

The following process is proposed for the recruitment process at IBBI:

*Grades A to D* All candidates must pass through Stage 1 and Stage 2.

In the Stage 3 process, the selection committee should ideally have four members: (1) the head of the unit within the department that is seeking to hire, (2) a representative from the HR unit of the *Strategy and Services* department with a grade D or higher, (3) one member from a department other than the one in which the person will work, and (4) 1 external independent members chosen from a list of potential members that has been approved by the Chairperson. The selection committee shall be chaired by the HR representative.

*Grades E, F, G* will not have to pass through Stage 2.

The selection committee should ideally have: (1) the Chairperson of the IBBI, who will also be the chairperson on this selection committee, (2) the WTM or the senior most member of the functional department seeking to recruit, (3) a representative from the HR department from grade D or above, and (4) 2 external independent members, chosen from a list of potential members that has been approved by the *People policy committee* of the IBBI Board.

All recruits will be in probation for one year from the date of joining. There will be two performance reviews, at six month intervals, during the probation. On satisfactory performance in these two performance reviews, the employee can be confirmed. For staff in IBBI on deputation, the period of deputation shall not ordinarily exceed three years. However, it may be extended up to five years

or curtailed to less than three years, based on performance of the employee in the designated role. For contract staff, the contract will be renewable every year based on requirement and performance.

#### *Career path within IBBI*

Only professionally qualified candidates will be eligible for recruitment as officers. Only in the case of candidates from the Indian Company Law Service will the criteria of professional qualification be waived. This is because they undergo an induction training on corporate matters for about two years which equips them with the skills that may be required for the work of the IBBI. The progress of a person within the organisation must be done based on peer review through a committee process, without dependence on criteria such as age or time spent within the organisation.



## *Establishing sound processes*

The hallmark of high performance organisations is the use of *formal processes*. The lack of formal processes results in an idiosyncratic performance, where the behaviour of the organisation varies from day to day depending on the identity and disposition of individuals in the organisation. Such an organisation is not an *institution*, one that behaves in a predictable way in the eyes of external persons.

Further, the quality of regulatory governance is defined by the processes within the organisation. The lack of formal processes introduces arbitrary power in the hands of individuals within the organisation, which creates the risk of corruption. Formal processes are essential for curbing these problems.

Finally, in developing economies, management is bound by processes in low-level issues (e.g. formal process for the procurement of equipment) but have enormous discretion on the substantive content of their work (e.g. absence of formal process for drafting and passing regulation). This gives a loss of operational control for the leadership.

The key principles for a sound process design of an regulatory organisation are summarised in Box 2.

This means that every element of the work required of IBBI in the law must map to the name of a formal process within IBBI. Every formal process must have:

1. A unique identifying name;
2. A link to a specific function, and where the responsibility for the function rests within the organisation;
3. A formal process manual, specified at the level of detail at which it can be encoded into the software system;
4. A training manual for all individuals involved in the working of this process;
5. Corresponding software components in the enterprise IT system of the regulator.

As an example, the first step in writing a new regulation would be for the relevant person within the Department of *Research and regulations* to initiate the process of a new regulation within the

**Box 2: Key principles for sound process designs at regulatory agencies**

1. A workflow system where everything happens in a computerised system. No paper files must be used, or physical signatures.
2. All disclosures must be made through a website, which must be as much of a real-time data feed about what is going on inside the agency as is possible.
3. The website must not be a corporate brochure. Every process of the agency should be enabled through a seamless web experience. No private person should have to visit the office of the agency for any normal work.
4. The legislative function must internally use high quality software systems.
5. The statistical system functions of a regulator should be created using concepts of transparency and authenticity. There should be clearly written regulations that force private persons to do e-filing of all required data, which goes into the core IT system of the regulator.  

This system should be created along the lines of the Financial Data Management Corporation, proposed in the Indian Financial Code of the *FSLRC Volume I*.
6. There should be a single point source of all communication with stakeholders. As much as it possible, this should be enabled through the website of the regulatory agency.
7. All data release should be comprehensively done through an API to the public. This can be done using the example of data.gov open government principles

IT system. This would begin with a workflow system where authorisations would be obtained from the appropriate to kick off a regulation making project. This project would remain alive within the IT system for the entire period for which work is being done on that regulation. All work would happen within the IT system; there would be no physical files. The IT system would ensure that all rules of the regulation-making process are met.

For example, at a given step in the formal process of regulation making, the IT system would require for files would go into the website for public comment. Similarly, at the correct sequence in the process, the files would need to be added into the agenda papers for the next board meeting. Such a tight interlinkage between the workflow process and the IT system would help in ensuring accountability, and reduce the costs of adhering to the process once the system has been stabilised.

### *Instrumentation and improvements*

Since there are typically no formal processes in an under-developed economic system, the first step up is to establish formal processes. However, this is likely to start in a form that is inefficient and sub-optimal. The creation of the final process will necessarily involve operationalising this first form, and continuously monitoring it to detect flaws, and to put in place corrective mechanisms.

Thus, a critical second step is to instrument processes and create an organisation that is able to continuously watch numerical metrics of its own performance. This involves instrumenting all elements of the enterprise IT systems, and constructing and releasing a series of operational MIS statements for review.

As an example, regulators in India know how to conduct an investigation in an informal way. One of the reasons that it remains informal is because the systems to collect data about investigations, and the process to review the data, is missing. Once formal processes are established and IT systems are in place, it would be possible to query the process for questions such as:

1. How many early stage queries came into the organisation this week?
2. What fraction of them were followed through into a full investigation?
3. What was the cost of the average investigation?

Thus, the final stage of a high performance organisation is one in which it becomes *self-aware*. In such an organisation, formal processes are in operation but the senior leadership is observing those processes function through a comprehensive operational MIS. Any flaw in the processes will be identified and improvements are

made. In the final stage of development, this will be continuously done.

Thus, in order to achieve high performance, IBBI must be organised around a list of processes that are ultimately derived from the law. Therefore, a critical step of setting up the IBBI will be to define and create a set of processes for each of its functions. In the following, the above principles are applied to the key functions of the IBBI.

### *Process for making regulations*

The starting point for the process of regulation making is the Financial Sector Legislative Reforms Commission (FSLRC), which has suggested a detailed step by step approach for making regulations in a manner that is transparent and responsive.

- It suggests that since the board of a regulator is accountable to Parliament, the regulation making process must originate from the board in order to ensure that the issues requiring regulation are deliberated at the appropriate level.
- The draft regulations must be approved by the board before it is released to public for comments.
- The regulator must release for public comments: (a) the draft regulations; (b) the specific provision of law that empowers the regulator to make the proposed regulations and the manner in which the proposed regulation is consistent with the principles of the law; (c) a statement of the problem or market failure that the proposed regulation seeks to address; and (d) an analysis of the costs and benefits of the proposed regulations.
- The regulator must provide reasonable time for public comments and an appropriate mode for widespread public participation.
- The board must consider the comments received from public before approving the regulations and such public comments along with its response thereon must be published.
- This process may be relaxed if there is an emergency, but regulation so made would have a limited life unless it is ratified by regulations made following the regular process.

As an example, *AERA, 2008* requires the authority to ensure transparency while exercising its powers and discharging its functions by (a) holding consultation with all the stakeholders, (b) allowing all stakeholders to make their submissions and (c) making all decisions of the authority fully documented and explained. The authority makes available in the public domain the comments of the regulator on each feedback received during consultation process of every proposed regulation.

In a similar manner, the *IBC* requires the board of IBBI to specify the mechanisms for issuing regulations, including public consultations, before notifying any regulation. In the interest of transparency, democratic legitimacy and accountability, it would be appropriate for the board of the IBBI to use the principles listed below while carrying out its quasi-legislative functions:

1. The IBBI must use only one instrument, namely, regulations, to prescribe norms or regulatory requirements which have a binding effect. If a regulatory norm has to be prescribed on an urgent basis, it could be done through a circular, but its shelf life will be less than 90 days.
2. The IBBI should ensure that the proposed regulations are *intra vires* the *IBC*.
3. Regulation is the exclusive responsibility of the IBBI Board. The regulation making should commence with the approval of the Board. It should come into force only upon approval by the Board.
4. The Board shall make regulations to address a perceived market failure in order to usher in best practices to improve efficiency, transparency and effectiveness.
5. Regulation is neither free of cost nor is it the panacea against all evils. The IBBI should make regulations only if the benefits from regulations exceed costs and the regulation is implementable. The regulation should be supported by a regulatory impact assessment.
6. In order to lend professionalism, regulations should be drafted in consultation with advisory and expert committees.
7. In order to impart democratic legitimacy to the regulations, these should be made in consultation with the public, after presenting them a regulatory impact assessment of the proposed regulation.
8. The regulatory impact analysis should cover costs on (a) regulated entities in complying with the regulations; (b) consumers, both directly and indirectly; (c) the regulator, in enforcing the regulations; and (d) any other person affected by the regulations. So also the benefits that will accrue to consumers and other persons as a result of the regulations.
9. The consultation is effective if (a) it provides meaningful opportunities (including online) for the public to contribute to the process of making regulation; and (b) draft regulations are comprehensible and clear and the public can easily understand their rights and obligations (Sahoo, "Political economy of Neo-governments"). For this purpose, the draft regulations must be

accompanied with sufficient background documents and information to allow people to understand the context, implications and scope of the regulations. A list of the documents which must accompany the draft regulations issued for public consultation is contained in Box 3.

10. The board should consider every input received from the public. The board should publish all inputs received, and a general account of the inputs. It's decision on every input shall be displayed on its web site with a reason for such decisions.
11. If the board decides to approve regulations in a form substantially different from what was published earlier, it must repeat the process described here.
12. The board may, in emergency, make regulations, by notification, with the approval of chairperson, without following the provisions under earlier regulations, if it considers that time required for compliance with those provisions is detrimental to the objectives of the *IBC*. Such regulations shall remain in force for six months from the date of notification, unless they are re-issued during this interval after following the process described here.
13. The regulations must be notified immediately after it is approved by the board, and will come into force after 30 days from the date of notification, unless a different date is specified along with the reasons for the same.
14. The board must review every regulation once in three years to ensure that it is still relevant and efficient and to weed out redundant regulations, unless a review is warranted earlier keeping in view: (a) its objectives; (b) its outcomes; (c) experience of its implementation; (d) experience of its enforcement and the related litigation; (e) its relevance in the changed environment; (f) international best practice; and (g) any other factor considered relevant by the Board.<sup>9</sup>
15. The regulations must carry legislative notes to explain the rationale for the same.

<sup>9</sup> Two Members of the Working Group held the view that the board may review the regulations and that it should not be mandatory.

#### *Process for granting, suspending and revoking registrations*

1. On and from the commencement of the *IBC*, no person should act as a service provider or hold itself out as a service provider except under, and in accordance with, the conditions of a certificate of registration obtained from the IBBI in accordance with the regulations made under the *IBC*.
2. Only the persons who are fit and proper and meet the eligibility requirements specified in the regulations should be registered.

### Box 3: Documents/ information to be published along with draft regulations for public consultation purposes

The following information and documents must be published by IBBI when it seeks stakeholder comments on draft regulations:

1. draft of proposed regulations as approved by the board of IBBI;
2. the specific provision of the *IBC* empowering the board to make the said regulations;
3. a statement of the market failure that the said regulation seeks to address or the transparency and efficiency and any other developmental / regulatory objective the said regulation seeks to achieve;
4. a regulatory impact analysis of the proposed regulations for better appreciation by the public and the regulated of the implications of the said regulations;
5. likely effect of the said regulations on different stakeholders;
6. a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the said regulation;
7. the manner of implementation of the regulations; and
8. the manner, process and timelines for receiving comments from the public

3. One should not require unreasonable time to commence or close business. The applications for registration should be disposed off in a time bound manner. Similarly, the applications for surrender of registration should be disposed of expeditiously.
4. A view should be taken expeditiously where a service provider is alleged to have contravened provisions of law and deserves to be de-registered.
5. The proceedings for cancellation of registration should terminate in a time bound manner to ensure integrity of the market, certainty of law, to protect the clients, and penalise the service provider concerned.
6. The regulations relating to meetings of the IBBI should require the Board of IBBI to lay down and review timelines for various activities, including registration, surrender and cancellation of registration and such timelines shall be available on the website for guidance of the public and stakeholders.
7. The Board should pass reasoned written orders for:<sup>10</sup>
  - (a) refusal to grant registration,
  - (b) refusal to accept surrender of registration; and
  - (c) cancellation of registration.
8. The details (process and requirements of registration and the circumstances for cancellation of registration, conditions of regis-

<sup>10</sup> Such orders must be passed by the whole-time member who heads the Disciplinary Committee. A more detailed discussion of this is presented in Section .

tration, validity of registration, fees, etc.) to be specified through regulations.

The suggested text of the regulations governing the process for granting, suspending and cancelling the licenses of IPs, IPAs and IUs is set out in the IBBI (Processes) Regulations, 2016 contained in Appendix Appendix .

### *Process for monitoring performance of regulated entities*

There are some core principles which must guide the performance of this core IBBI function of monitoring the performance of IPs, IPAs and IUs:

1. The performance of an IP, IPA and IU must be measured in terms of their core functions.
2. IPs, IPAs and IUs must periodically report their performance to IBBI.
3. IPs will additionally periodically report their performance to the IPA with which they are registered.
4. The IBBI must devise Key Performance Indicators (KPIs) for IPs, IPAs and IUs:
  - (a) the IBBI must first identify the core functions of IPs, IPAs and IUs.
  - (b) The IBBI must identify the core activities that must be performed by an IP, IPA and IU which are necessary for the performance of the identified functions.
  - (c) KPIs should be designed to track each of these activities.
  - (d) At the beginning of each financial year, an IP, IPA or IU must set a target for each KPI.
  - (e) At the end of the financial year, the performance report must mention if the target was met or not. If not, it must give reasons for the same.
5. Every IPA, every IPs which is an artificial person and every IU must have a compliance officer. IPs who are natural persons will monitor their own compliance.

On the basis of these core principles, more specific recommendations on the regulations which the IBBI must make when monitoring IPs, IPAs and IUs are summarised in Boxes 4, 5 and 6 respectively.

### *Process for conducting inspections and investigations*

Investigation (including inspection) entails infringement of freedom of agents. In addition, there are both explicit and implicit costs that

#### Box 4: Monitoring of IPs

1. Every IPA which is registered as an artificial person must appoint a compliance officer who will be responsible for monitoring the compliance of the laws.
2. Every individual IP will be a deemed compliance officer and will act accordingly.
3. The compliance officer shall be responsible for overseeing compliance by the IP of the IBC and all delegated legislation issued under it as well as the bye-laws of the IPA with which it is registered.
4. The compliance officer shall immediately and independently report to IBBI of any non-compliance observed by him.
5. Every IP must maintain books of accounts, records and documents as may be specified by IBBI and the IPA with which it is registered.
6. Such books of accounts, records and documents must be maintained for such minimum period as may be specified by the IBBI.
7. The IBBI must lay down a basic list of KPIs which will be used by IPs to measure and report its performance.
8. The IBBI may lay down different KPIs for individual IPs and IPs which are registered as artificial persons.
9. The KPIs could be different for IPs handling different scales of business. For example, the KPIs for an IP managing corporates with assets above Rs.1,00,000 crore could be very different from those of an IP managing corporates having assets less than Rs.1 crore.
10. An IPA may lay down an additional list of KPIs to be measured by IPs registered with it.
11. Every registered IP must have systems in place to collect relevant data and continuously measure the KPIs specified by the IBBI as well as the additional KPIs mentioned by the respective IPA.
12. Based on the continuous measurement of KPIs, each registered IP must file a copy of its annual performance report with its respective IPA and the IBBI at the end of every financial year. Such annual performance report should also be put up on the website of the IPA.

**Box 5: Monitoring of IPAs**

1. Every IPA must appoint a compliance officer who will be responsible for monitoring the compliance by the IPA with the *IBC*, rules and regulations, notifications, guidelines, instructions, etc., issued by the board or the Central Government.
2. Such compliance officer shall oversee compliance by the IPA, the IPs registered with it, and other agencies which are associated with insolvency such as certification authorities, if any, who certify the knowledge and skills required for IPs.
3. The compliance officer shall immediately and independently report to the IBBI of any non-compliance observed by him.
4. Every person registered as an IPA must maintain books of accounts, records and documents as may be specified by the IBBI.
5. Such books of accounts, records and documents must be maintained for such minimum period of years, as may be specified by the IBBI.
6. The IBBI must lay down a basic list of KPIs which will be used by IPAs to measure and report their performance.
7. The KPIs will include performance in respect of enforcement actions, inspections of IPs, resolution of complaints / grievances, resolution of insolvency, etc.
8. Every registered IPA must have systems in place to collect relevant data and continuously measure the KPIs specified by IBBI.
9. Based on the continuous measurement of KPIs, each registered IPA must file an annual performance report with the IBBI at the end of every financial year and also put it up on its website.

### Box 6: Monitoring of IUs

1. Every IU must appoint a compliance officer who shall be responsible for monitoring the compliance by the IU of the IBC, rules and regulations, notifications, guidelines, instructions, etc., issued by the IBBI or the Central Government.
2. The compliance officer shall immediately and independently report to the IBBI any non-compliance observed by him.
3. Every person registered as an IU must maintain books of accounts, records and documents as may be specified by the IBBI.
4. Such books of accounts, records and documents must be maintained for such minimum period of years, as may be specified by the IBBI.
5. The IBBI must lay down a basic list of KPIs which will be used by IUs to measure and report their performance.
6. Every registered IU must have systems in place to collect relevant data and continuously measure the KPIs specified by the IBBI.
7. Based on the continuous measurement of KPIs, each registered IU must file an annual performance report with the IBBI at the end of every financial year and also put it up on the website of the IU.

they and their businesses suffer as a consequence of an investigation. There must be clear governance principles to minimise the costs of investigation. This requires both internal capacity building at the IBBI, as well as clear principles which must guide the conduct of any inspection or investigation. The principles underlying the conduct of any investigation by IBBI are enumerated in Box 7.

The IBBI must make an investigation manual to ensure that (1) the investigator follows due process, and (2) the person under investigation knows her rights during various stages of investigation.

This manual should be available on the IBBI website in a text searchable format. A good example of international best practice in this regard is UK Financial Conduct Authority's Handbook. The Manual should provide timelines for disposal of various activities involved in an investigation. Such timelines can be relaxed with the approval of the Board of IBBI, where such relaxation is warranted in a given situation.

#### *Process for disposal of notice*

The IBBI must not commence any proceeding which may end with the issuance of an enforcement action, except by issuing a show-cause notice. The notice must contain the specific details of the provision under which it has been issued and the documents relied on by the IBBI as well as any exculpatory evidence. The notice must be disposed off by an adversarial system of hearings and disposal by a neutral functionary. Any order imposing penalty should be

## Box 7: Principles underlying the conduct of inspections and investigations by IBBI

### 1. Before investigation

The Board must:

- Be satisfied of the need for investigation;
- Identify the objective of the investigation with specific reference to the alleged violation and facts;
- Identify an investigator;
- Define the scope of investigation in terms of persons, records, activities, places, etc.,
- Specify time frame for commencement and completion of investigation;
- Set up arrangements for reviewing and monitoring the progress of the investigation;
- Issue preventive orders, if necessary, during an investigation;
- Issue an order appointing the investigator and setting out terms of the investigation; and
- Keep the investigation confidential.

### 2. During investigation

- The investigator must:
  - Provide a copy of the order appointing the investigator to the person under investigation;
  - Inform the person under investigation of its rights;
  - Furnish the reasons for requiring the presence of a person or collecting a document;
  - Endeavour to cause the least burden on the person under investigation or any third party whose cooperation is required;
  - Keep the investigations confidential;
  - Keep the Board informed of the progress from time to time;
  - Obtain comments of the person under investigation on its *prima facie* adverse views, and the basis for such view.
- A person under investigation must appear before the Investigator or any person authorised by him in this behalf, and must produce all the books, registers, other documents and the records of, or relating to, the matter which are in its custody or power. If it fails to do so without reasonable cause or refuses to cooperate with investigation, it shall be liable for punishment.

### 3. After the investigation is completed

- The investigator must submit the investigation report to the Board.
- On submission of the investigation report:
  - The Board must conclude the investigation only if it is satisfied that the investigator has conducted investigation and submitted the report of investigation as per its order.

- The Board must consider the investigation report promptly (within a specified number of days of the submission of the report) and it may conclude the investigation only in one of the following two ways:
  - (a) it must issue an order stating either that there is no adverse finding; or
  - (b) approve the issuance of a show-cause notice for initiating appropriate enforcement proceedings against the investigated person, if it finds that there has not been any contravention of any provision of law.
- A show cause notice must be decided only by the Disciplinary Committee. For determining the notice, the Disciplinary Committee must take into account:
  - the nature and seriousness of the alleged contraventions, including whether it was deliberately carried out by the person under investigation; caused due to the recklessness of the person under investigation; or caused due to the negligence on the part of the person under investigation;
  - the consequences and impact of the alleged contravention, including the extent of the benefit or unfair advantage gained by the person under investigation or any other person as a result of the alleged contravention, and loss caused, or likely to be caused, to customers or any other persons as a result of the alleged contravention;
  - the conduct of the person under investigation after the occurrence of the alleged contravention, and prior to alleged contraventions or offences committed by the person under investigation.

reasoned.

The suggested text of the regulations governing the process for disposal of show cause notices is set out in the IBBI (Processes) Regulations, 2016 contained in the Appendix .

### *Process to address complaints and grievances*

The principles underlying handling complaints by the IBBI are enumerated below:

1. The IBBI must have a unit responsible for receiving and handling complaints. This is the Complaints and grievance unit in the *Interfaces* department (Section has a description of this unit).
2. The IBBI shall follow principles of natural justice if and when it initiates enforcement actions while addressing a grievance.
3. Service providers must provide grievance redressal systems that are in addition to the complaints handling systems of the IBBI:
  - Every service provider (namely, IPs, IPAs and IUs) shall provide for redressal of grievances in the first instance and try to solve the dispute amicably.
  - Every service provider shall endeavour to provide an electronic mechanism for grievance redressal.
  - Every IPA and IU shall provide an arbitration facility as a mode of grievance redressal.
  - Every IPA and IU shall disclose the status of receipt and disposal of grievances received by it, on its website.

Based on these principles, the process of handling complaints by the IBBI is summarised in Box 8. The principles for the grievance redressal process of the IPA is summarised in Box 9.

### *Process to hold board meetings*

The board of IBBI is responsible for administration of the *IBC* and governance of the IBBI. It has, therefore, certain inalienable duties. These duties must be performed by the board only and cannot be delegated. Preferably, these should be performed in a meeting of the board. These include:

1. Issuing Regulations under section 196(1);
2. Accounts and audit under section 223;
3. Budget under section 228;
4. Annual Report under section 229;
5. Delegation of Powers under section 230;

### Box 8: Complaints handling processes in IBBI

1. IBBI shall specify the circumstances where a person can file a complaint.
2. IBBI should provide an electronic complaints filing mechanism.
3. IBBI shall publish the details of how complaints will be addressed on its website, including timelines for different stages of the complaints handling process.
4. If a person is not satisfied with the redressal of grievance by a service provider, because of any of the grounds specified by IBBI in its regulations, such person may file a complaint with the IBBI within a year of the cause of rise of grievance. Such complaints cannot be filed where such person has taken recourse to the arbitration proceedings provided by an IPA or an IU.
5. The complaint must be forwarded to the Complaints and grievances unit of the *Interfaces* department.  
Internally, the complaints and grievances unit will pass on the grievance to the *Licensing, monitoring and investigations* department for further action.
6. When the Investigations unit of this department receives the complaint, it may:
  - (a) Close the complaint if it finds that there is no *prima facie* case. The closure of the complaint must be supported with a written order with reasons.  
If the complainant is aggrieved by such closure, she may file an application before the *Adjudication* department for recourse. The *Adjudication* department may require the investigations unit to initiate a full investigation and submit an investigation report.
  - (b) The process of conduct an investigation must follow the process described in section . If the investigation report indicates wrongdoing, the investigations department will issue a show-cause notice, which will be disposed off by the Board in accordance with the process described in section .
7. The IBBI must maintain all complaints that it received in the IT systems at a centrally accessible database of complaints.
8. Wherever the IBBI issues a notice to a service provider or any other person in pursuance of a grievance redressal, it shall assign the notice to a Disciplinary Committee for disposal.
9. The IBBI shall publish all orders issued in the course of redressal of grievances, on the website.
10. A person aggrieved by an order of the IBBI may prefer an appeal to the appellate authority against such order. Since the IBC is silent on who is the appropriate appellate authority in this case is, this may be taken to be the *Financial Sector Appellate Authority* which is the appellate authority to other financial sector regulators such as SEBI and the Insurance Regulatory and Development Authority (IRDA).

### Box 9: Grievance redressal processes in IPAs

#### 1. Grievance redressal process of IPAs

Every IPA must:

- provide an efficient facility for amicable redressal of grievance, which is accessible through its website;
- publish the details of such facility, including timelines for different stages of grievance redressal, on its website for easy public access;
- disclose the status of receipt and disposal of grievances received by it either against itself or the entities registered with it, on its website.

#### 2. Arbitration

An IPA shall provide for redressal of grievances against an IP through arbitration. The arbitration process will include the following:

- Applicant submits arbitration application to an IPA.
- The application is verified and sent to the IP against whom the complaint is made.
- The arbitrator is appointed and the relevant documents are forwarded to her.
- The arbitrator holds hearings.
- The arbitrator passes a speaking award.
- The award amount is debited, if it is in favor of the complainant.
- The aggrieved party may file an appeal against the award.
- Hearings held and appeal award passed
- Application for enforcement may be filed under section 34 of the Arbitration and Conciliation Act, 1996 in the competent court.

#### 3. Procedure for filing grievance with the IBBI

- A grievance must be filed duly signed by the aggrieved or his authorised representative in a form specified by the IBBI stating clearly: (i) the name and the address of the aggrieved, (ii) the name and address of the service provider against which the grievance is made, (iii) the facts giving rise to the grievance, (iv) the nature and extent of the loss, if any, caused to the aggrieved, and (v) the relief sought for.
- The aggrieved shall file along with the grievance, copies of the documents, if any, which it proposes to rely upon.

6. Evaluation of the performance of the Board of the IBBI;
7. Operations Manuals for various activities;
8. Timelines for disposal of various activities by IBBI and the Board; and
9. Any other function as may be required under the law.

The decisions taken by the board of IBBI form the basis of action by the IBBI. It is, therefore, necessary to:

1. Assign the responsibility of keeping records of meetings of the board to a senior officer;
2. Record all minutes along with proceedings and decisions taken;
3. Publish the agenda of each meeting on its web site.
4. Publish the minutes of board meetings, including decisions taken and votes of each member, within three weeks of the meeting.
5. Selected portions of records may be published with appropriate delay if such portions meet any of the following conditions, –
  - (a) they relate exclusively to the conduct of individuals with regard to the performance of their functions within the regulator;
  - (b) they relate to information that has been obtained from a person in confidence, where such information is exempt from disclosure by that person under the Right to Information Act, 2005 (22 of 2005);
  - (c) they involve discussion of a particular instance of violation of laws or censuring any person;
  - (d) they disclose information about a particular investigation which is ongoing;
  - (e) they disclose techniques for investigation or inspection;
  - (f) they disclose information of a commercial nature relating to a financial service provider which has been obtained for regulatory purposes; or
  - (g) they deprive a person of a right to a fair and impartial adjudication.
6. The selected portions of records of a meeting must not be published if such portions meet any of the following conditions, –
  - (a) they are likely to significantly frustrate the implementation of an action proposed by a regulator, where such action has not been disclosed to the public; or
  - (b) they involve discussion of any particular legal proceeding before a tribunal, court or arbitrator.

7. The publication of portions of records relating to a particular meeting may be delayed or prevented only if the board, in such meeting, –
  - (a) records the reason in respect of such portions of the records;
  - (b) the majority of members present at the meeting vote in favour of such action for each portion of the records separately; and
  - (c) the vote of each member is recorded and published.
8. Portions of records delayed for publication must be published by the IBBI within six months, or as soon as the reasons for their delay cease to be applicable, whichever is later.

All board members must contribute to the decision making and must be accountable for the decisions they take. It is, therefore, necessary to:

1. Provide agenda well in advance;
2. Proceed with the meeting only with quorum;
3. Convene meetings at convenient places and convenient times; and
4. Allow use of technology for interaction with Members, including meetings through video, in connection with meetings of the Board.

These regulations should be supported by a Code of Conduct for Members to avoid and resolve conflict of interests.

The suggested text of the regulations which must govern the conduct of meetings of the board of IBBI and the Code of Conduct are contained in the IBBI (Processes) Regulations, 2016 contained in Appendix .

### *Process for annual reports*

The Annual Report of the board of a regulator is an accountability tool which enables it to explain to its stakeholders its performance vis-a-vis its statutory mandate, its annual target and its resources. It should report such details as would enable stakeholders review its performance, including:

1. a true and full account of policies, activities, and programmes of the IBBI during the preceding year,
2. an assessment of the effectiveness and the efficiency of the IBBI in terms of its objectives, functions, and activities during the previous financial year,

3. the policies, activities and programmes envisaged by the board for the next financial year for the IBBI, and
4. an assessment of performance of the board.

This approach distinguishes between the board of IBBI and the the organisation itself.

As with any organisation, all stakeholders should have the annual report soon after the close of the financial year. In this case, the central stakeholder is Parliament itself. When Parliament has the opportunity to consider the annual report immediately on close of the year, then policy statements and recommendations, if any, could factor in the activities and decisions of the IBBI in a prompt manner. This also allows for prompt mid-course corrections to be done.

Therefore, the annual report should be submitted to Government within 90 days of the close of the financial year. The persons with authority and resources, who are responsible for performance, should approve the performance report. Therefore, the annual report should be submitted with the approval of the Board. The report should endeavor to provide both qualitative and quantitative dimension of IBBI activities, policies and performance. It should also state what it holds for different stakeholders.

The annual report once laid on the table of the Parliament should be available on the web site of the IBBI so that it is available to the public. In particular, it should provide the details listed in Box 10.

As an example, Figure 3 is a snapshot of the information published in the Annual Report of the U.K. insolvency regulator, the Insolvency Services.

	Measure	Target	Performance to March 2016
Customer	Stakeholder confidence in the effectiveness of our enforcement actions	73%	70%
	Customer satisfaction is sustained in upper quartile of comparable public bodies	90%	93%
Processes & Continuous Improvement	Issue reports to creditors within eight weeks (bankruptcy cases & company cases)	95%	98%
	Authorise disqualification proceedings within 23 months	97%	98%
	Authorise bankruptcy restrictions proceedings within 11 months	80%	87%
	Action redundancy payment claims within 3 weeks	80%	81%
	Action redundancy payment claims within 6 weeks	92%	95%
Finance & Resources	Deliver against agreed budget, with sound financial management & robust governance.	Achieve	Achieved

Figure 3: Extract of Annual Report of the Insolvency Service (UK), 2016

### *Designing the IBBI website*

The design of the website of the IBBI should underpin the mandate of transparency. The website of IBBI will essentially be used by (a)

**Box 10: Contents of annual report**

1. Policies, activities, and programmes of the IBBI in respect of: (a) Service Providers, namely, IPs, IPAs, IUs and any other entities (b) consumers, namely, Creditors, Debtors, and other entities; (c) Constituents, namely, NCLT, NCLAT, DRT, DRAT, Examination Agencies, and any other entities;
2. Goals set for the previous year and the extent to which they have been achieved;
3. An assessment of the effectiveness and the efficiency of the IBBI in terms of its objectives and mandate keeping in view its resources, duties and powers;
4. An assessment of the quasi-legislative, executive and quasi-judicial functions of the IBBI;
5. Contribution to credit market and entrepreneurship;
6. Market outcomes in terms insolvency resolutions and the efficiency of resolution;
7. Summary data - time series or cross section - as may be relevant and available, about the market outcomes that can facilitate appreciation of the market and promote research;
8. Financial statements of IBBI at par with reporting standards applicable to other organisations;
9. A statement indicating any statutory obligations that the IBBI has not complied with, and reasons for such non-compliance.
10. An assessment of performance of the board, and its vision for the next year, signed by Chairperson of the board;
11. A summary statement of the deliberations of the board and its decisions during the year; and
12. A statement of major policies and activities the board intends to undertake in the subsequent year.

#### Box 11: Features of the website of the OSB

1. Area-wise list of individual insolvency trustees and insolvency trustee firms, in a search-able format. Only the name and address of the trustees are reflected. There is no information on the disciplinary proceedings, performance, etc. of the trustee.
2. Forms which creditors must submit as proof of claim to the insolvency trustee.
3. Proof of claim forms to be submitted by employees against an employer which is in insolvency.
4. Request form for repossession of goods unpaid for by a debtor who is in insolvency.
5. Details of entities which are currently undergoing insolvency. The online records contain basic debtor information for all bankruptcies and proposals. This information is accessible on payment of a fee online.
6. Service standards of the OSB, which includes details of time-lines within which the OSB must complete a process and form of redress if it fails to do so.

creditors; (b) debtors; (c) insolvency professionals; (d) researchers; and (e) the general public. A review of websites of global regulators, which include OSB, the Insolvency Service and ASIC, shows a set of common features. These are summarised as:

1. The websites display standard information such as laws and regulations, public consultations conducted, responses received, board constitution, etc.
2. It contains all the information which the regulators are required to “publish” under the law.
3. They are often used as a wide-access platform to collect complaints, since the website tends to the lowest cost access that can be made available to stakeholders.
4. The websites are designed to be consumer friendly.
5. The websites are easy to navigate and entirely search-able without specific referencing for the search item.

In short, these websites act as a single source of all information mandated from the regulator, and often is used as a source of other information that helps clarity for all stakeholders. As an example, the features of the website of the OSB are summarised in 11. Additionally, there are examples of how the Insolvency Services, which is the insolvency regulator in the U.K. The examples show published information about individual insolvency cases (Figure 4) and a snapshot of the consumer complaints form (Figure 5).

The objective of the website must be to provide all information that would be relevant to a person seeking credit-related details of a person in insolvency.<sup>11</sup> This suggests the following principles that

<sup>11</sup> For instance, the website of the Insolvency Service, which is the insolvency regulator in the U.K., shows the users the real-time status of an insolvency proceeding. An image of this functionality of the website is shown in Figure 4.

8/31/2016

Individual Insolvency Register - Name Search Results

Figure 4: Snapshot of individual insolvency records from the website of the Insolvency Service, UK

[Home](#) [Register Info](#) [Register Main Menu](#) [Register Feedback](#) [Register FAQ](#)

## Individual Insolvency Register

### Search Results

**Surname starting with ADAM**

Forename was left blank

Searching across ALL courts in England and Wales

Your search returned **592** records.

Click on the **Surname** to see the Individual Insolvency Register Report

**Also included in the results of your search will be those individuals with an alias or a previous name which matches your search criteria.**

Forename	Surname	Date Of Birth	Court	Number	Start Date	Type
NAA AYIKATLEY	ACQUAH	18/10/1960	VOL		23/11/2012	IVA
ABDELWAHAB	ADAM	15/08/1961		DRO4553571	29/09/2015	Debt Relief Order
AMY SUZANNE	ADAM	31/05/1978	GUILD		09/10/2015	IVA
ASHLEY	ADAM	21/07/1975	VOL		13/08/2012	IVA
CLIVE BENJAMIN	ADAM	25/08/1979	GUILD		09/10/2015	IVA
EDWARD	ADAM	27/07/1979	BRIS		22/04/2013	IVA
EILEEN HARRIET	ADAM	20/04/1937	BPL		13/02/2014	IVA
EVANS	ADAM	31/12/1985	VOL		04/08/2016	IVA
FIROZ	ADAM	20/07/1978	HUDD	0000100	19/11/2015	Bankrupt
FUZAIL HALIF	ADAM	28/03/1990	VOL		06/07/2015	IVA
GAYNOR	ADAM	23/12/1971	BIRK		04/09/2014	IVA
JOHN	ADAM	31/05/1943	BPL		13/02/2014	IVA
JOSEPH	ADAM	21/12/1962	ADJ	5005120	30/06/2016	Bankrupt
KAREN	ADAM	09/08/1954	CANT		29/07/2011	IVA
LAWRENCE JOHN ANTHONY	ADAM	28/11/1966	HIGH	0105577	27/10/2005	IVA

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A BIS SERVICE



**The Insolvency Service**  
Insolvency Practitioner Complaint

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- [Guidance for those who wish to complain](#)
- [Provision of the complain gateway](#)

**How do you wish to submit the form**

Send this form electronically  
 Print this form and send it by post

**Your details**

Name (forename/surname) \*

Organisation (if appropriate)

Address \*

Postcode \*

Email

Email 2 (if applicable)

Telephone

Alternative telephone

**Who do you wish to complain about**

This needs to be the named insolvency practitioner or practitioners in the case of a joint appointment for the insolvency procedure. This will not necessarily be the member of staff who you have been dealing with.

You can find the name of all insolvency practitioners, including the name of their authorising body here and their contact details at <http://www.insolvencydirect.bis.gov.uk/ijp1/>

**Insolvency Practitioner 1**

Name (forename/surname) \*

Firm \*

Email \*

Telephone \*

Authorising Body \*  ICAEW  
 IPA  
 ACCA  
 ICAS  
 CAI

**Insolvency Practitioner 2 (if applicable)**

Name (forename/surname)

Firm

Email

Figure 5: Online complaint form on the website of the Insolvency Service

applies to the design and features of the IBBI website.

*Be the sole interface to automated processes* To the extent possible, processes involving interfacing between the IBBI on the one hand and regulated entities and consumers on the other, must be automated. Further, these processes must be integrated in the website design.

For instance, a person desiring to submit an application as an insolvency professional must be able to submit the application online. Similarly, consumers (debtors and creditors) must be able to submit complaints for redress to the IBBI online. A copy of an online complaint form used by the Insolvency Service is contained in Figure 5.

*User-friendly* Barriers to information can be blatant or subtle. The website design must ensure that users are able to readily access information with the least inconvenience. Some examples of the features which can be embedded in the website of IBBI for ease of use and access as listed below:

- All information pertaining to a given topic must be placed in the same location on the website. For instance, all consultations held by IBBI must be located in the same place. Similarly, comments received, and responses given by the IBBI, must be seen at the same location on the website.

For instance, the website of AERA has a consultations segment displaying all the active consultation papers in one place. The archives page of the AERA website also has a consultations segment which displays (a) all the consultation papers ever issued by AERA together with the dates on which the consultation opened and closed for each paper; (b) Responses received and minutes of stakeholder consultation meetings, if any; and (c) Orders issued pursuant to each consultation exercise.

Another example is the website of TRAI, which has a dedicated section on consultations. This section organises all the consultation papers ever issued by TRAI subject-wise, shows the status of the consultation paper (whether it is ongoing or closed) and displays the responses received. This allows a stakeholder in the telecom sector to have better predictability of regulation making by the TRAI.

- The search function on the website must allow for a generic search. A consumer looking for a specific regulation must not be required to key in details of the period during which or the date on which the regulation was issued. She must be able to key in the subject of the regulation in the search function to generate relevant results.
- Older and non-timely information must not be deleted from the website. It must be archived in an organised fashion so

as to preserve continuity of knowledge about the regulatory processes.

*Restricted access* The public must be given access that is free of charge to a general level of basic information. However, certain sections of the website may be restricted to those who are likely to be affected by the information. For instance, the public at large must be able to run a general search function for all insolvency professionals. However, only an interested creditor or debtor must have access to the details of disciplinary proceedings pending against specific insolvency professionals. The design of the website may factor in such different levels of access.

*Integration with back-end* The website must be integrated with the back-end system of the IBBI to ensure that applications for all matters including complaints can be filed and processed online.

*Frequent review* Since the website will be a crucial (and in several cases, the only) interface between the public and the IBBI, we recommend that the board must review the design of the website and set up process to invite and incorporate feedback from the users periodically.

### *Developing knowledge partnerships*

At present, government organisations are used to two kinds of services contracts. One contracting mechanism that is used is a staffing contract. This is a contract that prescribes the credentials and numbers of technical staff that will be supplied by an external firm. Another contracting mechanism that is used is a fixed-output contract. This is a contract that defines a desired outcome – such as the draft of a highway PPP contract – and is executed by an external firm.

Knowledge partnership contracts diverge from these two kinds of contracts. The key elements of a knowledge partnership contract are as follows:

- The contract establishes a broad statement of the fields in which the knowledge partnership will be pursued.
- The contract is of duration 3 to 6 years, so as to encourage a long term perspective from both sides, and encourage capacity building by the Agent.
- The Principal commits to a resource outlay over this long horizon, which enables recruitment and knowledge building by the Agent.
- The Agent is obliged to build knowledge in these fields and communicate it into the public domain, through articles on the Internet, videos, newspaper articles, research paper, seminar and

conference talks. The Agent is obliged to organise conferences which bring together knowledge and community on the subjects of interest to the Principal.

- The Principal exerts no control on the expenditures of the Agent, including questions like salaries, mechanisms of contracting with research staff, travel expenses, etc.
- The Agent is obliged to pursue the best interests of the people of India, which would involve sometimes criticising the Principal in good faith. The Principal has no power to control the messages that are put out by the Agent in the public domain. The Principal would have the maturity to accept criticism when it takes place.

Through this flow of public domain work, the Agent creates a team with skills in the fields of interest to the Principal.

- In this structure, the IBBI as the Principal now has the right (but not the obligation) to use these skills in various ways. This can include discussions, requests for short policy notes, membership in expert committees, substantial research and policy projects, and participation in the technical teams that support expert committees.

The Knowledge Partner has the right to turn down requests made by the Regulator of this nature, owing to the lack of capacity.

- The working of the Knowledge Partnership would have oversight by a Steering Committee where there would be a majority of external professionals. The Steering Committee would meet twice a year, to review the public domain output of the Agent. The main accountability of the Agent would be to produce a substantial quantity of output into the public domain that is of high quality.

The Working Group recommends that IBBI enter into such knowledge partnerships as early as possible to inception. If the IBBI builds this partnership with three academic organisations, assuming that each such partnership creates a team of 10 people, the presence of these contracts would create 30 technically strong individuals, spread across three organisations in India, who would have expertise on the subjects of IBBI. A reserve of 30 such individuals would constitute a substantial enhancement of talent and capacity on insolvency and bankruptcy in the country, over and above the internal professional staff at IBBI. This would improve knowledge, strengthen public debates, and be a talent pool that IBBI is able to access, as and when policy questions or policy implementation is desired.

## *Project management*

Establishing the IBBI is a complex project. There is a risk of 'premature load bearing' where operations and transactions commence with an underprepared agency. This would lead to a fire-fighting environment in which the development of capabilities would then not arise. Premature load bearing would rule out the possibility of a capable IBBI emerging.

There is a useful analogy with a bridge on a river. Building a bridge is a complex project which requires up-front commitment of resources and project management. This leads up to a discrete date on which the bridge is inaugurated, and after that the flow of traffic on the bridge commences. This approach to systematic project management is desirable.

The initial team at IBBI would thus have to constitute an entrepreneurial team of project managers, who would set a process in motion of creating a formal institution. The culture of entrepreneurship is required in the early days, and is out of place in a stable regulatory institution.

The key actions required at the outset are:

1. Work with consulting and HR firms to detail out the organisation structure and staffing requirements, down to the writing of the job description for each role.
2. Work with consulting companies to design all the formal processes of the organisation. At a high level, they are the legislative, executive and judicial functions. At a more detailed level, for example, the executive function includes a licensing process for information utilities.
3. Contract-out the development of comprehensive workflow software which will (a) yield a paperless office; (b) enforce formal processes for the legislative, executive and judicial functions; and (c) establish the website which looks into the core enterprise IT system as the window seen by the world.
4. Commission the development of a modern office with the required IT systems.
5. Establish Knowledge Partnership Contracts through which intellectual capacity building commences at multiple locations in

India.

6. Project management for the issue of all required regulations through the formal regulation-making process.
7. Undertake recruitment for all the roles, with careful synchronisation between the starting dates for various persons and the date on which the office and the IT systems would be in place.
8. Engage with private persons for the development of the three regulated industries.
9. Project management for the final six months leading to the opening date on which the organisation will be ready for traffic.

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*Appendix I: Draft regulations on processes at the IBBI*

# The Insolvency and Bankruptcy Board of India (Processes) Regulations, 2016

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## ARRANGEMENT OF CLAUSES

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### CLAUSES

#### CHAPTER 1 PRELIMINARY

1. Short title, application and commencement.
2. Definitions.

#### CHAPTER 2 GRANT, SURRENDER AND REVOCATION OF CERTIFICATE OF REGISTRATION

3. Grant of Certificate of Registration.
4. Cancellation or suspension of registration and other actions.
5. Surrender of any certificate of registration.
6. Appeal to Appellate Authority.

#### CHAPTER 3 DISPOSAL OF SHOW CAUSE NOTICE BY THE BOARD

7. Issue of Notice.
8. Disposal of Notice.
9. Rights of the Noticee.

#### CHAPTER 4 PROCESSES IN MEETINGS OF THE BOARD

10. Board Matters.
11. Notice.
12. Quorum.
13. Leave of absence.
14. Minutes of the meeting.
15. Member not to participate in meetings in certain cases.
16. Obligation of a Member to give information of disqualification.
17. Declaration of fidelity.
18. Officer for keeping custody of the minutes book, common seal etc..
19. Manner and form in which contracts may be executed.
20. Accounts and documents by whom to be signed.
21. Affixation of Common Seal.
22. Power to regulate procedure in certain circumstances.
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24. Definitions.
25. Code in addition to other provisions.
26. General principles.
27. Outside or private activities.
28. Conflict in respect of agenda.
29. Members not to hear or decide in certain cases.
30. Availing services of regulated entities.
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33. Procedure for managing the conflict.
34. Procedure for public to raise conflict of interests.
35. Maintenance of disclosures.

**The Insolvency and Bankruptcy Board of India (Processes)  
Regulations, 2016**

**A**

**BILL**

BE it enacted by Parliament in the Year of the Republic of India as follows:—

CHAPTER 1  
PRELIMINARY

- |    |  |   |
|----|--|---|
| 1. | <p>(1) These Regulations will be called the Insolvency and Bankruptcy Board of India (Processes) Regulations, 2016.</p> <p>(2) These Regulations will come into force from such date as may be notified by the Central Government.</p>   | <p>Short title,<br/>application and<br/>commencement.</p> <p>5</p>                                  |
| 2. | <p>(1) In these Regulations, unless the context requires otherwise:</p> <p>(a) “Board” means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188 of the Code;</p> <p>(b) “Code” means the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder, as amended from time to time;</p> <p>(c) “Disciplinary Committee” means a committee comprising a whole time member of the Board under section 220(1) of the Code, assigned for the purpose of performing the quasi-judicial functions of the Board.</p> <p>(d) “Fact Finding Process” means an investigation or inspection, as the case may be, ordered by the Board under section 218(1) of the Code and includes the process by which the Board finds out if there has been a contravention of any provision of the Code. ]</p> <p>(e) “Fit and Proper Person” means a person who is considered so by the Board taking into account any factor as it deems fit, including but not limited to the following criteria -</p> <p style="margin-left: 20px;">(i) financial integrity;</p> <p style="margin-left: 20px;">(ii) absence of convictions or civil liabilities;</p> <p style="margin-left: 20px;">(iii) competence;</p> <p style="margin-left: 20px;">(iv) good reputation and character; and</p> <p style="margin-left: 20px;">(v) efficiency and honesty.</p> <p style="margin-left: 20px;">in respect of the person concerned and its key functionaries.</p> <p>(f) “Investigation / Inspection” means an investigation or inspection, as the case may be, ordered by the Board under section 218(1) of the Code and includes the process by which the Board finds out if there has been a contravention of any provision of the Code.</p> <p>(g) “notice” means a notice issued under section 219 of the Code, which initiates a proceeding under these Regulations.</p> <p>(h) “noticee” means a person who is alleged to have contravened any provision of the Code and who is asked by a notice to show cause as to why appropriate action(s) permissible under the Code should not be taken against it.</p> <p>(i) “Proceeding” means a proceeding initiated by issue of a notice under section 219 of the Code that may result in any one or more of the following:</p> <p style="margin-left: 20px;">(i) issuance of a public warning;</p> <p style="margin-left: 20px;">(ii) issuance of a direction requiring the noticee to remedy the contravention;</p> <p style="margin-left: 20px;">(iii) direction requiring the noticee to cease and desist from committing contravention or to prevent recurrence of contravention;</p> <p style="margin-left: 20px;">(iv) imposition of a monetary penalty under section 220(3) of the Code;</p> | <p>Definitions.</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> |

- (v) variation, suspension, or cancellation of an authorisation, permission or registration granted by the Board to the noticee, which has contributed to the contravention;
- (vi) issuance of any preventive and / or remedial direction that contravention of any provision of the Code may warrant;
- (vii) issuance of a direction to disgorge an amount equivalent to unlawful gain made or lawful loss avoided under section 220(4) of the Code;
- (viii) recommendation to the Board to file a complaint before the appropriate court of law under section 236 of the Code;
- (j) “promptly” means within X (X in words) number of days from a trigger which has been laid down by the Board through a circular.
- (k) “Schedule” means schedule attached to these regulations.
- (l) “Service provider” means an insolvency professional, insolvency professional agency and an information utility as defined in clauses 19, 20 and 21 of section 3 of the Code.
- (2) All words and expressions used but not defined in these Regulations but defined in the Code shall have the same meaning as assigned to them in the Code.

20 CHAPTER 2

GRANT, SURRENDER AND REVOCATION OF CERTIFICATE OF REGISTRATION

3. (1) A person eligible under the Code and desirous of registering itself as a Service Provider, shall make an application to the Board seeking a certificate of registration, in the specified format along with the prescribed fees. Grant of Certificate of Registration.
- (2) Upon receipt of an application under sub-regulation (1), the Board shall acknowledge its receipt promptly.
- (3) The Board shall promptly upload Part I (non-confidential) of the application on its website. The Board may upload Part II (Confidential) of the application, after suitable redaction, if it believes that the benefits from such disclosure outweigh the harm to be caused to the applicant.
- (4) The Board shall allow the applicant an opportunity to withdraw or modify the details submitted in the application within X (X in words) days from the acknowledgement of receipt of the application. Where the applicant withdraws the application made under this regulation, the Board shall be not be bound to refund the application fee to the applicant.
- (5) The Board shall decide the application solely on the basis of the requirements / criteria, if any, specified in these relevant regulations.
- (6) The Board shall examine the application and promptly inform the the applicant of the deficiencies, if any, and shall further promptly advise the applicant to remove the deficiencies.
- (7) The Board shall disclose the timelines for the various stages of the application procedure.
- (8) The Board shall, if it considers necessary, verify the documents and inspect the facilities, which the applicant is required to have for registration.

- (9) Where the applicant meets the requirements specified for the grant of a certificate of registration, the Board shall grant registration within 30 (thirty) days of receipt of application or removal of deficiencies in the application, as applicable.
- (10) Where the Board is of the prima facie opinion that a certificate ought not be granted or ought to be granted with specific conditions, it shall issue a notice to the applicant before the expiry of X (X in words) days from the date of receipt of application or removal of deficiencies, as applicable. 5
- (11) The Board shall issue a reasoned order rejecting registration within X (X in words) days of issue of notice. 10
- (12) If registration is refused on account of false or misleading information in the application, such applicant shall not be allowed to seek any fresh registration, in any capacity, for a period of 5 (five) years from the date of refusal.
- (13) The Board may grant conditional registration by way of a reasoned order when there is lack of certainty on any aspect of the application or for any other appropriate reason as it may deem fit. It shall, however, publicly state such conditions attached to any registration. 15
- (14) The registration shall be valid till the Service Provider retains the characteristics as mentioned in the application, unless specified otherwise. This means that any change in control or constitution of the Service Provider shall require fresh registration (*depending on recommendation of the Working Group 2*). 20
4. (1) If the Board believes, based either on inspection, investigation, complaint or otherwise, that a Service Provider has (a) failed to comply with any condition subject to which a certificate of registration was granted; (b) contravened any of the provisions of the Code; it may, without prejudice to any other action under the Code, initiate proceedings by issuing a notice to the applicant. 25  
 Cancellation or suspension of registration and other actions.
- Provided that non-payment of fees may not require issue of notice and may be dealt administratively, unless there is a specific reason to issue a notice.
- (2) The proceedings mentioned in (1) shall be disposed of by the Disciplinary Committee in accordance with the regulations for disposal of notices. 30
- (3) The outcome of the proceedings may be: 35
- (a) suspension of certificate of registration for a specified period;
  - (b) cancellation of certificate of registration;
  - (c) prohibiting the service provider from taking up any new assignment or entering into a new contract for a specified period;
  - (d) debarring key functionaries from providing services under the Code.
- .
5. (1) A Service Provider may surrender its certificate of registration. 40  
 Surrender of any certificate of registration.
- (2) The Board shall accept such surrender of certificate if it is satisfied that the Service Provider has made arrangements for:
- (a) the maintenance and preservation of records and other documents required to be maintained under the Code,
  - (b) the redressal of grievances;

- (c) ensuring continuity of service to the clients;
- (d) adjudicated defaults or pending actions, if any.

6. A Service Provider or person aggrieved by an order of the Board refusing to grant registration, refusing to accept surrender of registration or cancelling of registration, may prefer an appeal to the Adjudicating Authority against such order.

Appeal to Appellate Authority.

### CHAPTER 3

#### DISPOSAL OF SHOW CAUSE NOTICE BY THE BOARD

7. (1) On consideration of findings of an Investigation or Inspection, as the case may be, the Board may issue a notice under section 219 of the Code to the person(s) alleged to have contravened any provision of the Code.

Issue of Notice.

- (2) Every notice issued under sub-regulation (1) shall be in writing and shall state:

- (a) the provision(s) of the Code under which it is issued;
- (b) the purpose of the notice;
- (c) details of the alleged facts;
- (d) details of evidence in support of the alleged facts;
- (e) the provision(s) of the Code allegedly contravened;
- (f) the action(s)/ direction(s) that the Board proposes to take / issue, if contravention is established;
- (g) the reasons for the proposed action(s) / direction(s);
- (h) the manner in which the noticee is required to respond to the notice and the time line for and the manner of doing the same;
- (i) the consequences of failure by the noticee to respond or to respond adequately to the notice;
- (j) the procedure to be followed for disposal of the notice; and
- (k) the details of the Disciplinary Committee authorised to dispose of the notice.

- (3) A notice under sub-regulation (1) shall have annexed to it, copies of relevant documents and extracts of relevant portions from the report of Investigation or Inspection, as the case may be, relied upon in support of the alleged contravention.

- (4) A notice issued shall be served on the noticee(s) in any of the following ways:

- (a) by delivering or tendering it by hand to the noticee or his duly authorized agent;
- (b) by delivering or transmitting the notice at a place where the noticee or its agent authorized to accept the notice or documents on behalf of the noticee, actually and voluntarily resides or carries on business or personally works for gain; by registered post with acknowledgement due or by courier, addressed to the noticee or its agent authorized to accept the service or by any other means of transmission of documents such as facsimile message or electronic mail service; and

(c) where service under any of the above mentioned clauses is not possible to be effected, service may be carried out by affixing on the outer door or some other conspicuous part of the premises in which the noticee resides or is known to have last resided or carried on business or personally works or last worked for gain and the same shall be witnessed by two persons. 5

Disposal of Notice.

8. (1) The Board shall assign every notice to a Disciplinary Committee for disposal.
- (2) The Disciplinary Committee shall dispose of a notice assigned to it by a reasoned order in adherence to the principles of natural justice.
- (3) The Disciplinary Committee shall endeavour to dispose of the notice within a period of 6 (six) months of the assignment. 10
- (4) The Disciplinary Committee may relax the time lines for various stages of the disposal of the notice on sufficient grounds shown by the noticee or the Board, after recording reasons for the same in writing; Provided that the disposal of the notice shall not be delayed by more than 6 (six) months.
- (5) The Disciplinary Committee shall follow an adversarial system where the Board as well as the noticee shall have the right to participate in the proceedings. 15
- (6) The Disciplinary Committee shall facilitate cross examination of witnesses, if required and relevant in disposal of the notice.
- (7) The Disciplinary Committee shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which it deems to be useful for or relevant to the subject matter of the notice. 20
- (8) In the event a noticee fails, neglects or refuses to submit his written submission or fails, neglects or refuses to appear before the Disciplinary Committee, the Disciplinary Committee shall proceed ex-parte against the noticee after recording the reasons for doing so. 25
- (9) The Disciplinary Committee shall consider the written submissions of the noticee, if any, as well as the oral submissions, if any, made by the Board and the noticee, and any supplementary material or submission that may be received from either. 30
- (10) After considering the relevant material facts and circumstances and the material on record, the Disciplinary Committee shall dispose of the notice by way of a reasoned order either acquitting the noticee or holding him guilty, as the case may be.
- (11) The order of the Disciplinary Committee shall contain such actions / directions as are warranted by the nature and extent of the contravention of Code and while determining such actions / directions, the Disciplinary Committee shall take the following factors, among others, into considerations: 35
  - (a) the nature and seriousness of the contraventions, including whether it was deliberate, reckless or negligent; 40
  - (b) the consequences and impact of the contravention, including the extent of unfair benefit or unfair advantage gained by the noticee and loss caused or likely to be caused, to customers or any other person;
  - (c) the conduct of the noticee after the occurrence of the contravention; and
  - (d) prior contraventions or offences committed by the noticee. 45

(12) The order in disposal of a notice shall contain the following:

- (a) provision(s) of the Code under which the order is issued;
- (b) the noticee(s) against whom the order is issued,
- (c) brief particulars of hearing;
- 5 (d) brief background leading to the notice;
- (e) details of facts based on which contravention has been alleged;
- (f) details of evidence submitted by the Board;
- (g) details of alleged contraventions;
- 10 (h) brief particulars of written and oral submissions made by the noticee(s) and the Board;
- (i) details of defence by the noticee;
- (j) appreciation of evidence, defence and materials relied upon by the Disciplinary Committee;
- (k) findings on facts and contraventions;
- 15 (l) mitigating factors, if any;
- (m) factors taken into account to determine the action / direction;
- (n) details of the direction / action issued in the order;
- (o) manner of implementation of the order;
- 20 (p) consequences of implementation of the order and management of such consequences;
- (q) date on which the order shall come into force;
- (r) status of interim order, if any; and
- (s) the noticee's right to appeal before the Adjudicating Authority.

25 (13) The order issued under sub-regulation (11) shall not become effective until a period of 30 (thirty) days has elapsed from the date of issue of the order, unless the Disciplinary Committee states otherwise in the order along with the reason for the same.

30 (14) The order issued under sub-regulation (11) shall be published on the web site of the Board as soon as it is issued and a copy of the same shall be sent to affected persons and the noticees.

(15) The proceeding shall be confidential and only the order shall be available in public domain.

9. Every noticee has the right to:

Rights of the  
Noticee.

- 35 (a) make a written submission by the specified date;
- (b) avail an opportunity of personal hearing before the Disciplinary Committee;
- (c) seek inspection and / or copies of relevant documents, records or material from the Board as it considers necessary in support of its defence;
- (d) cross examine the witnesses relied upon by the Board in support of the contraventions;
- 40 (e) represent itself personally or through an authorised representative before the Disciplinary Committee; and
- (f) prefer an appeal before the Adjudicating Authority if it is aggrieved by the order issued in disposal of the notice.

## CHAPTER 4

## PROCESSES IN MEETINGS OF THE BOARD

- (1) Meetings of the Board shall be convened at least once in each quarter of the year by the Chairperson, or in his absence by any Member nominated by the Chairperson in this behalf. 5
- (2) Any two Members may require the Chairperson to convene a meeting of the Board at any time and the Chairperson shall convene the meeting of the Board accordingly: Provided that if the Chairperson is not available, any two Members may require the Secretary to convene the meeting of the Board.
- (3) Meetings of the Board shall be held at such times and places in India as may be specified in the notice convening the meeting. 10
- (4) The meetings of the Board Commission shall ordinarily be held at its head office situated in New Delhi: Provided that the Board may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Board, it is expedient to do so. 15
- (5) The Chairperson, or if he is unable to attend the meeting of the Board for any reason, any other Member chosen by the Members present at the meeting shall preside over the meeting.
- (6) The Board shall endeavour to promote use of information technology in proceedings of the Board. 20
10. (1) The Board shall take decisions on the following matters and preferably in its meetings: Board Matters.
- (a) Regulations under section 196(1);
- (b) Accounts and audit under section 223;
- (c) Budget under section 228; 25
- (d) Annual Report under section 229;
- (e) Delegation of Powers under section 230;
- (f) Evaluation of the performance of the Board of the IBBI;
- (g) Operations Manuals for various activities;
- (h) Timelines for disposal of various activities by IBBI and the Board; and 30
- (i) Any other as may be required under the law.
11. (1) Not less than seven days notice shall ordinarily be given of each meeting of the Board and such notice along with agenda papers shall be sent to every Member seven working days in advance at his usual address in India or by mail, as furnished by him to the Board: Provided that if an emergency meeting of the Board is required to be convened, ten days notice may not be required. However, sufficient notice shall be given to the Member to enable him to attend the meeting: Provided further that a resolution may be passed or a decision taken by circulation of an agenda to the Members. Notice. 35
- (2) No business other than that for which the meeting was convened shall be discussed at a meeting of the Board, except with the consent of the Chairperson or the Member presiding at the meeting and a majority of the Members present. 40

12. (1) Five Members of the Board shall constitute the Quorum for the transaction of business at a meeting of the Board. Quorum.
- (2) All questions which come up before any meeting of the Board shall be decided by a majority vote of the Members present and voting and in the event of any equality of votes, the Chairperson, or in his absence, the Member presiding, shall have a second or casting vote. Leave of absence.
13. The Board may grant leave of absence to a Member not present in the meeting and such leave of absence shall be recorded in the minutes of the meeting. Minutes of the meeting.
14. (1) The Board shall cause the minutes of all the proceedings to be maintained in the books kept for the purpose which may be in the form of binders containing loose leaves, duly numbered.
- (2) A copy of the proceedings of each meeting of the Board shall be circulated as soon as possible for confirmation by the Members. The confirmed minutes shall be signed by the Chairperson or the Member presiding at the succeeding meeting, and taken on record thereafter.
- (3) The Board shall publish the agenda and decisions of every meeting on its web site within ... weeks of the meeting, save those which are not be disclosed under the RTI Act, 2005.
15. Every Member, who is directly or indirectly concerned or interested in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible, after the 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 and the Member shall not take any part in any deliberation or decision of the Board with respect to that matter. Explanation: The expression directly or indirectly referred to in this regulation shall include any concern or interest of a Member either by himself or through his relatives within the meaning of definition of section 2(77) of the Companies Act, 2013 or by reason of being a partner, director of that concern. Member not to participate in meetings in certain cases.
16. (1) A Member, as soon as may be, inform the Board if he becomes subject to any of the disqualifications specified in section 190 of the Act. Obligation of a Member to give information of disqualification.
- (2) The Board shall inform the Central Government, if it comes to the notice of the Board that any Member has attracted the disqualifications referred to in sub-regulation (1).
17. (1) Every Member, before entering upon his duties, shall sign a declaration of fidelity and secrecy in the form set out in the Schedule pledging himself to observe strict secrecy in relation to all transactions of the Board and all matters relating thereto and shall by declaration pledge himself not to reveal any of the matters/information which may come to his knowledge in the discharge of his duties except when required or authorised to do so by the Board or by Law. Declaration of fidelity.
- (2) Every Member, before joining upon his duties, shall sign a Code of Conduct conforming his allegiance to the highest standards of ethics and integrity.

18. (1) Chairperson shall nominate any officer of the Board not below the rank of ... as Secretary to keep custody of common seal, register of attendance of the meetings, minutes book, and other documents/records etc. pertaining to the meetings of the Board. Officer for keeping custody of the minutes book, common seal etc..
- (2) The Secretary shall arrange meetings, record minutes and generally ensure that these regulations are followed. 5
19. (1) Any contract which, if made between private persons would by law be required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Board in writing signed by any Member, officer of the Board or any other person acting under its authority, express or implied and may in the same manner be varied or discharged. Manner and form in which contracts may be executed. 10
- (2) Any document connected with any contract may be signed and verified on behalf of the Board by any officer authorised by Chairperson to sign such document for and on behalf of the Board.
- (3) All contracts made according to the provisions of this regulation shall be valid and binding on the Board. 15
20. (1) The Chairperson, the whole time Members, or any officer as may be nominated by the Chairperson by designation or otherwise are hereby severally authorised for and on behalf of the Board to endorse and transfer negotiable instruments, stock-receipts, stock, debentures, shares, securities, and documents of title to movable and immovable properties standing in the name of or held by the Board, and to draw, accept and endorse bills of exchange and other instruments in the current and authorised business of the Board and to sign all other accounts, receipts and documents connected with such business. Accounts and documents by whom to be signed. 20
- (2) Plaints, written statements, complaints, affidavits, petitions and all other documents connected with legal proceedings may be signed and verified on behalf of the Board by any officer authorised by the Chairperson to sign such documents for and on behalf of the Board. 25
21. The Common Seal of the Board shall not be affixed to any instrument except in pursuance of a resolution of the Board and in the presence of at least one Member who shall sign on such instrument in token of his presence and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Affixation of Common Seal. 30
22. In a situation not provided for in these regulations, the Board may, for reasons to be recorded in writing, determine the procedure in a particular case. Power to regulate procedure in certain circumstances. 35
23. No act or proceedings of the Board shall be invalid merely by reason of any irregularity in the procedure of the Board not affecting the merits of the case. Effect of any irregularity of procedure. 35

## **Schedule - Insolvency and Bankruptcy Board of India (Procedure for Board Meetings) Regulations, 2017**

See regulation 11 (1)

### **DECLARATION OF FIDELITY AND SECRECY**

5 I ( ), do hereby solemnly and sincerely declare that I will faithfully, truly and to the best of my skill and ability, execute and perform the duties required of me as a Member of the Board and which properly relate to the office or position held by me in, or in relation to, the said Board.

10 I further declare that I shall not communicate, or allow to be communicated, to any person not legally entitled thereto, any information relating to the affairs of the Insolvency and Bankruptcy Board of India, or to the affairs of any person having any dealings with the said Board, nor shall I allow any such person to inspect or to have access to any books or documents belonging to or in the possession of the said Board and relating to the business of the said Board or the business of any person having any dealing with the  
15 said Board.

Date

Place

(Signature)

Signed before me

20 (Before Honble Minister in case of Chairperson / before Chairperson in case of any other member)

## Schedule - Code on conflict of interests for Members of the Board

### See regulation 11 (2)

This Code has been adopted by the Board in its meeting held on (), to ensure that it conducts in a manner that does not compromise its ability to accomplish its mandate or undermine the public confidence in the ability of Member(s) to discharge his responsibilities. 5

24. In this Code, unless the context otherwise requires,-

- (i) "family" means spouse and dependant children below 18 years of age;
- (ii) "conflict of interests" means any personal interest or association of a Member, which is likely to influence the decision of the Board in a matter, as viewed by an independent third party; 10
- (iii) "Member" means a Member of the Board and includes Chairman of the Board;
- (iv) "regulated entity" means a IP, IPA or IU;
- (v) "WTM" means a Whole Time Member of the Board and includes the Chairperson of the Board; 15

Words and expressions used and not defined in this Code but defined in the Code shall have the meanings respectively assigned to them in those laws.

25. This Code shall be in addition to the provisions of section 193 of the Code, 2016; Rule..of the IBBI (Terms and Conditions of Service of Chairperson and Members) Rules, 2016, and Regulations ..the IBBI (Procedure for Board Meetings) Regulations, 2016. 20

26. (1) A Member shall take all steps necessary to ensure that any conflict of interests to which he may be subject to does not affect any decision of the Board.

(2) A Member shall disclose his interests which may conflict with his duties. 25

(3) A Member shall not exploit to his personal advantage, any personal or professional relationship with regulated entities or any employee of such entities.

27. (1) A WTM shall not hold any other office of profit.

(2) A WTM shall not engage in any other professional activity, which entails receipt of salary or professional fees. 30

28. (1) A Member, who is directly or indirectly interested in any matter coming up for consideration at a meeting of the Board, shall disclose the nature of his interest at such meeting. 35

(2) A Member shall not take part in any deliberation or discussion of the Board with respect to such matter except to the extent of professional advice if sought by the Board.

29. No Member shall hear or decide any matter where he has a conflict of interest. Members not to hear or decide in certain cases.

Definitions.

Code in addition to other provisions.

General principles.

Outside or private activities.

Conflict in respect of agenda.

Members not to hear or decide in certain cases.

30. A Member shall disclose if he or his family has any dispute in respect of product or services availed from a regulated entity. Availing services of regulated entities.
31. (1) A WTM shall not accept any gift by whatever name called, to the extent possible, from a regulated entity. Acceptance of gifts.
- 5 (2) A WTM shall hand over the gift, if he receives any and the value exceeds Rs. 1000/-, to the General Services Department of the IBBI.
32. A Member shall disclose the following: Other disclosures.
- (a) any post, other employment or fiduciary position which a Member holds, or has held in the past 5 years in connection with any regulated entity;
- 10 (b) any other significant relationship, including a professional, personal, financial or family relationship held in connection with a regulated entity;
- (c) any honorary position, by whatever name called, in any organisation.
33. (1) A Member shall disclose a conflict of interests at the earliest possible opportunity. Procedure for managing the conflict.
- 15 (2) A Member shall seek determination from the Chairperson if he has a doubt whether there is a conflict of interests or not.
- (3) Chairperson shall seek determination from the Board if he has a doubt whether there is a conflict of interests or not.
- 20 (4) If the Chairperson or the Board, as the case may be, determines that there is a conflict of interests, the Member or Chairperson shall refrain from dealing with the particular matter.
- (5) The man or the Board, as the case may be, shall assign that matter to another Member or a Committee of Members.
34. (1) Any person, who has reasonable ground to believe that a Member has an interest in a particular matter, may bring the same with material evidence to the notice of Secretary to Board. Procedure for public to raise conflict of interests.
- 25 (2) The Secretary to the Board shall place the details received under sub-clause before Chairperson case of a Member and before the Board in case of Chairperson
- 30 (3) The Chairperson or the Board, as the case may be, shall determine if the Member or Chairperson has an interest which is likely to affect the decision by him.
- (4) The Member or the Chairperson, as the case may be, shall refrain from dealing with that particular matter if the Chairperson or the Board determines that there is a conflict of interests.
- 35 (5) The Chairperson or the Board, as the case may be, shall assign that matter to another Member or a Committee of Members.
35. (1) The information as disclosed under this Code shall be kept confidential and shall not be disclosed save in the following circumstances where there is: Maintenance of disclosures.

- (a) a requirement for disclosure for the purposes of managing potential or actual conflicts;
  - (b) a requirement for disclosure following the change of responsibilities of a Member;
  - (c) a requirement for the purposes of disciplinary proceedings; 5
  - (d) any legal or regulatory obligation to disclose the information.
- (2) The disclosures by a Member may be scrutinized under the authority of the Chairperson with due regard to Members' areas of responsibility.
- (3) The disclosures by Chairperson may be scrutinized under the authority of the Board with due regard to Chairperson's responsibility. 10
- (4) The Secretary nominated under Regulation of... the IBBI (Procedure for Board Meetings) Regulations, 2016 shall keep and maintain custody of documents / records etc. pertaining to any disclosure made by Members under this Code.



## *Appendix II: Cost estimates, FY 2016-2018*

The *IBC* proposes to bring about a significant change to the landscape of insolvency and bankruptcy resolution in India. Since the volume of work for the IBBI will be a function of the case volume, at this point, estimating the manpower requirement for the IBBI poses a challenge. However, some estimates are needed to anticipate the set-up and initial costs for IBBI, including on manpower, so that this can become part of funding plan for the oversight Ministry of the IBBI.

### *Staffing requirement and cost, FY 2016-2018*

Keeping this in mind, a high level estimate of manpower and related costs has been made. This estimate is based on the assumption that all core and support functions will be staffed and will be able to start performing their functions by mid-2017. In this period, wherever possible, recruitment has been envisaged at mid-senior to junior level staff. By end of 2017 or early 2018, as greater clarity emerges on the IBBI's work volume, this manpower plan may be revised.

*Human resource requirement* Based on the above assumptions, an initial estimate of the manpower requirement for IBBI, by department and by level, for FY 2016-2017 and FY 2017-2018 is given in Table 5. It shows that by March 2017, IBBI will have an employee strength of 41, in addition to the Chairperson and three whole time members (WTM). This will increase to 88 by March 2018.

*Wage estimates for FY 2016-2017 and FY 2017-2018* Table 6 provides an estimate of the HR cost for IBBI based on the staffing requirement in Table 5. It has two main components:

- employee remuneration using CTC estimated from Table 3, and
- cost of hiring and on-boarding these employees taken at 50% of the CTC per employee per month. This is estimated as a one time expense associated with each new hire and includes hiring cost and initial training expense.

Table 5: Estimated manpower requirement for the IBBI for FY 2016-2017 and FY 2017-2018

FY 2016-2017								FY 2017-18							
A	B	C	D	E	F	G	Total	A	B	C	D	E	F	G	Total
Research and regulation															
-	-	1	-	2	1	1	5	-	-	2	-	4	3	2	11
Licensing, monitoring and investigations															
-	1	2	-	1	1	2	7	-	1	2	2	4	4	7	20
Adjudication															
-	-	-	-	-	1	-	1	-	-	-	-	-	2	2	4
Statistics and knowledge partnerships															
-	-	-	1	1	4	2	8	-	-	-	2	1	8	-	11
Interfaces															
-	1	-	-	2	-	1	4	-	1	-	-	4	-	2	7
Strategy and services															
-	1	1	2	2	4	4	14	-	1	1	5	7	8	8	30
Secretariat of the Board															
-	-	-	-	1	-	1	2	-	1	-	-	2	-	2	5
Total for IBBI															
A	B	C	D	E	F	G	Total	A	B	C	D	E	F	G	Total
-	3	4	3	9	11	11	41	-	4	5	9	22	25	23	88

Rs. in lakhs	FY 2016-2017	FY 2017-2018
Employee remuneration	314	1,743
Hiring and on-boarding	35	35
Total manpower cost	349	1,778

Table 6: IBBI manpower cost estimate 2016-2018

*Estimates of knowledge partnerships* An additional element of human resources that is not accounted for in staffing explicitly at the IBBI are the knowledge partners with whom the Department of *Statistics and Knowledge Partnerships* will sign Memorandums of Association (MoA).

Each of these will be an element in the capital expenditure of the IBBI. If we assume that the knowledge partners will be identified within FY 2016-2017 and each of these MoA will require Rs.20 million a year, this raises the human resource cost at IBBI from Rs.34.9 million to Rs.64.9 million in FY 2016-2017, and from Rs.177.8 million to Rs.183.6 million in FY 2017-2018.

### *Office infrastructure cost*

A significant element of the infrastructure required by the IBBI is the office space. In this section, we estimate the office space re-

quirement for the IBBI for FY 2016-17 and FY 2017-18, as well as the associated cost to be incurred.

Office space requirement is estimated as having two parts:

1. linked to number of personnel, in house and on contract, and
2. common amenities

For FY 2016-2017, a project office of around 5,000 sq ft. will be taken. This space is estimated to be taken up for 5 months in FY 2016-2017 and for 3 months in FY 2017-2018, by which time the IBBI with staffing of FY 2017-2018 will be ready to take possession of the larger space required.

Table 7 provides the estimate of personnel linked office space requirement. It has been computed basis the manpower estimates for FY 2017-2018. Table 8 provides details of the space requirement for common amenities.

Based on these estimates IBBI requires approximately, 15,000 sq. ft. of space by FY 2017-2018. For deciding the location in which to procure this space, factors such as cost, ready availability, possibility of expansion, connectivity to public transport systems and commute time for personnel should be taken into consideration. Locations such as Gurugram, Noida and Dwarka may be evaluated. These have rental rates ranging from Rs. 40-75 per sq. ft. and have ready supply of plug and play office space. They also provide easier access and lower commute times to personnel due to the availability of reasonably priced residential spaces nearby. In comparison, in areas such as Barakhambha Road, KG Marg and other nearby locations, rental rates range from Rs. 165-200 per sq. ft., there is limited supply of office space and a lack of residential options for personnel.

Table 9 gives an estimate of the cost associated with this space requirement.

Level	Designation	Space (sq. ft. per person)	Persons	Total (sq. ft.)
SA-SB	Secretarial staff	60	10	600
A	Assistant Manager	60	23	1,380
B	Deputy Manager	60	25	1,500
C	Manager	100	22	2,200
D	Deputy General Manager	100	9	900
E	General Manager	200	5	1000
F	Chief General Manager	200	4	800
G	Executive Director	300	-	-
WTM	Board	400	3	1,200
Chairperson	Board	500	1	500
Total		102	99	10,080

Table 7: Space requirement for personnel

Category	Per unit space (sq. ft.)	Units (no.)	Total space (sq. ft.)
Reception	350	1	350
Board room	450	1	450
Large meeting room	300	1	300
Small meeting room	120	3	360
Cafeteria	800	1	800
Library	800	1	800
IT/Server room	2	150	300
Washrooms	8	40	320
<b>Total</b>			<b>3,680</b>
<b>Common space (12% of total space)</b>			<b>1,423</b>

Table 8: Space requirement for common amenities

	(per month)		Months (No.)	Total cost (Rs. lakhs)
	Rate (Rs.)	Cost (Rs. lakhs)		
<b>For FY 2016-2017</b>				
Commercial property rent <sup>1</sup>	130	6.5	5	32.4
<b>Total for FY 2017-2018</b>				<b>32.4</b>
<b>For FY 2017-2018</b>				
Commercial property rent <sup>1</sup>	130	6.5	3	19.4
Commercial property rent <sup>2</sup>	75	11.3	9	101.7
Maintenance cost <sup>3</sup>	15	2.3	9	20.7
Depreciation <sup>4</sup>	49	7.4	9	66.6
<b>Total for FY 2017-2018</b>				<b>207.1</b>

Table 9: Cost estimates for office space 2016 - 2018

<sup>1</sup> Rental for temporary office. 5,000 sq. ft. at Rs. 130 per sq. ft. per month

<sup>2</sup> For 15,000 sq. ft. permanent office space in Gurugram at Rs. 75 per sq. ft. per month

<sup>3</sup> Includes maintenance and electricity

<sup>4</sup> For furniture and fixtures fit out cost. Taken at USD 42/sq. ft. capital cost. Depreciated over five years.

### Capital expenditure

Initial capital expenditure requirement for FY 2016-2017 will arise out of two sources:

1. For office furniture and fixture and initial set-up costs. This is estimated to be Rs. 4.4 cr (for a 15,000 sq. ft. office space at Rs. 2,900 per sq. ft.), to be depreciated over a five year period.
2. For people related IT expenditure, such as computers, LAN, software licenses. This is estimated at Rs.11 million (at Rs.100,000 per personnel for 110 personnel), to be depreciated over a period of 4 years.

Capital expenditure in FY 2017-2018 will mainly be on account of IT systems implementation. These may include:

- a system to enable automation of IBBI process work-flows.

This will seek to automate the licensing, monitoring, investigation and complaint handling work-flow as well IBBI's internal processes such as accounting, approvals based on delegation of powers, recruitment process, and procurement process.

- a document management system to ensure that the regulator runs a paperless office. This system will be integrated with the process automation system.
- a database management system for collection, storage and retrieval of insolvency case database, IP database and any other database that the regulator needs to maintain.
- an analytics layer on top of its process automation and database management layer.



*Appendix III: Draft rules for salaries and allowances of board members of IBBI*

# The Insolvency and Bankruptcy Board of India (Salaries and Allowances for Chairperson and Members) Rules, 2016

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## ARRANGEMENT OF CLAUSES

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### CLAUSES

#### CHAPTER 1 PRELIMINARY

1. Short title, application and commencement.
2. Definitions.
3. Terms and conditions of service of Chairperson and members.
4. Pay.
5. Dearness Allowance.
6. Entertainment Allowance.
7. Leave.
8. Leave Sanctioning Authority.
9. Provident Fund.
10. Travelling Allowance.
11. Leave Travel Concession.
12. Accommodation.
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14. Bonus.
15. Sitting Fees and Board's Meetings.
16. Encashment of Leave.
17. Facilities for medical treatment.
18. Residuary Provisions.
19. Terms and Conditions of Services of Part-time Members.
20. Fee and Allowances of Part-time Members.
21. Power to Relax.

**The Insolvency and Bankruptcy Board of India (Salaries and Allowances for Chairperson and Members) Rules, 2016**

**A**

**BILL**

BE it enacted by Parliament in the Year of the Republic of India as follows:—

CHAPTER 1  
PRELIMINARY

G.S.R. (E).- In exercise of the powers conferred in clause (zd) of the sub-section (2) of section 239 read with sub section (5) of section 189 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following rules, namely:-

1. (1) These rules shall be called the Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016. Short title, application and commencement.
- 10 (2) They shall come into force on the date of publication of this notification in the Official Gazette.
2. (1) In these rules, unless the context requires otherwise: Definitions.
  - (a) "Code" means the Insolvency and Bankruptcy Code, 2016;
  - 15 (b) "Board" means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 3 of the Code;
  - (c) "Chairperson" means the Chairperson of the Board appointed under clause (a) of sub-section (1) of section 189 of the Code;
  - (d) "whole-time member" means the member of the Board appointed under clause (d) of sub-section (1) of section 189 of the Code;
- 20 (2) Words and expressions used in these rules and not defined, but defined in the Code shall have the meanings respectively assigned to them in the Code.
3. (1) The Chairperson and the whole-time member shall be persons who do not have any financial or other interests as are likely to prejudicially affect their functions as such Chairperson or member. Terms and conditions of service of Chairperson and members.
- 25 (2) The Chairperson and whole-time member appointed to fill up a causal vacancy shall hold office for the remaining period of the term of the Chairperson or, as the case may be, whole-time member in whose place he is appointed.
- (3) The Chairperson and whole-time member shall not accept any employment before the expiry of a period of one year from the date of demitting the office in the Board, except with the previous sanction of the Central Government. Pay.
- 30 4. (1) The Chairperson shall have an option to receive pay as admissible to a Secretary to the Government of India or a consolidated salary of Rs 4,50,000 per month.
- 35 (2) Every whole-time member shall have an option to receive pay as admissible to an Additional Secretary to the Government of India or a consolidated salary of Rs 3,75,000 per month.
- 40 (3) In the case of an appointment of a person as the Chairperson or a whole-time member, he shall have an option to receive pay as admissible to a Secretary or Additional Secretary to the Government of India respectively, who has retired from service under the Central Government or the State Government and who is in receipt of, or has received, or has become entitled to receive any retirement benefits by way of pension, gratuity, employer contribution to the

- Contributory Provident Fund or other Funds or retirement benefits. The pay and allowances of such Chairperson or member, as the case may be, shall be reduced by gross amount of pension and pension equivalent of gratuity or employer contribution to the Contributory Provident Fund or any other form of retirement benefits, if any, drawn or to be drawn by him. 5
5. The Chairperson and a whole-time member who has opted for a pay as admissible to a Secretary or an Additional Secretary to the Government of India respectively shall receive dearness allowance at the rates admissible to a Group Officer of the Central Government of equivalent rank. Dearness Allowance.
6. The Chairperson and a whole-time member shall be entitled to entertainment allowance subject to a maximum of Rs.6,000 per annum. Entertainment Allowance.
7. The Chairperson and a whole-time member shall be entitled to a leave as follows:- Leave.
- (1) Earned Leave at the rate of thirty days for every completed calendar year of service: 15  
 Provided that the leave account shall be credited with earned leave in advance in two installments of fifteen days each from the first day of January and first day of July of every calendar year:  
 Provided further that the earned leave at the credit at the close of previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus credited for half year does not exceed three hundred days. 20
- (2) Half Pay Leave on medical certificate or on private affairs at the rate of twenty days in respect of each completed year of service to be credited in advance in two installments of ten days each on first day of January and first day of July of every calendar year, and leave salary for half pay leave shall be equivalent to half of the leave salary admissible during the earned leave; 25
- (3) Leave on Half Pay may be commuted to full pay leave at the discretion of the Chairperson or a whole-time member, if it is taken on medical grounds and is supported by a Medical Certificate by a competent medical authority;
- (4) Causal Leave at the rate of eight days in a calendar year; 30
- (5) Restricted holidays at the rate of two days in a calendar year availing to their choice;
- (6) Extra - ordinary leave without pay and allowances up to a maximum period of one hundred and eighty days in one term of office; and
- (7) Extra-ordinary leave without pay and allowances in a calendar year out of the holidays notified by the Central Government. 35
8. The Chairperson shall be the authority competent to sanction leave to a whole-time member and the President of India shall be the authority competent to sanction leave to the Chairperson. Leave Sanctioning Authority.
9. The Chairperson and a whole-time member shall be entitled to subscribe to the Contributory Pension Fund. Provident Fund. 40

10. (1) The Chairperson, while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with the Board proceeds to his home town) shall be entitled to the travelling allowances, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rate as are prescribed for a Secretary to the Government of India. Travelling Allowance.
- 5
- (2) A whole-time member while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with the Board proceeds to his home town) shall be entitled to the travelling allowances, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are prescribed for Group A officer of equivalent rank of the Central Government. Leave Travel Concession.
- 10
11. (1) The Chairperson shall be entitled to Leave Travel Concession at the same rates and at the same scales as are applicable to a Secretary to the Government of India. Leave Travel Concession.
- 15
- (2) A whole-time member shall be entitled to Leave Travel Concession at the same rates and at the same scales as are applicable to a Group officer of the equivalent rank of the Central Government.
- (3) Other conditions relating to Leave Travel Concession shall be governed by the rules relating to Group A officers of the same rank of the Central Government. Accommodation.
- 20
12. (1) The Chairperson and a whole-time member shall be entitled to rent free unfurnished house and the Board shall approve the type of accommodation, purchase price or rent of the house to be used for residence by the Chairperson or a whole-time member. Accommodation.
- 25
- (2) Charges for water, electricity and fuel consumed in the house shall be borne by the occupant of the house.
- (3) Where the Chairperson or a whole-time member occupies his own accommodation or makes private arrangements, he shall be entitled to a compensation comprising of ten per cent of his Basic Pay and House Rent Allowance as admissible to a Group A officer of the Government of India. Conveyance.
- 30
- (4) Nothing in this rule shall apply to the Chairperson and a whole-time member who has opted a consolidated salary of Rs. 4,50,000/- per month or 3,75,000/- respectively.
- 35
13. (1) The Chairperson and a whole-time member shall be entitled to a staff car of the Board for official purpose. Conveyance.
- (2) No passenger vehicle shall be purchased by the Board and requirement of vehicles shall be met by hiring.
- (3) Nothing in this rule shall apply to the Chairperson and a whole-time member who has opted a consolidated salary of Rs. 4,50,000/- per month or 3,75,000/- respectively. Conveyance.
- 40
14. The Chairperson and a whole-time member shall not be entitled to any bonus. Bonus.

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| 15. | The Chairperson and a whole time member shall not be entitled to any sitting fees for attending meetings of the Board.   | Sitting Fees and Board's Meetings.   |
| 16. | The Chairperson or a whole time member shall be entitled to the encashment of leave in accordance with the rules applicable to Group A officers of the Central Government, subject to a maximum encashment of three hundred days, including the leave encashed before superannuation.  | Encashment of Leave.<br>5  |
| 17. | The Chairperson and a whole-time member shall be covered under the Health Scheme as may be prescribed by the Central Government.   | Facilities for medical treatment.  |
| 18. | Matters relating to the conditions of service of the Chairperson and a whole-time member with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision, and the decision of the Central Government thereon shall be final.   | Residuary Provisions.<br>10  |
| 19. | (1) A part-time member shall be a person who shall not have any such financial or other interest as is likely to affect prejudicially his functions as a part-time member.<br><br>(2) Every part -time member shall hold office for such period, not exceeding three years, as may be specified in the order of his appointment, but shall be eligible for reappointment.<br><br>(3) A part-time member appointed to fill up a casual vacancy, shall hold office for the remaining period of the term of whole -time or part-time member in whose place he is appointed. | Terms and Conditions of Services of Part-time Members.<br>15<br><br><br><br><br>20 |
| 20. | (1) A part-time member shall be entitled to receive remuneration by way of a fee of rupees one thousand only for each meeting of the Board attended by him.<br><br>(2) A part-time member while on tour (including the journey undertaken to attend a meeting of the Board) shall also be entitled to travelling allowance and daily allowances at the same rates and scale as are applicable to an Additional Secretary to the Government of India.   | Fee and Allowances of Part-time Members.<br><br>25                                 |
| 21. | The Central Government shall have power to relax the provisions of any of these rules with respect to any class or category of person.   | Power to Relax.  |