

## **Insolvency and Bankruptcy Board of India**

### **Sub: Regulations relating to Governing Board Meetings under Section 192(1)**

Section 192(1) of the Code reads as under:

*“(1) The Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be determined by regulations.”*

2. Section 240 of the Code empowers the Board to make regulations consistent with the Code and the rules made thereunder, to carry out the provisions of the Code.

3. In accordance with the aforesaid provisions, draft regulations relating to Governing Board Meetings were proposed for consideration by the Governing Board in its 1<sup>st</sup> meeting held on 7<sup>th</sup> October, 2016. The Governing Board considered the draft and suggested a few changes therein. It, however, advised that the regulations after incorporating the changes and legal vetting may be placed again before the Governing Board.

4. The suggestions have been incorporated. The Report (Chapter 4 of the draft IBBI (Process) Regulations, 2016 appended to the Report) of the Working Group has also been considered. Though a formal legal vetting has not been done, care has been taken to ensure that they meet the legal requirements.

5. Accordingly, draft regulations are proposed as at Annexure for consideration and approval of the Governing Board.

DRAFT

**Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings)  
Regulations, 2017**

In exercise of the powers conferred by section 192(1) read with section 240 of the Insolvency and Bankruptcy Board of India Code, 2016, the Insolvency and Bankruptcy Board of India hereby makes the following regulations, namely:—

**Chapter I**  
**Preliminary**

**1. Short title and commencement.**

- (1) These regulations may be called Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2016.
- (2) These regulations shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.**

- (1) In these regulations, unless the context otherwise requires:—
  - (a) “Board” means the Insolvency and Bankruptcy Board of India established under section 188(1) of the Code;
  - (b) “Chairperson” means the Chairperson of the Board;
  - (c) “Code” means the Insolvency and Bankruptcy Board of India Code, 2016;
  - (d) “Governing Board” means the Board of Members constituted under section 189(1) of the Code;
  - (e) “Member” means a Member of the Board and includes the Chairperson, Whole-Time Member and Part-Time Member;
  - (f) “Schedule” means schedule attached to these regulations;
  - (g) “Secretary” means Secretary to the Governing Board designated under regulation 9(1) of these Regulations.
- (2) Words and expressions used and not defined in these regulations but defined in the Code shall have the meanings respectively assigned to them in the Code.

**Chapter II**  
**Businesses**

**3. Governing Board Businesses.**

- (1) The Governing Board shall transact the following businesses:-
  - (i) Regulations to be made under section 240;
  - (ii) Annual Accounts and Audit under section 223;
  - (iii) Annual Budget under section 228;
  - (iv) Annual Report under section 229;
  - (v) Delegation of Powers under section 230;
  - (vi) Operations Manuals for various activities;

- (vii) Timelines for Disposal of various activities;
- (viii) Expenditures above Rs.5 crore;
- (ix) Location of Office Premises;
- (x) Number and categories of employees and their compensation;
- (xi) Accommodation for Chairperson and Whole Time Members under Rule 12 of the IBBI (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016;
- (xii) Any other as may be specifically required by the Governing Board from time to time;
- (xiii) Any other as may be brought before the Governing Board from time to time; and
- (xiv) Any other as may be required under any law for the time being in force.

(2) The business shall be transacted, as far as possible, in meetings of the Governing Board: **Provided** that wherever considered necessary, a business may be transacted by a resolution passed by circulation of an agenda to the Members: **Provided further** that a resolution passed through circulation of the agenda to the Members shall be placed before the next meeting of the Governing Board for ratification.

### **Chapter III** **Meetings**

#### **4. Convening of Meetings.**

- (1) There shall be at least four meetings of the Governing Board in a year and at least one meeting in each quarter.
- (2) The Chairperson or in his absence, any other Member nominated by the Chairperson in this behalf, may convene the meetings of the Governing Board.
- (3) Any three Members may require the Chairperson to convene a meeting of the Governing Board at any time and the Chairperson shall convene the meeting of the Governing Board accordingly:  
**Provided** that if the Chairperson is not available, any three Members may require the Secretary to convene the meeting of the Governing Board.
- (4) The meetings of the Governing Board shall be held at such times and places in India as may be specified in the notice convening the meeting.
- (5) The meetings of the Governing Board shall ordinarily be held at its head office:  
**Provided** that the Governing Board may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Governing Board, it is expedient to do so.
- (6) The Chairperson or if he is unable to attend the meeting of the Governing Board, for any reason, any other Member chosen by the Members present at the meeting, shall preside over the meeting.
- (7) The Governing Board shall endeavour to promote use of information technology in meetings of the Governing Board.

#### **5. Notice.**

- (1) Not less than seven days' notice shall ordinarily be given of each meeting of the Governing Board and such notice along with agenda papers shall be sent to every Member ordinarily seven working days in advance at his usual address in India or by e-mail, as furnished by him to the Board:

**Provided** that if an urgent meeting of the Governing Board is required to be convened, seven days' notice may be dispensed with by the Chairperson. However, sufficient notice shall be given to the Member to enable him to attend the meeting.

- (2) No business other than that for which the meeting has been convened shall be transacted at a meeting of the Governing Board, except with the permission of the Chairperson.

#### **6. Quorum.**

- (1) Five Members, if the Governing Board has eight or more Members, and three Members, if the Governing Board has less than eight Members, shall constitute the quorum for the transaction of business at a meeting of the Governing Board.
- (2) All businesses which come up before any meeting of the Governing Board shall be decided by a majority vote of the Members present and voting and in the event of an equality of votes, the Chairperson, or in his absence, the Member presiding, shall have a second or casting vote.

#### **7. Leave of absence.**

The Governing 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.

#### **8. Minutes of the meeting.**

- (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 draft minutes of the proceedings of each meeting of the Governing Board shall be circulated as soon as possible for confirmation by the Members.
- (3) The confirmed minutes shall be signed by the Chairperson or the Member presiding at the succeeding meeting, and taken on record thereafter.

#### **9. Secretary.**

- (1) The Chairperson shall nominate an officer of the Board not below the rank of General Manager as Secretary to the Governing Board to keep custody of common seal, register of attendance of the meetings, agenda, minutes book, and other documents/records etc. pertaining to the meetings of the Governing Board and of Committees thereof.
- (2) The Secretary shall arrange meetings, record minutes and generally ensure that these regulations are followed.

### **Chapter IV** **Charter of Conduct**

#### **10. Member not to participate in meetings in certain cases.**

Every Member, who is directly or indirectly concerned or interested in any business coming up for consideration at a meeting of the Governing 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 Governing Board and

the Member shall not take part in any deliberation or decision of the Governing Board with respect to that business.

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 or director of that concern.

#### **11. Obligation of a Member to give information of disqualification.**

- (1) A Member shall, as soon as possible, inform the Board if he becomes subject to any of the disqualifications specified in section 190 of the Code.
- (2) The Board shall inform the Central Government, if it comes to the notice of the Board that any Member has attracted any of the disqualifications referred to in sub-regulation (1).

#### **12. Declaration of fidelity.**

- (1) The Chairperson and every Whole Time Member, before entering upon his duties, shall take an Oath of Office and Secrecy, in the format given at Schedule I.
- (2) Every Member, before joining upon his duties, shall sign a Charter of Conduct confirming his allegiance to the highest standards of ethics and integrity, in the format given at Schedule II.

### **Chapter V** **Contracts**

#### **13. Manner and form in which contracts may be executed.**

- (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 a 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.
- (2) Any document connected with any contract may be signed and verified on behalf of the Board by any Officer authorised by the 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.

#### **14. Accounts and documents by whom to be signed.**

- (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.
- (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.

**15. Affixation of Common Seal.**

The Common Seal of the Board shall not be affixed to any instrument except in pursuance of a resolution of the Governing 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 the executor.

**Chapter VI**  
**Miscellaneous**

**16. Power to regulate procedure in certain circumstances.**

In a situation not provided for in these Regulations, the Governing Board may, for reasons to be recorded in writing, determine the procedure in a particular case.

**17. Effect of any irregularity of procedure.**

No act or proceedings of the Governing Board shall be invalid merely by reason of any irregularity in the procedure of the Governing Board not affecting the merits of the case.

**18. Meetings of Committees.**

- (1) Subject to sub-regulation (2), these regulations shall apply mutatis mutandis to the meetings of Committees of the Governing Board.
- (2) 50 percent of Members of the existing strength of the Committee shall constitute quorum for meetings of the Committee.

**19. Relaxation.**

The Governing Board may relax any of these regulations in case of exigencies warranting such relaxation.

\*\*\*\*\*

**Schedule I**  
**[See regulation 12 (1)]**  
**Oath of Office and Secrecy**

I, ....., having been appointed as ..... of the Insolvency and Bankruptcy Board of India, do solemnly affirm that I will faithfully and conscientiously discharge my duties as ..... to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will.

I, ....., having been appointed as ..... of the Insolvency and Bankruptcy Board of India, do solemnly affirm that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my

consideration or shall become known to me as ..... except as may be required for the due discharge of my duties as .....

Date :

Place:

(Signature)

(Oath to be administered by Hon'ble Minister / Secretary to Ministry of Corporate Affairs in case of Chairperson and by Chairperson in case of any other Member)

**Schedule II**  
**[See regulation 12 (2)]**

**Charter of Conduct for Members of Board**

This Charter aims to ensure that the Board 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.

**Definitions.**

1. In this Charter, unless the context otherwise requires,-

- (i) "family" means spouse and dependent 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.
- (iii) "regulated entity" means an Insolvency Professional, an Insolvency Professional Entity, an Insolvency Professional Agency, or an Information Utility.
- (iv) "Whole Time Member" means a Whole Time Member of the Board and includes the Chairperson of the Board.

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

**Charter in addition to other provisions.**

3. This Charter is in addition to the provisions of section 193 of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India (Terms and Conditions of Service of Chairperson and Members) Rules, 2016, and the Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017.

**General principles.**

- 4. (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.
- (3) A Member shall not exploit to his personal advantage, any personal or professional relationship with regulated entities or any employee of such entities.

**Outside or private activities.**

- 5. (1) A Whole Time Member shall not hold any other office of profit.

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

**Conflict in respect of agenda.**

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

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

**Members not to hear or decide in certain cases.**

7. No Member shall hear or decide any matter where he has a conflict of interest.

**Availing services of regulated entities.**

8. A Member shall disclose if he or his family has any dispute in respect of product or services availed from a regulated entity.

**Acceptance of gifts.**

9. (1) A Whole Time Member shall not accept any gift by whatever name called, to the extent possible, from a regulated entity.

(2) A Whole Time Member shall hand over the gift, if he receives any and the value exceeds Rs.5000, to the IBBI.

**Other disclosures.**

10. A Member shall disclose the following:

- 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;
- b) any other significant relationship, including a professional, personal, financial or family relationship held in connection with a regulated entity.

**Procedure for managing the conflict.**

11. (1) A Member shall disclose a conflict of interests at the earliest possible opportunity.

(2) A Member shall seek determination from the Chairperson if he has a doubt whether there is a conflict of interests or not.

(3) The Chairperson shall seek determination from the Governing Board if he has a doubt whether there is a conflict of interests or not.

4) If the Chairperson or the Governing Board, as the case may be, determines that there is a conflict of interests, the Member or the Chairperson shall refrain from dealing with the particular matter.

(5) The Chairperson or the Governing Board, as the case may be, shall assign that matter to another Member or a Committee of Members.

**Procedure for public to raise conflict of interests.**

12. (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 the Secretary.

(2) The Secretary shall place the details received under sub-clause (1) before the Chairperson in case of a Member and before the Governing Board in case of Chairperson.

(3) The Chairperson or the Governing Board, as the case may be, shall determine if the Member or the 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 Governing Board determines that there is a conflict of interests.

(5) The Chairperson or the Governing Board, as the case may be, shall assign that matter to another Member or a Committee of Members.

**Maintenance of disclosures.**

13. (1) The information as disclosed under this Charter shall be kept confidential and shall not be disclosed.

(2) Notwithstanding the provisions in clause (1), the information may be disclosed only to the authorised persons in the following circumstances where there is:

- a. a requirement for disclosure for the purposes of managing potential or actual conflicts; or
- b. any legal or regulatory obligation to disclose the information.

(3) The disclosures by a Member may be scrutinized under the authority of the Chairperson with due regard to Members' areas of responsibility.

(4) The disclosures by Chairperson may be scrutinized under the authority of the Governing Board with due regard to Chairperson's responsibility.

(5) The Secretary shall keep and maintain custody of documents / records pertaining to any disclosure made by Members under this Charter.