

Insolvency and Bankruptcy Board of India

Subject: Amendment in the IBBI (Information Utilities) Regulations, 2017.

A discussion paper on “Strengthening the process of issuance of record of default by Information Utility” was circulated to the members of the Governing Board on 3rd May, 2024. After the in-principle approval from the Governing Board, the discussion paper (**Annexure A**) was uploaded on the website of the Board on 10th May, 2024 for seeking public comments in terms of regulation 4 of the IBBI (Mechanism for Issuing Regulations) Regulations, 2018. The last date for submission of public comments was 31st May, 2024.

2. In response to the stated discussion paper, a total of 28 public/stakeholders comments have been received for the proposals included in this Board note. The summary of views received along with the comments of the Division is enclosed at **Annexure B**. Accordingly, based on the public comments/suggestions and their analysis, following proposals are being put up for consideration and approval of the Governing Board:

3. Proposal 1: Providing sufficient time to the debtor to respond after delivery of the information of default by the IU.

3.1 Regulation 21 (2) (a) and 21 (2) (b) of the IBBI (Information Utilities) Regulations, 2017 (IU Regulations) provide that the IU shall deliver the information of default to the debtor seeking confirmation and remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, and allow three days each time for the debtor to respond. To prevent recalcitrant debtors from causing delays at the admission stage it is being considered to provide sufficient time to the CD or the debtor to respond to the financial information submitted concerning them. Further, it may be noted that there are a limited number of cases where debtors have actually authenticated the information of default. One reason for the same may be that a strict timeline is in place to respond to the delivery of information of default by the IU. Accordingly, it is proposed that sufficient time may be provided to the Debtor to respond after delivery of the information of default by the IU.

Proposal:

3.2 It is proposed that in order to provide a fair and reasonable opportunity to the debtor to respond, Regulation 21 (2) (a) and 21 (2) (b) of the IU Regulation may be amended to provide that IU shall allow sufficient time of seven days after delivery of information of default to the debtor. Further, IU shall continue to remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, by allowing seven days each time instead of three days for the debtor to respond.

Views of the Public:

3.3 The majority of the stakeholders have agreed with the proposal. However, one of the stakeholders submitted that proposal may weigh against a speedy resolution process as borrowers who would not intend to authenticate the information of default, despite the proposed timelines, would still not be incentivized to authenticate the information of default in a timely manner. Further two stakeholders have suggested that IU may allow a time of 5 working days after the delivery of information of default to the debtor for confirmation and further remind the debtor twice by allowing 3/4 working days each time seeking confirmation of information of default.

Submissions of the Division on the comments

3.4 The proposed amendment in the regulations provides for changes in timelines to provide sufficient/reasonable time to the debtor to respond after delivery of the information of default by the IU. This will help in preventing recalcitrant debtors from causing delays at the admission stage and ultimately help in time bound resolution of the CD.

3.5 In view of the above, the original proposal, as presented in the discussion paper, has been retained without changes.

4. Proposal 2: Delivery of information of default on debtor provided e-mail id for authentication in case of certain category of creditors.

4.1 It is essential that any record of default issued by IU should be acceptable to AA as sufficient evidence of the existence of debt and default. Hence, it is important to ensure that the process by which record of default is issued by IUs is robust, standardised, and rigorous.

4.2 As per the provision of the IU Regulations, IU needs to deliver the creditor provided information of debt and default to the debtor for the purpose of authentication of the same. For this purpose, IU needs to deliver the information of debt and default, to the e-mail address of the debtor (i) registered with the IU by the debtor, failing which, (ii) recorded with MCA 21¹ and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry, failing which (iii) submitted in Form C of the Schedule by the creditor.

The provision of the Regulation 21 (2) (c) of the IU Regulations provides that the information utility shall:

“...deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

(i) registered with the information utility by him, failing which,

¹ The MCA 21 database contains details about a company/LLP including email address and such data is furnished by the company/LLP themselves. The email addresses of corporate entities are being shared with the IU for the purpose of authentication of default under the Code.

(ii) recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories or any other statutory repository as approved by the Board, failing which,

(iii) submitted in Form C of the Schedule”

4.3 It is felt that the use of debtor provided email address i.e. e-mail address of the debtor registered with the IU or e-mail address recorded in MCA 21 database may be more reliable for the purpose of delivery of information of debt/default by the IU to the debtor for authentication purpose rather than the creditor provided email address in Form – C. Further, since the MCA 21 database includes information of all corporate entities, perhaps there is no need for creditor provided email ID for such entities.

4.4 Accordingly, it is proposed that in order to make record of default issuance process more robust, delivery of information of default in case of creditors may be restricted to those email addresses which have been provided by the debtors themselves either by registering as a user with the IU or MCA/CERSAI. However, the Banks may be treated on a different footing, than the other class of creditors as the information is based on certified copy of entries in the relevant account in the bankers’ book, as defined in clause (3) of section 2 of the Bankers’ Books Evidence Act, 1891, which has evidentiary value.

Proposal:

4.5 It is proposed that in case of creditors other than banks included in the second schedule of the Reserve Bank of India Act, 1934, the delivery of information of default or the reminder may be restricted to the debtor provided email id i.e.

(i) e-mail address of the debtor registered with the information utility.

(ii) e-mail address of the debtor recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).

Views of the Public:

4.6 The proposal has received positive support from the stakeholders. However, several stakeholders have suggested that in case debtor provided email address is not available (particularly in case of non-corporates and individuals) with IU and MCA -21 database, the information of default may be sent to the email address provided in the Form C. One of the stakeholders further suggested that the proposed amendment may be confined to defaults reported under corporate segment only.

Submissions of the Division on the comments

4.7 The use of debtor provided email address i.e. e-mail address of the debtor registered with the IU or e-mail address recorded in MCA 21 database may be more reliable for the purpose of delivery of information of debt/default by the IU and in order to enhance the credibility of RoDs. It may be noted that MCA-21 is an exhaustive database of about 14 lakh corporate entities where debtors themselves provided their address/email ids.

4.8 Further, the suggestion that proposed amendment may be restricted to corporate segment may be accepted as MCA- 21 database contains details about a company/LLP only. Accordingly, in case of non-corporates and individuals (including PG to the CD cases) email address is not available in the MCA-21 database. Hence, proposed amendment may be restricted to ‘corporate person’ as defined in the Code.

In view of the above, the revised proposal is as follows:

4.9 It is proposed that in those cases where information is submitted for “corporate debtor” as defined in Section 3(8) of the Code, except where creditor is a bank included in the second schedule of the Reserve Bank of India Act, 1934, the delivery of information of default or the reminder as the case may be restricted to the debtor provided email id i.e.

(i) e-mail address of the debtor registered with the information utility.

(ii) e-mail address of the debtor recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).

5. Proposal 3: Proper due diligence by IU before issuance of RoD:

5.1 The primary function that IUs perform is related to authenticating and verification of financial information submitted by the creditors and providing access to information stored with it. Accordingly, it is important that IU provides a high-quality authenticated information about debts and defaults. This can be possible only when IU carries out due diligence in verifying the financial information such as e-mail Ids of the debtor, proof for debt, latest acknowledgment of debt, proof of default etc. before issuance of RoD.

Proposal:

5.2 It is proposed that IU shall verify key details such as e-mail Id of the debtor, proof of debt, latest acknowledgment of debt and proof of default before issuance of RoD so that it can act as a sufficient proof.

Views of the Public:

5.3 All the stakeholders favour the proposal. However, there was a suggestion that IBBI may specify a detailed list of documents to verify for proof of debt/default, for each sub-type of debt.

Submissions of the Division on the comments

5.4 This proposal has received a strong support from the stakeholders. With regard to the suggestion that IBBI may specify a detailed list of documents to verify for proof of debt/default, for each sub-type of debt it may be noted that the documents to be uploaded as proof of debt, and default are already specified in Form C of the IU Regulation. Further, Regulation 2A and 2B of the (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 specify documents to be submitted for record or evidence of default. In addition to this, the Insolvency

and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) also provides for the documents to be submitted as record and evidence of default while filing application to initiate CIRP under the provisions of the Code.

5.5 In view of the above, the original proposal, as presented in the discussion paper, has been retained without changes.

6. Proposal 4: Issuance of RoD in case Debtor disputes the information of default.

6.1 In order to enhance the credibility of RoDs, it is essential to minimise the possibility of raising of frivolous disputes by the debtors to avoid insolvency proceedings, when information of default is delivered to them. Accordingly, it is essential that an effective, fair and transparent mechanism for dealing with cases of disputes may be followed by the IU to ensure that RoDs are reliable.

6.2 At present, when debtor disagrees with or disputes a part of or entire information, RoD is issued by the IU in disputed category. This provides incentive to the debtor to raise frivolous disputes to delay the insolvency proceedings. Furthermore, the guidelines for Technical Standards for the Performance of Core Services and Other Services under the IU Regulation provide for the:

- (i) IU to obtain reasons for dispute from the debtor.
- (ii) IU to provide for affixing electronic signature of the debtor.
- (iii) IU to notify the creditor as soon as a dispute is recorded by debtor.

6.3 However, as per existing provisions, IU does not mandate the debtor to upload proof of existence of dispute, if any, or record of the pendency of suit or arbitration proceedings which can be later verified by the IU before issuance of RoD in disputed category.

6.4 Further, it is worth noting that in certain instances, creditors would be issued RoD under disputed category despite the following:

- (i) document showing latest acknowledgment of debt by the debtor is available with the IU.
- (ii) debtor disputes only a part of the default yet RoD would be issued under disputed category for the whole amount.

6.5 In view of the above, it is proposed that uploading of proof of existence of a dispute is made mandatory for the debtors to deter raising of frivolous disputes by them.

6.6 Further, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when debtor disputes the information of default but documents showing latest acknowledgment of debt by the debtor are available with IU, it is proposed that the creditor may be issued 'record of default' under '**authenticated**' category. In addition, in case debtor disputes a part of the default, 'record of default' for undisputed part of debt/default may be issued under '**authenticated**' category.

Proposal:

6.7 (a) It is proposed that in case the debtor disputes the information of default presented to them by the IU, it may be made mandatory for them to upload proof of such dispute to deter frivolous disputes.

(b) Further, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when debtor disputes the information of default but documents showing latest acknowledgment of debt by the debtor are available with IU, then IU will record the status of authentication in authenticated category and issue the 'record of default' under authenticated category.

(c) In addition to this, in case debtor disputes a part of the default, then IU will record the status for undisputed part of debt/default under authenticated category and issue the 'record of default' for the undisputed amount under authenticated category.

Views of the Public:

6.8 The majority of the stakeholders agreed with the proposal. However, one of the stakeholders submitted that placing reliance only on 'latest acknowledgement of debt' for showing existence of debt where debtor disputes information of default is not valid. This will result in issuance of RoD for Banks under 'Authenticated Category' despite dispute by the debtor which may be against the principle of natural justice as it will take away the right of denial of information by the debtor.

6.9 In addition to this, it was submitted that all disputes recorded in IU during authentication of information of default are not related to the amount of debt. Some of the disputes are of non – financial nature such as addresses, names of directors etc. Accordingly, RoD in such cases may be issued under authenticated category.

Submissions of the Division on the comments

6.10 All the stakeholders favoured the part (a) and (c) of the proposal. With regard to part (b) concerns have been raised by the stakeholders on the issuance of RoD by relying on 'latest acknowledgement of debt' even when the debt/ default is disputed by the debtor. In such cases it would be more appropriate if decision to adjudicate is left to the AA. Accordingly, it is proposed that same may be withdrawn for further examination.

6.11 With regard to the suggestion that RoD may be issued by the IU where dispute is of non-financial nature may be accepted and necessary clarity may be brought in the amended regulations in this regard.

In view of the above, the revised proposal is as follows:

6.12 (a) It is proposed that in case the debtor disputes the information of default presented to them by the IU, it may be made mandatory for them to upload proof of such dispute to deter frivolous disputes.

(b) In addition to this, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, if debtor disputes a part of the default, then IU will record the status for undisputed part of debt/default under authenticated category and issue the ‘record of default’ for the undisputed amount under authenticated category. It may be further clarified that in case the dispute is of non – financial nature, IU will record the status of information of default under authenticated category in the ‘record of default’ in such cases.

7. It may be further noted that there were two additional issues i.e. (i) Submission of documents by creditors showing proof for debt/security, default and latest acknowledgement of debt while submitting information to the IU in Form C (ii) Incorporating additional details in Form – D (Record of Default), that were part of the discussion paper. However, the same may be deferred for further examination.

Approval Sought:

8. Approval of the Governing Board is solicited for amendment in the IU Regulations as proposed in the para 3 to 6 above. The draft amended regulations, after suitably incorporating the public comments are placed at **Annexure C**.

Discussion paper on “Strengthening the process of issuance of record of default by Information Utility”

10th May, 2024

Introduction:

An effective resolution of stress is in the interest of the financial sector in general and health of the economy as whole. Insolvency reforms in India took a concrete shape with the enactment of the Insolvency and Bankruptcy Code, 2016 (Code/IBC). The success of the insolvency proceedings critically depends on availability of complete, correct and up to-date information about the debtor which aids in speedy resolution. This information may not be available with every stakeholder in equal measure which may impede resolution and compromise the objective of value maximisation. To address these issues, the Code envisages Information Utility (IU) as repositories of financial information about debtors for expeditious completion of various processes under the Code.

2. The Bankruptcy Law Reforms Committee (BLRC), which conceptualised the Code, envisaged a competitive industry of inter-operable IUs, rather than a centralised depository with the State. It elucidates the rationale:

*“Before the IRP can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral that has been pledged, etc. Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court. The objective of an IRP that is completed in no more than 180 days can be lost owing to these problems. Hence, the Committee envisions a competitive industry of information utilities who hold an array of information about all firms at all times. When the IRP commences, within less than a day, **undisputed and complete information would become available to all persons involved in the IRP and thus address this source of delay.**” (emphasis supplied)*

3. The Committee further discussed that in order to ensure that a resolution process is **swift and efficient**, certain categories of information must be available to all participants including **reliable and readily accessible records of liabilities** of a solvent entity, **clear evidence of the instance of default** etc. Accordingly, the Code envisions that financial information stored by the IU should **help to establish defaults before the Adjudicating Authority (AA)** and thereby facilitate initiation and completion of processes under the Code in a time bound manner.

4. The ‘time bound’ feature of the Code ensures strict timelines in place and the Adjudicating Authority (AA) has to either admit or reject an application to initiate a CIRP within 14-day from the date of receiving the application. The primary function that IUs perform, that make them important from the public perspective is that they provide high-quality authenticated information about debts and default. Hence, the Record of default (RoD) issued by the IU, holds a crucial role in the insolvency proceedings to establish defaults before the AA.

5. Recently a need has been felt to further strengthen the process of issuance of RoD by the IU to expedite the insolvency and Bankruptcy process and the same is brought out in the subsequent paras of this discussion paper.

Objectives and purpose of IU under the Code:

Statutory provisions covering IU:

6. The Code mandates every IU to provide certain core services. Core services have been defined u/s 3(9) of the Code to mean services rendered by an IU for accepting electronic submission of financial information; safe and accurate recording of financial information; authenticating and verifying the financial information submitted; and providing access to information stored with the IU. Further, Section 3 (13) of the Code defines the financial information as under:

“financial information, in relation to a person, means one or more of the following categories of information, namely: -

(a) records of the debt of the person;

(b) records of liabilities when the person is solvent;

(c) records of assets of person over which security interest has been created;

(d) records, if any, of instances of default by the person against any debt;

(e) records of the balance sheet and cash-flow statements of the person; and

(f) such other information as may be specified.”

7. Section 214 of the Code creates certain obligations on the IU while providing core services to any person. In addition, Section 215 of the Code provides that any person who intends to submit financial information to the IU shall submit information in such form and manner as may be specified by regulations. Further, it also mandates the financial creditors to submit financial information and information relating to assets in relation to which any security interest has been created to the IU.

Statutory provisions regarding use of record of the default recorded with the IU for initiation of corporate insolvency resolution process:

8. Section 7(3) and 9(3)(d) of the Code provide for the financial/operational creditors, to file the record of the IU along with application to initiate the process of insolvency as evidence of default. Further, Sec 7(4) and Sec 9(5) of Code provide that AA shall within 14 days of receipt of application, ascertain the existence of default from the records of IU or on the basis of other evidence for admission of application. Thus, the time bound admission process is envisaged under the Code with the intend that the RoD provided by the IU may be used by the AA as conclusive evidence for establishing the debt and default.

Statutory provisions regarding use of IU in claims verification process:

9. Section 17 (2) (c) of the Code provides authority to the IRP to access the electronic records of CD from IU having financial information of the CD. Further, Regulations 7, 8, 8A, 9 & 9A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) provide that existence of debt due to Financial Creditors, Operational Creditors, Creditors in a class, Workmen, Employees & Other Creditors may be proved on the basis of records available with IU.

10. Aforementioned provisions highlight the three important areas where the role of IU is critical.

(i) The existence of information on debt and default with the IU, which has been verified and recorded.

(ii) The information with the IU shall aid in establishing conclusive evidence before the Adjudicating Authority.

(iii) The information shall be used widely throughout the insolvency resolution process.

Statement of problem

11. Speed is of essence of the Code. The IBC mandates that the processes under the Code should be completed in a time bound manner so that the economic value of the assets under resolution is not lost. This could happen only if the electronic records contained in the IU are considered as conclusive evidence. The Information and Technology Act, 2000 amended the definitions in the Indian Evidence Act, 1872 (Indian Evidence Act) to include electronic records as “evidence”. However, just admissibility of electronic records alone is not sufficient to achieve the purpose envisaged for IUs. For the insolvency process to be swift, the judiciary and the stakeholders should be convinced that the records of the IUs are conclusive proof. Otherwise, considerable time of AA can get wasted in establishing their accuracy, which can be utilised for other matters, resulting in draining of resources and causing delays in the conduct of insolvency resolution processes under the Code.

12. IU is an essential pillar of the Code, and without IUs in place it would become a practical challenge for the AA & Insolvency Professionals (IPs) to follow the timelines provided under the Code. IU is a two-way communication platform for ready information for the IPs and AA by helping them in providing correct and complete information about default. Accordingly, the RoDs issued by IU could make a difference to outcomes under the Code if RoDs are more reliable and conclusive. The Regulations governing the IUs have been in existence since 2017, however, this pillar (IUs) of the Code has not been able to achieve its full potential of ensuring maximizing time efficacy in the entire Insolvency Resolution Process. The Ministry of Corporate Affairs in its discussion paper titled *“Invitation of comments from the public on changes being considered to the Insolvency and Bankruptcy Code, 2016”* dated 18th January, 2023 highlighted the need for increasing reliance on the record submitted with the Information Utilities during the admission process. Accordingly, there is a need to strengthen the record of

the default being issued by the IUs to be conclusive proof to establish default before the AA. **Hence, as such there is a need to further strengthen the process of issuance of RoD by IU in order to establish its unassailable credibility.**

Proposals to strengthen the process of issuance of record of default (RoD):

13. As per provisions of the Code, the admission process should ordinarily be completed in 14 days from the date of filing application. However, there are significant delays in admission of applications and one of the reasons is lack of availability of credible and reliable information about debt and default. Accordingly, strengthening the process of issuance of Record of Default (RoD) by IU can help in significant reduction of delays and fast track the admission process. In this regard the following are proposed:

Issue 1: Providing sufficient time to the debtor to respond after delivery of the information of default by the IU.

14. The commencement of the insolvency proceedings based upon the record of default issued by the IU can have significant and far-reaching consequences for the debtor and existing management as it divests the existing management of all rights to control assets and manage and operate the business. Accordingly, in order to ensure accuracy and preclude disputes, Section 3(9)(c) and Section 214(e) of the Code require that information received from various persons shall be authenticated and verified by all concerned parties. The motivation for this requirement is clear that if an IU accepts information submitted by a creditor, and does not get it authenticated by the debtor, the veracity of the information will be challenged by the debtor in a court if the debt ever ends up in default. On the other hand, if the IU accepted the information only after it was authenticated by the debtor, it cannot be later challenged by the debtor, and the AA can consider the information accurate.

15. Regulation 21 (2) (a) and 21 (2) (b) of the IU Regulations provide that the IU shall deliver the information of default to the debtor seeking confirmation and remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, and allow **three days** each time for the debtor to respond. To prevent recalcitrant debtors from causing delays at the admission stage it is being considered to provide sufficient time to the CD or the debtor to respond to the financial information submitted concerning them. Further, it may be noted that there are a limited number of cases where debtors have actually authenticated the information of default. One reason for the same may be that a strict timeline is in place to respond to the delivery of information of default by the IU. Accordingly, it is proposed that sufficient time may be provided to the Debtor to respond after delivery of the information of default by the IU.

Proposal:

16. It is proposed that in order to provide a fair and reasonable opportunity to the debtor to respond, Regulation 21 (2) (a) and 21 (2) (b) of the IU Regulation may be amended to

provide that IU shall allow sufficient time of seven days after delivery of information of default to the debtor. Further, IU shall continue to remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, by allowing seven days each time instead of three days for the debtor to respond.

Issue 2: Delivery of information of default on debtor provided e-mail id for authentication in case of certain category of creditors.

17. It is essential that any record of default issued by IU should be acceptable to AA as conclusive evidence of the existence of debt and default. Hence, it is important to ensure that the process by which record of default is issued by IUs is robust, standardised, and rigorous.

18. As per the provision of the IU Regulations, IU needs to deliver the creditor provided information of debt and default to the debtor for the purpose of authentication of the same. For this purpose, IU needs to deliver the information of debt and default, to the e-mail address of the debtor (i) registered with the IU by the debtor, failing which, (ii) recorded with MCA 21¹ and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry, failing which (iii) submitted in Form C of the Schedule by the creditor.

The provision of the Regulation 21 (2) (c) of the IU Regulations provides that the information utility shall:

“...deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

(i) registered with the information utility by him, failing which,

(ii) recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories or any other statutory repository as approved by the Board, failing which,

(iii) submitted in Form C of the Schedule”

19. It is felt that the use of debtor provided email address i.e. e-mail address of the debtor registered with the IU or e-mail address recorded in MCA 21 database may be more reliable for the purpose of delivery of information of debt/default by the IU to the debtor for authentication purpose rather than the creditor provided email address in Form – C. Further, since the MCA 21 database includes information of all corporate entities, perhaps there is no need for creditor provided email ID for such entities.

20. Accordingly, it is proposed that in order to make record of default issuance process more robust, delivery of information of default in case of creditors may be restricted to those email

¹ The MCA 21 database contains details about a company/LLP including email address and such data is furnished by the company/LLP themselves. The email addresses of corporate entities are being shared with the IU for the purpose of authentication of default under the Code.

addresses which have been provided by the debtors themselves either by registering as a user with the IU or MCA/CERSAI. However, the Banks may be treated on a different footing, than the other class of creditors as the information is based on audited books of accounts and certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891.

Proposal:

21. It is proposed that in case of creditors other than banks included in the second schedule of the Reserve Bank of India Act, 1934, the delivery of information of default or the reminder may be restricted to the debtor provided email id i.e.

(i) e-mail address of the debtor registered with the information utility.

(ii) e-mail address of the debtor recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).

Issue 3: Submission of documents by creditors showing proof for debt/security, default and latest acknowledgement of debt.

22. As per regulation 20 of the IU Regulations, a creditor needs to submit financial information to the IU in Form C of the schedule. The documents to be uploaded as evidence for proof for debt/security, default and latest acknowledgement of debt have been specified by the Board in Form C. However, submission of these documents is not made mandatory at the time of submission of information by the Creditors.

23. Proof of debt/ security, default and latest acknowledgement of debt is integral to prove the existence of debt and default which can be verified by the debtor at the time of authentication as well as IU before issuance of RoD. A case has been noticed where RoD (under deemed to be authenticated category) was incorrectly issued without existence of debt. This issuance of the RoD against the Debtor, despite he was not a party to the underlying transaction raises doubt about the extent to which a RoD issued by an IU can be considered as conclusive and reliable.

24. Accordingly, in order to establish the RoD as a conclusive proof it is proposed to be made mandatory for creditor other than financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934 to upload proof for debt/security, default and latest acknowledgement of debt while submitting the information to the IU in Form C to allow verification by the IU to establish the existence of debt and default. Further, to ensure the genuineness of the documents submitted as proof of debt/security, default and latest acknowledgement of debt, the creditors may be required to submit a declaration along with the Form -C in line with declaration provided in claims submission forms in CIRP Regulations.

25. It is further proposed that proof of debt/ security, default and latest acknowledgement of debt may not be insisted from Banks included in the second schedule of the Reserve Bank of India Act, 1934, as they are on a different footing, because in case of Banks the information is based on audited books of accounts and certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891.

Proposal:

26. It is proposed to mandate creditors other than banks included in the second schedule of the Reserve Bank of India Act, 1934 to mandatorily upload proof of debt/security, default and latest acknowledgement of debt while submitting the information to the IU in Form C.

Further, to ensure the genuineness of the documents submitted as proof of debt/security, default and latest acknowledgement of debt, the creditors may be required to submit a declaration along with the Form -C.

“I, [Name of the user], do hereby verify that the contents of this Form along with documents submitted are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom”.

Issue 4: Proper due diligence by IU before issuance of RoD:

27. The primary function that IUs perform is related to authenticating and verification of financial information submitted by the creditors and providing access to information stored with it. Accordingly, it is important that IU provides a high-quality authenticated information about debts and defaults. This can be possible only when IU carries out due diligence in verifying the financial information such e-mail Ids of the debtor, proof for debt/security, latest acknowledgment of debt, proof of default etc. before issuance of RoD.

Proposal:

28. It is proposed that IU shall verify key details such as e-mail Id of the debtor, proof of debt/security, latest acknowledgment of debt and proof of default before issuance of RoD so that it can act as a conclusive proof.

Issue 5: Issuance of RoD in case Debtor disputes the information of default.

29. In order to enhance the credibility of RoDs, it is essential to minimise the possibility of raising of frivolous disputes by the debtors to avoid insolvency proceedings, when information of default is delivered to them. Accordingly, it is essential that an effective, fair and transparent mechanism for dealing with cases of disputes may be followed by the IU to ensure that RoDs are reliable.

30. At present, when debtor disagrees with or disputes a part of or entire information, RoD is issued by the IU in disputed category. This provides incentive to the debtor to raise frivolous disputes to delay the insolvency proceedings. Furthermore, the guidelines for Technical Standards for the Performance of Core Services and Other Services under the IU Regulation provide for the:

- (i) IU to obtain reasons for dispute from the debtor.
- (ii) IU to provide for affixing electronic signature of the debtor.

(iii) IU to notify the creditor as soon as a dispute is recorded by debtor.

31. As per existing provisions, IU does not mandate the debtor to upload proof of existence of dispute, if any, or record of the pendency of suit or arbitration proceedings which can be later verified by the IU before issuance of RoD in disputed category.

32. Further, it is worth noting that in certain instances, creditors would be issued RoD under disputed category despite the following:

- (i) document showing latest acknowledgment of debt by the debtor is available with the IU.
- (ii) debtor disputes only a part of the default yet RoD would be issued under disputed category for the whole amount.

33. In view of the above, it is proposed that uploading of proof of existence of a dispute is made mandatory for the debtors to deter raising of frivolous disputes by them.

34. Further, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when debtor disputes the information of default but documents showing latest acknowledgment of debt by the debtor are available with IU, it is proposed that the creditor may be issued 'record of default' under '**authenticated**' category. In addition, in case debtor disputes a part of the default, 'record of default' for undisputed part of debt/default may be issued under '**authenticated**' category.

Proposal:

35. It is proposed that in case the debtor disputes the information of default presented to them by the IU, it may be made mandatory for them to upload proof of such dispute to deter frivolous disputes.

Further, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when debtor disputes the information of default but documents showing latest acknowledgment of debt by the debtor are available with IU, then IU will record the status of authentication in authenticated category and issue the 'record of default' under authenticated category.

In addition to this, in case debtor disputes a part of the default, then IU will record the status for undisputed part of debt/default under authenticated category and issue the 'record of default' for the undisputed amount under authenticated category.

Issue 6: Incorporating additional details in Form – D (Record of Default).

36. Section 7(3) and 9(3)(d) of the Code provides for the financial/operational creditors to file the record of the IU along with application to initiate the insolvency proceeding as evidence of default. Further, Regulation 21(4) of the IU Regulations provides that the IU shall communicate the status of authentication by issuing a record of default in Form D of the Schedule, to the registered users. It is essential that information contained in the RoD is relevant and aid the AA in timely accepting or rejecting an application to commence the insolvency proceedings.

37. Accordingly, it is proposed that the format for ROD may include certain additional fields such as type of debt claimed, whether creditor is a schedule-II Bank, date of latest acknowledgement of debt, details of disputed remarks, date of last repayment made by debtor, amount of last repayment made by debtor, date of issuance of demand notice by creditor, whether creditor received any response to the demand, date of invocation of guarantee, if applicable.

It is expected that streamlining the RoD format would facilitate more efficient and effective decision making by the AA.

Proposal

38. In order to enhance the effectiveness and admissibility of the ROD, it is proposed to specify certain additional details to the existing format of RoD. The additional fields may be as per table below:

Sl. No.	Additional fields in the ROD
1.	Type of Debt: Financial Debt/Operational Debt
2.	Schedule-II Bank (Y/N):
3.	Date of latest acknowledgement of debt
4.	Details of disputed remarks by the debtor
5.	Date of last repayment made by debtor
6.	Amount of last repayment made by debtor
7.	Date of issuance of demand notice by the creditor
8.	Whether creditor received any response to the demand notice: Yes/No
9.	Date of Invocation of Guarantee, if applicable

These additional details will aid the AA in scrutinizing the existence of default under the Code in a time bound manner,

Economic rationale of the proposals:

39. This paper seeks to attain the objective of enhancing the effectiveness and acceptability of the record of default issued by an IU; speed up the process of admission application to initiate corporate insolvency resolution process. Further, aforementioned proposals aim to ensure that authentication process being followed by IU are robust, standardised, and rigorous.

40. Overall, the proposed amendments will have a positive impact on faster admission of applications for initiation of insolvency resolution process, as creditor will be able to present reliable evidence in the form of RoDs to the Courts that she has an undisputed amount due and proof of default. This will also increase the stakeholder confidence in the insolvency process and bring symmetry of information in the insolvency process. Further, with these measures an unwavering reliance can be placed on the information stored with and accessible from the IU. As a result, the confidence and acceptability of the RoDs will be established as per the provisions of the Code.

A draft of amendment to the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2024 is placed at **Annexure-A**.

Public comments:

41. The Board accordingly solicits comments on the proposals discussed above and the draft regulations placed in the Annexure-A. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. After considering the comments, the Board proposes to make regulations under section 196 of the Code.

Submission of comments:

42. Comments may be submitted electronically by **31st May, 2024**. For providing comments, please follow the process as under:

- (i) Visit IBBI website, www.ibbi.gov.in;
- (ii) Select 'Public Comments';
- (iii) Select 'Discussion paper – "Discussion paper on strengthening the process of issuance of record of default (RoD) by Information Utility (IU)"
- (iv) Provide your Name, and Email Id;
- (v) Select the stakeholder category, namely, -
 - a) Corporate Debtor;
 - b) Personal Guarantor to a Corporate Debtor;
 - c) Proprietorship firms;
 - d) Partnership firms;
 - e) Creditor to a Corporate Debtor;
 - f) Insolvency Professional;
 - g) Insolvency Professional Agency;

- h) Insolvency Professional Entity;
- i) Academics;
- j) Investor; or
- k) Others.

(vi) Select the kind of comments you wish to make, namely, a) General Comments; or b) Specific Comments.

(vii) If you have selected 'General Comments', please select one of the following options:

- a) Inconsistency, if any, between the provisions within the regulations (intra-regulations);
- b) Inconsistency, if any, between the provisions in different regulations (inter-regulations);
- c) Inconsistency, if any, between the provisions in the regulations with those in the rules;
- d) Inconsistency, if any, between the provisions in the regulations with those in the Code;
- e) Inconsistency, if any, between the provisions in the regulations with those in any other law; f) Any difficulty in implementation of any of the provisions in the regulations;
- g) Any provision that should have been provided in the regulations, but has not been provided; or
- h) Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

(viii) If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.

(viii) You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on More Comments and repeating the process outlined above from point 42 (vi) onwards.

(ix) Click 'Submit', if you have no more comments to mark

THE GAZETTE OF INDIA
EXTRAORDINARY
PART I-I - Section 4
PUBLISHED BY AUTHORITY

New Delhi, Day __, Date __

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, Date _____

Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment)
Regulations, 2024

No. IBBI/2023-24/GN/REG/___. — In exercise of the powers conferred by section 196, 213, 214, 215 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2024.

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

2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (hereinafter referred to as “the principal regulations”), in regulation 21,

i. in sub-regulation (2),

(a) In clause (a), for the words “the time specified in the Technical Standards”, the words “seven days” shall be substituted.

(b) in clause (b), for the words “three days”, the words “seven days” shall be substituted.

(c) after clause (c), sub-clause (iii), the following shall be inserted, namely:-

“Provided that provision of sub-clause (iii) shall apply only to those debtors in respect of which information is submitted by the financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934.”

ii. in sub-regulation (3), for the Table 2, the following shall be substituted, namely: -

“TABLE 2

Sl. No.	Response of the Debtor	Status of Authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	(a) Debtor confirms the information of default, or (b) Debtor does not respond even after three reminders, or (c) Debtor disputes the information of default but documents showing latest acknowledgment of debt/default by the debtor are available with Information Utilities or (d) Debtor disputes a part of the information of default	Authenticated	Green
2	Debtor disputes the entire information of default	Disputed	Red

”

iii. in sub-regulation (4), after clause (b), the following shall be inserted, namely:-

“Clarification: It is clarified that in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when a debtor disputes a part of the information of default then the Information Utility shall issue a record of default for the undisputed amount under authenticated category.”

3. In the principal regulations, after regulation 21, the following regulation shall be inserted, namely: -

“21A Verification of information

An information utility shall verify the e-mail address of the debtor, document showing proof of debt or security, latest acknowledgment of debt by the debtor and proof of default before issuance of record of default in Form D of the schedule under Regulation 21.

Provided that in case the debtor disputes a part of, or entire information presented, the information utility shall provide for obtaining the reasons for dispute along with mandatory uploading of documents showing proof of existence of a dispute.

Provided further that, an information utility shall verify the proof of dispute before issuance of record of default in Form D of the schedule under Regulation 21.”

4. In the principal regulations, existing regulation 21A regarding dissemination of public announcement shall be re-numbered as regulation 21B.

5. In the principal regulations, in the Schedule, for the Form C, the following shall be substituted, namely: -

“[FORM C

Under regulation 20 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

(Note: Information may be accepted in this Form with necessary modifications as the information utility deems fit.)

A. Details relating to Creation of Debt		
Sl. No.	Nature of information	Particulars
I	II	III
Details of the user submitting information		
1	Business date (The information will be as on date. For example, data of 30 th April 2020 submitted even on a later date, say on 05 th May 2020, will be as on the business date – 30 th April 2020)	
2	UIN (PAN)	
3	Full Name (Please provide your First, Middle and Last name without salutations)	
4	Relationship (Debtor/Creditor/ Guarantor/ Co-obligant / Security Provider / Assignee)	
5	Whether user submitting information is banks included in the second schedule of the Reserve Bank of India Act, 1934.	
6	Date of Birth/ Date of incorporation	
7	Communication address	
8	PIN Code	
9	Telephone No.	
10	Mobile No.	
11	Email ID-1 (for Submission acknowledgment, other submission related messages or any other general purpose message)	
12	Email ID-2 (for Dispute alert sent to submitter)	

13	Email ID-3 (for Default alert sent to submitter)	
Details of Other Parties to the Debt (Apart from the person submitting the debt)		
Details of Parties (please add as many parties as may be applicable)		
14	Relationship (Debtor/Creditor/ Guarantor/ Co-obligant / Security Provider / Assignee)	
15	Party name (Please provide your First, Middle and Last name without salutations)	
16	Registered / Permanent Address	
17	Registered Address PIN Code	
18	Communication address	
19	Communication Address PIN Code	
20	Party Type (Indian Entity, Resident Individual, Foreign Entity, NRI/Foreign Individual)	
21	Legal Constitution (Public Ltd. company, Private Ltd. company, LLP, Proprietorship, Partnership, Entity Created by or under a Statute, Trust, HUF, Co-op Society, Association of Persons, Government, Self Help Group, Resident Individual, Non-Resident Foreign Company).	
22	MSME Flag (Y/N)	
23	MSME Sub-type (Micro, Small, Medium)	
24	Industry Category	
25	Date of Birth/ Date of incorporation	
26	Corporate Identification Number (CIN/LLPIN) for registered corporate entities.	
27	PAN	
28	Customer ID	
29	CKYC KIN	
30	Contact Person Name	
31	Contact Person's Mobile No.	
32	Alternative Number	
33	Email id	
34	Alternative Email ID	
Details of the Debt		
35	Debt Reference Number	

36	Old Debt Reference No. (Unique identifier of the debt, in case the debt has previously been recorded in any Information Utility)	
37	Creditor Location (Creditor's internal location code, where submitted by creditor)	
38	Creditor Business Unit (Creditor's internal business unit code, where submitted by creditor)	
39	Creditor RM Email (Email of Creditor's Relation Manager, for notification purpose)	
40	Debt Contract Date (date of sanction, last renewal, debt acknowledgements, etc.)	
41	Debt Start Date (Date of first disbursement or date of activation of the facility)	
42	Sanction Reference No.	
43	Sanction Currency	
44	Sanctioned Amount	
45	Drawing Power	
46	Type of Debt (Financial, Operational)	
47	Intermediary Status (Yes, No)	
48	Debt subtype	
49	Funded Type Indicator (Funded, Non-fund)	
50	Facility name	
51	Repayment frequency (Monthly, Quarterly, Half yearly, Annual, On demand, Bullet, Rolling, Others)	
52	Tenor of debt	
53	Instalment Amount	
54	Rate of interest	
55	Lending arrangement (Sole Banking, Consortium, Multiple Banking Arrangement, Outside Multiple Banking, Outside Consortium, Others)	
56	Currency of debt	
57	Total Outstanding Amount	
58	Principal Outstanding	
59	Interest Outstanding	
60	Other Charges Outstanding	

61	Amount Overdue	
62	Days Overdue (Number of days overdue as on business date of reporting. If no overdue, report zero value)	
63	Asset Classification (Standard, Sub-standard, Doubtful, Loss)	
64	SMA Category (0, 1, 2, N)	
65	Account Closed Flag (Yes, No, Assigned)	
66	Part-A Remarks (Any remarks that can be helpful for Other Parties during authentication)	
B. Details relating to Creation of Security on Debt (If not applicable, please write NA)		
67	Date of creation of Security Interest	
68	Type of Charge created (Mortgage, Hypothecation, Charge, Assignment, Pledge, Lien, Negative Lien, Guarantee, Asset Cover and such other charges)	
69	Assets type (Movable, Immovable, Intangible, Not Classified)	
70	Security type (Nature of asset used as security as per list of values)	
71	Security Category (Primary, Collateral)	
72	Asset ID (identification number of asset on which charge is created)	
73	Description of security	
74	Value of security	
75	Currency of Security	
76	Date of valuation	
77	ROC Charge ID (as registered with MCA, where applicable)	
78	CERSAI Security Interest ID	
79	Part-B Remarks (Any remarks that can be helpful for Other Parties during authentication)	
C. Details relating to Default of Debt (If not applicable, please write NA)		
80	Date of default	
81	Total Outstanding Amount	
82	Default amount	
83	Days past due	
84	Amount of last repayment	

85	Date of last repayment	
86	Date of latest acknowledgment of debt by the debtor	
87	Date of issuance of Demand notice by the creditor	
88	Whether creditor received any response to the demand notice (Yes, No)	
89	Date of latest acknowledgment of demand notice by the debtor	
90	Description of response to demand notice by the debtor acknowledging default/part default or seeking time to clear the outstanding dues.	
91	Date of invocation of Guarantee	
92	Date of filing of suit	
93	Part-C Remarks (Any remarks that can be helpful for Other Parties during authentication)	
94	Documents* uploaded as proof for Debt, Security and Default:- Debt: <ul style="list-style-type: none"> a. Copy of Loan Agreement (as revised from time to time) b. Repayment schedule (If in possession of the submitter) c. Balance Confirmation d. Balance Sheet and Cash Flow Statements (If the submitter is the Debtor) e. Any other documents relating to creation of debt/change in the terms of the debt ²⁸[f. document showing latest acknowledgment of debt by the debtor] Security: <ul style="list-style-type: none"> a. Copy of the Security Deed b. Copy of the Valuation Report c. Proof of Registration with CERSAI d. Copy of the Certificate of Registration of Charge e. Any other document relating to creation of security Default: Any documents attached as a proof of default	

DECLARATION

I, [Name of the user], do hereby verify that the contents of this Form along with documents submitted are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.

* It shall be mandatory for the creditors other than financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934 to upload documents showing proof of debt or security, proof of default and latest acknowledgement of debt while submitting the information in Form C. While in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, these documents can be submitted at any stage not necessarily along with the data in Form C.”

6. In the principal regulations,

(i) in the Schedule, for the Form D, the following shall be substituted, namely: -

**“FORM D
RECORD OF DEFAULT**

(Issued by information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This record of default is issued to the Financial/Operational Creditor _____ in respect of the default of debt as per details given below-

- (a) Name of the Submitter:
- (b) Schedule-II Bank: Yes/No
- (c) Name of Corporate Debtor:
- (d) Unique Debt Identifier Number:
- (e) Registered Address:
- (f) Type of Debt: Financial Debt/Operational Debt
- (g) Total debt amount:
- (h) Default amount remaining:
- (i) Date of default:
- (j) Date of latest acknowledgement of debt
- (k) Date of last repayment made by Debtor
- (l) Amount of last repayment made by Debtor
- (m) Date of issuance of demand notice by the creditor
- (n) Whether creditor received any response to the demand notice: Yes/No
- (o) Details of disputed remarks by the debtor, if any
- (p) Date of invocation of guarantee, if applicable
- (q) Status of Authentication of default:

Filing of Default (Submission ID No.)	Submitted on (DD/MM/YY)	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated) (Colour Code: Green or yellow or Red, as the case may be)	Authentication completed on (DD/MM/YY)

.....(name of the information utility) is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core

Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

Date:

Digital Signature of the Authorized Signatory

Note:

1. Technical details may be inserted by the respective Information Utility
2. Documents uploaded as proof for debt, security, default and latest acknowledgement of debt shall be enclosed by the respective Information Utility
3. Other details/documents, if any, may be enclosed by the Information Utility

*(Note: Information may be issued in this Form with necessary modifications as the information utility deems fit).”

RAVI MITAL, Chairperson
[ADVT.-]

Note: The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published *vide* notification No. IBBI/2016-17/GN/REG009 dated 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 129 on 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022-23/GN/REG/098, dated the 20th September, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 463 on 20th September, 2022.

Gist of public/stakeholders comments on Discussion Paper on “Strengthening the process of issuance of record of default by Information Utility” and views of the Division thereon

Sr. No.	Proposal	Number of Comments	Gist of Comments / Suggestions	Comments of the Board
1.	<p>Providing sufficient time to the debtor to respond after delivery of the information of default by the IU.</p> <p>It is proposed that in order to provide a fair and reasonable opportunity to the debtor to respond, Regulation 21 (2) (a) and 21 (2) (b) of the IU Regulation may be amended to provide that IU shall allow sufficient time of seven days after delivery of information of default to the debtor. Further, IU shall continue to remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, by allowing seven days each time instead of three days for the debtor to respond.</p>	8	<p>Favour (4):</p> <ul style="list-style-type: none"> Agreed with the proposal. (NeSL, IBA & SBI, MCA) <p>Against (1):</p> <ul style="list-style-type: none"> The proposal may weigh against a speedy resolution process. Borrowers who would not intend to authenticate the information of default, despite the proposed timelines, would still not be incentivized to authenticate the information of default in a timely manner. (SAM) <p>Suggestions (3):</p> <ul style="list-style-type: none"> In respect of cases involving addressing letters by RPAD (where e-mail is not available or could not be delivered to the 	<p>Noted</p> <p>The proposed amendment in the regulations provides for changes in timelines to provide sufficient/reasonable time to the debtor to respond after delivery of the information of default by the IU. This will help in preventing recalcitrant debtors from causing delays at the admission stage and ultimately help in time bound resolution of the CD.</p> <p>RPAD will be used only in limited no. of cases where e-mail address of the debtor is not available, or</p>

			<p>CD for any reason), it may take more time to deliver the information of default. (NeSL)</p> <ul style="list-style-type: none"> It was suggested that IU would allow a time of 5 working days after the delivery of information of default to the debtor for confirmation and further remind the debtor twice by allowing 3/4 working days each time seeking confirmation of information of default. (IBA/SBI). 	<p>delivery of email is failed for any other reason. In such cases IU may deliver letters by RPAD as per the timelines provided in the Regulations.</p> <p>The purpose of the proposed amendment is to provide sufficient time to the debtor to respond after delivery of the information of default by the IU and to ensure timely admission by the AA. The suggested timeline is not significantly different from the timeline already provided in the existing Regulations.</p>
2.	<p>Delivery of information of default on debtor provided e-mail id for authentication in case of certain category of creditors.</p> <p>It is proposed that in case of creditors other than banks included in the second schedule of the Reserve Bank of India Act, 1934, the delivery of information of default or the reminder may be restricted to the debtor provided email id i.e.</p> <p>(i) e-mail address of the debtor registered with the information utility.</p>	7	<p>Favour (2):</p> <ul style="list-style-type: none"> Agreed with the Proposal (NeSL, MCA) <p>Against (3):</p> <ul style="list-style-type: none"> The delivery of information of default may also be sent to the email address provided in Form C by the submitter in addition to the debtor provided e-mail address. (SAM/IBA) 	<p>Noted</p> <p>For Banks included in the second schedule of the Reserve Bank of India Act, 1934 (Schedule - II Banks), delivery of information of default will be sent on e-mail address of the debtor provided in the Form – C will be used. However, in case of creditor's other than Schedule - II Banks , it is felt that the use of debtor provided</p>

	<p>(ii) e-mail address of the debtor recorded with MCA 21 and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI).</p>		<ul style="list-style-type: none"> In case where no email address of the debtor is recorded with MCA and/or CERSAI, the information of default may be sent to email address provided in the Form C. (SBI) 	<p>email address i.e. e-mail address of the debtor registered with the IU or e-mail address recorded in MCA 21 database will be more reliable for the purpose of delivery of information of debt/default by the IU to the debtor for authentication purpose rather than the creditor provided email address in Form – C.</p> <p>It may be noted that MCA-21 is an exhaustive database of about 14 lakh corporate entities where debtors themselves provided their address/email ids. Secondly, authentic emails or such email Ids will enhance the credibility of RoDs. Further, the proposed amendment will be applicable in case of creditors other than Schedule – II Banks. Accordingly, in case of Banks IU will continue to send information of default on email address provided in Form – C by the Creditors. However, in case of creditors other than schedule-II Banks, where debtor provided email address is not available, IU will restrict the delivery the</p>
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			<p>Suggestions (2):</p> <ul style="list-style-type: none"> • It was suggested that no special treatment should be given to the banks. (SAM) • It was submitted that as on the date of acceptance of default information by IU in a loan record, most of the CDs are not registered in IU. As such the chances of IU having the debtor registered e-mail ID with it in most of the cases are less; and consequently, the possibility of sending the authentication invitation e-mails to registered e-mail id of the Debtor are fewer. (NeSL) 	<p>information of default to the corporate debtor provided email address.</p> <p>The Banks may be treated on a different footing, than the other class of creditors as the information is based on certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 which has evidentiary value.</p> <p>The proposed amendment will be applicable in case of creditors other than Schedule – II banks. Accordingly, in case of Schedule – II Banks IU will continue to send information of default on email address provided in Form – C by the Creditors. However, in case of other creditors, where debtor provided email address is not available with it, IU will restrict the delivery the information of default to MCA -21 database</p>
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			<ul style="list-style-type: none"> • It was further suggested that this amendment be confined to defaults reported under corporate segment only. (NeSL) • For non-corporates and individuals MCA email ID is not an option, therefore if NeSL is unable to use the creditor provided email ID, the RPAD facility would need to be used, where the success of delivery is very poor. (NeSL) • The Creditors falling under- NBFCs, Private Financial Creditors and Operational Creditors categories are impacted by this proposed amendment. It was suggested that 	<p>where the address and email ids are provided by the corporate debtor themselves. This will enhance the credibility of authentication process and hence RoDs.</p> <p>Noted. The MCA- 21 database contains details about a company/LLP only. Accordingly, in case of non-corporates and individuals (including PG to the CD cases) MCA email address is not available. Hence, this suggestion may be accepted and proposed amendment may be restricted to “corporate person” as defined in the Code.</p> <p>Noted. Same as above.</p> <p>The acceptance of the suggestion regarding restriction of the proposed amendment to “corporate person” as defined in</p>
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			the exemption from this provision may be extended to financial service providers as defined in the Code (in addition to Banks coming under second schedule of RBI Act), who are also regulated entities or at least to the systemically important NBFCs. (NeSL)	the Code will address this issue. Further, the Banks may be treated on a different footing, than the other class of creditors as the information is based on certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 which has evidentiary value.
3	<p>Proper due diligence by IU before issuance of RoD:</p> <p>It is proposed that IU shall verify key details such as e-mail Id of the debtor, proof of debt/security, latest acknowledgment of debt and proof of default before issuance of RoD so that it can act as a conclusive proof.</p>	6	<p>Favour (4):</p> <ul style="list-style-type: none"> Agreed with the proposal. (NeSL, IBA and SBI, MCA) <p>Against (0):</p> <p>Suggestions (2):</p> <ul style="list-style-type: none"> IBBI may specify a detailed list of documents to verify for proof of debt/default, for each sub-type of debt. (NeSL). 	<p>Noted.</p> <p>Noted.</p> <p>The documents to be uploaded as a proof of debt and default are already specified in Form C of the IU Regulation. Further, Regulation 2A and 2B of the (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) specify documents to be submitted for record or evidence of default. In addition to</p>

			<ul style="list-style-type: none"> • Suitable penal provisions for submission of false / wrong information to IU by submitters under Sec 75 and protection of immunity to IU for actions done in good faith under Sec 233 may be extended, by amending Sec 75 and 233 of the Code respectively. (NeSL) • The manner of verification of key details by the IU may be further clarified. Further, it was submitted that creation of any piece of information as ‘conclusive proof or conclusive evidence’ is only a creation of law or of Indian Evidence Act. Accordingly, the proposition may be modified. (MCA) 	<p>this, the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) also provides for the documents to be submitted as record and evidence of default while filing application to initiate CIRP under the provisions of the Code. Accordingly, the same may be verified by the IU.</p> <p>To implement this suggestion an amendment to the Code is required. Hence, as such the suggestion is outside the purview of IU Regulations.</p> <p>In order to ensure that RoD issued by IU is credible and reliable, it is important that IU provides a high-quality authenticated information about debts and defaults. Accordingly, it is proposed that IU will verify the following details:</p> <ul style="list-style-type: none"> (i) Email address of the debtor with the MCA records. (ii) proof for debt, latest
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				<p>acknowledgment of debt and proof of default has been uploaded by the creditor before issuance of RoD as specified in the IU/CIRP Regulation and AA Rules.</p> <p>The IU will verify the existence and nature of the proof and not its authenticity as such. With regard to the second suggestions it may be accepted and word ‘conclusive evidence’ may be replaced with ‘sufficient evidence’.</p>
4	<p>Issuance of RoD in case Debtor disputes the information of default.</p> <p>(a) It is proposed that in case the debtor disputes the information of default presented to them by the IU, it may be made mandatory for them to upload proof of such dispute to deter frivolous disputes.</p> <p>(b) Further, in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when debtor disputes the information of default but documents showing latest</p>	7	<p>Favour (3):</p> <p>Agreed with the whole proposal. (NeSL, IBA, SBI) Agreed with Part 5(a) of the proposal. (MCA)</p> <p>Against (1):</p> <p>It was submitted that placing reliance only on ‘latest acknowledgement of debt’ for showing existence of debt where debtor disputes information of default is not valid. This will result in issuance of RoD for Banks under ‘Authenticated Category’ with color status ‘Green’ only. Further, it was submitted that the proposal may be against the principle of natural justice as it will take away the right of denial of information by the debtor. (MCA)</p>	<p>Noted.</p> <p>In view of the comments, proposal 5(b) may be withdrawn for further examination.</p>

	<p>acknowledgment of debt by the debtor are available with IU, then IU will record the status of authentication in authenticated category and issue the 'record of default' under authenticated category.</p> <p>(c) In addition to this, in case debtor disputes a part of the default, then IU will record the status for undisputed part of debt/default under authenticated category and issue the 'record of default' for the undisputed amount under authenticated category.</p>		<p>Suggestions (3):</p> <ul style="list-style-type: none"> • It was suggested that the AA may impose penalty on the debtor if it is satisfied that the dispute raised by the debtor was frivolous and resulted in delaying the admission. (SAM) • NeSL submits that all disputes recorded in IU during authentication of information of default are not related to amount of debt. Some of the disputes are on the addresses, names of directors and such other things. Where the Debtor has admitted the debt and default but disputes non-financial matters, IU may issue RoD, with a reference to dispute on other than financial transactions. (NeSL) • To implement the proposal major enhancements are required in the NeSL software. Accordingly, reasonable time may be provided to implement the proposed amendment. (NeSL) • The timeline within which the submission of proof of reasons of dispute to be filed by the debtor has not been defined in the proposed amendment of IU amendment Regulations, 2024. Furthermore, no provision has been made for the creditors 	<p>To implement this suggestion an amendment to the Code is required. Hence, as such outside the purview of Regulations.</p> <p>Noted and clarification may be brought in the amended Regulations that IU may issue RoD in case the dispute is of non-financial matter.</p> <p>May be considered.</p> <p>Existing Regulation 21(2)(a) of the IU Regulations provides for the timeline. Further, Guidelines for Technical Standards for the Performance of Core Services and Other</p>
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			to submit their counter reply against the proof of reason of dispute posted by the debtor, as this will be tantamount to violation of principles of natural justice. (Ors)	Services under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 provides that IU shall notify the submitting party as soon as a dispute is recorded by any concerned party. However, the dispute finally needs to be adjudicated by the AA.
	Total	28		

THE GAZETTE OF INDIA
EXTRAORDINARY
PART I-I - Section 4
PUBLISHED BY AUTHORITY

New Delhi, Day __, Date __

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, Date _____

Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment)
Regulations, 2024

No. IBBI/2023-24/GN/REG/___. — In exercise of the powers conferred by section 196, 213, 214, 215 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2024.

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

2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (hereinafter referred to as “the principal regulations”), in regulation 21,

i. in sub-regulation (2),

(a) In clause (a), for the words “the time specified in the Technical Standards”, the words “seven days” shall be substituted.

(b) in clause (b), for the words “three days”, the words “seven days” shall be substituted.

(c) after clause (c), sub-clause (iii), the following shall be inserted, namely:-

“Provided that provision of sub-clause (iii) shall not apply to delivery of the information of default or reminder, as the case may be, where information is submitted in respect of “corporate debtor” as defined in Section 3(8) of the Code, except where creditor is a bank included in the second schedule of the Reserve Bank of India Act, 1934.

ii. in sub-regulation (3), for the Table 2, the following shall be substituted, namely: -

“TABLE 2

Sl. No.	Response of the Debtor	Status of Authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	(a) Debtor confirms the information of default, or (b) Debtor does not respond even after three reminders, or (c) Debtor disputes a part of the information of default, or (d) Debtor disputes only non-financial information	Authenticated	Green
2	Debtor disputes the entire information of default	Disputed	Red

”

iii. in sub-regulation (4), after clause (b), the following shall be inserted, namely:-

“Clarification: It is clarified that in case of financial creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, when a debtor disputes a part of the information of default or such dispute is in respect of non-financial information then the Information Utility shall issue a record of default for the undisputed amount under authenticated category.”

3. In the principal regulations, after regulation 21, the following regulation shall be inserted, namely: -

“21A Verification of information

An information utility shall verify the key details namely e-mail address of the debtor, document showing proof of debt, latest acknowledgment of debt by the debtor and proof of default before issuance of record of default in Form D of the schedule under Regulation 21.

Provided that in case the debtor disputes a part of, or entire information presented, the information utility shall provide for obtaining the reasons for dispute along with mandatory uploading of documents showing proof of existence of a dispute.

Provided further that, an information utility shall verify the proof of dispute before issuance of record of default in Form D of the schedule under Regulation 21.”

4. In the principal regulations, existing regulation 21A regarding dissemination of public announcement shall be re-numbered as regulation 21B.

RAVI MITAL, Chairperson
[ADVT.-]

Note: The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published *vide* notification No. IBBI/2016-17/GN/REG009 dated 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 129 on 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022-23/GN/REG/098, dated the 20th September, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 463 on 20th September, 2022.