Public Comments on the issues related to Service Providers (IPA and IU) - Analysis of responses received

Sl. No.	Particulars	No. of Comments Received	Gist of Public Comments	Analysis
1.	Discussion Paper - IPA IU Regulations	34 (including 5 test, 10 repeat, 5 irrelevant)	(1) Under Regulation 7(2) of IP Regulations, after (bb) new sub regulation (bc) has been proposed to be inserted where in there is mention of Certificate of Practice; but there is no mention of age below 70 which is must to get Certificate of Practice may be because COP to be issued by IPA however in case of amendment of IPA Regulation also I have not found any reference of Certificate of Practice and to get COP age below 70 is must; Suggestion: I think one paragraph of COP & to get COP age below 70 is must; can be inserted in IP Regulation and also in the IPA Regulation.	The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 were amended w.e.f. 23rd July 2019 to incorporate age limit of seventy years for obtaining Authorisation For Assignment.
			(2) In the IPA regulations, it is proposed to raise the maximum age limit of the independent directors from the age of 70 years to 75 years, whereas in the proposed amendments to IP regulations, age restriction of 70 years is being put in place for assignment of work as RP/IRP/ AR/ Liquidator etc. Thus, the thought process for amendments to IPA & IP regulations are contradictory to each other. There should be uniformity in respect of age restrictions in different regulations.	The time is the essence of the Code and an IP is required to perform his duties under the Code within the time prescribed under the Code. Any recusal /pre-mature exist of an IP from the process, not only affect the timelines under the Code but also jeopardises the interest of all stakeholders of an already ailing CD. The Board has observed certain instances wherein the IPs, after taking up assignments, requested for discharge from the assignment on account of various factors, poor health due to age, being one of them. Further, it is also to be noted that normally other professional assignments do not require, practising professional to undertake active management responsibilities of a business, whereas, an IP has onerous responsibilities under the Code which are demanding, both

				physically and mentally. Also, during the corporate insolvency resolution process (CIRP), an IP replaces the Board of Directors and manages the affairs / operations of the Corporate Debtor (CD) as a going concern. The job of an IP is thus not less demanding than that of a Managing Director appointed under the provisions of Companies Act, 2013. It is prominent to note that in terms of section 196 of the Companies Act, 2013, an individual above the age of 70 years is not ordinarily eligible to be a Managing Director, Whole time director or Manager, given the demanding responsibilities of such positions. This warrants that the age limit as applicable to a Managing Director under the Companies Act, 2013 should also be made applicable in case of IPs registered under the provisions of the Code. Accordingly, imposition of age limit of 70 years maximum, for IPs for undertaking assignments under the Code would rectify the legal anomaly, considering that the Code is to be read in congruence with the provisions of the Companies Act, 2013.
			(3) In the IPA regulations the age limit of independent directors (IP) is proposed to be increased to 75 years of age from the existing 70 years, whereas in IP regulations it is being proposed to restrict the assignments as IRP /RP/ AR/ liquidator to an IP up to the age of 70. Both the proposals are contradictory to each other. Further in no other profession CA/ cost accounts/ company secretary/ advocates/ medicine etc any age limit is prescribed.	The comments are similar to (2) above, hence the reply is same as (2) above.
			(4) Age limit is unacceptable as a successful CIRP process is dependent to a large extent on the age and experience of the IP and restricting experienced professionals from practice will be	The comments are similar to (2) above, hence the reply is same as (2) above.

			detrimental to the very purpose of IBC which is resolution of stressed assets.	
			(5) The activity of Verification & Authentication applies generally to all Financial Information and not just to default. Facilitating such verification and authentication for all financial information is a core service of IU as defined u/s 3 (9) of IBC. Hence the process of Verification & Authentication of information needs to be equally defined in the Regulations. In view of this, the proposed amendment to define the process and context of deemed authentication may be considered to be brought under definition clause of Reg 2 of IU Regulations instead of restricting it only in the context of Reg 21. It will have the desired effect of enhancing the objective of IBC for storage of prima facie legal evidence in the IU.	Under the provisions of the Code, default is the trigger for initiating CIRP. Therefore, authentication of all the available information irrespective of the fact whether it pertains to defaulting CD or not does not meet the requirement of the Code.
			(6) Receipt of notice of dispute from the debtor, need to be predefined for debtor to understand what acceptable form of dispute and acceptable document/information debtor is is supposed to submit against each criterion in built in system. This may not provide 100% clarity, however, surely bring objectivity and way for faster determination of the status of default.	As per the technical standards, the three types of status of authentication shall be communicated in three different colours. The communication shall clarify the status of authentication. On receipt of notice of dispute, the status of authenticated maybe provided as "Disputed". Therefore, IBBI (Information Utilities) Regulations, 2017 were amended w.e.f. 25th July 2019 and the Technical standards have been reviewed and amended w.e.f. 22nd January 2020 .
			(7) The Amendments proposed, especially Deemed Authentication provides needed strength for the process of authentication. Eliminate scope for- Debtors to ignore the Authentication Invitation E-mails / letters of IU, frivolous legal litigations and consequent delays in Resolution Process. Benefits Financial Creditors to obtain the force of law in its favour when Debtors strategically remain silent to e-mails/letters of IU. Under the concept of Verification, the Debtor may agree or dispute the financial information and record accordingly. In both the cases, he	As per the technical standards, the three types of status of authentication shall be communicated in three different colours. The communication shall clarify the status of authentication. On receipt of notice of dispute, the status of authenticated maybe provided as "Disputed". Therefore, IBBI (Information Utilities) Regulations, 2017 were amended w.e.f. 25th July 2019.

			affixes the Authentication with his Digital Signature. Therefore, receipt of notice of dispute need not be treated as Information not Authenticated merely on the ground of raising dispute.	
			(8) An IUs if does become a Listed Company shall have to compulsorily comply with the LODR, hence, the SEBI intent of making Listed Companies highly compliant will be satisfied. Further, the Companies Act 2013 also does not have an upper limit on the age for Independent Directors for any type of the Company. The Companies Act 2013, has restriction in the form of Age only for the Managing Director, Whole-Time Director or Manager in section 196(3). It is submitted that regulation 24 (3) of the Securities Contract (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 which earlier provided the upper age limit of 70 years of independent directors of stock exchange and clearing corporations, has since been amended on 3 October, 2018 to provide age limit of 75 years. We submit to the Board being a regulator to consider and align the age limit of independent directors of information utilities in line with the other regulators. In the light above, we propose to submit our representation as Information Utility to IBBI to amend the Regulations to increase the upper age 75 years for independent directors of IUs.	Suggestion accepted. The IBBI (Information Utilities) Regulations, 2017 were amended w.e.f. 25th July 2019.
			(9) As per the currently applicable Guidelines for Technical Standards (Guidelines), response to an authentication request would be segregated into one of five heads. In order to ensure consistency between the Guidelines and the IU Regulations, the Guidelines need to be accordingly amended to provide for only three possible categorizations of authentication status, as proposed to be captured in the Regulation 21(4). Further, the Guidelines currently allow for information to be disputed, in part or whole. The proposed amendment to the IU Regulations however does not allow for the same. Accordingly, clarity must be provided in this	Suggestion accepted. IBBI (Information Utilities) Regulations, 2017 were amended w.e.f. 25th July 2019 and the Technical standards have been reviewed and amended w.e.f. 22nd January 2020.

			regard and consistency should be maintained between the Guidelines and IU Regulations.	
			(10) In the current regime, financial creditors are required to undertake reporting requirements such as to Credit Information Companies under the Credit Information Companies (Amendment) Regulations, 2017, CERSAI under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Central Repository of Information on Large Credits pursuant to RBI notification dated May 22, 2014 (and other amendments). Furthermore, security data is required to be submitted to (a) Registrar of Companies (b) Regional transport office for security interest over motor vehicle (c) DGCA for security interest over aircraft (d) Registrar of ships for security interest over ship/vessel and (e) sub-registrar of assurances for registered mortgages as well as for equitable mortgages (where notice of intimation is required to be filed). Reporting/submission of data to each of these agencies entail cost implications on the submitter, many of which data submitted are repetitive and common with various agencies. Therefore, we recommend IU to seamlessly connect with these agencies and auto-populate and consolidate the data already available with these agencies, in its records. Only incremental data (not available with any of the aforesaid agencies) should be sought from the financial creditor. Consolidation of data by IU through inter-portability with various agencies will result in cost saving, curtailing repetitive submissions. Furthermore, data submitted to the ROC (vide CHG-1 filing) is verified by the debtor/security provider and a digital signature is affixed by the security provider representative which	Regulation 26 (1) provides for porting of information from other registries. The standards for authentication are different for various repositories. Therefore, suggestion not accepted.

			is followed by digital signature of the creditor representative. Hence, the requirement of authentication of data obtained from ROC must be waived. The same also holds true for filing done with Sub-registrar of assurances, DGCA, Registrar of ships, Regional Transport office for security interest over motor vehicles.	
			(11) We would like to highlight that in a majority of cases, the debtor might not want to authenticate the fact that a default has been committed as a result of which the entire purpose of setting up of IUs and authentication of information submitted to them would stand defeated. These concerns have also been echoed by the Report of the Working Group on Information Utilities set up by the MCA. In the case of default, the debtor might not want to authenticate the fact that a default has been committed. To work around such situations, the committee proposes to redefine "concerned parties" in this case to include a bank which maintains the account in which the repayment amount has to be deposited by the debtor. This bank will be able to authenticate whether there has been default or not, by providing the account statement of the repayment account. This prevents the debtor from holding the process hostage, while preserving the evidentiary value of records in the IU. Accordingly, we propose that the Code and the IU Regulations be suitably modified so as to impose a mandatory obligation on the concerned parties to authenticate the information submitted to the IUs. Further, we recommend that pecuniary liability must be imposed for non-compliance with the aforementioned obligation, in addition to the occurrence of deemed authentication, as captured in the proposed regulations.	It may not be legally permissible to provide such mandate or penal provisions in the Regulations. Therefore, proposal not accepted.
			(12) The concept of deemed authentication has been proposed to be instituted only for "information of default". In our view, the concept of deemed authentication should extend to all financial information submitted to the IUs and the process for such deemed	The rationale in respect of default is that a debtor is unlikely to authenticate a default. This argument may not be extendable to all information.

			authentication would be analogous to the procedure specified in the proposed Regulation 21.	
			(13) The stages are not correctly defined. If the Debtor disputes, it should be advised as Documents disputed by Debtor. If the Debtor does not authenticate in any given time frame, the Documents will remain unauthenticated. Authentication cannot be presumed or assumed. It is bad in approach. IU and other processes are not ruled by Creditors. Nobody is a ruler. Giving credit and availing credit is a private business between two parties. The administrative system cannot be biased towards one. Giving credit is a private decision of the creditor and it is not a public privilege provided to anybody who borrows. If it is not authenticated up to any number of days, IT has to be reported by the Utility as REMAINS UNAUTHENTICATED; the obligation of the Utility may be terminated at the end of any fixed period proposed.	The three types of status of authentication shall be communicated in three different colours. The communication shall clarify the status of authentication. On receipt of notice of dispute, the status of authenticated maybe provided as "Disputed". There has to be a finality to any process including that of "authentication" and status of "remain authenticated" cannot be accepted. The suggestion is not accepted. Therefore, IBBI (Information Utilities) Regulations, 2017 were amended w.e.f. 25th July 2019.
			(14) As per the Supreme Court judgement on Aadhaar, the use of Aadhaar as identifier is only subject to matters related to obtaining government subsidy, benefits and cannot be mandated by any other entity. It also specifies that private entities cannot mandate Aadhaar. 2. The IBBI Technical standards extensively use Aadhaar in multiple places violating not just Supreme Court guidelines but also UIDAI regulations pertaining to storage and use of Aadhaar numbers. These includes Technical Standards 13(2)(c) and 13(2)(f) pertaining to registration and verification of identity of individual user. Use of Aadhaar is not backed by law and hence IBBI technical standards needs to be updated to use alternate identifiers for individual users registering with IU for availing any IU services. b. The clause pertaining to verification of identity with UIDAI is expressly prohibited by law as use of Aadhaar and eKYC is prohibited as per Aadhaar judgement. c. 13(2)(d) - Unique	Technical standards have been reviewed and amended w.e.f. 22nd January 2020 to take into account these observations.

			Identifier for each record and each Use again proposes Aadhaar to be used as unique identifier. Please note that as per the judgement and regulations by UIDAI, storage of Aadhaar number is prohibited by entities for purposes other than subsidy. Entities can at best store only the last 4 digits of UID and can only store tokenized hashes of UID and must not be storing UID of individuals. d. 13(2)(d) also uses Aadhaar as part of Unique Debt Identifier and stores 12 digits Aadhaar number in plain text. This is directly in violation with regulations issued by UIDAI in regard to data security and use of Aadhaar number in applications. https://www.uidai.gov.in/images/resource/FAQs_Aadhaar_Data_Vault_v1_0_13122017.pdfe. 13(2)(j) Consent Framework for providing access to information to third parties also refers to consent artefact containing Aadhaar number of representatives to whom consent is provided. Use of Aadhaar here as well is not backed by law. 3. For the above noted inconsistencies with Aadhaar Act, Regulations of UIDAI with regards to storage and use of Aadhaar number in applications and the Supreme Court judgement on the Aadhaar case, it is suggested that the use of Aadhaar in the technical standards to be reviewed and suitable alternatives like use of PAN is used for individuals users for registration, verification, unique debt ID as is being done with the case of non-individual users using IU services. 4. It is also suggested that IBBI audit IU to ensure compliance with laws, regulations related to Aadhaar and conduct a full IT audit to ensure full compliance after the technical standards is modified to be compliant with law.	

*****