

**Discussion Paper on enabling entities to become insolvency professional**

This paper deals with issue of enabling entities to get registered as an insolvency professional (IP) under the Insolvency and Bankruptcy Code, 2016 (Code).

***Background***

2. The Insolvency and Bankruptcy Code, 2016 (Code) provides for a class of regulated professionals, namely, insolvency professional who plays an important role in resolution of corporate debtors (CDs) in distress.

3. Section 3(19) of the Code defines IP as a **person** enrolled under section 206 of the Code with an insolvency professional agency (IPA) as its member, and registered with the Insolvency and Bankruptcy Board of India (the IBBI/ the Board) as an IP, under section 207 of the Code. Section 3(23) of the Code defines **person** to include:

- i. an individual,
- ii. a Hindu Undivided Family,
- iii. a company,
- iv. a trust,
- v. a partnership,
- vi. a limited liability partnership and
- vii. any other entity established under a statute.

4. The IBBI (Model Bye-Law and Governing Board of Insolvency Professional Agencies), Regulations, 2016 (Model Bye Laws Regulations) *inter alia* governs the process of enrolment as professional member with IPAs. The IBBI (Insolvency Professionals), Regulations 2016 (IP Regulations) *inter alia* governs the process of registration as an IP with the IBBI. The extant legal framework, thus, provides for two-tier regulatory structure comprising of IPAs, being the front-line regulator, and the IBBI, as the principal regulator of IPs.

5. It is pertinent to note that Section 207(2) of the Code empowers the IBBI to specify the **categories of professionals or persons** possessing such qualifications and experience in the field of finance, law, management, insolvency, or such other field, as it deems fit to be eligible for registration as IPs.

6. Clause 9 of Schedule to the Model Bye-Laws Regulations read with regulation 4 of IP Regulations however stipulate that **only an individual** shall be eligible for enrolment with an IPA, and registration with the IBBI.

7. Thus, it is evident from the aforesaid discussion that the Code provides for a wider definition of **person which includes both the natural as well as juristic persons** who can act as IPs. However, the extant regulations have limited ambit of specifying only an **individual i.e., a natural person** to get enrolled, registered and act as an IP.

***Statement of Problem***

8. The Code envisages resolution of stressed entities in a time bound manner so as to ensure maximisation of value of assets. A key feature of such insolvency resolution is the endeavour to keep the company in going concern condition i.e., the company remains operational, while it is getting resolved. The continued business operation of the company helps in protection of interests of all stakeholders and also ensuring that the company remains attractive for willing buyers, when insolvency resolution process is being carried on.

9. Section 25 of the Code casts duty of continued business operations of the stressed company on Resolution Professional. This is in addition to various other functions performed by him under the Code and regulations, to enable orderly resolution of the company. A resolution professional acts as a crucial pillar, on which the fate of the corporate debtor rests.

10. It is noteworthy to mention that in normal situations, the board of directors perform crucial functions for a company. During insolvency resolution under the Code, the existing board of directors is suspended, and the resolution professional takes on that role which involves performance of multifarious activities. The regulations provide for only professionally qualified and adequately experienced persons to be registered as Insolvency Professionals. However, ensuring continued business operations of a stressed company, is an onerous job and it may not be possible for a single professional to take on the multi-task activities of the board of directors, along with other important insolvency resolution process functions, that too in a time bound manner.

11. It has been observed that to fulfil their duties under section 25 of the Code, the resolution professional tends to outsource his functions to other persons such as Insolvency Professional Entities, Process advisors etc. The supporting entities are often not under the any strong regulatory framework. Accordingly, it is not possible to fix accountability on unregulated entities.

12. Perhaps the foregoing situation is one of the factors leading to undesired outcomes. Although the theme of the Code is insolvency resolution, majority of the cases are being going for liquidation. As against 480 companies being resolved, 1609 companies went for liquidation (data as on 31<sup>st</sup> March 2022). Also, the financial creditors have been able to garner only around 33% of their total admitted claims.

13. A roundtable discussion was organised to seek opinion from Insolvency Professional Agencies, prominent Insolvency Professionals and members of financial institutions on the existing institution of Insolvency Professional. It emerged from the discussion that an entity may also be allowed to perform the functions of insolvency professional as a single insolvency professional may not have required skills, knowledge and experience as may be required in a particular case.

14. In the aforesaid background, a need is felt to revisit the policy of allowing only individuals to be registered as insolvency professional. The institution of insolvency professional can be strengthened by widening the eligible category of persons to include other juristic persons as well. Thus, in addition to individuals, entities (a company, limited liability partnership, registered partnership firms) may also be allowed to get enrolled, registered and act as insolvency professional. An entity working as resolution professional, with all its paraphernalia of resources and experience, would enhance the efficiency of insolvency resolution process and deliver better outcomes.

### ***Legal Opinion***

15. In this connection, a legal opinion was sought from learned government law officer on the following queries:

- a. *Whether a person defined under section 3(23) of the Insolvency and Bankruptcy Code, 2016 (Code), including a company, limited liability partnership or registered partnership firm, can be registered as an insolvency professional as defined under section 3(19) read with section 206 and 207 of the Code?*
- b. *Whether the insolvency professional entity (IPE) recognised by the Insolvency and Bankruptcy Board of India (IBBI/ the Board) under the IBBI (Insolvency Professionals) Regulations, 2016 can be registered as an insolvency professional under Chapter IV of the Insolvency and Bankruptcy Code, 2016?*

16. The learned law officer opined as under: -

*“It is stated that a bare reading of the of the term ‘person’ as mentioned under Section 3(23) of the Code, read with the aforementioned relevant provisions makes it apparent that any ‘person’, including a juristic person, can be registered as an insolvency professional under the Code.”*

*“On the other hand, a perusal of the existing IP Regulations makes it clear that they have been framed with a ‘natural person’ being in mind. In view of the same, it is suggested that appropriate regulations/amendments are framed in the IP Regulations so as to ensure its applicability with respect to a ‘corporate person’ as defined under the Code and not only a ‘natural person’, while simultaneously also bearing in mind the interests and requirements of the job entailing an insolvency professional.”*

*“Therefore, both the queries placed before me for opinion are answered in the positive, provided, the Querist takes out the necessary changes/amendments in the IP Regulations, so as to remove any ambiguities with respect to a ‘person’ as defined under 3(23) of the Code and an IPE recognised by the Querist Board, being registered as an insolvency professional under the Code.”*

17. The aforesaid legal opinion makes it amply clear that permitting category of juristic persons i.e., entities (a company, limited liability partnership, registered partnership firms) to get enrolled, registered and act as IP is not legally barred. The principal statute thus embodies enabling provisions for the said proposition.

#### ***Domestic and International Scenario***

18. In order to further analyse the issue, certain regulatory frameworks in domestic as well international regimes were examined to identify any similar provisions. The same has been discussed in ensuing paragraphs.

#### ***Domestic Scenario***

##### ***Valuation Profession***

19. It is pertinent to note that IBBI has been designated as the ‘Authority’ under the Companies (Registered Valuers and Valuation Rules), 2017 (**Valuation Rules**) for regulation and development of the profession of valuers in the country. The said rules provide that a ‘person’ shall be eligible to be a registered valuer and a partnership entity / company shall also be eligible to be a registered valuer. Therefore, a valuer as individual and the valuer as entity co-exist.

20. It is observed that in terms of Rule 3 (1) of the Valuation Rules, person is eligible to be registered valuer while Rule 3(2) of the said Valuation Rules, allows partnership entity or company to be registered valuer. Further, Rule 7 of the said Valuation Rules *inter alia* provides that in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued, to sign and act on behalf of it. This is in addition to the condition in case of partnership entity which is jointly and severally liable along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity. In case a company is the registered valuer, it would be liable along with director who sign and act in respect of a valuation assignment on behalf of the company.

#### ***Securities and Exchange Board of India (SEBI) – Financial Market***

21. The SEBI (Stock Brokers) Regulations, 1992 permits a ‘person’ to become a stock broker *inter alia* meeting required eligibility criteria, possessing necessary infrastructure in terms of space, equipments and manpower, being a fit and proper person and satisfying minimum net worth requirements.

#### ***Insurance Regulatory and Development Authority of India – Insurance Industry***

22. Insurance Regulatory and Development (Registration of Corporate Agents) Regulations, 2015 enables ‘Corporate Agent Concept’ wherein a company, limited liability partnership, cooperative society, banking company, regional rural bank, a non-governmental organisation can register to act as ‘Corporate Agent’.

### ***Accounting and Secretarial Professions [CA/ CS/ ICMAI]***

23. The Chartered Accountants Regulations Act, 1988, The CS Regulations, 1982 and the Cost and Works Accountants Regulations, 1959 enable formation of a CA Firm, CS Firm and partnership firm of cost accountants.

24. Thus, it is observed that the domestic framework in case of other professions duly incorporates the concept of juristic persons being permitted to operate in the ecosystem. In practice, the engagement of such entities is widely prevalent in the country.

### ***International Scenario***

25. The cross-country comparison for the insolvency profession exhibits existence of natural person as IP in majority of the jurisdictions. However, there are few jurisdictions as well wherein the legal design for juristic persons exists and operate, such as Austria, Czech Republic, Hungary, Slovakia, Spain, Lithuania, Romania, Switzerland.<sup>1</sup>

### ***Benefits***

26. It can be concluded from the aforesaid discussion that the legal architecture as well as domestic and international frameworks support the introduction of juristic persons i.e., entities to become an IP. The entry of entities into the insolvency profession is envisaged to offer multi-pronged benefits to insolvency landscape. On one hand, it will institutionalise the insolvency profession, on the other hand, it will bring forth the benefits of a stronger governance system. Thus, it is envisioned to address the issues pertaining to limitations of an individual in performing myriad and complex tasks, addressing concerns of susceptible behaviour of an individual, consequent compromise in the conduct of the processes, etc. The institutional design of the entities would assist in better conduct of the processes owing to their resourcefulness and corporate governance and risk management mechanisms.

### ***Proposal***

27. Thus, in line with the aforesaid, a similar regulatory architecture, as applicable to registered valuer entities, may also be considered for IPs to enable entities (viz. a company, limited liability partnership and registered partnership firm) to get enrolled, registered and act as an IP.

28. As this is going to be a significant policy change in profession of IP, to start with, it may be considered:

- i. to allow the existing IPEs to become IPs, since they have the infrastructure and requisite exposure in providing support services to IPs,
- ii. existing IPEs, after seeking registration as IP, may also continue to provide support services to IPs.

29. It is therefore proposed to amend Model Bye-law Regulations and IP Regulations to specify that the entities, which are presently recognised as IPE, shall be eligible to get enrolment as professional member of IPA, and registration as an IP with IBBI, respectively.

### ***Economic Analysis***

30. Allowing entities to act as an IP will institutionalise the profession of IP and help to establish better governance framework. This would address the limitations posed by IP being an individual in dealing with large and complex processes requiring concurrent efforts and actions. Gradual improvements in the outcome of the processes will facilitate fulfilment of objective of value maximization as enshrined in the Code in the long run. The major inputs for violation will be through complaints and therefore, the cost of surveillance for IBBI may not be significant.

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<sup>1</sup> Report on The Regulation of Insolvency Office Holders, INSOL Europe – May 2016

**Public comments:**

31. The Board accordingly solicits comments on the proposals discussed above and the draft Model Bye-law Regulations and IP Regulations are placed in the **Annexure-A and Annexure-B**. 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 clauses (aa), (b), (c) and (t) of sub-section (1) and sub-section (2) of section 196 of the Code.

**Submission of comments:**

32. Comments may be submitted electronically by 5<sup>th</sup> July, 2022. For providing comments, please follow the process as under:

- i. Visit IBBI website, [www.ibbi.gov.in](http://www.ibbi.gov.in);
- ii. Select 'Public Comments';
- iii. Select 'Discussion paper – Enabling IPEs to become IP'
- 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.
- ix. You can make comments on more than one para/sub-para, by clicking on **More Comments** and repeating the process outlined above from point 32 (vi) onwards.
- x. Click 'Submit' if you have no more comments to make.

GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
NEW DELHI, .... JULY, 2022

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION

New Delhi, the ... July, 2022

**Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022**

**No. IBBI/2022-23/.....**—In exercise of the powers conferred by sections 196 and 205 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, namely:-

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022.  
  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in the Schedule, in para VI, in clause 9,
  - (i) the existing clause shall be renumbered as sub-clause (1), and
  - (ii) after sub-clause (1), the following sub-clause shall be inserted, namely: -  
"(2) No insolvency professional entity, recognised by the Board under regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, shall be enrolled as a professional member if it is not eligible to be registered as an insolvency professional with the Board."
3. In principal regulations, in the Schedule, in para VI, in clause 10, after the words “individual”, the words “or insolvency professional entity” shall be inserted.

RAVI MITAL, Chairperson  
[ADVT.- ]

Note: The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG001 dated 21<sup>st</sup> November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 421 on 22<sup>nd</sup> November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022- 23/GN/REG0-- dated \_\_ July, 2022, in the Gazette of India, Extraordinary, Part III, Section 4, No. --- on \_\_ July, 2022.

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**THE GAZETTE OF INDIA  
EXTRAORDINARY  
PART III, SECTION 4  
PUBLISHED BY AUTHORITY  
New Delhi, Thursday, ---- JULY, 2022**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

**NOTIFICATION**

**New Delhi, the ---- July, 2022**

**Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022**

**No. IBBI/2022-23/GN/REG----** In exercise of the powers conferred by sections 196, 207 and 208 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 (Insolvency Professionals) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022.

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

2. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 2, in sub-regulation (2), in clause (g), for the words “an individual”, the words “a person” shall be substituted.

3. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 4,

(i) the existing regulation shall be renamed as sub-regulation (1), and

(ii) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

“(2) No insolvency professional entity, recognised by the Board under regulation 13, shall be eligible to be registered as an insolvency professional if –

(a) in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt; and

(c) all the partners or directors, as the case may be, are eligible under clauses (a), (b), (c), (d), (e), (f) and (g) of sub-regulation (1)”.

4. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), after regulation 6, sub regulation (1), the following sub-regulation shall be inserted namely:-

“1A. An insolvency professional entity eligible for registration as an insolvency professional under sub-regulation (2) of regulation 4 may make an application to the Board in Form AA of

Second Schedule along with a non-refundable application fee of two lakh rupees in favour of the Board.”

5. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in regulation 7, in sub-regulation (2), after clause (h), the following clauses shall be inserted, namely:-

“(ha) in case an insolvency professional entity is the insolvency professional, it shall -

- (i) allow only the partner or director who is an insolvency professional to sign and act on behalf of it;
- (ii) disclose to the applicant, the Adjudicating Authority and the committee, as the case may be, the extent of capital employed or contributed in a company, a registered partnership firm or a limited liability partnership by the partner or director, as the case may be, who would sign and act in respect of relevant assignment for the company;
- (iii) be liable jointly and severally along with the partner who signs and acts in respect of an assignment handled by the registered partnership firm or limited liability partnership, as the case may be, which is registered as the insolvency professional; and
- (iv) be liable alongwith director who signs and acts in respect of an assignment handled by such the company which is registered as the insolvency professional.”

6. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in principal regulations, in regulation 12, in sub-regulation (1),

(i) clause (a) shall be substituted as under, namely:-

“(a) its sole objective is to provide support services to insolvency professionals or to get registered as an insolvency professional under regulation 7 subject to meeting eligibility requirements under regulation 4.”

(ii) clause (c) shall be substituted as under, namely:-

“majority of its equity shares and voting rights are held by insolvency professionals, who are its directors, in case it is a company;

7. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), in Second Schedule, after Form A, the following form shall be inserted, namely:-

#### **“FORM AA**

*[Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]*

To  
The Executive Director (IP Division)  
Insolvency and Bankruptcy Board of India

**Sub.: Application for registration as an insolvency professional.**

**Sir/Madam,**

1. I, being duly authorized for the purpose, hereby apply on behalf of [*name of the applicant entity*], recognised by the Board as an insolvency professional entity with recognition number [*recognition number*], having registered address at [*registered address of the applicant entity*] for registration as an insolvency professional under section 207 of the Insolvency and Bankruptcy Code, 2016 read with



regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations). I hereby enclose proof (certified copy of Board /Partner’s Resolution) that I am authorized to make this application and correspond with the Board in this respect.

2. I, on behalf of [*name of the applicant entity*], affirm that the applicant entity has at all times complied with regulations 12 and 13 of the IP Regulations.

3. I, on behalf of [*name of the applicant entity*], affirm that the applicant is eligible to be registered as an insolvency professional.

4. I, on behalf of [*name of the applicant entity*], affirm that-

i. Whether the applicant entity is undergoing or has undergone an insolvency resolution process? (Yes/ No)

If yes, please give complete details along with current status.

ii. Whether the applicant entity is an undischarged bankrupt? (Yes/ No)

If yes, please give complete details along with current status.

5. I, on behalf of [*name of the applicant entity*], hereby affirm that –

i. all information contained in this application is true and correct in all material respects,

ii. no material information relevant for the purpose of this application has been suppressed, and

iii. registration granted in pursuance of this application may be cancelled summarily if any information submitted herein is found to be false or misleading in material respects at any stage.

6. I, hereby confirm that the applicable fee has been paid to the Board vide [*please enter the payment details along with date of making the payment*] and enclose proof thereof.

7. If granted registration, I, on behalf of [*name of the applicant entity*], undertake to comply with the requirements of the Code, the rules, regulations or guidelines issued thereunder, and such other terms and conditions as may be imposed by the Board while granting the certificate of registration or subsequently.

Yours faithfully,

Authorized Signatory

(Name)

(Designation)

(Insolvency Professional Registration Number-----)

(Name of the Insolvency Professional Entity-----)

(Recognition Number of the Insolvency Professional Entity----)

Place:

Date :

### ATTACHMENTS

1. Certified copy of Board / Partners’ Resolution authorising the person to make this application and correspond with the Board in this respect

2. Certified copy of Certificate of Recognition

3. Copy of Certificate of Registration issued by the Board

Yours faithfully,

Authorized Signatory

(Name)  
(Designation)  
(Insolvency Professional Registration No.-----)

Place :

Date :

RAVI MITAL, Chairperson  
[ADVT. - \_\_\_\_\_]

**Note:** The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 were published *vide* notification No. IBBI/2016-17/GN/REG003 dated 23<sup>rd</sup> November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 424 on 23<sup>rd</sup> November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022 published *vide* notification No. IBBI/2022-23/GN/REG0-- dated -- July, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. --- on --- July, 2022.

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