

Insolvency and Bankruptcy Board of India

16th August, 2017

Invitation of Comments

AMENDMENTS TO THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) REGULATIONS, 2017

Information Utilities (IUs) constitute a key pillar of the institutional infrastructure under the Insolvency and Bankruptcy Code, 2016 (Code), the other three pillars being the Adjudicating Authority (National Company Law Tribunal and Debt Recovery Tribunal), the Insolvency and Bankruptcy Board of India (IBBI) and Insolvency Professionals. They probably have no parallel elsewhere in the world. They are envisaged to make available verified and authenticated financial information required for various transactions under the Code. For example, a creditor may use the information available with the IUs along with its application for initiating corporate insolvency resolution process to establish default before an adjudicating authority, a claimant may use the information available with the IUs to establish his claim before an interim resolution professional, etc. The IUs thus facilitate determination of defaults, claims, etc. and help closure of transactions in a time bound manner.

2. The IBBI notified the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (<http://ibbi.gov.in/IU%20Regulations%2031032017%20Final.pdf>), on 31st March, 2017. The regulations provide for a framework for registration and regulation of IUs. They lay down the eligibility criteria for registration of an IU. A public company with a minimum net worth of Rs.50 crore is eligible. More than half of the directors of its Governing Board shall be independent directors. The IU, its promoters, its directors, its key managerial personnel, and persons holding more than 5% of its paid-up equity share capital or its total voting power, shall be fit and proper persons. Ordinarily a person should not hold more than 10% of paid up equity share capital, while certain specified persons may hold up to 25% of paid up equity share capital. However, to start with a person may hold up to 51% of paid-up equity share capital of an IU, but it has to reduce to 10% or 25%, as the case may be, before expiry of three years from registration. The regulations enable the IBBI to lay down Technical Standards, through guidelines, for the performance of core services and other services by IUs.

3. The IBBI has received certain suggestions, both formally and informally, seeking a review of certain aspects of the regulations. It has also perused regulatory framework governing similar facilities in financial markets, such as, credit information companies, securities depositories, credit rating agencies, etc. On a review, the Governing Board of the IBBI, in its meeting on 22nd July, 2017, decided to continue with the extant regulations except for the matters dealt in Para 4 hereunder. It felt that the norms of foreign holding in an IU needs to be provided under the FDI Policy / FEMA, which provides for such norms for credit information companies, market infrastructure institutions, credit rating agencies, etc. and not in the regulations under the Code. Consequently, regulations 3(e) and (f) may be deleted from the regulations.

4. The Governing Board advised that the public comments may be invited on the following changes for its consideration:

- (a) Irrespective of foreign holding norms, at least 50% of directors of the Board of an IU may be Indian nationals and resident Indians.
- (b) Regulation 8 (2) may allow a person - Indian or foreign - to hold up to 51% of the paid-up equity share capital or total voting power of an IU up to three years. However, if that person is well-diversified, it may be allowed to hold up to 100%.

5. The IBBI hereby invites comments from public and stakeholders on the proposals in Para 4 above. The comments may be emailed at feedback@ibbi.gov.in or sent by post to the Deputy General Manager (Information Utilities), Insolvency and bankruptcy Board of India, 7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001, on or before 6th September, 2017.