

Info Capsule

AMENDMENTS TO THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) REGULATIONS, 2017¹

1. 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 March 31, 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

¹ Available at: http://www.ibbi.gov.in/Discussion_Paper_on_IU_Regulations_1.pdf

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.
6. *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 September 6, 2017.*

PROVISION OF A FORM FOR SUBMISSION OF CLAIMS BY CREDITORS OTHER THAN FINANCIAL CREDITORS AND OPERATIONAL CREDITORS OF THE CORPORATE DEBTOR UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS²

1. Section 18 (1) of the Insolvency and Bankruptcy Code, 2016 (Code), *inter alia*, provides that an interim resolution professional shall “collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor ...” and “receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15”.

These provisions envisage submission and collation of all claims from all creditors. All creditors, including operational creditors and financial creditors, need to submit claims to the interim resolution professional.

2. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 provide for Forms for submission of claims by operational creditors (including workmen and employees), and financial creditors. There could be claims from a creditor who is not a financial creditor or an operational creditor and it needs a specific form for submitting its claim.
3. The Insolvency and Bankruptcy Board of India has amended these regulations on August 16, 2017 to provide for a form (Form F) for submission claims by creditors other than financial and operational creditors.
4. The amendments are available at www.mca.gov.in and www.ibbi.gov.in.

CABINET APPROVES MOU BETWEEN INDIA AND SWEDEN ON IPRS³

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi today has given its approval to the Memorandum of Understanding (MoU) between India and Sweden on cooperation in the field of Intellectual Property (IPRs).

The MoU establishes a wide ranging and flexible mechanism through which both countries can exchange best practices and work together on training programs and technical exchanges to raise awareness on IPRs and better protect intellectual property rights.

Impact:

The MoU will enable India to exchange experiences in the innovation and IP ecosystems that will substantially benefit entrepreneurs, investors and businesses on both sides. The exchange of best practices between the two countries will lead to improved protection and awareness about India's range of Intellectual creations which are as diverse as its-people. It will be a landmark step forward in India's journey towards becoming a major player in global Innovation and will further the objectives of National IPR Policy, 2016.

² Available at: <http://www.ibbi.gov.in/FormforSubmissionofClaims.pdf>

³ <http://pib.nic.in/newsite/erelease.aspx>

Features:

A Joint Coordination Committee (JCC) with members from both sides will be formed to decide cooperation activities to be taken under the MoU in following areas:

- a) Exchange of best practices, experiences and knowledge on IP awareness among the public, businesses and educational institutions of both countries;
- b) Collaboration in training programmes, exchange of experts, technical exchanges and outreach activities;
- c) Exchange and dissemination of best practices, experiences and knowledge on IP with the industry, universities, R & D organisations and Small and Medium Enterprises (SMEs) through participation in programs and events in the matter, organized singly or jointly by the Parties;
- d) Exchange of information and best practices for disposal of applications for patents, trademarks, industrial designs, copyrights and Geographical Indications, as also the protection, enforcement and use of IP rights;
- e) Cooperation in the development of automation and implementation of modernization projects, new documentation and information systems in IP and procedures for management of IP;
- f) Cooperation to understand how Traditional Knowledge is protected; and the exchange of best practices, including traditional knowledge related databases and awareness raising of existing IP systems;
- g) Exchange of information and best practices regarding Intellectual Property law infringements in the digital environment, especially regarding Copyright issues; and
- h) Other cooperation activities as may be decided by the Parties with mutual understanding.

Team ICSI

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