

Insolvency and Bankruptcy Board of India

7th March, 2018

PRESS RELEASE

Insolvency and Bankruptcy Board of India invites comments on draft IBBI (Mechanism for Issuing Regulations) Regulations, 2018.

The Insolvency and Bankruptcy Code, 2016 (Code) is a modern economic legislation. Section 240 of the Code empowers the Insolvency and Bankruptcy Board of India (IBBI) to make regulations subject to the conditions that the regulations: (a) carry out the provisions of the Code, (b) are consistent with the Code and the rules made thereunder; (c) are made by a notification published in the official gazette; and (d) are laid, as soon as possible, before each House of Parliament for 30 days.

2. The IBBI has evolved a transparent and consultative process to make regulations. It has been endeavor of the IBBI to effectively engage stakeholders in the regulation making process. The process generally starts with a working group making draft regulations. The IBBI puts these draft regulations out in public domain seeking comments thereon. It holds a few round tables to discuss draft regulations with the stakeholders. It takes advice of its Advisory Committee. The process culminates with the Governing Board of the IBBI finalising regulations and the IBBI notifies them. This process endeavours to factor in ground reality, secures ownership of regulations, imparts democratic legitimacy and makes regulations robust and precise, relevant to the time and for the purpose.

3. Public consultation enables collective choice and hence plays an important role in evolution of regulatory framework. The participation of the public, particularly the stakeholders and the regulated, in the regulatory process ensures that the regulations are informed by the legitimate needs of those interested in and affected by regulations.

4. Given the importance of subordinate legislations for the processes under the Code, it is essential that the IBBI has a structured, robust mechanism, which includes effective engagement with the stakeholders, for making regulations. In fact, section 196 (1) (s) of the Code requires the IBBI to specify mechanisms for issuing regulations, including the conduct of public consultation processes, before notification of regulations.

5. In sync with this philosophy and the statutory requirement, the IBBI proposes to make regulations to govern the process of making regulations and consulting the public. The IBBI invites comments from public, including the stakeholders and the regulated, on the draft Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations), Regulations, 2018 which is annexed to this press release and also available at www.ibbi.gov.in. A cost benefit analysis of the draft regulations is appended at the end of the draft regulations.

6. The comments may be e-mailed at feedback@ibbi.gov.in by 31st March, 2018, with subject line “Mechanism for Issuing Regulations”.

Annexure

Draft Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018.

**TO BE PUBLISHED, IN THE GAZETTE OF INDIA, EXTRAORDINARY
PART III, SECTION 4**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, the [●DAY, ● MONTH],
2018

No. IBBI/2018-19/GN/REG---. In exercise of the powers conferred by clause (s) of sub-section (1) of section 196 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, namely:-

CHAPTER I

PRELIMINARY

1. Short title and commencement.

- (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018.
- (2) Save as otherwise provided, these regulations shall come into force on the date of their publication in the Official Gazette.
- (3) These regulations shall not apply to regulations made by the Board in respect of organizational matters.

2. Definitions.

- (1) In these regulations, unless the context otherwise requires,-
 - (a) “Advisory Committee” means an advisory committee constituted by the Board under section 197 of the Code;
 - (b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016); and
 - (c) “Governing Board” means the Board of Members constituted under sub-section (1) of section 189 of the Code.
- (2) Words and expressions used and not defined in these regulations but defined in the Code shall have the meanings respectively assigned to them in the Code.

CHAPTER II

MAKING OF REGULATIONS

3. Making regulations.

The Board may make regulations to carry out the provisions of the Code with the approval of its Governing Board, in compliance with regulations 4 and 5.

4. Public Consultation.

(1) For the purpose of making regulations, the Board shall upload the following on its website seeking comments from the public:-

- (a) draft of proposed regulations;
- (b) the specific provision of the Code under which the Board proposes regulations;
- (c) a statement of the problem that the proposed regulation seeks to address;
- (d) an economic analysis of the proposed regulations;
- (e) a statement carrying norms advocated by international standard setting agencies and the international best practices, if any, relevant to the proposed regulation;
- (f) the manner of implementation of the proposed regulations; and
- (g) the manner, process and timelines for receiving comments from the public.

(2) The Board shall allow at least 21 days for public to submit their comments.

(3) The Board shall consider the public comments received and upload the same on its website along with a general statement of its response on the comments, not later than the date of notification of regulations.

(4) If the Governing Board decides to approve regulations in a form substantially different from the proposed regulations, it shall repeat the process under this regulation.

(5) The regulations shall be notified promptly after it is approved by the Governing Board and the date of their enforcement shall ordinarily be after 30 days from the date of notification unless a different date is specified therein.

(6) Without prejudice to provisions in this regulation, the Board may consult stakeholders and advisory committees, as it may consider appropriate for making regulations.

5. Economic Analysis.

(1) The Board shall cause an economic analysis of the proposed regulations to be made.

(2) The economic analysis shall cover the following:-

- (a) expected costs to be incurred by, and the benefits that will accrue to, the society, economy, stakeholders and the Board, both directly and indirectly on account of the proposed regulation; and
- (b) how the proposed regulations would facilitate in enforcement of the provisions of the Code.

6. Urgent regulations.

(1) Where the Board is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently, it may make regulations or amend the existing regulations, as the case may be, with the approval of Chairperson, without following the provisions under this Chapter, if it considers that time required for compliance with those provisions would defeat the objectives sought to be achieved or cause undue delay in redressing the problem or market failure.

(2) The regulations made under sub-regulation (1) shall remain in force for a period of six months from the date of notification unless approved by the Board in accordance with these regulations.

CHAPTER III

AMENDMENT AND REVIEW OF REGULATIONS

7. Amendment of Regulations.

An amendment to any regulations shall be made in compliance with the provisions of Chapter II.

8. Review of Regulations.

The Board shall review each regulation every three years unless a review is warranted earlier and amend or repeal any regulation, keeping in view-

- (a) its objectives;
- (b) its outcome;
- (c) experience of its implementation;
- (d) experience of its enforcement and the related litigation;
- (e) global best practices, if any;
- (f) its relevance in the changed environment; and
- (g) any other factor considered relevant by the Board.

9. Guidance on law.

(1) The Board may provide for a scheme for general or specific clarification or guidance on the provisions of regulations made by it either on a request by a person or on its own, subject to the condition that such clarification or guidance shall not be binding on the Board and shall not be construed as determination of any question of fact or law.

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

Dr. M. S. Sahoo
Chairperson
Insolvency and Bankruptcy Board of India

Cost Benefit Analysis for regulations on mechanism on issuing regulations

	Direct		Indirect	
	COST	BENEFIT	COST	BENEFIT
Board	• Allocation of resources: i) Human Resources ii) Administrative & Operative Costs iii) Advocacy Cost	• The Board as a regulator seen as a transparent and fair regulatory body • Increase in trust and confidence in the society towards the Board • All suggestions and concerns of framing and implementing regulations considered (Bottom to Top approach)	• Additional time taken in considering the public opinion and framing regulations	• Accommodating concerns of public leads to a more stable, acceptable and comprehensive law • A move towards Inclusive and democratic governance
Stakeholders (Debtor, Creditor, IPs IPAs, and IUs)	• Research & Evaluation of impact of implementing regulations • Administrative cost in giving suggestions • Additional HR costs	• Feel involved in the regulation making process • Stakeholders get a chance to voice their concerns and get them addressed.	• Difficulty in balancing the views of all stakeholders • Additional cost of compliance	• Better Compliance • Alignment of goals & expectations
Society / Economy	• Additional burden on the tax payer • Additional time required to frame regulations	• Robust and responsive Legal Framework • Helps to maintain professional/global standards • More stable laws lead to stable economy.	• More regulations increase complexities for people • Time spent to study the regulations	• Increases transparency and accountability • Setting Standards & clarity for regulation making process • Enhances predictability • Principle based regulations • Efficient markets. • More efficient and liquid markets • Increases employment and GDP • Promotes entrepreneurship