

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE- LAWS
AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES)
REGULATIONS, 2016¹**

[Amended upto 11-10-2018]

IBBI/2016-17/GN/REG001.- In exercise of the powers conferred by sections 196, 203 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, namely -

**CHAPTER I
PRELIMINARY**

Short title and commencement.

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

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

Definitions.

2. (1) In these Regulations, unless the context otherwise requires-
 - ²(a) “Board” means the Insolvency and Bankruptcy Board of India established under section 188 of the Code;
 - ³(aa) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (b) “Governing Board” means the Board of Directors, as defined under section 2(10) of Companies Act, 2013 (18 of 2013), of the company registered as an insolvency professional agency;
 - (c) “model bye-laws” means the model bye-laws as contained in the Schedule to these Regulations.

¹Vide Notification No. IBBI/2016-17/GN/REG001, dated 21st November, 2016, published in Gazette of India, Extraordinary, Part III, Sec.4, vide No. 421, dated 22nd November, 2016 (w.e.f. 22.11.2016).

² Inserted by Notification No. IBBI/2018-19/GN/REG35, dated 11th October, 2018 (w.e.f. 11-10-2018).

³ Renumbered by Notification No. IBBI/2018-19/GN/REG35, dated 11th October, 2018 (w.e.f. 11-10-2018).

Before renumbered, it stood as under:

“(a) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”

(2) Unless the context otherwise requires, words and expressions used and not defined in these Regulations shall have the meanings assigned to them in the Code.

CHAPTER II **BYE LAWS**

Insolvency professional agencies to have Bye-Laws.

3. (1) A company shall submit to the Board its bye-laws along with the application for its registration as an insolvency professional agency.
- (2) The bye-laws shall provide for all matters specified in the model bye-laws.
- (3) The bye-laws shall at all times be consistent with the model bye-laws.
- (4) The insolvency professional agency shall publish its bye-laws, the composition of all committees formed, and all policies created under the bye-laws on its website.

Amendment of Bye-Laws.

4. (1) The Governing Board may amend the bye-laws by a resolution passed by votes in favour being not less than three times the number of the votes, if any, cast against the resolution, by the directors.
- (2) A resolution passed in accordance with sub-regulation (1) shall be filed with the Board within seven days from the date of its passing, for its approval.
- (3) The amendments to the bye-laws shall come into effect on the seventh day of the receipt of the approval, unless otherwise specified by the Board.
- (4) The insolvency professional agency shall file a printed copy of the amended bye-laws with the Board within fifteen days from the date when such amendment is made effective.

CHAPTER III
GOVERNING BOARD

Composition of the Governing Board.

- ⁴[5. Composition of the Governing Board.-** (1) The Governing Board shall consist of-
- (a) managing director;
 - (b) independent directors; and
 - (c) shareholder directors:

Provided that the Governing Board shall have minimum seven directors.

- (2) The managing director shall not be considered either an independent director or a shareholder director.
- (3) Any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

⁴ Substituted by Notification No. IBBI/2018-19/GN/REG35, dated 11th October, 2018 (w.e.f. 11-10-2018).

Regulation 5, before substitution stood as under:

“5.(1) The Governing Board shall have a minimum of seven directors.

(2) More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.

(3) Not more than one fourth of the directors shall be insolvency professionals.

(4) More than half of the directors shall be independent directors at the time of their appointment, and at all times during their tenure as directors:

Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

(5) An independent director shall be an individual-

- (a) who is a person of ability and integrity;
- (b) who has expertise in the field of finance, law, management or insolvency.
- (c) who is not an insolvency professional;
- (d) who is not a relative of the directors of the Governing Board;
- (e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten percent of its share capital, during the two immediately preceding financial years or during the current financial year;
- (f) who is not a shareholder of the insolvency professional agency;
- (g) who is not a member of a governing council of any of the shareholders holding more than ten percent of the share capital of the insolvency professional agency; and

(6) The directors shall elect an independent director as the Chairperson of the Governing Board.

Explanation - For the purposes of this Regulation, any fraction contained in

- (a) ‘more than half’ shall be rounded off to the next higher number; and
- (b) ‘not more than one- fourth’ shall be rounded down to the next lower number.”

- (4) More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.
- (5) The number of independent directors shall not be less than the number of shareholder directors:
Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.
- (6) An independent director shall be an individual-
- (a) who is a person of ability and integrity;
 - (b) who has expertise in the field of finance, law, management or insolvency;
 - (c) who is not an insolvency professional;
 - (d) who is not a relative of the directors of the Governing Board;
 - (e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten per cent. of its share capital, during the immediately preceding two financial years or during the current financial year;
 - (f) who is not a shareholder of the insolvency professional agency;
 - (g) who is not a member of the Board of Directors of any of the shareholders holding more than ten per cent. of the share capital of the insolvency professional agency.
- (7) An independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.
- (8) An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.
- (9) The second term referred to in sub-regulation (8) may be subject to a satisfactory performance review of the first term by the Governing Board.
- (10) A cooling off period of three years shall be applicable for an independent director to become a shareholder director in the same or another insolvency professional agency.
- (11) Not more than one fourth of the directors shall be insolvency professionals.
- (12) The directors shall elect an independent director as the Chairperson of the Governing Board.
- (13) A director, who has, any interest, direct or indirect, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Governing Board or any of its Committees, shall as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Governing Board or the Committee with respect to that matter.

5A. Managing director.- (1) An insolvency professional agency shall, subject to the guidelines issued by the Board from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other

procedural formalities associated with the selection and appointment of the managing director, subject to the condition that-

- (a) an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper;
- (b) an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be relaxed by the Governing Board up to sixty years, after recording reasons therefor; and
- (c) an individual shall not serve as managing director after he attains the age of sixty-five years.

(2) The appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

(3) An individual may serve as managing director for a maximum of two terms.

(4) The process of appointment for the second term of an individual as managing director shall be conducted afresh.

(5) The appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

(6) The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

(7) The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.

(8) The Board may *suo motu* remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after giving a reasonable opportunity of being heard.

(9) The managing director shall be an *ex-officio* member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

5B. Compliance.- Every insolvency professional agency registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with regulations 5 and 5A within one year from the date of such commencement.]

SCHEDULE
MODEL BYE-LAWS OF AN INSOLVENCY PROFESSIONAL AGENCY
[Under Regulation 3 read with Regulation 2(1)(c)]

I. GENERAL

1. The name of the Insolvency Professional Agency is “_____” (hereinafter referred to as the ‘Agency’).
2. The Agency is registered as a company under section 8 of the Companies Act, 2013 with its registered office situated at _____ *[provide full address]*.
3. These bye-laws may not be amended, except in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

II. DEFINITIONS

4. (1) In these bye-laws, unless the context otherwise requires -
 - (a) “certificate of membership” means the certificate of membership of the Agency granted under bye-law 10;
 - (b) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (c) “Governing Board” means the Board of Directors of the Agency as defined under section 2(10) of Companies Act, 2013 (18 of 2013);
 - (d) “professional member” means an insolvency professional who has been enrolled as such, in accordance with Part VI of these bye-laws;
 - (e) “relative” shall have the same meaning as assigned to it in section 2(77) of the Companies Act, 2013.
- (2) Unless the context otherwise requires, words and expressions used and not defined in these bye-laws shall have the meanings assigned to them in the Code.

III. OBJECTIVES

5. (1) The Agency shall carry on the functions of the insolvency professional agency under the Code, and functions incidental thereto.

(2) The Agency shall not carry on any function other than those specified in sub-clause (1), or which is inconsistent with the discharge of its functions as an insolvency professional agency.

IV. DUTIES OF THE AGENCY

6. (1) The Agency shall maintain high ethical and professional standards in the regulation of its professional members.

(2) The Agency shall -

(a) ensure compliance with the Code and rules, regulations and guidelines issued thereunder governing the conduct of insolvency professional agencies and insolvency professionals;

(b) employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation of its professional members;

(c) be accountable to the Board in relation to all bye-laws and directions issued to its professional members;

(d) develop the profession of insolvency professionals;

(e) promote continuous professional development of its professional members;

(f) continuously improve upon its internal regulations and guidelines to ensure that high standards of professional and ethical conduct are maintained by its professional members; and

(g) provide information about its activities to the Board.

V. COMMITTEES OF THE AGENCY

Advisory Committee of Professional Members.

7. (1) The Governing Board may form an Advisory Committee of professional members of the Agency to advise it on any matters pertaining to-

(h) the development of the profession;

(i) standards of professional and ethical conduct; and

(j) best practices in respect of insolvency resolution, liquidation and bankruptcy.

(2) The Advisory Committee may meet at such places and times as the Governing Board may provide.

Other Committees of the Agency.

8. (1) The Governing Board shall constitute-
- (a) one or more Membership Committee(s) consisting of such members as it deems fit;
 - (b) a Monitoring Committee consisting of such members as it deems fit;
 - (c) one or more Grievance Redressal Committee(s), with not less than three members, at least one of whom shall be a professional member of the Agency;
 - (d) one or more Disciplinary Committee(s) consisting of at least one member nominated by the Board.
- (2) The Chairperson of each of these Committees shall be an independent director of the Agency.

VI. PROFESSIONAL MEMBERSHIP

Eligibility for Enrolment.

9. No individual shall be enrolled as a professional member if he is not eligible to be registered as an insolvency professional with the Board:

Provided that the Governing Board may provide additional eligibility requirements for enrolment:

Provided further that such additional requirements shall not discriminate on the grounds of religion, race, caste, gender, place of birth or professional affiliation.

Process of Enrolment as Professional Member.

10. (1) An individual may apply for enrolment as a professional member by submitting an application in such form, in such manner and with such fees as may be specified by the Agency.
- (2) The Agency shall examine the application in accordance with the applicable provisions of the Code, and rules, regulations and guidelines thereunder.
- (3) On examination of the application, the Agency shall give an opportunity to the applicant to remove the deficiencies, if any, in the application.

(4) The Agency may require an applicant to submit additional documents, information or clarification that it deems fit, within reasonable time.

(5) The Agency may reject an application if the applicant does not satisfy the criteria for enrolment or does not remove the deficiencies or submit additional documents or information to its satisfaction, for reasons recorded in writing.

(6) The rejection of the application shall be communicated to the applicant stating the reasons for such rejection, within thirty days of the receipt of the application, excluding the time given for removing the deficiencies or presenting additional documents or clarification by the Agency, as the case may be.

(7) The acceptance of the application shall be communicated to the applicant, along with a certificate of membership in Form A of the Annexure to these bye-laws.

(8) An applicant aggrieved of a decision rejecting his application may appeal to the Membership Committee of the Agency within thirty days from the receipt of such decision.

(9) The Membership Committee shall pass an order disposing of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

Professional Membership Fee.

11. The Agency may require the professional members to pay a fixed sum of money as its annual membership fee.

Register of Professional Members.

12. (1) The Agency shall maintain a register of its professional members, containing their-

- (a) name;
- (b) proof of identity;
- (c) contact details;
- (d) address;
- (e) date of enrolment and professional membership number;
- (f) date of registration with the Board and registration number;
- (g) details of grievances pending against him with the Agency;

- (h) details of disciplinary proceedings pending against him with the Agency; and
- (i) details of orders passed against him by the Board or Disciplinary Committee of the Agency.

(2) The records relating to a professional member shall be made available for inspection to-

- (a) the Board,
- (b) the Adjudicating Authority,
- (c) the committee of creditors in a corporate insolvency resolution process where the professional member has been appointed as an interim resolution professional, or
- (d) any other person who has obtained the consent of the member for such inspection.

VII. DUTIES OF MEMBERS

13. (1) In the performance of his functions, a professional member shall-

- (a) act in good faith in discharge of his duties as an insolvency professional;
- (b) endeavour to maximize the value of assets of the debtor;
- (c) discharge his functions with utmost integrity and objectivity;
- (d) be independent and impartial;
- (e) discharge his functions with the highest standards of professional competence and professional ethics;
- (f) continuously upgrade his professional expertise;
- (g) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;
- (h) comply with applicable laws in the performance of his functions; and
- (i) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

14. The Agency shall have a Code of Conduct that shall be consistent with, and that shall provide for all matters in the Code of Conduct as specified in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

VIII. MONITORING OF MEMBERS

15. The Agency shall have a Monitoring Policy to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations and guidelines issued thereunder, these bye-laws, the Code of Conduct and directions given by the Governing Board.
16. A professional member shall submit information, including records of ongoing and concluded engagements as an insolvency professional, in the manner and format specified by the Agency, at least twice a year.
17. The Monitoring Committee shall review the information and records submitted by the professional members in accordance with the Monitoring Policy.
18. The Monitoring Policy shall provide for the following -
 - (a) the frequency of monitoring;
 - (b) the manner and format of submission or collection of information and records of the professional members, including by way of inspection;
 - (c) the obligations of professional members to comply with the Monitoring Policy;
 - (d) the use, analysis and storage of information and records;
 - (e) evaluation of performance of members; and
 - (f) any other matters that may be specified by the Governing Board.
19. The Monitoring Policy shall –
 - (a) have due regard for the privacy of members,
 - (b) provide for confidentiality of information received, except when disclosure of information is required by the Board or by law, and
 - (c) be non-discriminatory.
20. The Agency shall submit a report to the Board in the manner specified by the Board with information collected during monitoring, including information pertaining to -

- (a) the details of the appointments made under the Code,
- (b) the transactions conducted with stakeholders during the period of his appointment;
- (c) the transactions conducted with third parties during the period of his appointment;
and
- (d) the outcome of each appointment.

IX. GRIEVANCE REDRESSAL MECHANISM

21. (1) The Agency shall have a Grievance Redressal Policy providing the procedure for receiving, processing, redressing and disclosing grievances against the Agency or any professional member of the Agency by-

- (a) any professional member of the Agency;
- (b) any person who has engaged the services of the concerned professional members of the Agency; or
- (c) any other person or class of persons as may be provided by the Governing Board.

(2) The Grievance Redressal Committee, after examining the grievance, may-

- (a) dismiss the grievance if it is devoid of merit; or
- (b) initiate a mediation between parties for redressal of grievance.

(3) The Grievance Redressal Committee shall refer the matter to the Disciplinary Committee, wherever the grievance warrants disciplinary action.

22. The Grievance Redressal Policy shall provide for-

- (a) the format and manner for filing grievances;
- (b) maximum time and format for acknowledging receipt of a grievance;
- (c) maximum time for the disposal of the grievance by way of dismissal, reference to the Disciplinary Committee or the initiation of mediation;
- (d) details of the mediation mechanism
- (e) provision of a report of the grievance and mediation proceedings to the parties to the grievance upon dismissal or resolution of the grievance;

- (f) action to be taken in case of malicious or false complaints;
- (g) maintenance of a register of grievances made and resolutions arrived at; and
- (h) periodic review of the Grievance Redressal Mechanism.

X. DISCIPLINARY PROCEEDINGS

23. The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional members-
- (a) based on a reference made by the Grievances Redressal Committee;
 - (b) based on monitoring of professional members;
 - (c) following the directions given by the Board or any court of law; or
 - (d) *suo moto*, based on any information received by it.
24. (1) The Agency shall have a Disciplinary Policy, which shall provide for the following -
- (a) the manner in which the Disciplinary Committee may ascertain facts;
 - (b) the issue of show-cause notice based on the facts;
 - (c) disposal of show-cause notice by a reasoned order, following principles of natural justice;
 - (d) timelines for different stages of disposal of show cause notice; and
 - (e) rights and obligations of the parties to the proceedings.
- (2) The orders that may be passed by the Disciplinary Committee shall include-
- (a) expulsion of the professional member;
 - (b) suspension of the professional member for a certain period of time;
 - (c) admonishment of the professional member;
 - (d) imposition of monetary penalty;

- (e) reference of the matter to the Board, which may include, in appropriate cases, recommendation of the amount of restitution or compensation that may be enforced by the Board; and
- (f) directions relating to costs.

(3) The Disciplinary Committee may pass an order for expulsion of a professional member if it has found that the professional member has committed-

- (a) an offence under any law for the time being in force, punishable with imprisonment for a term exceeding six months, or an offence involving moral turpitude;
- (b) a gross violation of the Code, rules, regulations and guidelines issued thereunder, bye-laws or directions given by the Governing Board which renders him not a fit and proper person to continue acting as an insolvency professional.

Explanation: The violations referred to in sub-clause (b) include-

- (i) making a false representation or indulging in fraud for the purpose of obtaining creditors' approval under sections 28, 31, 111 or 153 of the Code;
- (ii) contravening provisions of the Code in a manner which is actionable in accordance with sections 70(2) or 185 of the Code;
- (iii) knowingly or wilfully committing or authorizing or permitting contravention of sections 14, 96, 101 or 124 of the Code;
- (iv) contravening provisions of the Code inviting action in accordance with sections 71 or 187 of the Code;
- (v) aiding or abetting any activity which is actionable in accordance with Chapter VII of Part II or Chapter VII of Part III of the Code,
- (vi) providing unequal or differential treatment to the disadvantage of a party which cannot be justified with reference to the interests of the insolvency resolution, liquidation or bankruptcy process; or
- (vii) in any other case it deems fit.

(4) Any order passed by the Disciplinary Committee shall be placed on the website of the Agency within seven days from passing of the said order, and a copy of the order shall be provided to each of the parties to the proceeding.

(5) Monetary penalty received by the Agency under the orders of the Disciplinary Committee shall be credited to the Insolvency and Bankruptcy Fund constituted under section 224 of the Code.

25. (1) The Governing Board shall constitute an Appellate Panel consisting of one independent director of the Agency, one member from amongst the persons of eminence having experience in the field of law, and one member nominated by the Board.

(2) Any person aggrieved of an order of the Disciplinary Committee may prefer an appeal before the Appellate Panel within thirty days from the receipt of a copy of the final order.

(3) The Appellate Panel shall dispose of the appeal in the manner it deems expedient, within thirty days of the receipt of the appeal.

XI. SURRENDER OF PROFESSIONAL MEMBERSHIP AND EXPULSION FROM PROFESSIONAL MEMBERSHIP

Temporary Surrender of Professional Membership.

26. (1) A professional member shall make an application for temporary surrender of his membership of the Agency at least thirty days before he-

(a) becomes a person not resident in India;

(b) takes up employment; or

(c) starts any business, except as specifically permitted under the Code of Conduct;

and upon acceptance of such temporary surrender and on completion of thirty days from the date of application for temporary surrender, the name of the professional member shall be temporarily struck from the registers of the Agency, and the same shall be intimated to the Board.

(2) No application for temporary surrender of professional membership of the Agency shall be accepted if -

(a) there is a grievance or disciplinary proceeding pending against the professional member before the Agency or the Board, and he has not given an undertaking to cooperate in such proceeding; or

(b) the professional member has been appointed as a resolution professional, liquidator or bankruptcy trustee for a process under the Code, and the appointment of another insolvency professional may be detrimental to such process.

(3) A professional member may make an application to revive his temporarily surrendered membership when the conditions for temporary surrender as provided in sub-clause (1) cease to be applicable, and upon acceptance of the application for revival, the name of the professional member shall be re-inserted in the register of the Agency, and the same shall be intimated to the Board.

Surrender of Professional Membership

27. (1) A professional member who wishes to surrender his membership of the Agency may do so by submitting an application for surrender of his membership.
- (2) Upon acceptance of such surrender of his membership, and completion of thirty days from the date of such acceptance, the name of the professional member shall be struck from the registers of the Agency, and the same shall be intimated to the Board.
28. Any fee that is due to the Agency from a professional member surrendering his membership shall be cleared prior to his name being struck from the registers of the Agency.
29. The Agency may refuse to accept the surrender of membership by any professional member if -
- (a) there is any grievance or disciplinary proceeding pending against the professional member before the Agency or the Board; or
 - (b) the professional member has been appointed as a resolution professional, liquidator or bankruptcy trustee for a process under the Code, and the appointment of another insolvency professional may be detrimental to such process.

Expulsion from Professional Membership.

30. A professional member shall be expelled by the Agency –
- (a) if he becomes ineligible to be enrolled under bye-law 9;
 - (b) on expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the Appellate Panel;
 - (c) upon non-payment of professional membership fee despite at least two notices served in writing;
 - (d) upon the cancellation of his certificate of registration by the Board;
 - (e) upon the order of any court of law.

ANNEXURE

FORM A

CERTIFICATE OF PROFESSIONAL MEMBERSHIP

(Under bye-law 10 of the Agency's bye-laws)

No.

1. This is to certify that *[insert name]* residing at *[insert address]* is enrolled as a professional member of *[insert name of insolvency professional agency]* with professional membership no. *[insert number]*.
2. This certificate shall be valid from *[insert date]*.

Sd/-

For and on behalf of *[name of insolvency professional agency]*

Place:

Date:

(Dr. M. S. Sahoo)

Chairperson

Insolvency and Bankruptcy Board of India