

The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016

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The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016¹

In exercise of the powers conferred by Sections 196, 201, 202, 219, and 220 read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Board hereby makes the following regulations to provide a framework for regulation of insolvency professional agencies in terms hereof, namely—

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.

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

2. Definitions.—(1) In these Regulations, unless the context otherwise requires—

- (a) “Code” means the Insolvency and Bankruptcy Code, 2016;
- (b) “control” shall have the same meaning as assigned to it in Section 2(27) of the Companies Act, 2013;
- (c) “certificate of registration” means a certificate of registration granted or renewed by the Board under these regulations;
- (d) “net worth” shall have the same meaning as assigned to it under Section 2(57) of the Companies Act, 2013.

(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 REGISTRATION

²[3. Eligibility for registration.—(1) No person shall be eligible for registration as an insolvency professional agency unless it is a company registered under Section 8 of the Companies Act, 2013, and—

1. Insolvency and Bankruptcy Board of India, Noti. No. IBBI/2016-17/GN/REG002, dated November 21, 2016, published in the Gazette of India, Extra., Part III, Section 4, dated 22nd November, 2016, pp. 10-16, No. 420

2. Subs. by No. IBBI/2018-19/GN/REG33, dt. 11-10-2018 (w.e.f. 11-10-2018). Prior to substitution it read as:

“3. *Eligibility for registration.*—No person shall be eligible to be registered as an insolvency professional agency unless it is a company registered under Section 8 of the Companies Act, 2013, and—

(a) its sole object is to carry on the functions of an insolvency professional agency under the Code;

- (a) its sole object is to carry on the functions of an insolvency professional agency under the Code;
- (b) it has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016;
- (c) it has a minimum net worth of ten crore rupees;
- (d) it has a paid-up share capital of five crore rupees;
- (e) it is not under the control of any person resident outside India;
- (f) not more than forty-nine per cent. of its share capital is held, directly or indirectly, by persons resident outside India;
- (g) it is not a subsidiary of a body corporate through more than one layer; and
- (h) the applicant, its promoters, its directors and its shareholders are fit and proper persons.

Explanation 1.—For the purposes of clause (g), “layer” in relation to a body corporate means its subsidiary.

Explanation 2.—For determining whether a person is fit and proper under clause (h), the Board may take into account any consideration as it deems fit, including but not limited to the following criteria, namely—

- (i) integrity, reputation and character,
- (ii) absence of conviction and restraint orders,
- (iii) competence including financial solvency and net worth.

(2) No person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent. of the paid-up equity share capital in an insolvency professional agency:

Provided that—

- (i) a stock exchange;

(b) it has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies), 2016;

- (c) it has a minimum net worth of ten crore rupees;
- (d) it has a paid-up share capital of five crore rupees;
- (e) it is not under the control of person(s) resident outside India;
- (f) not more than 49% of its share capital is held, directly or indirectly, by persons resident outside India; and
- (g) it is not a subsidiary of a body corporate through more than one layer:

Explanation.—“layer” in relation to a body corporate means its subsidiary;

- (h) itself, its promoters, its directors and persons holding more than 10% of its share capital are fit and proper persons.

Explanation.—For determining whether a person is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria—

- (i) integrity, reputation and character,
- (ii) absence of convictions and restraint orders, and
- (iii) competence including financial solvency and net worth.”

- (ii) a depository;
- (iii) a banking company;
- (iv) an insurance company;
- (v) a public financial institution; and
- (vi) a multilateral financial institution,

may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid-up equity share capital of an insolvency professional agency:

Provided further that—

- (i) the Central Government;
- (ii) a State Government; and
- (iii) a statutory regulator,

may, acquire or hold, directly or indirectly, up to hundred per cent. of the paid-up equity share capital of an insolvency professional agency.]

4. Application for registration or renewal thereof.—(1) A company eligible for registration as an insolvency professional agency, may make an application to the Board in Form A of the Schedule to these Regulations, along with a non-refundable application fee of ten lakh rupees.

(2) An insolvency professional agency who has been granted registration under Regulation 5, may six months before the expiry of such registration, make an application for renewal in Form A of the Schedule to these regulations, along with a non-refundable application fee of five lakh rupees.

(3) The Board shall acknowledge an application made under this regulation within seven days of its receipt.

(4) The Board shall examine the application, and give an opportunity to the applicant to remove the deficiencies, if any, in the application.

(5) The Board may require the applicant to submit, within reasonable time, additional documents, information or clarification that it deems fit.

(6) The Board may require the applicant to appear, within reasonable time, before the Board in person, or through its authorised representative for clarifications required for processing the application.

5. Grant of certificate of registration.—(1) If the Board is satisfied, after such inspection or inquiry as it deems necessary and having regard to the principles specified in Section 200 of the Code, that the applicant—

- (a) is eligible under Regulation 3;
- (b) has adequate infrastructure to perform its functions under the Code;
- (c) has in its employment, persons having adequate professional and other relevant experience, to enable it to perform its functions under the Code; and
- (d) has complied with the conditions of the certificate of registration, if he has submitted an application for renewal under Regulation 4(2),

it may grant or renew a certificate of registration to the applicant to carry on the activities of an insolvency professional agency in Form B of the Schedule to these regulations, within sixty days of receipt of the application, excluding the time given by the Board for removing the deficiencies, or presenting additional documents, information or clarification, or appearing in person, as the case may be.

(2) The registration shall be subject to the conditions that the insolvency professional agency shall—

- (a) abide by the Code, rules, regulations, and guidelines thereunder and its bye-laws;
- (b) at all times after the grant of the certificate continue to satisfy the requirements under sub-regulation (1);
- ³[(c) pay an annual fee of five lakh rupees to the Board, within fifteen days from the date of commencement of the financial year:

Provided that no annual fee shall be payable in the financial year in which an insolvency professional agency is granted registration or renewal, as the case may be:

Provided further that without prejudice to any other action which the Board may take as permissible under the Code, any delay in payment of fee by an insolvency professional agency shall attract simple interest at the rate of twelve percent per annum until paid.

Illustration

- (a) Where an insolvency professional agency is registered on 1st December, 2016 upon receipt of an application fee of ten lakh rupees along with the application for registration, no further fee is required to be paid for the financial year 2016-17. The annual fee of five lakh rupees becomes due on 1st April, 2017 and shall be paid by 15th April, 2017 for the financial year 2017-18. It becomes similarly due on 1st April, 2018 to be paid by 15th April, 2018, on 1st April, 2019 to be paid by 15th April, 2019, on 1st April, 2020 to be paid by 15th April, 2020 and on 1st April, 2021 to be paid by 15th April, 2021. Thereafter, the insolvency professional agency may apply for renewal of registration along with an application fee of five lakh rupees. If renewal is granted, there will be no annual fee for 2021-22.
- (b) Where the annual fee is paid on 20th April, 2017, interest at the rate of twelve percent per annum shall be paid for the delay of five days.]

3. Subs. by Noti. No. IBBI/2019-20/GN/REG044, dt. 23-7-2019 (w.e.f. 23-7-2019). Prior to substitution it read as:

“(c) pay a fee of five lakh rupees to the Board, payable every year after the year in which the certificate is granted or renewed;”

- (d) seek approval of the Board when a person, other than a statutory body, seeks to hold more than ten per cent, directly or indirectly, of the share capital of the insolvency professional agency;
- (e) take adequate steps for redressal of grievances; and
- (f) abide by such other conditions as may be specified.

(3) The certificate of registration shall be valid for a period of five years from the date of issue.

6. Procedure for rejecting application.—(1) If, after considering an application made under Regulation 4, the Board is of the prima facie opinion the registration ought not be granted or renewed, or be granted or renewed with additional conditions, it shall communicate the reasons for forming such an opinion and give the applicant an opportunity to explain why its application should be accepted, within fifteen days of the receipt of the communication from the Board, to enable it to form a final opinion.

(2) The communication under sub-regulation (1) shall be made to the applicant within forty-five days of receipt of the application, excluding the time given by the Board for removing the deficiencies, presenting additional documents, information or clarifications, or appearing in person, as the case may be.

(3) After considering the explanation, if any, given by the applicant under sub-regulation (1), the Board shall communicate its decision to—

- (a) accept the application, along with the certificate of registration, or
- (b) reject the application by an order, giving reasons thereof within thirty days of receipt of explanation.

(4) The order rejecting an application for renewal of registration shall require the insolvency professional agency to—

- (a) discharge pending obligations;
- (b) continue its functions till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency; and
- (c) comply with any other directions as considered appropriate.

CHAPTER III

SURRENDER OR CANCELLATION OF REGISTRATION

7. Surrender of registration.—(1) An insolvency professional agency may submit an application for surrender of a certificate of registration to the Board, providing—

- (a) the reasons for such surrender;
- (b) the details of all the pending or on-going engagements under the Code of the insolvency professionals enrolled with it;
- (c) details of its pending or on-going activities; and
- (d) the manner in which it seeks to wind-up its affairs as an insolvency professional agency.

(2) The Board shall within seven days of receipt of the application, publish a notice of receipt of such application on its website and invite objections to the surrender of registration, to be submitted within fourteen days of the publication of the notice.

(3) After considering the application and the objections submitted under sub-regulation (2), if any, the Board may within thirty days from the last date of submission of objections, approve the application for surrender of registration subject to such conditions as it deems fit.

(4) The approval under sub-regulation (3) may require the insolvency professional agency to—

- (a) discharge any pending obligations; or
- (b) continue its functions till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency.

(5) The Board, after being satisfied that the requirements of sub-regulation (4) have been complied with, shall publish a notice on its website stating that the surrender of registration by the insolvency professional agency has taken effect.

8. Disciplinary proceedings.—(1) Based on the findings of an inspection or investigation, or on material otherwise available on record, if the Board is of the prima facie opinion that sufficient cause exists to take actions permissible under Section 220, it shall issue a show-cause notice to the insolvency professional agency.

(2) The show-cause notice shall be in writing, and shall state—

- (a) the provisions of the Code under which it has been issued;
- (b) the details of the alleged facts;
- (c) the details of the evidence in support of the alleged facts;
- (d) the provisions of the Code, rules, regulations or guidelines thereunder allegedly violated, or the manner in which the public interest is allegedly affected;
- (e) the actions or directions that the Board proposes to take or issue if the allegations are established;
- (f) the manner in which the insolvency professional agency is required to respond to the show-cause notice;
- (g) consequences of failure to respond to the show-cause notice; and
- (h) procedure to be followed for disposal of the show-cause notice.

(3) The show-cause notice shall enclose copies of relevant documents and extracts of relevant portions from the report of investigation or inspection, or other records.

(4) A show-cause notice issued shall be served on the insolvency professional agency in the following manner—

- (a) by sending it to the insolvency professional agency at its the registered office, by registered post with acknowledgement due; or

(b) by an appropriate electronic means to the email address provided by the insolvency professional agency to the Board.

(5) The Board shall constitute a Disciplinary Committee for disposal of the show-cause notice.

(6) The Disciplinary Committee shall dispose of the show-cause notice assigned under (5) by a reasoned order in adherence to principles of natural justice.

(7) The Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of six months of the assignment.

(8) The Disciplinary Committee shall consider the submissions, if any, made by the insolvency professional agency.

(9) After considering the relevant material facts and circumstances and material on record, the Disciplinary Committee shall dispose of the show-cause notice by a reasoned order.

(10) The order in disposal of a show-cause notice may provide for—

- (a) no action;
- (b) warning;
- (c) any of the actions under Section 220(2) to (4); or
- (d) a reference to the Board to take any action under Section 220(5).

(11) The order passed under sub-regulation (10) shall not become effective until thirty days have elapsed from the date of issue of the order unless the Disciplinary Committee states otherwise in the order along with the reason for the same.

(12) The order passed under sub-regulation (10) shall be issued to the insolvency professional agency immediately, and published on the website of the Board.

(13) If the order passed under sub-regulation (10) suspends or cancels the registration of the insolvency professional agency, the Disciplinary Committee shall require the insolvency professional agency to—

- (a) discharge pending obligations;
- (b) continue its functions till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency; and
- (c) comply with any other directions as considered appropriate.

9. Appeal.—An appeal may be preferred under Section 202 of the Code, within a period of thirty days of receipt the impugned order in the manner prescribed in Part III of the National Company Law Tribunal Rules, 2016.

CHAPTER IV

IN-PRINCIPLE APPROVAL

10. Grant of in-principle approval.—(1) Any person who seeks to establish an insolvency professional agency may make an application for an in principle

approval, demonstrating that the conditions in sub-regulation (2) are satisfied, along with a non-refundable application fee of ten lakh rupees.

(2) If the Board is satisfied, after such inspection or inquiry as it deems necessary, that—

- (a) the applicant is a fit and proper person; and
- (b) the proposed or existing company which may receive registration would be able to meet the requirements for grant of registration under Regulation 5(1),

it may grant in-principle approval which shall be valid for a period not exceeding one year and be subject to such conditions as it deems fit.

(3) During the validity of in-principle approval, the company referred to sub-regulation 2(b) may make an application for a certificate of registration as an insolvency professional agency to the Board in accordance with Regulation 4(1), but shall not be required to pay the application fees for registration.

SCHEDULE

FORM A

APPLICATION FOR CERTIFICATE OF REGISTRATION

[Under Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016]

To

The Chairperson
The Insolvency and Bankruptcy Board of India
[Insert address]

From

[Name and address]

Subject: Application for grant or renewal of certificate of registration as insolvency professional agency

Madam/Sir,

1. I, being duly authorised for the purpose, hereby apply on behalf of [name and address of the applicant] for
 - (a) grant of certificate of registration as insolvency professional agency, or
 - (b) renewal of certificate of registration as insolvency professional agency,
 and enclose a copy of the board resolution authorising me to make this application and correspond with the Board in this respect.
2. Copies of the memorandum of association, articles of association and the bye-laws, as applicable, of the applicant are enclosed.
3. I, on behalf of [insert name], affirm that the applicant is eligible to be registered as an insolvency professional agency.
4. I, on behalf of [insert name], hereby affirm that—
 - (a) all information contained in this application is true and correct in all material respects,
 - (b) no material information relevant for the purpose of this application has been suppressed,
 and

- (c) registration granted or renewed in pursuance of this application may be cancelled summarily if any information submitted is found to be false or misleading in material respects at any stage.
5. If granted registration, I, on behalf of [insert name], undertake to comply with the requirements of the Code, the rules, regulations or guidelines issued thereunder, and such other conditions and terms as may be contained in the certificate of registration or be specified or imposed by the Board subsequently.

Yours faithfully,

Sd-

Authorised Signatory
(Name)

(Designation)

Date:

Place:

ANNEXURE TO FORM A**PART I****GENERAL**

1. Name of the applicant.
2. Address of registered office and principal place of business of the applicant.
3. Corporate Identification Number (CIN).
4. PAN.
5. Name, designation and contact details of the person authorised to make this application and correspond with the Board in this respect.

PART II**MEMORANDUM OF ASSOCIATION, ARTICLES OF ASSOCIATION AND BYE-LAWS**

6. Please state if the memorandum of association, articles of association and bye-laws provide for all matters as required in, and are consistent with the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
(Yes/No)
7. Please specify the clause number of the provisions of the bye-laws which are in addition to the provisions of the model bye-laws specified in the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (if any).

PART III**SHAREHOLDING AND FINANCIAL STRENGTH**

8. Please provide details of the persons holding more than ⁴[5%], directly or indirectly, of the share capital of the applicant.

Sl. No.	Name and address of the shareholder	PAN/Passport No and country of issue/company registration number	Percentage of shareholding in the applicant company and/or holding company

4. Subs. for "10%" by No. IBBI/2018-19/GN/REG33, dt. 11-10-2018 (w.e.f. 11-10-2018).

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9. Do persons resident outside India in aggregate hold more than 49% of the share capital of the applicant? Please provide details.
10. Who exercises control over the applicant? Please provide details.
11. Do persons resident outside India exercise control over the management or policy decisions of the applicant? If so, please provide details.
12. Please provide audited financial statements of:
- a company holding more than 10% of the share capital of the applicant (if any),
 - a company who is in control of the applicant (if any),
 - promoter company (if any),
 - the applicant,
- of the last three years or from the date of incorporation of the company, whichever is less.
13. Please provide any other information to demonstrate that the persons holding more than ⁵[5%] of the share capital of the company, and the promoters of the company are fit and proper persons.

PART IV

DIRECTORS AND EMPLOYEES

14. Please state the details of the applicant's Board of Directors:

Sl. No.	Name and address of the director	DIN and PAN	Details of any pending or concluded criminal proceedings against the directors

15. Please provide any other information to demonstrate that the directors are fit and proper persons.
16. Please provide number of employees, category-wise.

PART V

INFRASTRUCTURE

17. Please state the infrastructure the applicant currently has and proposes to have to enable it to discharge its functions as an insolvency professional agency, including:
- the number and locations of offices,
 - infrastructure in respect of enrolment, monitoring, grievance redressal and disciplinary proceedings,
 - IT and other computer facilities, and
 - library and training facilities.

PART VI

COMPLIANCE

[For applications for renewal of registration]

18. Please provide details of the insolvency professional agency's compliance with the conditions of its certificate of registration.
19. Please provide details of the insolvency professional agency's compliance with the Board's requirements in respect of reporting.

5. Subs. for "10%" by No. IBBI/2018-19/GN/REG33, dt. 11-10-2018 (w.e.f. 11-10-2018).

20. Please provide details of any grievance redressal proceedings instituted against the insolvency professional agency or by it under its bye-laws, any regulations of the Board or the Code. Please provide any other details you consider relevant in support of the application.

Sd-
Authorised Signatory
(Name)
(Designation)

Date:

Place:

FORM B

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

Certificate of Registration No.

The Insolvency and Bankruptcy Board of India hereby grants/renews this certificate of registration to/ of [insert name and address] to act as an insolvency professional agency in accordance with the Insolvency and Bankruptcy Code, 2016.

The certificate of registration shall be valid from [insert start date] to [insert end date] and may be renewed.

Sd-
(Name and Designation)

(For and on behalf of Insolvency and Bankruptcy Board of India)

Place:

Date:
