

## **IBBI releases Discussion Paper on Governance of Insolvency Professional Agencies and Information Utilities**

The Bankruptcy Law Reforms Committee (BLRC), which conceptualised the Insolvency and Bankruptcy Code, 2016, felt that regulations must ensure that Insolvency Professionals (IPs) are competent to perform the variety of tasks they may be hired for and that IPs are fair and impartial, as also conflict of interests are minimised. To this end, the BLRC recommended that the Insolvency Professional Agencies (IPAs) establish rules and standards for their members through bye-laws, create and update relevant entry barriers, and have mechanisms in place to enforce their rules and standards effectively.

The BLRC was of the opinion that the regulatory structure be so designed that competition is promoted amongst the multiple IPAs to help achieve efficiency gains. Greater competition among the IPAs will in turn lead to better standards and rules and better enforcement. The BLRC visualised IPAs as mini State having the following functions:

1. "Regulatory functions - drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members;
2. Executive functions - monitoring, inspecting and investigating members on a regular basis, and gathering information on their performance, with the overarching objective of preventing frivolous behaviour and malfeasance in the conduct of IP duties;
3. Quasi-judicial functions - addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions."

Section 205 of the Code empowers an IPA to make bye-laws consistent with the model byelaws specified by the IBBI. Section 204 of the Code provides that an IPA shall perform the following functions:

- a) Grant membership to persons who fulfil all requirements set out in its bye-laws on payment of membership fee;

- b) Lay down standards of professional conduct for its members;
- c) Monitor the performance of its members;
- d) Safeguard the rights, privileges and interests of insolvency professionals who are its members;
- e) Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;
- f) Redress the grievances of consumers against insolvency professionals who are its members; and
- g) Publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

There is no exact parallel organisation to IPAs. The closest may be the stock exchanges regulated by the Securities and Exchange Board of India (SEBI). The stock exchanges regulate trading on their platform and their members, called brokers, who are registered with the SEBI. In view of their statutory regulatory responsibilities and their commercial obligations, SEBI regulates the stock exchanges through the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012. These regulations provide as under:

**A. Organisation:** A company limited by shares is eligible for recognition as a stock exchange.

**B. Shareholding**

- I. At least fifty-one per cent of the paid-up equity share capital of a stock exchange is by public.
- II. No person resident in India shall at any time, directly or indirectly, either individually or
- III. together with persons acting in concert, acquire or hold more than five per cent of the paid-up
- IV. equity share capital in a stock exchange.
- V. The following persons may, however, acquire or hold, directly or indirectly, either
- VI. individually or together with persons acting in concert, up to fifteen per cent of the paid-up
- VII. equity share capital of a stock exchange:
  - a stock exchange;
  - a depository;
  - a banking company;

**C. Board Composition**

- I. The governing board of a stock exchange shall include: (a) shareholder directors; (b) public interest directors; and (c) managing director.
- II. Subject to prior approval of the SEBI, the chairperson shall be elected by the governing board from amongst the public interest directors.
- III. The number of public interest directors shall not be less than the number of shareholder directors in a stock exchange.

#### **D. Managing Director**

- I. The appointment, renewal of appointment and termination of service of the managing director of a stock exchange shall be subject to prior approval of the SEBI.
- II. A stock exchange shall, subject to the guidelines issued by the Board from time to time, determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/ appointment of the managing director.
- III. The appointment of the managing director shall be for a tenure not less than three years and not exceeding five years.

In order to promote competition, to provide for and strengthen the position of Managing Director and generally to further energise the governing board of the IPAs, it is proposed to broadly adopt the provisions relating to organisational structure, board composition, shareholding pattern and Managing Director from and similar to the provisions in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, subject to following modifications, namely,

- I. There may be no limit on shareholding of Government or any statutory regulator in an IPA;
- II. Multilateral institutions may be allowed to hold shares up to 15% of paid up capital of an IPA;
- III. The term 'independent director' may be used in place of 'public interest director'. An individual may serve as an independent director of an IPA for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier. The second term may be subject to a satisfactory performance review of the first term by the governing board of the IPA. A cooling off period of three years may be applicable for an independent director to become a shareholder director in the same or another IPA;

Keeping in view the provisions in the SEBI (Depositories and Participants) Regulations, 1996 and the need to provide for and strengthen the position of Managing Director and generally to further energise the governing board of the IUs, it is proposed to amend the IBBI (Information Utilities) Regulations, 2017 relating to Board Composition, and Managing Director as under:

#### **A. Board Composition**

- I. The governing board of an IU may include: (a) shareholder directors; (b) independent directors; and (c) managing director;
- II. The number of independent directors may not be less than the number of shareholder directors in an IU;
- III. The independent directors on the governing board of an IU may be nominated by the IBBI from a list of names proposed by the IU;

#### **B. Managing Director**

- I. The appointment, renewal of appointment and termination of service of the managing director of an IU may be subject to prior approval of the IBBI;
- II. An IU may determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection/ appointment of the managing director;
- III. The appointment of the managing director may be for a tenure of not less than three years and not exceeding five years;

**The detailed Discussion Paper on Governance of Insolvency Professional Agencies and Information Utilities by Insolvency and Bankruptcy Board of India (IBBI) is attached for your kind reference. IBBI seeks inputs on the discussion paper and therefore, request you to please provide your suggestions (if any) latest by 27<sup>th</sup> August 2018 at [research@phdcci.in](mailto:research@phdcci.in) / [kritika.bhasin@phdcci.in](mailto:kritika.bhasin@phdcci.in).**

Please contact for any query related to this mail to Ms. Kritika Bhasin, Research Officer at [kritika.bhasin@phdcci.in](mailto:kritika.bhasin@phdcci.in) with a cc to Dr. S P Sharma, Chief Economist at [spsharma@phdcci.in](mailto:spsharma@phdcci.in) and Ms. Surbhi Sharma, Associate Economist at [surbhi@phdcci.in](mailto:surbhi@phdcci.in), PHD Chamber of Commerce & Industry.

Warm regards,

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