

IBBI UPDATES

1. Pre- Packaged Insolvency Resolution Process: Information Brochure:

IBBI has designed a brochure for Pre- Packaged Insolvency Resolution Process (PPIRP). This brochure presents step-by-step activities from initiation till closure of PPIRP.

It annexes:

- (i) a typical process flow of a PPIRP (Annexure A);
- (ii) an indicative list of responsibilities of the CD, the RP and the creditors in respect of a PPIRP (Annexure B);
- (iii) a model timeline for completion of PPIRP within the prescribed period of 120 days from the date of its commencement (Annexure C); and
- (iv) a list of Forms (Annexure D).

Details processes for the followings is given in the Report

- (a) Background of the PPIRP process
- (b) Governing Framework
- (c) Eligibility for PPIRP
- (d) Pre-initiation Phase
- (e) Application for Initiation
- (f) Post-initiation Phase
- (g) Approval of Resolution Plan
- (h) Closure of PPIRP
- (i) Process Flow of PPIRP
- (j) An Indicative List of Responsibilities of the Corporate Debtor, Resolution Professional and Creditors
- (k) A Model Timeline for Completion of the PPIRP
- (l) List of Forms

The link to the aforesaid Brochure is as below:

<https://ibbi.gov.in/uploads/whatsnew/bdb6ae6137a1d86513a8b925fe07b002.pdf>

2. Guidance note by National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) for companies undergoing CIRP (Corporate Insolvency Resolution Process)

On **July 09, 2021** NSE vide **Circular No. NSE/CML/2021/27** issued a Guidance Note for companies undergoing Corporate Insolvency Resolution Process (CIRP). The Guidance Note states that the Companies undergoing CIRP have to comply with the requirement of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 ("LODR Regulations") and other applicable regulations as amended from time to time.

Off : 1005, Hubtown Solaris, Prof N. S. Phadke Marg, Andheri East, Mumbai – 400 069

Tel: 91 22 26845919/20/21 Cell: 09820177691

Website: www.amitadesai.com Email: info@amitadesai.com

Amita Desai & Co. Company Secretaries, Mumbai

LODR Regulations contain the list of events that are required to be disclosed in relation to CIRP by the Companies. In addition to the disclosures already prescribed, further following disclosures are also required to be made by Companies undergoing CIRP:

- (a) Prior intimation of at least two working days intimating about the date of hearing where NCLT would be considering the Resolution Plan.
- (b) Disclosure of the approval of Resolution Plan to be made to the Exchange on oral pronouncement or otherwise of the Order on immediate basis and not later than 30 minutes.
- (c) Resolution Professional shall inform through the Exchange platform any impact on the existing holders / investors of listed securities on areas such as status of listing, the value of holding of existing holders, write off/ cancellation/ extinguishment of existing equity shares/ preference shares/ debentures, etc. without any payment to such holders, where applicable.
- (d) Companies/Resolution Professionals are advised to be guided by the provisions of the LODR Regulations and advised to maintain the confidentiality of the Resolution Plan until details are not submitted on the Exchange Platform.

The link to the aforesaid Guidance Note by BSE is as below:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20210709-9>

The link to the aforesaid Guidance Note by NSE is as below:

https://static.nseindia.com/s3fs-public/inline-files/NSE_Circular_09072021.pdf

3. IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021:

On **July 14, 2021**, IBBI vide **Notification No. IBBI/2021-22/GN/REG075** notified a new set of regulations to amend the existing IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which shall come into force as on the date of its publication in the Official Gazette.

These regulations shall apply to every Corporate Insolvency Resolution Process (CIRP) on-going or commencing on or after the date of coming into force of these regulations.

Key highlights of the amendments are as follows:

1) Eligibility for Resolution Professional (Regulation 3):

- **Regulation 3(1)- Amendment- by adding IRP :** An Insolvency Professional, shall be eligible to be appointed as an **IRP (Interim Resolution Professional)** or RP (Resolution Professional), as the case may be, for CIRP of a Corporate Debtor (CD), if he and all Partners and Directors of the Insolvency Professional Entity (IPE) of which he is a Partner or Director, are independent of the Corporate Debtor.

Off : 1005, Hubtown Solaris, Prof N. S. Phadke Marg, Andheri East, Mumbai – 400 069

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Amita Desai & Co. Company Secretaries, Mumbai

- **Regulation 3(2) Amendment- by adding IRP:** An **Interim Resolution Professional (IRP)** or Resolution Professional (RP), as the case may be, is now required to make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.
- **Regulation 3(3)- Substituted with adding IRP:** An Interim Resolution Professional (IRP) or Resolution Professional (RP), who is a director or a partner of an Insolvency Professional Entity (IPE), shall not continue as **the IRP** or RP , as the case may be, in a Corporate Insolvency Resolution Process (CIRP), if the IPE or any other Partner or Director of such IPE represents any other stakeholder in that CIRP.”.
- 2) **Access to Books (Regulation 4)- Amendment -- by adding IRP:**
Power has been granted to RP or **IRP**, as the case may be, to access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the IBC 2016.
- 3) **Appointment of Authorised Representative of Creditors (Regulation 4A)-**
Insolvency Professional word is substituted with Resolution Professional :
In Regulation 4A under Sub Regulation 2(b): IRP to identify three Insolvency Professionals who are:
 - not his relatives or related parties;
 - Having address registered with IBBI, where highest number of creditors in the class as per their addresses in the records of the CD
 - eligible to be **Resolution Professional** (Earlier it was Insolvency Professional) and
 - willing to act as authorised representative of creditors.
- 4) **New Regulation 4B is inserted - Disclosure of change in name and address of CD:**
Where a CD has changed its name or registered office address during the period of two years preceding the insolvency commencement date, the IRP or RP, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed, along with the current name and registered office address in every communication, record, proceeding or any other document.”
- 5) **Regulation 9A (1) -Claims by other creditors- Insertion of 8A**
A person claiming to be a creditor, other than those covered under (Regulation 7, 8, **8A** or 9], shall submit its claim with proof to the IRP or RP in person, by post or by electronic means in Form F of the Schedule.
- 6) **Verification of claims (Regulation 13)- Insertion of their authorised representatives**
For verification of claims, the list of creditors shall be available for inspection by members, partners, directors and guarantors of the CD or **their authorised representatives**.
- 7) **Notice for the meetings of the Committee (Regulation 19)—IRP is added:**
A meeting of the Committee shall be called by giving not less than (5) five days’ notice in writing to every participant, at the address it has provided to **IRP** or RP, *as the case may be*, and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means.
- 8) **Appointment of Professionals (Regulation 27)- Substituted :**
(1)This regulation is to authorize RP to appoint within 7 days from his appointment but not later than 47th day from the insolvency commencement date appoint two registered valuers to determine the fair value and the liquidation value of the CD.

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Amita Desai & Co. Company Secretaries, Mumbai

(2) The IRP or RP, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the CIRP, if he is of the opinion that the services of such professional are required and such services are not available with the CD.

(3) The IRP or RP, as the case may be, shall appoint a professional under this regulation on an arm's length basis following an objective and transparent process, provided that the following persons shall not be appointed, namely: -

- (a) a relative of the RP;
- (b) a related party of the CD;
- (c) an auditor of the CD at any time during the period of five years preceding the Insolvency Commencement Date;
- (d) a partner or director of the IPE of which the RP is a partner or director.

(4) The invoice for fee and other expenses incurred by a professional appointed under this regulation shall be raised in the name of the professional and be paid directly into the bank account of such professional.

9) Preferential and other Transaction [Regulation 35A (2)]-deletion of intimation to IBBI

RP is not required to file intimation to IBBI

10) New Sub-Regulation 1B in Regulation 40B is inserted -- Filing of Form- CIRP 8 :

- **Regulation 1B:** RP shall file Form CIRP 8 with IBBI intimating details of his opinion and determination under Regulation 35A, on or before the 140th day of the insolvency commencement date, Provided that the filing of Form CIRP 8 shall not become due unless a period of 30 days has elapsed from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021."

11) In Form H – Changes in item 9 and 14 made

The link to the aforesaid Notification is as below:

<https://ibbi.gov.in/uploads/legalframework/48e2aa83bdcfb902ffb5852fccaac8c1.pdf>

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4. Filing of Form CIRP-8 under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

On **July 20, 2021**, IBBI vide **Circular No. IBBI/CIRP/42/2021** issued the Format to **Form CIRP 8** intimating details of Resolution Professional's opinion and determination by 140th day of the Insolvency Commencement Date on IBBI's website.

Form CIRP 8 is required to be filed for all CIRP ongoing or commencing on or after 14th July 2021. Form CIRP 8 filing shall not become due **unless a period of 30 days has elapsed** from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021.

The link to the aforesaid Circular is as below:

<https://ibbi.gov.in/uploads/legalframework/f6c188806f3e1357ec641821cfc62d7e.pdf>

5. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Third Amendment) Regulations, 2021:

On **July 22, 2021**, The Insolvency and Bankruptcy Board of India (IBBI) vide **Notification No. IBBI/2021-22/GN/REG076** has published the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Third Amendment) Regulations, 2021 to further amend the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

The Regulation is amended stating that the Insolvency Professional Agency (IPA) shall promptly realize the monetary penalty imposed by the Disciplinary Committee and credit the same to the Fund constituted under the IBC 2016.

The link to the aforesaid Notification is as below:

<https://ibbi.gov.in/uploads/legalframework/b5bcbb2358f95c2b232cadab23031e9c.pdf>

6. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021

On **July 22, 2021**, IBBI vide **Notification No. IBBI/2021-22/GN/REG077** modified IBBI (IP) Regulation 2016 as follows:

- (1) The **qualification and experience of Insolvency Professional** under Regulation 5 (c) (iii) substituted with following-
 - (iii) Individual to have following experience and having degree from a university established or recognised by law or an Institute approved by All India Council of Technical Education

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- (a) **10 years in the field of law**, after receiving a Bachelor's degree in law;
- (b) **10 years in management**, after receiving a Master's degree in Management or 2 year full time Post Graduate Diploma in Management; or
- (c) **15 years in management**, after receiving a Bachelor's degree,

(2) After clause (iv) in Regulation 5 (c) following **Explanation and Illustrations are inserted.**

Explanation 1.- For the purposes of this regulation, only professional and managerial experience shall be considered.

Explanation 2.- For the purpose of computing,-

- (a) the total experience of 10 or 15 years under sub-clause (iii), there shall be included experience of any period under sub-clause (iv);
- (b) the total experience of 10 years under ***sub-clause (iv)**, there shall be included experience of any period under any of the items of that sub-clause.

***Sub-clause (iv) reads** --- 10 years' of experience as – (a) chartered accountant registered as a member of the Institute of Chartered Accountants of India, (b) company secretary registered as a member of the Institute of Company Secretaries of India, (c) cost accountant registered as a member of the Institute of Cost Accountants of India, or (d) advocate enrolled with the Bar Council.

Illustration 1

Where an individual has experience of nine years under sub-clause (iii) and experience of six years under sub-clause (iv), he shall be considered having experience of fifteen years for the purposes of sub-clause (iii).

Illustration 2

Where an individual has experience of 6 years under item (a) of sub-clause (iv) and experience of four years under item (d) of sub-clause (iv), he shall be considered as having total experience of 10 years for the purposes of sub-clause (iv).

(3) Regulation 9 - **Registration for Limited Period** has been Omitted.

(4) Regulation 12- **Recognition of IPE- Amendment**

- (a) Regulation 12 (1) (c) has been amended reading now that a company, a registered partnership firm or a limited liability partnership may be recognised as an Insolvency Professional Entity (IPE), if) majority of its equity shares is held by Insolvency Professionals, who are its directors, in case it is a company;
- (b) Proviso is added under Regulation 12 (1) stating that
"Provided that the Insolvency Professional Entities recognised before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 shall comply with the provisions of clauses (b) and (c) on or before 31st December 2021.

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(c) In Regulation 12 (1)- an Explanation is added for Regulation 12 (1) (b) as follows:

Explanation.-Net worth means-

- (i) the net worth as defined under section 2(57) of the Companies Act, 2013 in case of a company;
- (ii) sum of partners' contribution in the capital account and their undistributed profits net of accumulated losses, if any, in case of a registered partnership firm or limited liability partnership.

(d) In Regulation 12 new Sub Regulation (3) and (4) are added as below :

- (3) The Board shall acknowledge an application made under this regulation within seven days of its receipt.
- (4) The Board may, after examination of the application,-
 - (i) require the applicant to submit, within reasonable time, additional documents, information or clarification;
 - (ii) inspect or inquire the applicant;
 - (iii) require any of the directors or partners of the applicant to appear, within a reasonable time, before it in person for any clarifications, as may be necessary for the purpose of considering the application.

(5) **Regulation 13 (1)** is substituted as follows with reference to Recognition & Certificate to IPE:

“(1) (a) IBBI , after consideration of the Application of IPE

- (i) is satisfied that the IPE is eligible under these Regulations, it may grant a certificate of recognition as an IPE **within 60 days** of receipt of the Application
- (ii) is of the *prima facie* opinion that the recognition ought not be granted, it shall communicate such opinion along with reasons thereof and provide the Applicant an opportunity to submit its explanation within 15 days of the receipt of the communication from IBBI, to enable it to form a final opinion.

(b) IBBI shall, within 30 days of receipt of the explanation, if any, submitted by the Applicant

- (i) grant a certificate of recognition as an insolvency professional entity; or
- (ii) reject the application by an order, after recording reasons thereof.

(c) IBBI shall grant a certificate of recognition as an IPE **in Form D** of the Second Schedule.

(6) In **Regulation 13 (2) and (3)** the time period is extended from 7 days to 30 days if there is any change in Director or Partner in IPE

(7) In **Schedule I on Code of Conduct for IP** , after Clause 22 following clarification is inserted.

“Clarification: *An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.*

The link to the aforesaid Notification is as below:

<https://ibbi.gov.in/uploads/legalframework/5c2976ceb203ec0ba390380f747563f6.pdf>

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Tel: 91 22 26845919/20/21 Cell: 09820177691

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7. Amendment to the guidelines for Technical Standards for the Performance of Core Services and Other Services Under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017:

On **July 26, 2021**, IBBI made amendments to the Guidelines for Technical Standards (GTS) for the Performance of core services and other services under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

The amendments are technical for IU to comply same are detailed below:

- In **clause 1.2 of GTS**-- abbreviation “OVD - Officially Valid Documents” shall be inserted
- In **clause 1.3 of GTS** , following clauses are substituted
 - (i) 'Identity Details' means C-KYC number in the C-KYC database maintained by CERSAI or identification number of any OVD of a person who is resident of India.
 - (ii) 'OVD' includes Permanent Account Number (PAN) Card, Passport, Driving License, Voter's Identity Card issued by Election Commission of India and Aadhaar letter/card or the e-Aadhaar (an electronically generated letter from the website of UIDAI), as the case may be.
- In **clause 2.1 of GTS**- on REGISTRATION, IDENTIFICATION AND VERIFICATION OF USER (Regulation 13(2)(c) and Regulation 13(2)(f))—Item (B) is deleted which was as follows:

The Identity of a User shall be verified based on a single primary identifier type. The access control shall ensure that the user is uniquely identified by the primary identifier that is issued by a government authority. Multiple types of ID options shall not be used for the same category of Users.
- In **clause 2.1 of GTS**-- after sub-clause 1(b), following explanation is inserted, namely,-

Explanation. For the purpose of de-duplication the IU may use the C-KYC database.
- **clause 2.1 (5) of GTS** is substituted as follows:
 - (i) Registration process shall be completed with PAN (legal entity) and PAN or CKYC number (individual), in the absence of PAN or C-KYC number any other ID shall be used.
 - (ii) A Unique Identification Number (UIN) by the IU shall be assigned to all the registered users in accordance with these Guidelines. 2
 - (iii) An ID once used in the registration process, will be taken on record and the same shall be used for all future access to IU services.
- In **clause 2.2 of GTS** under the heading “**Technical Standards on Regulation 13(2) (d)**” for sub-clause 1, the following sub- clause is be substituted:-
 1. Aadhaar number shall not be used as an UIN. The UIN shall be assigned for different categories of users in the following manner:-
 - (a) PAN or CKYC number for an individual and in the absence of PAN or C-KYC number, any other ID number shall be UIN;
 - (b) PAN number for all legal entities; and

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(c) For a government department or any other agency that does not have PAN or an individual or a legal entity or a foreign entity that has not been issued an ID, IU may issue UIN based on an alternative number assigned by any other authority, wherever available. Where such alternative identifier is not available, UIN shall be issued by the IU, starting with IU code (1 character), indicator for type of person (1 character), followed by 8 alphanumeric characters.”

For example, non-resident/foreign individuals: NIABC0002Z (N for IU code, I for Individual)

For overseas entity: NLXYZ0009P (N for IU code, L for legal entity)

➤ In **clause 2.2 of GTS** sub clause 4 as follow is omitted

The information utility shall create and maintain appropriate list of Registered Users, the Unique Identifiers of Registered Users and the Unique Identifiers assigned to the Debts.

➤ In **clause 2.3 of GTS** sub clause (3) is substituted as follow:

Submission of supporting documents:

Documents can be submitted at any time, not necessarily along with Form C data submission. Such documents should support multiple formats including PDF and scanned image files. All document submissions must be made under digital signature of the submitter, with digital stamping where required:

- a. Each supporting document for debt shall have a unique identifier reference;
- b. Each supporting document for security shall have security identifier reference; and
- c. While accepting and storing digital documents, IU may facilitate digital stamping of the document, in accordance with relevant rules in this respect.

➤ In **clause 2.4 of GTS** sub clause (9) (c) [which is wrt Status of Authentication] is substituted as follow:

“Expired: If the specified time limit of 15 days from successful delivery of intimation is exceeded or an updated submission of the same UDI is received, whichever is later.”

The link to the aforesaid Notification is as below:

<https://ibbi.gov.in/uploads/legalframework/1fec45081b1313f07945e1b217de6a9e.pdf>

The link of Guidelines on Technical Standard (GTS) is as below:

[https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2017/Dec/FINAL%20STANDARDS%20GUIDELINES%2013.12.2017 2017-12-13%2021:39:59.pdf](https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2017/Dec/FINAL%20STANDARDS%20GUIDELINES%2013.12.2017%202017-12-13%2021:39:59.pdf)

8. The Insolvency and Bankruptcy Code (Amendment) Bill, 2021

On **July 26, 2021**, the Insolvency and Bankruptcy Code (Amendment) Bill, 2021 was introduced in Lok Sabha, to amend the Insolvency and Bankruptcy Code, 2016, which shall be deemed to have come into force on the 4th day of April, 2021 as Insolvency and Bankruptcy Code (Amendment) Act, 2021. The same is with respect to Pre-Packaged Insolvency Resolution Process (PPIRP)

The link of the Bill is as below:

<https://ibbi.gov.in//uploads/legalframework/0cb67dc13cd3fdc59eddb4cc67226fc7.pdf>

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9. Monetary Penalties to be imposed by an Insolvency Professional Agency:

On **July 28, 2021**, IBBI issued **Circular No. IBBI/IPA/43/2021** pursuant to power under Section 196 of IBC 2016, stating in the interest of objectivity and uniformity, it has been decided that an IPA shall amend its Bye-laws to provide for the maximum and minimum monetary penalty, where the Disciplinary Committee decides to impose such penalty on its professional members, under Clause 24(2)(d) of the Schedule to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, as under:

Sr. No.	Contravention	Monetary Penalty
1.	Fails to submit disclosures, returns, etc. to IPAs or submits inadequate or incorrect disclosures, returns, etc., relating to any assignment, as required under the Code and Regulations made thereunder or Bye-laws of the IPA or called upon by the Board or the IPA.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.
2.	Accepts an assignment having conflict of interests with the stakeholders.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
3.	Fails to maintain records properly relating to any of his assignments.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.
4.	Rejects a claim(s) without giving any proper reason while undertaking an assignment or fails to exercise due diligence in claim verification.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
5.	Fails to comply with directions issued by Adjudicating Authority or the Appellant Tribunal.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
6.	Outsources his duties and obligations.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
7.	Fails to appoint registered valuers, wherever required, under the Code or Regulations made thereunder, for conducting valuation.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
8.	Fails to supply the information called for or to comply with the requirements of information sought by the IPA, Board, Adjudicating Authority or the Appellant Tribunal or does not cooperate with the inspection or investigating authority.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.
9.	Fails to make public announcement in the manner provided for in the relevant Regulations.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.

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10.	Fails to provide notice regarding meetings of creditors.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.
11.	Fails to reject resolution plan from ineligible resolution applicants.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
12.	Fails to take action in respect of Preferential, Undervalued, Fraudulent or Extortionate transactions.	Upto Rs. 2,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 1,00,000.
13.	Enters into contract or agreement with professionals in an incomplete and improper manner.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.
14.	Contravenes any provision of the Bye-laws, or Regulations for which no specific penalty has been provided.	Upto Rs. 1,00,000 or 25% of fee, whichever is higher, subject to minimum of Rs. 50,000.

Accordingly, the IPA shall amend its Bye- Laws to incorporate Clause 24(5) of the Schedule to the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 as inserted by IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Third Amendment) Regulations, 2021.

The Link of the Circular is as below:

<https://ibbi.gov.in/uploads/legalframework/c3d5d1bd7b451572b4dea0cfd7bcba3d.pdf>

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