

IBBI UPDATES

A. IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022

On **October 03, 2022**, IBBI, vide Notification No. **IBBI/2022-23/GN/REG100** has issued IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2022 which amends the existing IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

This amendment is made for making provisions for IPE (Insolvency Professional Entity) to be eligible for enrolment as a Professional member, application for AFA (Authorisation for Assignment), and Register of Professional Member.

1. Eligibility for Enrolment of IPE

In Clause 9 of the Schedule which states the provisions regarding “**Eligibility for Enrolment**” has been renumbered as Clause 9 (1) and a new sub-clause (2) has been inserted which reads as follows:

“No IPE (Insolvency Professional Entity), recognised by IBBI under Regulation 13 of the IBBI (Insolvency Professionals) Regulations, 2016, shall be enrolled as a professional member if it is not eligible to be registered as an Insolvency Professional with the Board.”

2. Process of Enrolment as a Professional Member

Clause 10 of the Schedule which states the provisions regarding the “**Process of Enrolment as Professional Member**” has been amended and it now reads as follows:

“**an individual or an IPE (Insolvency Professional Entity) recognised by IBBI under regulation 13 of the IBBI (Insolvency Professionals) Regulations, 2016** 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.”

3. Register of Professional Members

In Clause 12(1) of the Schedule which states the provisions regarding “**Register of Professional Members**” new item (fb) has been added and it reads as follows:

“Details of the Partners or Directors, as the case may be, where the Professional Member is an IPE (Insolvency Professional Entity).”

4. Authorisation for Assignment

In Clause 12A of the Schedule which states the provisions regarding “**Authorisation for Assignment**” new proviso has been added after sub-clause (2) it reads as follows:

“Provided that the item (c), item (e) and item (g)(iii) shall not be applicable for a professional member, which is an IPE (Insolvency Professional Entity) registered as an Insolvency Professional.”

Amita Desai & Co. Company Secretaries, Mumbai

The link to the aforesaid Notification is as follows:

[fe64020d75bf890e8128d1a4224b0acc.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/fe64020d75bf890e8128d1a4224b0acc.pdf)

B. RBI reviewed the Regulatory Framework for Asset Reconstruction Companies (ARCs)

On **October 11, 2022**, RBI had issued a Guideline vide Circular no. RBI/2022-23/128 DoR.SIG.FIN.REC.75/26.03.001/2022-23 and amended Regulatory Framework for ARCs.

The Reserve Bank of India had set up a Committee to undertake a comprehensive review of the working of ARCs and recommend suitable measures for enabling them to function in a more transparent and efficient manner to improve corporate governance standards in ARC

All ARCs are required to comply with these guidelines within six months from the date of this circular

(a) Measures to Enhance Governance of ARC

Certain measures are mandated for Corporate Governance like

1. Chairman to be an Independent Director and change in quorum and presence of independent director in meetings of the Board of Directors
2. Tenure of MD/ WTD/ CEO
3. Age of MD (max 70 years)
4. Annual Performance review
5. Setting up of Committees
6. Prior approval of RBI for change in shareholding of ARC
7. Fair and proper person criteria for MD and prior approval of RBI to be taken
8. Annual declaration from MD and Director of ARC
9. Directors to execute a covenant with ARC as per the format of the Circular of RBI
10. Annual Disclosure of the performance of ARC to RBI
11. ARC to mandatorily obtain recovery rating of the Security receipts from Credit Rating Agencies
12. Certain measures adopted for Settlement of Dues Payable by the Borrowers under One-time Settlement (OTS)
13. ARCs are mandated to ensure compliance with Section 29A of the Insolvency and Bankruptcy Code, 2016 in dealing with the prospective buyers
14. Certain changes in policy on Management Fees to be charged by ARC
15. Minimum Net Owned Fund requirement
16. Deployment of surplus funds
17. Investment in Security Receipts issued by ARCs
18. **Allowing ARCs to act as Resolution Applicants under the Insolvency and Bankruptcy Code, 2016 (IBC)** ARCs are currently not permitted to commence or carry on any business other than that of securitization or asset reconstruction or the business referred to in Section 10(1) of the SARFAESI Act without prior approval of the Reserve Bank of India. It has now been decided under the provision of Section 10(2) of the SARFAESI Act to permit ARCs to undertake those activities as a Resolution Applicant (RA) under IBC which are not specifically allowed under the SARFAESI Act. This permission shall be subject to the following conditions:

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- (i) The ARC has a minimum NOF of ₹1,000 crore.
- (ii) The ARC shall have a Board-approved policy regarding taking up the role of RA which may inter alia include the scope of activities, internal limit for sectoral exposures, etc.
- (iii) A committee comprising of a majority of independent directors shall be constituted to take decisions on the proposals of submission of resolution plan under IBC.
- (iv) The ARC shall explore the possibility of preparing a panel of sector-specific management firms/ individuals having expertise in running firms/ companies which may be considered for managing the firms/ companies, if needed.
- (v) In respect of a specific corporate insolvency resolution process (CIRP), the ARCs shall not retain any significant influence or control over the corporate debtor after five years from the date of approval of the resolution plan by the Adjudicating Authority under IBC. In case of non-compliance with this condition, the ARCs shall not be allowed to submit any fresh resolution plans under IBC either as a resolution applicant or a resolution co-applicant.
- (vi) The ARC shall make additional disclosures in the financial statements with respect to assets acquired under IBC in addition to the existing disclosure requirements. These would include the type and value of assets acquired under IBC, the sector-wise distribution based on the business of the corporate debtor, etc.
- (vii) The ARC shall disclose the implementation status of the resolution plans approved by the Adjudicating Authority on a quarterly basis in their financial statements

19. Transfer of Stressed Loans to ARCs

Subject to the provisions of the circulars DNBR.PD (ARC) CC.No.07/26.03.001/2018-19 dated June 28, 2019 and DOR.NBFC(ARC) CC. No. 8/26.03.001/2019-20 dated December 6, 2019, stressed loans that are in default in the books of the transferors are permitted to be transferred to ARCs. The Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021, is being suitably updated

The link to the aforesaid Notification is as follows:

[b2ca61baaf396ddd8a09456d7f920b73.PDF \(ibbi.gov.in\)](https://ibbi.gov.in/b2ca61baaf396ddd8a09456d7f920b73.PDF)

C. Some data for the Reader

Non-Performing Assets of Scheduled Commercial Banks recovered during FY 2020-21 through various Channels

Channels	No. of cases referred	Amount Involved (in Crores)	*Amount Recovered (in Crores)	Amount Recovered to the percentage of Amount Involved
Lok Adalat	19,49,240	28,089	1119	4.0
DRT	28,182	225,361	8113	3.6
SARFAESI	57,331	67,510	27,686	41.0
IBC	537	135,139	27,311	20.2
Total	20,35,299	456,094	64,228	14.1

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* Amount recovered could be with reference to cases referred during the year as well as earlier years.

Source:

1. Off-site Return, Reserve Bank of India (RBI) and Insolvency & Bankruptcy Board of India (IBBI)
2. Book published by IBBI – Idea, Impression and Implementation- Page 22
[b5fba368fbd5c5817333f95fbb0d48bb.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/b5fba368fbd5c5817333f95fbb0d48bb.pdf)

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