

Info Capsule

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THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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EMPANELMENT OF INSOLVENCY PROFESSIONALS (IPS) TO BE APPOINTED AS ADMINISTRATOR, REMUNERATION AND OTHER INCIDENTAL AND CONNECTED MATTERS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (APPOINTMENT OF ADMINISTRATOR AND PROCEDURE FOR REFUNDING TO THE INVESTORS) REGULATIONS, 2018¹

1. The Board has made the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (“Administrator Regulations”), which was notified in the Official Gazette on October 3, 2018. The aforesaid regulations provide, inter alia, for appointment of an Administrator and procedure for refund to the investors.
2. In terms of regulation 4 of the Administrator Regulations, the Board shall, after attachment of the properties of the defaulter, appoint an Administrator in the manner specified. In terms of sub-regulation (1) of regulation 5 of the said Regulations, the Administrator shall be a person registered with the Insolvency and Bankruptcy Board of India (“IBBI”) as an Insolvency Professional (“IP”) and empaneled with the Board from time to time.
3. The Board is also empowered, under regulations 5, 6 and 17 to, inter alia, fix the eligibility criteria, the terms of appointment including remuneration of an Administrator and issue clarifications and guidelines in respect of the application of the Administrator Regulations.
4. The Administrator would be selected from a Panel of IPs prepared by IBBI under the Administrator Regulations. The details of such appointments would be shared with IBBI from time to time.
5. An Administrator, who is selected from a Panel of IPs, shall not withdraw his consent to act as an Administrator or refuse to act as an Administrator, if appointed by the Board under the Administrator Regulations or surrender his registration to the IBBI Board or membership to his Insolvency Professional Agencies (IPA) during the pendency of the assignment. In case of such withdrawal or refusal, the matter will be referred to IBBI for suitable action in this regard.

¹ Available at: https://www.sebi.gov.in/legal/circulars/apr-2019/empanelment-of-insolvency-professionals-ips-to-be-appointed-as-administrator-remuneration-and-other-incident-and-connected-matters-under-the-securities-and-exchange-board-of-india-appointment-of_42592.html

6. Remuneration of Administrator shall be as under:

- (a) The remuneration payable to the Administrator shall be in accordance with sub-regulation (3) and (4) of regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) (as amended from time to time) with suitable modifications as given in Table 1 and 2 in Part-I of the Schedule;
 - (b) Fees for distribution as given in Table 2 in Part-I of the Schedule shall not apply in cases of recovery of fees, penalties and disgorgement;
 - (c) In addition to the fees under sub-regulation (3) of regulation 4 of the Liquidation Process Regulations, the fees payable to the entities such as chartered accountant (Table 3 and 4), registered valuer (Table 5), registrar and share transfer agent or such other agency (Table 6), etc. in Part-II of the Schedule, appointed by the Administrator under regulation sub-regulation (2) of regulation 7 the Administrator Regulations and incidental expenses as given in Part-III of the Schedule to this Circular would be payable to the Administrator and the same would be part of the overall remuneration payable to the Administrator;
 - (d) The overall remuneration paid to the Administrator shall be treated as the costs of administration under regulation 11 of the Administrator Regulations;
 - (e) In appropriate cases, the Board may, after recording reasons in writing, pay higher remuneration than the remuneration fixed under the Schedule to this Circular.
7. The Administrator shall appoint chartered accountant from the list of empaneled chartered accountants with SEBI. As regards registered valuer and registrar and share transfer agent or such other agency, they shall be appointed through open tender. The tender for registered valuer shall be published in at least two newspapers, one in a English daily newspaper having nationwide circulation and another in a newspaper having wide circulation and published in the language of the region where the defaulter was last known to have resided or carried on business or personally worked for gain or its registered office is located.
8. The tender for registrar and share transfer agent or such other agency shall be published in an English daily newspaper having nationwide circulation. However, if the investors to whom refund needs to be made is very few and total refund amount is small making newspaper publication not feasible in terms of cost-effectiveness, such publication shall be made only on the website of the Board. An officer of SEBI nominated by the Recovery Officer shall be part of the Tender Opening Committee in such matters.
9. This Circular is being issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulations 4, 5, 6 and 17 of the Administrator Regulations and shall come into force with immediate effect.
10. This Circular is available on the website of the Board (www.sebi.gov.in) under the category "Circulars" and "Empanelment of Insolvency Professionals (IPs) remuneration and other incidental and connected matters".
