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INSOLVENCY AND BANKRUPTCY CODE

This thought leadership paper provides insights on Insolvency and Bankruptcy Code

The implementation of the Goods and Service Tax and The Insolvency and Bankruptcy code ("IBC" or "the Code") have been touted as some of the biggest reforms in the country.

This newsletter discusses the valuation requirements under the IBC and other parallel regulatory requirements in an attempt to provide a bird's eye view to anyone looking to get a grasp of the how, why and what of the valuation requirements.

Earlier, insolvency and bankruptcy in India were dealt under various statutes such as: Recovery of Debts Due to Banks and Financial Institutions Act 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002, Companies Act 1956 & 2013, The Contract Act etc.

The IBC is an effort to consolidate a single legislation to bring about time bound resolution of insolvency. The Code outlines the steps that a financial creditor, operational creditor or the corporate debtor itself should take to commence to initiate corporate insolvency resolution process.



INSOLVENCY REGULATIONS AROUND THE WORLD

Sr. No.	DETAILS	INDIA	UK	CANADA	AUSTRALIA	SINGAPORE
1	Trigger	Default and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary
2	Amount of default that triggers the process	INR 100,000	GBP 750	CAD 1000	NA	S\$ 10,000
3	Regime- Debtor or Creditor control?	Creditor	Creditor	Mix of both	Creditor	Creditor
4	Who is in charge of the company, during the insolvency process	Insolvency professional (IP)	IP	Board, if debtor sponsored, and receiver if creditor sponsored proceeding	IP	IP
5	Who can recommend the appointment of IP	Creditor, Debtor or court	Creditor, Debtor or court	Creditor, Debtor or court	Creditor, Debtor or court	Creditor, Debtor or court
6	Who can be the IP?	Individual or firm	Individual	Corporate	Individual	Individual
7	How many regulators? (IPA)	Four	Seven	One	Two	Three
8	Who fixes the remuneration- insolvency process?	Market forces, approved by creditor	Market forces, approved by creditor	Market forces, approved by court	Market forces, approved by creditor	Market forces, approved by creditor
9	Who fixes the remuneration- liquidation process?	Scale of value realized	Market forces, approved by creditor	Market forces, approved by creditor	Market forces, approved by creditor	Market forces, approved by creditor
10	Is the IP required to provide surety bond or professional insurance	No	Yes	Yes	Yes	Yes
11	Does an IP get protection under the law?	Yes	Yes	Yes	Yes	Yes
12	Is there a moratorium period?	Yes	Yes	Yes	Yes	Yes
13	How long is the moratorium period for the company under process?	180 days	Entire period till plan is approved	180 days for BIA proposals and longer in CCAA		Entire period till plan is approved
14	Is it compulsory to form a credit committee?	Yes	No	No	No	No
15	Are there specialized courts to deal with insolvency?	Yes	No	Yes	No	No
16	Who runs the liquidation process?	IP	IP	IP	IP	IP
17	Who does the IP report to during the liquidation	Court	Court	Creditor and Court	Creditor	Creditor and Court
18	Period of antecedent transaction?	Upto two years	Upto two years	Upto five years	Upto ten years	Upto five years
19	Is there a licensing/ examination process to become an IP	Yes	Yes	Yes	Yes	Yes
20	Are the licenses renewed?	Life membership	Annually	Life membership	No, but have to satisfy certain conditions	Once in three years

Source: EY report: Interpreting the Code – Corporate Insolvency in India

The Code closely mirrors the UK insolvency regime. However, certain aspects of the Code have been customised per the Indian scenario.

ROLE OF VALUATION IN THE PROCESS

Per the Code, on acceptance of the application to initiate corporate insolvency resolution process, an interim resolution professional (IRP) shall be appointed with whom the management of affairs of the corporate debtor shall vest.

Pursuant to the Corporate Insolvency Resolution Process (CIRP) regulations (No. 27), the IRP is required to appoint two **registered valuers** to determine the **liquidation value** of the corporate debtor.

WHAT IS LIQUIDATION VALUE?

The CIRP regulations, have introduced the concept of liquidation value. Per Regulation 35(1), "liquidation value is the estimated realizable value of the assets of a corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date."

The appointed registered valuers shall submit to the IRP, an estimate of the liquidation value of the corporate debtor. If the two estimates are significantly different, the IRP may appoint a third registered valuer. The average of the two closest estimates shall be considered the liquidation value.

WHO IS A REGISTERED VALUER?

The CIRP regulations define registered valuer as "A person registered as such in accordance with the Companies Act, 2013 and rules made thereunder"

This leads to another set of Rules i.e. Companies Registered Valuers and Valuation Rules 2017 ("the Rules"). Rule 2(1)(f) defines registered valuer as a valuer registered with the Registration authority for carrying out valuation of assets belonging to a class or classes of assets. Rule 2(1)(g) defines the registration authority as the Insolvency and Bankruptcy Board of India ("IBBI")



WHAT ARE THE QUALIFICATIONS FOR BEING A REGISTERED VALUER?

The eligibility criteria have been discussed in Rule 5 of the Rules. Passing the **valuation examination** is a must unless one is:

- 50 years of age; and
- has been substantially involved in at least 10 valuation assignments of assets amounting to 5 crores or more during 5 years preceding the commencement of these rules.

The other eligibility criteria for an individual can be summarised as follows:

SHOULD BE	SHOULD NOT BE
Person resident in India	Minor
Valuer member of a valuation professional organization. (Applicable to firm also)	Convicted with imprisonment exceeding 6 months or for moral turpitude in the last 5 years (Applicable to firm also)
Fit and proper person (Applicable to firm also)	Convicted for imprisonment for 7 years or more. (Applicable to firm also)
Post graduate degree holder and 3 years of experience	
Bachelor's degree holder and 5 years of experience	
Member of professional institute and 5 years of experience	Unsound mind
-	Bankrupt

For a partnership firm to be a registered valuer, the criteria are:

- Should not be undergoing an insolvency resolution or bankruptcy process or is an undischarged bankrupt
- Any of the partners should not have incurred the disqualifications specified for individuals
- Majority of its partners practising in India should be registered valuers
- At least one of the partners should be a registered valuer for the class of assets for which registration is being sought

An individual/partnership firm meeting the eligibility criteria should make an application for certificate in the respective form to the IBBI.

WHAT IS A REGISTERED VALUER ORGANISATION ("RVO")?

Per the Rules, IBBI on its own or through RVOs, conduct the valuation examination which is indispensable for most of the applicants seeking a registration certificate.

Currently, IBBI has granted recognition to the following as RVOs:

- Institution of Estate Managers and Appraisers (land and building)
- IOV Registered Valuers Foundation (land and building, plant and machinery, securities or financial assets)
- ICSI Registered Valuers Organisation (land and building, plant and machinery, securities or financial assets)
- The Indian Institution of Valuers (land and building, plant and machinery, securities or financial assets)
- CMAI Registered Valuers Organisation (land and building, plant and machinery, securities or financial assets)
- ICAI Registered Valuers Organisation (securities or financial assets)

WHAT ARE VALUATION STANDARDS?

Per Rule 16 of the Rules, a registered valuer shall make valuations per:

- Internationally accepted valuation methodology
- Valuation standards adopted by any valuation professional organization; or
- Valuation standards specified by Reserve Bank of India, Securities Exchange Board of India or any other statutory regulatory body.

The Institute of Chartered Accountants of India has constituted Valuation Standards Board pursuant to these rules. The Board has released a set of draft valuation standards for public comments. The Link for the same is:

https://www.icai.org/new_post.html?post_id=14681&c_id=240

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