

Insolvency and Bankruptcy Code, 2016- Beginning of a new era and new Professional Opportunity for CAs



The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha on 21st December, 2015 and referred to the Joint Parliamentary Committee. The Committee had presented its recommendations and modified the Bill based on its suggestions. Later the Insolvency and Bankruptcy Code, 2016 was passed by both the Houses of Parliament in May 2016 and the same has been notified. This is one of the major economic reforms Bill moved by the Government. The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner so as to make it easy for the investors to exit within a fixed time frame in an effort to improve the ease of doing business in India. Since there is no single law in India that deals with insolvency and bankruptcy, one of the most important reforms envisaged in this bill is to make substantive changes in eleven enactments and repealing some to avoid conflicting rules, i.e., now only 1 Act to be followed, instead of 11 different Acts. It also opens up a new window of professional opportunity for Chartered Accountants as Insolvency Professionals. Read on to know more...

As per the earlier legal framework, provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. Liquidation of companies is handled by the High Courts. Individual Bankruptcy and Insolvency is dealt with by the Courts.

The Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship, and facilitate more investments leading to higher economic growth and development.

(Contributed by Corporate Laws and Corporate Governance Committee of the ICAI. Comments can be sent to clcg@icai.in.)

The Code has been divided into five Parts and there are 244 Sections in the Act, out of which most of the sections have been notified by the Ministry of Corporate Affairs, some of the Regulations have also been notified by the Government. Other Sections from 245 to 255 are regarding amendments to various Acts.

The said Code *inter-alia* envisages—

- Insolvency Professionals
- Insolvency Professional Agencies
- Information Utilities
- Insolvency and Bankruptcy Board of India

As per the Code, the insolvency resolution processes are to be conducted by the Insolvency Professionals, who are required to be members of an Insolvency Professional Agency which in turn is to be registered with the Insolvency and Bankruptcy Board of India.

With the enactment of this Code, there is a new professional avenue which has been opened up as

Insolvency professional (IP) who will play a vital role in the insolvency and bankruptcy resolution process. The role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions.

Role of an Insolvency Professional

Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process. An IP may hold any of the following roles under the Code:

1. Resolution professional (RP) to resolve insolvency for a firm or an individual;
2. Bankruptcy Trustee in an individual bankruptcy process;
3. Liquidator in a firm liquidation process.

Functions of an Insolvency Professional

Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely:—

1. a fresh start order process
2. individual insolvency resolution process
3. corporate insolvency resolution process—
Insolvency Professional (IP) to take over the management and operations of the borrower during the CIRP
4. individual bankruptcy process and
5. liquidation of a corporate debtor firm.

Opportunities for Chartered Accountants as an Insolvency Professional

Looking at the roles and functions of IPs, the Chartered Accountants are best suited to be the Insolvency Professionals. They can contribute effectively to carry out the insolvency and bankruptcy process.

First time in India, a formal process of insolvency has been laid down.

The insolvency professionals are to be appointed as liquidators, trustees *etc.* at various stages of the insolvency proceedings. The Code provides a lot of challenges and opportunities to the professionals as they would play a key role in the efficient working of the bankruptcy process. The Insolvency Professionals are required to possess adequate knowledge and experience.

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There are many salient features in the Code:

- The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 days, extendable by 90 days. It also provides for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- The Code also provides for setting up of an 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. Till the Insolvency and Bankruptcy Board of India is set up, the central government was to exercise the powers of the Board or designate any financial sector regulator the powers and functions. The Board has now already been established and started functioning.
- The resolution processes will be conducted by licensed insolvency professionals (IPs). These IPs will be members of insolvency professional agencies (IPAs).
- Information utilities (IUs) will be established to collect, collate and disseminate financial information to facilitate insolvency resolution.
- The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- The Committee observed that provident fund, pension fund and gratuity fund provide a social security net for employees. It recommended that any dues payable to workmen from these funds should be excluded from the debtor's assets during liquidation.
- Cross border insolvency relates to an insolvent debtor who has assets abroad. The Code

does not contain provisions to deal with such situations. The Committee recommended that new provisions should be made to provide for the central government to enter into agreements with other countries to enforce provisions of the Code.

Insolvency Professional Agency formed by ICAI

The Indian Institute of Insolvency professionals of ICAI (IIPI) is a Section 8 Company formed by the Institute of Chartered Accountants of India to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations.

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An individual shall be eligible to be registered for a limited period (as per Regulation 9 of the said Regulations) as an insolvency professional if he has been 'in practice' for a minimum period of fifteen years as a chartered accountant, cost accountant company secretary or advocate enrolled as a member of the respective Institute and who is not in employment.

An Insolvency Professional is required to submit an application for registration in Form A (online and hard copy with the relevant documents) of the Second Schedule of the Insolvency Professionals Regulations to IIPI. More details are available at the website www.iipicai.org

Limited period registration shall be valid for a period of six months from the date of such submission.

Subsequently, a chartered accountant, cost accountant, company secretary or advocate can register as an Insolvency professional only after

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passing Limited Insolvency Examination which is an online examination starting from 31st December, 2016.

The insolvency Professionals who have already enrolled with the Insolvency Professional Agency and registered with Insolvency and Bankruptcy Board of India can give examination according to the validity of their Registration.

Who can become Insolvency Professional

The criteria for becoming Insolvency professional has been provided by the Insolvency and Bankruptcy Code, 2016 and its Regulations. The provisions are as follows:

Provisions of the Insolvency and Bankruptcy Code, 2016

As per Section 3(19) of the Insolvency and Bankruptcy Code, 2016, insolvency professional" means a person enrolled under Section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under Section 207.

As per Section 206 of the Code, no person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with the Board.

Also, Section 207 of the Code provides that every insolvency professional shall, after obtaining the membership of any insolvency professional agency, register himself with the Board within such time, in such manner and on payment of such fee, as may be specified by regulations.

A chartered accountant, cost accountant, company secretary or advocate can register as an Insolvency professional only after passing Limited Insolvency Examination which is an online examination starting from 31st December, 2016.

Corporate & Allied Laws

Provisions as per the Regulations

The Eligibility criteria to become an Insolvency Professional has been bifurcated into two categories:

1. General as per Regulation 5 which would be after 31st December, 2016
2. Limited Period as per Regulation 9 valid till 31st December, 2016

Insolvency Professionals who will register for a limited period, their term shall be valid for a period of six months from the date of such registration and upto 31st December, 2016, i.e. limited period registration is valid maximum upto 30th June, 2017.

Qualification and Experience as per Regulation 5

Subject to the other provisions of these Regulations, an individual shall be eligible for registration, if he-

- (a) has passed the National Insolvency Examination;
- (b) has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognised by law; or
- (c) has passed the Limited Insolvency Examination and has ten years of experience as -
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
 - (iv) an advocate enrolled with a Bar Council.

Qualification and Experience as per Regulation 9 for Limited period

Further regulation 9 provides for registration for a limited period and has been reproduced as follows: Notwithstanding any of the provisions of Regulation 5, an individual shall be eligible to be registered for a limited period as an insolvency professional if he-

- (a) has been 'in practice' for fifteen years as-
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,

- (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
- (iv) an advocate enrolled with a Bar Council; and

An insolvency professional registered with IBBI shall not undertake any assignment as an insolvency professional after the expiry of his registration:

Provided that he may complete the pending assignments undertaken before the expiry of his registration, and his registration shall be deemed to be valid for this limited purpose.

Examination for Limited Insolvency Examination

The Insolvency and Bankruptcy Board has published the syllabus, format and frequency of the "Limited Insolvency Examination" under regulation 3(3) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. However, the syllabus for National Insolvency Examination is yet to be notified.

The Examination to become Insolvency Professional would be a onetime examination.

I. Syllabus for Examination

The syllabus for the "Limited Insolvency Examination" is as under:

Sl. No.	Coverage	Weight (%)
a.	The Insolvency and Bankruptcy Code, 2016 (Entire Code)	30
b.	Rules and Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 30 th November, 2016)	25
c.	Report of the Bankruptcy Law Reforms Committee (Entire Report)	05

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Corporate & Allied Laws

Sl. No.	Coverage	Weight (%)
d.	(I) The Companies Act, 2013 <ul style="list-style-type: none"> • Chapter III Prospectus and Allotment of Securities • Chapter IV Share Capital and Debentures • Chapter V Acceptance of Deposits by Companies • Chapter VI Registration of Charges • Chapter VII Management and Administration • Chapter IX Accounts of Companies • Chapter XV Compromises, Arrangements and Amalgamations • Chapter XVII Registered Valuers • Chapter XVIII Removal of names of the companies from the register of companies • Chapter XX Winding-up of the companies • Chapter XXVII NCLT and NCLAT (II) The Partnership Act, 1932, and (III) The Limited Liability Partnership Act, 2008 (Nature of LLP; Partners and their Relations; Limitation of Liability; Financial Disclosures)	10
e.	(I) The Indian Contracts Act, 1872 (Void, Voidable and Contingent Contracts; Novation, Rescission and Alteration of Contracts; Damages for breach; Indemnity, Guarantee, Surety, Bailment and Pledge; Set off) (II) Transfer of Property Act, 1882; (III) The Sale of Goods Act, 1930 (Sale, Warranties, Lien and Damages).	05
f.	(I) The Recovery of Debts due to Banks and Financial Institutions Act, 1993; (II) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; and (III) Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A) (of RBI)	05
g.	General Awareness (Constitution, Economy, Finance, Code of Conduct for Insolvency Professionals, and Rights of Workmen)	05
h.	Finance and Accounts (Corporate Finance, and Financial Analysis)	05
i.	Case Study (Cases on Corporate Insolvency Resolution, Corporate Liquidation, Fresh Start, Individual Insolvency Resolution and Individual Bankruptcy)	10
Total		100

This syllabus will hold good for examinations conducted from 31st December, 2016 to 30th June, 2017.

II. Format of Examination

The format of examination is as under:

- a. The examination will be conducted online (computer-based in a proctored environment); with objective multiple choice questions;
- b. The duration of the examination will be two hours;
- c. A candidate will be required to answer 90 questions in two hours for a total of 100 marks;
- d. There will be negative marking of 25% of the marks assigned for the question;
- e. Passing mark for the examinations 60%;
- f. Passing candidates will be awarded a certificate by the Board;
- g. A candidate will be issued a temporary mark sheet on submission of test paper; and
- h. No workbook or study material will be provided.

III. Frequency of Examination

The frequency of Examination is as under:

- a. The examination will be available from 100 + locations in the country;
- b. The examination will be available from 31st December, 2016 between 9:30 AM and 5:30 PM;
- c. The enrollment for examination will be open from 15th December, 2016.
- d. A candidate needs to enroll for examination at www.nism.ac.in. He needs to select IBBI-Limited Insolvency Examination and enroll himself for the examination by choosing the time, the day and the examination centre for his examination;
- e. A candidate needs to provide PAN/Aadhaar to enroll for the examination; and
- f. A candidate needs to pay examination fee of ₹1000 (Rupees one thousand only) online on every enrolment.

Conclusion

Looking at the roles and functions of Insolvency Professionals, the Chartered Accountants are best suited to be the Insolvency Professionals. They can contribute effectively to carry out the insolvency and bankruptcy process. The insolvency professionals are to be appointed as liquidators, trustees *etc.* at various stages of the insolvency proceedings. ■