

FAQs: Insolvency and Bankruptcy Code, 2016

AUTHORISATION FOR ASSIGNMENT

1. Who is required to obtain AFA and what is the eligibility criterion for obtaining AFA?

An Insolvency Professional is required to hold a valid AFA before accepting or undertaking any assignment under the Insolvency and Bankruptcy Code.

Further, as per Regulation 2(1) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, “assignment” means any assignment of an insolvency professional as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code.

For the purpose of obtaining AFA, the Insolvency Professional Member has to submit application with his IPA in Form AA (online mode only) through IBBI portal and has to strictly adhere to the following eligibility requirements as on the date of application:

- a) He is registered with the Board as an IP;
- b) He is a fit and proper person in terms of the Explanation to clause (g) of regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
- c) He is not in any employment;
- d) He is not debarred by any direction or order of the Agency or the Board;
- e) He has not attained the age of seventy years;
- f) He has no disciplinary proceeding pending against him before the Agency or the Board;
- g) He complies with requirements with respect to-
 - payment of fee to the Agency and the Board
 - Annual membership fees to IPA
 - Professional fees (.25% of the turnover of preceding FY) in Form E to IBBI
 - Membership fees to Board (every 5 years)
 - filings and disclosures to the Agency and the Board
 - Submission of half yearly returns to IPAs
 - Submission of CIRP forms to IBBI
 - Submission of disclosures to IPAs
 - Other forms/disclosures to IPAs/IBBI, as asked specifically
 - continuous professional education;
 - other requirements, as stipulated under the Code, regulations, circulars, directions or guidelines issued by the Agency and the Board, from time to time

2. What is the validity period of AFA?

AFA shall be valid for a period of one year from the date of its issuance or till the date on which IP attain the age of 70 years, whichever is earlier.

Application for the renewal shall be made any time before the date of expiry of the authorisation, but not earlier than 45 days before the date of expiry of the authorisation.

3. Who has the authority to issue and renew AFA?

The Insolvency Professional Agencies (IPAs) have the authority to issue and renew AFA.

4. Can AFA be issued, if required forms and disclosures w.r.t assignments handled not submitted?

The Insolvency professional Agencies verify all the mandatory compliances (IBBI & IPAs) w.r.t assignments handled/being handled by the Insolvency professionals. Discrepancies in the compliances are generally communicated to the concerned IP and after successful completion of pendencies only AFA is issued.

No AFA will be issued to the IP without filing of required forms and disclosures.

5. What are the remedies available with the Insolvency Professionals whose AFA is rejected by the IPA?

The Insolvency Professional who is aggrieved by the rejection of AFA may submit an appeal within 15 days of the rejection to the membership committee of the concerned IPA.

The membership committee shall pass an order disposing of the appeal by a reasoned order, within 15 days of the date of receipt of appeal.

Otherwise, he may complete the discrepancies highlighted in the rejection order and after 7 days, fresh application may be filed.

6. Does the insolvency professional who has attained the age of 70 years is required to obtain AFA?

The Insolvency Professional who has attained the age of 70 years is not allowed to undertake any assignment under the Insolvency and Bankruptcy Code of India. He can act as an advisor to the IP and no AFA is required to be obtained for such services.

7. Does the insolvency professional who is in employment is required to obtain AFA?

The Insolvency professional who is in employment is not required to obtain AFA. Only before taking up any assignment under the Code, AFA is required to be obtained.

8. What is the minimum requirement of obtaining CPE hours before issuance of AFA?

An IP shall undertake a minimum of 10 credit hours of CPE each calendar year and a minimum of 60 credit hours of CPE in each rolling block of three calendar years, provided an IP is not required to undertake any CPE in the calendar year in which he is registered.

Accordingly, an IP shall complete the required CPE hours before applying for the issuance/renewal of AFA.

However, IPAs reserve the right to grant exemption in availing CPE in a particular calendar year subject to the undertaking that required CPE will be completed in rolling block of three calendar years.

9. What are the eligibility criterion to be in the Panel of IPs for appointment as IRP, Liquidator, RP and BT issued by IBBI?

An IP will be eligible to be in the Panel of IPs, if –

- a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him;
- b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;
- c) he expresses his interest to be included in the Panel for the relevant period;
- d) he undertakes to discharge the responsibility as IRP, Liquidator, RP or BT, as he may be appointed by the AA;

- e) he holds an Authorisation for Assignment (AFA), which is valid till the validity of Panel. For example, the IP included in the Panel for appointments during January – June 30, 2022 should have AFA valid up to June 30, 2022.

10. What are the consequences of not obtaining AFA before undertaking any assignment under the IBC?

If the Insolvency Professionals undertake assignments or give consent to undertake assignment without holding valid authorisation for assignment, disciplinary proceedings may be initiated by the IPA/IBBI.

CLAIMS

11. Whether resolution professional can adjudicate claims in CIRP process?

Regulations 13 and 14 of the CIRP Regulations limit the role of a resolution professional to that of an administrative authority to verify and collate claims but not adjudicate (this limitation is not applicable to a liquidator). Section 25 of the IBC mandates resolution professionals to maintain an updated list of claims made under the Code. Resolution Professional has to verify the claims made and ultimately determine the amount of each claim.

One might come across a situation where a claim may be disputed by the debtor or the value of claim amount as determined by the resolution professional is disputed by the creditor. It is clear from a reading of the Code as well as the Regulations that the resolution professional has no adjudicatory powers. The Resolution Professional has to vet and verify the claims made and ultimately determine the amount of each claim. It is clear from a reading of the Regulations (i.e. Regulation 10, 12, 13 and 14 of CIRP Regulations) that the resolution professional is given administrative as opposed to quasi-judicial powers.

Section 60(5) of the IBC grants the Adjudicating Authority with the power to entertain claims made by or against the corporate debtor.

Adjudicating Authority (NCLT) has the power to adjudge claims or disputes relating to claims. Tribunal shall have jurisdiction to entertain or dispose of any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India.

12. What is be the category of money advanced by a promoter, director or shareholder of the corporate debtor?

Money advanced by a promoter, director or shareholder of the corporate debtor (even without interest) can be filed as financial debt.

13. What will be the nature of dues of state Government and Central Government under the Insolvency and Bankruptcy Code?

All the dues of Central Government, State Government, local authorities etc. arising out of the operation of any existing law are classified as Operational Debt and such bodies are considered as Operational Creditors within the meaning of Section 5(20) of the Insolvency and Bankruptcy Code, 2016.

14. Who are the persons entitled to file claims on behalf of financial creditor during the Corporate Insolvency resolution process with the resolution professional?

The following persons are authorised to file claims on behalf of financial creditor during the Corporate Insolvency resolution process with the resolution professional:

- A guardian
- An executor or administrator of an estate of a Financial Creditor
- A trustee (including a debenture trustee)
- A person duly authorised by the Board of Directors of a Company

15. What methodology shall be followed by the resolution professional while accepting interest component in the claims?

A financial debt is a debt along with interest, as defined under section 5(8) of the Code.

In case of operational debt, the claim can be based on interest also in addition to the principal debt amount if claim is supported with a valid contract or under the applicable law. Without a valid contract or in the absence of any applicable law, the interest as per Sales of Goods Act and Civil Procedure Code can be awarded only by the Adjudicating Authority and not RP as RP during CIRP acts as administrator.

Where the rate of interest has not been agreed to between the parties in case of creditors in a class (including home buyers), an interest at the rate of 8 percent per annum will be calculated.

Penal interest calculated is also included in the total amount of claim.

16. Who shall bear the cost of filing a claim?

The cost of filing a claim has to be borne by the claimant himself/itself.

APPOINTMENT OF VALUERS

17. What are the provisions relating to valuation during CIRP process under the Insolvency and Bankruptcy Code of India?

As per Regulation 27 IBBI (Insolvency Resolution process for corporate persons) Regulations, 2016, the resolution professional shall within 7 days of 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 corporate debtor in accordance with Regulation 35.

As per Regulation 35 of IBBI (Insolvency Resolution process for corporate persons) Regulations, 2016, Fair value and liquidation value shall be determined in the following manner:-

- (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
- (b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and
- (c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

18. What are the provisions relating to valuation during Liquidation process under the Insolvency and Bankruptcy Code of India?

As per Regulation 35 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016,

- (1) Where the valuation has been conducted under regulation 35 of CIRP Regulations, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.
- (2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:
- (3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.
- (4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

19. What are the provisions relating to valuation during Voluntary Liquidation process under the Insolvency and Bankruptcy Code of India?

As per Section 59 of the Code, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings subject to the fulfilment of certain conditions.

A declaration of solvency from majority of the directors of the company verified by an affidavit shall be submitted which shall be accompanied with audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later and a report of the valuation of the assets of the company, if any prepared by a registered valuer.

20. Who shall be appointed as the registered valuer under the Code?

As per IBBI circular dated 17th October, 2018, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a 'registered valuer', that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. It is hereby directed that with effect from 1st February, 2019, no insolvency professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

21. What is the eligibility criteria for appointment of registered valuers under the Code?

As per Regulation 27 of IBBI (CIRP) Regulations, 2016 & Regulation 35 of IBBI (Liquidation) Regulations, 2016:

The following persons shall not be appointed as Registered Valuers, namely: -

- a. a relative of the resolution professional/Liquidator;
- b. a related party of the corporate debtor;
- c. an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date;
- d. a partner or director of the insolvency professional entity of which the resolution professional/liquidator is a partner or director.

22. Whether approval of CoC is required for appointment of registered valuers?

As per Section 20 of the Code, the interim resolution professional shall have the authority to appoint accountants, legal or other professionals as may be necessary.

However, As per Regulation 34 of IBBI (Insolvency Resolution process for corporate persons) Regulations, 2016, the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Expenses include fees to be paid to Resolution Professional, fees to be paid to insolvency professional entity, if any, fees to be paid to professionals, if any and other expenses to be incurred by the Resolution Professional.

Accordingly, there is no need to take approval for the appointment of resolution professional, however the fees paid to them need to be approved by the committee of creditors.

23. Whether for each class of assets single valuer be appointed?

As per Regulation 27 of the IBBI (CIRP) Regulations, 2016, for each class of assets separate registered valuers shall be appointed.

DISCIPLINARY MECHANISM OF IPAs

24. What are the governing provisions of the disciplinary mechanism of the ICSI IIP?

The IBC provides for a two-tier regulatory regime for the Insolvency Professionals (IPs), the Insolvency and Bankruptcy Board of India (IBBI) and the IPAs. Apart from IBBI, the IPAs also regulate IPs as its members in accordance with Insolvency and Bankruptcy Code, 2016 read with regulations and rules made there under. IPAs formulate and codify the procedures to deal with disciplinary matters, which ensure proper conduct on the part of the members of IPAs and to deal with the cases of violation of Code as well as rules and regulations framed there under.

The Disciplinary Mechanism of IPAs is governed by the Bye Laws (consistent with the Model Bye Laws contained in the schedule to IBBI (Model Bye Laws and Governing Board of IPA) Regulations, 2016)) and Disciplinary Policy adopted by them.

Section 196(2) (p) of the Code provides that IBBI may make model bye-laws to be adopted by Insolvency Professional Agencies which may provide for, inter alia, the manner of conducting disciplinary proceedings against its members and imposing penalties.

Section 205 of the Code mandates every Insolvency Professional Agency to make bye-laws which are consistent with the model bye-laws specified by IBBI.

Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of IPA) Regulations, 2016 mandates every Insolvency Professional Agency to have a Governing Board and frame Bye-Laws to regulate its procedure.

ICSI IIP has framed its own Bye-Laws namely “Bye-Laws of ICSI Institute of Insolvency Professionals” which are drawn from the IBBI Model Bye-Laws Regulations.

In terms of the ICSI IIP Bye-Laws, it is necessary to formulate a Disciplinary Policy and constitute a Disciplinary Committee to deal with cases of violation of the Code as well as the rules and regulations framed thereunder by the professional members enrolled with ICSI IIP.

25. How the disciplinary proceedings are initiated against the professional member in ICSI IIP?

An IPA may initiate disciplinary proceedings against its professional member:

- based on a reference made by the Grievances Redressal Committee
- based on a reference made by the Monitoring Committee
- based on a complaint received in prescribed format alleging professional or other misconduct
- following the direction given by IBBI or any court of law; or
- suo moto, based on any information that is backed by evidence/information indicating malafide action by the professional member and such reasoning to be recorded in writing for launch of a complaint in the prescribed format.

Broadly,

- (1) Any professional member, any person who has engaged the services of the concerned professional member, or any other person as may be provided by the Governing Board of the IPA may file grievance with the IPA with which the IP is enrolled in accordance with the Grievance redressal policy of the IPA.

The grievance redressal committee after examining, may either dismiss, initiate mediation or refer the matter to the disciplinary committee.

- (2) If the monitoring committee is of the considered opinion that a professional member’s conduct is not satisfactory (*non-submission of required information/ submission of incomplete information/submission of incorrect information etc.*), they may direct the secretariat of the agency for the initiation of disciplinary proceedings by issuance of show cause notice.
- (3) Further, disciplinary proceedings may also be initiated on the directions of IBBI or any court of law, suo moto by the agency etc.
- (4) On consideration of documents available on record and after affording an opportunity of hearing to the complainant and the professional member, where, the Disciplinary Committee holds that the professional member is not guilty of professional or other misconduct, the Committee shall dispose of the show-cause notice by recording reasons in writing within thirty days of passing such order and may also impose cost on the complainant, if the Committee is of the opinion that the complaint was frivolous.
- (5) On consideration of documents available on record and after affording an opportunity of hearing to the complainant and the professional member, where, the Committee holds that the professional member is guilty of professional or other misconduct, it may pass any one or more of the following orders:

- Reprimand

- imposition of monetary penalty*
- suspension of the IP for a certain period of time
- expulsion of IP
- reference of the matter to the IBBI;
- the amount of restitution or compensation that may be enforced by IBBI
- directions relating to costs
- cancellation of authorisation for assignment
- any other order, as the Committee may deem fit

** The imposition of penalties by the IPAs is governed by IBBI circular dated 28th July, 2021 read with their Model Bye Laws.*

- (6) The Committee may pass an order for expulsion of a professional member if it has found that the professional member has committed –
- a. an offence under any law for the time being in force, punishable with imprisonment for a term exceeding six months;
 - b. a gross violation of the Code, rules, regulations and guidelines issued there under, byelaws or directions given by the Governing Board which renders him not a fit and proper person to continue acting as an insolvency professional.
- (7) The Committee shall send, free of charge, to the professional member, complainant and IBBI, a certified copy of the final order. Further, any order passed by the Committee under this Part shall be placed on the website of ICSI IIP within seven days from the passing of the order.
- (8) The Committee shall endeavor to dispose off the show-cause notice within a period of six months from the receipt of complaint, information, reference or direction, as the case may be. While disposing off any show-cause notice under this Part, the Committee shall follow its own procedure and shall be guided by the principles of natural justice.

26. What are the provisions of appeal against the orders of Disciplinary Committee of ICSI IIP?

As per the disciplinary policy of Insolvency Professional Agencies,

- Any person aggrieved by an order passed by the Committee may prefer to make an appeal before the Appellate Panel within thirty days from the receipt of the copy of such order.
- The Appellate Panel may call for the records of any case and may –
 - a. confirm, modify or set aside the order passed by the Committee;
 - b. impose any penalty or set aside, reduce or enhance the penalty imposed by the Committee;
 - c. remit the case to the Committee for such further enquiry as the Appellate Panel considers proper in the circumstances of the case; or
 - d. pass such other order(s) as the Appellate Panel deems fit
- The Appellate Panel shall follow its own procedure while deciding the appeal and shall be guided by the principles of natural justice.

27. What are the common violations observed by the committee?

Following are some common violations observed by the Disciplinary Committees of IPAs:

- Acceptance of assignment without getting authorization for assignment (AFA) i.e. non-compliance of Regulation 7A of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016
- Delay in statutory timelines.
- Misrepresentation of facts in the minutes of meetings of committee of creditors.
- Not adhering to the duties of RP as envisaged under the Code
- Non Ratification of fees in CoC meetings
- Non filing of proper forms/disclosures to IPA.
- Non appointment of registered valuers.
- Appointment of related party for work related to assignment.
- Non-compliance of code of conduct for IPs

FILING OF CIRP FORMS

28. What are the different CIRP forms which are required to be filed by the Insolvency Professional while handling a CIRP process?

As per Regulation 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) read with IBBI circular dated 14th August, 2019, 18th March, 2021 & 20th July, 2021, following forms are required to be filed by IRP/RP (*as the case may be*):

Form No.	Particulars	To be filed by	Timelines
IP-1	Pre-Assignment: This includes consent to accept assignment IP as IRP / RP / Liquidator / Bankruptcy Trustee and details thereof.	IP	Within 3 days of giving consent
CIRP -1	From Commencement of CIRP till Issue of Public Announcement: Details of IRP, CD, public announcement, AR etc.	IRP	Within 7 days of making Public Announcement
CIRP- 2	From Public Announcement till replacement of IRP: Details of claims, CoC, cost incurred, disclosures filed etc.	IRP	Within 7 days of replacement of IRP.
CIRP-3	From Appointment of RP till issue of Information Memorandum (IM) to Members of CoC: details of RP, details of registered valuers, handing over of records of CD by IRP to RP, details in IM etc.	RP	Within 7 days of issue of IM to members of CoC.
CIRP-4	From Issue of IM till issue of Request for Resolution Plans (RFRP): Details of RFRP, evaluation matrix etc.	RP	RP Within seven days of the issue of RFRP.
CIRP-5	From Issue of RFRP till completion of CIRP: Details of claimants, resolution plan, liquidation, CIRP cost etc.	RP	Within 7 days from the approval/rejection of resolution plan or order of liquidation

CIRP-6	<p>IRP 6 Event Specific: This includes:</p> <p>a. Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction;</p> <p>b. Raising interim finance;</p> <p>c. Insolvency resolution process of guarantors;</p> <p>d. Extension of period of CIRP and exclusion of time;</p> <p>e. Premature closure of CIRP (appeal, settlement, withdrawal, set aside etc.);</p> <p>f. Request for liquidation before completion of CIRP; and</p> <p>g. Non implementation of resolution plan as approved by the AA.</p>	IRP or RP, as the case may be.	Within seven days of the occurrence of event.
CIRP-7	<p>Where any activity stated above is not complete by the date specified therein, the interim resolution professional or resolution professional, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete-</p> <ul style="list-style-type: none"> - Public announcement is not made by T+3rd day - Appointment of RP is not made by T+30th day - Information memorandum is not issued within 51 days from the date of public announcement - RFRP is not issued within 51 days from the date of issue of information memorandum - CIRP is not completed by T+180th day 	IRP or RP as the case may be	<p>Date specified in above + 3 days</p> <p>X+30th day, X+60th day, X+90th day, and so on, till the activity is completed.</p>
CIRP-8	<p>The resolution professional to form an opinion on transactions covered under sections 43, 45, 50 and 66 by 75th day, make determination on such transactions by 115th day, and file an application before the Adjudicating Authority by 135th day of the insolvency commencement date.</p> <p>Sub-regulation (1B) of regulation 40B of the CIRP Regulations requires the resolution professional to file Form CIRP 8 intimating details of his opinion and determination under Regulation 35A, by 140th day of the insolvency commencement date.</p>	RP	X+140th day

The Form CIRP 8 is required to be filed for all corporate insolvency resolution processes ongoing or commencing on or after 14th July 2021.		
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Forms CIRP-3 to CIRP-5 are required to be filed by IRP also, in cases where he/she is working as deemed RP.

29. How the CIRP forms will be filed on IBBI website?

The assignment needs to be added at online portal of IBBI along with copy of admission order. Post approval of the same from admin IBBI, the CIRP forms (CIRP-1,2, 6 and 7) will be open for filing for an IRP.

For filing of forms as Resolution professional, again the assignment needs to be added with required documents, post approval of the same from admin IBBI, the CIRP forms (CIRP-3,4,5,6,7 & 8) will be open for filing.

If the IRP is handling the case as deemed RP in accordance with Section 22 of the Code, the IRP will add the assignment as deemed RP along with copy of minutes of CoC/AA order etc., Post approval of the same from admin IBBI, the CIRP forms (CIRP-3,4,5,6,7 & 8) will be open for filing.

30. Whether CIRP-5 is also required to be filed in the matters where liquidation order has been passed by AA?

As per Regulation 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016), CIRP-5 is required to be filed:

- Within seven days of the approval or rejection of the resolution plan under section 31
- issue of liquidation order under Section 33, as the case may be, by the AA.

Therefore, Form CIRP-5 is required to be filed in cases where liquidation order is passed by AA. The Insolvency Professionals are required to mention the date of liquidation in the starting of the form and fill the details, wherever applicable.

31. Whether CIRP-7 is required to be filed in cases where application for liquidation is approved by CoC but pending with Adjudicating Authority?

One of the scenarios for filing of Form CIRP-7 is when the CIRP is not completed by T+180th day. Accordingly, Form is required to be filed in all cases where the case is ongoing irrespective of the fact whether the same is pending with CoC, Adjudicating Authority, extension application filed with AA, extension allowed by AA etc.

If the case is ongoing, Form CIRP-7 is required to be filed and it is to be filed after every 30 days till the activity is completed.

32. Whether CIRP-8 is required to be filed in cases where no opinion on PUF transactions has been made by the Insolvency Professional?

As per Regulation 40B & IBBI circular dated 20th July, 2021, the resolution professional shall file Form CIRP 8 intimating details of his opinion and determination under Regulation 35A, on or before the 140th of the insolvency commencement date. Accordingly, details of opinion and determination (whether made/not) shall be filed in Form CIRP-8.

33. Whether any the delay filing or modification fees on CIRP forms is levied by IBBI?

Yes, the filing of forms after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

The insolvency professional or interim resolution professional or resolution professional, as the case may be, shall be liable to any action which the Board may take as deemed fit under the Code or any regulation made thereunder, including refusal to issue or renew Authorisation for Assignment, for-

- (i) failure to file a form along with requisite information and records;
- (ii) inaccurate or incomplete information or records filed in or along with a form;
- (iii) delay in filing the form

However, if the delay has been caused due to the technical glitches on IBBI portal and proper communication has been made to IBBI in this regard, the delay filing fees paid by the IP may be refunded by IBBI on special request made with the proofs.

INFORMATION MEMORANDUM

34. What is the definition of Information memorandum as per the Insolvency and Bankruptcy Code, 2016? What details the Information memorandum shall cover?

As per Section 5(10) of the Code, “Information Memorandum” means a memorandum prepared by resolution professional under sub-section (1) of Section 29;

And as per Section 29(1) of the Code, the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

As per Regulation 36(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), the information memorandum shall contain the following details of the corporate debtor-

- (a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values
- (b) the latest annual financial statements
- (c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application
- (d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims
- (e) particulars of a debt due from or to the corporate debtor with respect to related parties
- (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party
- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- (h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;
- (j) other information, which the resolution professional deems relevant to the committee.

35. Can the Interim Resolution professional prepare Information memorandum?

As per Section 25 of the Code, it is the duty of the resolution professional to prepare the information memorandum. However, the cases where the interim resolution professional is working as deemed resolution professional, he shall carry out all the functions which are supposed to be of the Resolution professional.

36. What is the purpose of preparation of Information memorandum?

The purpose of an Information Memorandum is that resolution plan may be prepared based on it. It is specified in the provision relating to preparation of Resolution Plan.

As per Section 30(1) of the Code, a resolution applicant may submit a resolution plan *[along with an affidavit stating that he is eligible under section 29A]* to the resolution professional prepared on the basis of the information memorandum.

37. What is the time limit for preparation and submission of information memorandum?

As per Regulation 36(1) of CIRP Regulations, The Resolution professional shall submit the information memorandum in electronic form to each member of the committee within 2 weeks of his appointment, but not later than 54th day from the insolvency commencement date, whichever is earlier.

38. Can the Information memorandum be placed in the CoC meetings directly?

From the language of Regulation 36(1) of CIRP Regulations (*as stated above*), it may be presumed that the Information memorandum is required to be circulated to all the members electronically only that too after taking the confidentiality undertaking.

39. Who has the right to receive the Information memorandum?

The information memorandum is to be submitted to Resolution applicants and members of the committee of creditors.

As per Section 29(2), the resolution professional shall provide the information to the resolution applicants, provided that they undertakes-

- (a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;
- (b) to protect any intellectual property of the corporate debtor it may have access to; and
- (c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Further, as per Regulation 36(4) of CIRP Regulations, the resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29.

40. Which CIRP form is required to be filed by the resolution professional on submission of Information memorandum?

As per Regulation 40(B) of CIRP Regulations, Form CIRP-3 is required to be filed within 7 days of issue of information memorandum to the members of Committee of creditors.

Further, if the information memorandum is not issued within 51 days from the date of from the date of issue of information memorandum, CIRP-7 will be required to be filed within 3 days of such date and the filing will be continued every 30 days till the completion of issuance of IM.

Moreover, filing of forms after due date shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay.

41. What assistance may be sought from the creditors of the corporate debtor in preparation of information memorandum?

As per Regulation 4(3) of CIRP Regulations, the creditor shall provide to the interim resolution professional or resolution professional, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.

INSPECTION CONDUCTED BY IPAs

42. What are the governing provisions of Insolvency and Bankruptcy Code (Code) related to Inspection of professional members enrolled with it?

The role of Insolvency Professional Agencies (IPAs) are envisaged under Section 204 of the Code which *inter alia* includes monitoring performance of the professional members enrolled with it.

The mandates relating to Monitoring the Professional Members are specified in IBBI (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (hereinafter called 'IBBI (IPA) Regulations') and IBBI (Insolvency Professionals) Regulations, 2016 (hereinafter called 'IBBI (IP) Regulations'). The same are as follows:

- Clause 8(1)(b) of the Schedule to the IBBI (IPA) Regulations requires every the Governing Board of an Insolvency Professional Agency (IPA) to constitute a Monitoring Committee. Further, Clause 8(2) thereof requires the Chairman of the Monitoring Committee to be an Independent Director of the IPA.
- Regulation 15 to 20 of IBBI (IPA) Regulations lays down the monitoring mechanism in detail.
- Clause 18 of the Schedule to the IBBI (IPA) Regulations requires every IPA to have a Monitoring Policy that shall *inter alia* cover the manner and format of submission or collection of information and records of the professional members **including by way of inspection.**
- Clause 18 of first Schedule to IBBI (IP) Regulations states that an Insolvency Professional must appear, cooperate and be available for inspection and investigations carried out by the Board, any person authorised by the Board or the Insolvency Professional Agencies with which he is enrolled.

43. What is the objective of conducting inspection of Insolvency professionals?

- To ensure that IPs complies with the provisions of Code and Rules and Regulations made thereunder in true letter and spirit.
- To improve and simplify the process adopted by IP while handling assignments under the Code and to ensure that assignments are handled by IP in transparent, accountable and efficient manner.

- To ensure that requirements of record maintenance as required under the Code and rules and regulations made thereunder are duly complied and IP has worked keeping in consideration the interest of all the stakeholders at large.
- To strengthen the regulatory framework for IPs by identifying, and responding appropriately to misconduct and poor performance.
- To increase the confidence in insolvency framework and regulatory regime and to ensure better and more consistent outcomes for all stakeholders.
- To ascertain whether adequate internal control systems, procedures and safeguards have been adopted and established and are being regularly followed by the registered members (Insolvency Professionals) to fulfill their obligations under the Code, relevant regulations, circulars et al;
- To ascertain whether any circumstance exists which would render a registered member (Insolvency Professional) unfit or ineligible; and
- To inquire into all reasonable and credible complaints received from any aggrieved person on any matter having a connection with or bearing on the activities of a registered member (Insolvency Professional);

Further, Inspections are also instruments/mechanisms to:

- Keep a tab on and put in place checks and balances on any unauthorised action(s) of the registered members (IPs) and take cognizance of all reasonable and credible complaints against such registered members and provide appropriate relief to the aggrieved person.
- Ensure that no false or misleading information is provided by any of the registered member (IPs) w.r.t the assignments handled by him/her.
- Give a fair chance of hearing to the Insolvency Professionals.

44. What type of inspections are conducted are conducted by IPAs?

As per the Monitoring policy and Inspection policy of ICSI IIP, the inspections are of two types:

- (i) Routine Inspection:** The routine inspection may be carried out on the basis of Annual Inspection Plan, *if any* as approved by the monitoring committee including percentage of Insolvency Professionals and frequency of inspection.
- (ii) Event-based Inspection:** The event based inspection may be carried out as per the circumstances prescribed in the monitoring policy and approved by MD of ICSI IIP.

The monitoring policy states that Event-based Inspection – The Board may decide to conduct an inspection of an IP:

- a) Professional Member(s) flagged under Desktop Monitoring;
- b) On receipt of a complaint against the Insolvency professional
- c) On the direction of IBBI or Governing Board or Committee;
- d) In case, it has material available on record to believe that the insolvency professional has contravened any of the provisions of the Code or the rules or regulations made, or directions issued by the Board;
- e) On receipt of any order of court or tribunal or Board that directs inspection or makes adverse observations / remarks against the professional members;
- f) Such other event as may be deemed fit.

45. What is the process of inspection conducted by IPAs?

Step 1: Constitution of Inspection Authority

Step 2: Conduct of Inspection by IA

- Issuance of Notice by IA to the IP
- Desktop Appraisal/ On-Site Inspection by IA

Step 3: Submission of draft inspection report to IP

Step 4: Submission of final inspection report post incorporation of his comments

Step 5: Placing of inspection report before monitoring committee meeting

46. What are the common errors and omissions observed by IPAs during inspection of IPs?

Some of the errors are produced below for reference:

1. Deviation in timelines: It has been observed that many Insolvency Professionals do not adhere with the timelines prescribed under the Code and regulations.
2. Non-adherence to reporting requirements
3. Non-maintenance of website during CIRP: It has been observed that there is no updation on the website of the Corporate Debtor w.r.t. ongoing CIRP process in many cases despite of having the website. Further, the website should not contain confidential information about the proceedings of CIRP.
4. Lack of transparency/Non maintenance of records during CIRP
5. In many cases fees were not placed before the CoC for ratification or approval. Further, Costs not ratified by COC to forming a part of CIRP cost.
6. Related to registered valuers
 1. IP appointing Individual valuers not registered under any class.
 2. Non- disclosures of all RVs appointed.
 3. 2 Registered Valuers not appointed for each class of assets.
 4. IPs have not appointed registered valuers within the prescribed timelines.
7. Non-obtaining of declaration of confidentiality from CoC members while sharing Information Memorandum and fair and liquidation value of the corporate debtor

LIMITATION ACT vis a vis IBC

47. What are the provisions related to Limitation Act under Insolvency and Bankruptcy Code of India?

Section 238A of the Code stipulates that “the provisions of the Limitation Act, shall as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the debt recovery tribunal or the debt recovery appellate tribunal, as the case may be.

It is clear that all the relevant provisions of the Limitation Act will be applicable while adjudicating an application or claim under the IBC. The phrase “as far as may be” means that the provisions of the Act would apply mutatis mutandis to proceedings under the Code.

Further, since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default

occurs. The application has to be filed within a time period of three years from the date of default and there is no continuing cause of action once the default takes place.

48. Which sections of Limitation Act are frequently referred during IBC proceedings?

Section 18 of the Act provides for “**effect of acknowledgment in writing**”

As per Section 18,

- (1) where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
- (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Section 19 of the Act provides for “**effect of payment on account of debt or of interest on legacy**”

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Section 14 of the Act provides for “**exclusion of time of proceeding bona fide in court without jurisdiction**”

- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
- (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

49. Explain the applicability of Section 18 of the Limitation Act under IBC proceedings.

As per the decision of Apex Court dated March 26, 2021 in the matter of **Laxmi Pat v. Union Bank of India**, the provisions of Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. There is no reason to exclude the effect of Section 18 of the Limitation Act to the proceedings initiated under the Code. Fresh period of limitation be computed from the date of acknowledgement of a debt by the principal borrower or the corporate guarantor (corporate debtor), as the case may be, provided the acknowledgment is before expiration of the prescribed period of limitation.

50. Explain the applicability of Section 19 of the Limitation Act under IBC proceedings.

As per the decision of NCLAT vide its order dated 14th August, 2020 in the matter of Rajendra Narottamdas read with Apex Court dated March 26, 2021 in the matter of **Laxmi Pat v. Union Bank of India**, the provisions of Limitation Act have been made applicable to the proceedings under the Code, as far as may be applicable. Accordingly, where payment is made on account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made.

51. Does entries in balance sheet amounts to an acknowledgment for the purpose of Section 18 of the Limitation Act?

In reference to the discussions held in the matter of Asset Reconstruction company (India) Limited v. Bishal vide its order dated 15th April, 2021 there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.

52. In what circumstances exclusion of time as per Section 14 of the Limitation Act is applicable under IBC?

In the matter of Sesh Nath v. Baidyabati Sheoraphuli Co-operative Bank vide order dated 22nd March, 2021, the court held that the proceedings under the SARFAESI Act qualifies to be a “civil proceeding” for exclusion of time under Section 14 of the Act. Interpreting section 14 liberally and more broadly, the court held that the Section 14 exclusion is available to a creditor filing an application under section 7 of the IBC.

LIQUIDATION UNDER IBC

53. As per Insolvency and Bankruptcy Code, 2016, in what scenario's the Adjudicating Authority may pass order for initiation of Liquidation of the Corporate Debtor?

As per Section 33 of the Code, the Adjudicating Authority may pass order for initiation of Liquidation of the Corporate Debtor:

- When it does not receive a resolution plan on or before the expiry of the maximum time permitted for CIRP,
- When it rejected the resolution plan for non-compliance of the requirements specified,
- When committee of creditors with minimum 66% voting share decided to liquidate the corporate debtor before completion of process, or
The committee of creditors may take the decision to liquidate the company any time after its constitution but before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.
- When any prejudicially affected person makes application that the approved resolution plan is contravened by the corporate debtor.

The order of liquidation shall be deemed to be a notice of discharge to the officers, employees, workmen of the corporate debtor except when the business of the corporate debtor is continued during the liquidation process of the liquidator.

54. Is there any fee criteria for the Liquidators under Insolvency and Bankruptcy Code, 2016?

An insolvency professional proposed to be appointed as a liquidator shall charge fees in accordance with the decision taken by the committee of creditors under Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”)

In other cases, the liquidator shall be entitled to a fee

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under.

The liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

It is hereby clarified that where a liquidator realizes any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

The fees for the conduct of the liquidation shall be paid to the liquidator from the proceeds of the liquidation estate as per Section 53 of the Code.

55. What are the reports required to be submitted by Liquidators while handling the processes as per Insolvency and Bankruptcy Code, 2016?

In case of Liquidation,

- **Preliminary report** within 75 days from Liquidation Commencement Date detailing capital structure, assets & liabilities, proposed plan of action etc. and submission to Adjudicating Authority
- Preparation of **asset memorandum** within 75 days from Liquidation Commencement Date and submission to Adjudicating Authority
- **Progress reports** to Adjudicating Authority
 - the first Progress Report within fifteen days after the end of the quarter in which he is appointed
 - subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator

Provided that if an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation

- **Final report** along with the application for dissolution to Adjudicating Authority.

In case of Voluntary Liquidation,

- **Preliminary report** within 45 days from the liquidation commencement date detailing capital structure, estimates of assets and liabilities, proposed plan of action etc. to the corporate person

- **Annual status report** after 12 months days from the liquidation commencement date detailing list of stakeholders, details of assets, distribution made by stakeholders, details of avoidance transactions, audited accounts showing receipt and payments since LCD etc. to the contributories
- **Final report** along with application for dissolution on completion of liquidation process to registrar, Board and Adjudicating Authority.

56. In which cases Liquidator is required to take prior approval of Adjudicating Authority is required for sale of assets?

As per Regulation 33 of Liquidation Regulations,

The liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

- (a) a related party of the corporate debtor;
- (b) his related party; or
- (c) any professional appointed by him.

57. Whether fresh valuation of assets or businesses of the Corporate Debtor is required as per IBBI (Liquidation Process) regulations, 2016?

Generally, the liquidator shall consider the average of the estimates of the values arrived by the registered valuers appointed under the corporate insolvency resolution process in accordance with Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

In other cases or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date appoint two registered valuers to determine the realizable value of the assets or businesses of the Corporate Debtor.

The average of two estimates received shall be taken as the value of the assets or businesses.

The following persons shall not be appointed as registered valuers:

- a) a relative of the liquidator;
- b) a related party of the corporate debtor;
- c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

The appointment of registered valuers shall be governed by IBBI circular dated 17th October, 2018.

58. What are the reporting requirements for Insolvency professionals who are handling Liquidation/Voluntary Liquidations with IBBI/IPA?

As of now, no CIRP forms or disclosures (cost/relationship) needs to be submitted by IPs to IBBI/IPA. Only the following needs to be done:

- details of initiation of liquidation needs to be added on IP login at IBBI website
- details of status of liquidation on IPA website (*through online forms- every IPA has its own way of seeking information*)

- periodic intimations needs to be sent to IBBI & IPA on designated email IDs as per Section 208(2)(d) of the Code
- Other information, as and when asked.