



## IBC KNOWLEDGE CAPSULE 22

### Framework for “Information Memorandum under IBC”

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#### Introduction:

**‘Information Memorandum’** (hereinafter referred as **‘IM’**) is the most important document under Corporate Insolvency Resolution Process which provides basis for preparing the resolution plan and consists of information of corporate debtor inter-alia including list of creditors and the amount of claims admitted, debt due from related parties, number of workers and employees and liabilities due to them, details of material litigation, latest audited financial statements and audited financial statements for the last two years, provisional financial statements upto a date which is not earlier than fourteen days from the date of application, liquidation value etc.

During the Corporate Insolvency Resolution Process, when a Resolution Professional is appointed, he has to perform various duties as per Section 29 of the Code including the preparation of Information Memorandum. IM is a document prepared by Resolution Professional which provides details of corporate debtor to assist Resolution Applicant to formulate resolution plan.

The available legal framework of Information Memorandum with important provisions under the Code and under relevant regulations are summarized in the table below:

The table has been color coded as follows:

Provisions of the Code	
Rules/Regulations under the Code	
Orders passed by NCLT/NCLAT/Supreme Court	
Circulars/Notifications/Reports	

TABLE: “Information Memorandum” under IBC

Source	Details /Excerpts	Explanation
<b>Section 5 (10) of the Code: Definition of Information Memorandum</b>	<i>“information memorandum” means a memorandum prepared by resolution professional under sub-section (1) of section 29;</i>	IM is defined in the Code.
<b>Section 25(2)(g) of the Code: Duties of Resolution Professional</b>	<i>(2) the resolution professional shall undertake the following actions, namely: ... (g) prepare the information memorandum in accordance with section 29;</i>	Section 25 of the Code defines the duties of the Resolution Professional and states inter-alia that it is the duty of RP to prepare the IM.
<b>Section 29 of the Code: Preparation of Information Memorandum</b>	<i>(1) 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.  (2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant 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.  Explanation. – For the purposes of this section, “<b>relevant information</b>” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter</i>	This section details the preparation of Information Memorandum by Resolution Professional to provide the same to Resolution applicant on receipt of undertaking from resolution applicant.

	<i>pertaining to the corporate debtor as may be specified.</i>	
<b>Section 30 of the Code: Submission of Resolution Plan</b>	<i>(1) 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.</i>	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.
<b>Section 33 of the Code: Initiation of liquidation</b>	<i>Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.</i>	As per the explanation of Section 33(2), it is declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of Section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.
<b>Section 240 of the Code: Power to make regulations</b>	<i>(1) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code. (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: ..... (u) the form and the manner in which an information memorandum shall be prepared by the resolution professional sub-section (1) of section 29;</i>	As per Section 240(2)(u), IBBI may make regulation for prescribing the form and the manner in which an information memorandum shall be prepared by Resolution Professional under section 29(1).
<b>Regulation 36 of the IBBI (CIRP) Regulations, 2016: Information Memorandum</b>	<i>(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier. (2) 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</i>	This Regulation specifies the details that need to be set out in the IM.  Key features: <ul style="list-style-type: none"> <li>The resolution professional shall submit the information memorandum in electronic form to each member of the committee <b>within two weeks</b> of</li> </ul>

for ascertaining their values. Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.

(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;

(l) other information, which the resolution professional deems relevant to the committee.

(3) A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.

his appointment, but **not later than fifty-fourth day from the insolvency commencement date**, whichever is earlier.

- 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.

*(Sample Confidentiality Undertaking annexed as Annexure A)*

- The details of Corporate Debtor that need to be mentioned are also given in this provision.

*(Sample particulars that need to be covered in an IM are given as Annexure B)*

	<p><i>(4) 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.</i></p>	
<p><b>IBBI Press Release No. IBBI/PR/2018/33</b></p>	<p>A draft specimen was presented by IBBI for what all an Information Memorandum should entail.</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/press/2018/Nov/PR-Specimen-compressed.pdf">https://ibbi.gov.in/webadmin/pdf/press/2018/Nov/PR-Specimen-compressed.pdf</a></p>
<p><b>The Report of the Bankruptcy Law Reforms Committee (BLRC) (November 2015)</b></p>	<p><i>“The information collected on the entity is used to compile an information memorandum, which is signed off by the debtor and the creditors committee, based on which solutions can be offered to resolve the insolvency. In order for the market to provide solutions to keep the entity as a going concern, the information memorandum must be made available to potential financiers within a reasonable period of time from her appointment to the IRP. If the information is not comprehensive, the RP must put out the information memorandum with a degree of completeness of the information that she is willing to certify. For example, as part of the information memorandum, the RP must clearly state the expected shortfall in the coverage of the liabilities and assets of the entity presented in the information memorandum. Here, the asset and liabilities include those that the RP can ascertain and verify from the accounts of the entity, the records in the information system, the liabilities submitted at the start of the IRP, or any other source as may be specified by the Regulator”</i></p>	<p>Link for full report: <a href="https://ibbi.gov.in/BLRCReportVol1_04112015.pdf">https://ibbi.gov.in/BLRCReportVol1_04112015.pdf</a></p>

**Annexure A: Sample Confidentiality Undertaking for an Information Memorandum**

**(On The Letterhead of the Financial Creditor/Resolution Applicant)**

**CONFIDENTIALITY UNDERTAKING**

This confidentiality undertaking has been signed by \_\_\_\_\_, a Financial Creditor, having its office at \_\_\_\_\_ acting through Mr./Ms. \_\_\_\_\_, the authorized signatory / authorized representative (which expression shall, unless repugnant to the context, include its successors in business, administrators in business, administrators, insolvency professional, liquidator and assigns or legal representative) on \_\_\_\_ day of \_\_\_\_\_, 2018 and submitted to Mr. \_\_\_\_\_, an Insolvency Professional having Registration No. \_\_\_\_\_.

WHEREAS M/s. \_\_\_\_\_, a company registered under Companies, Act, 1956 (hereafter referred as (*Corporate Debtor*) is under Corporate Insolvency Resolution Process *pursuant to Hon'ble NCLT* (Mumbai Bench) order dated 19<sup>th</sup> June 2018 and subsequently, Mr. \_\_\_\_\_ having Registration No. \_\_\_\_\_ has been appointed as a Resolution Professional (RP) by the Committee of Creditors.

WHEREAS RP has prepared Information Memorandum as per Section 29(1) of the Insolvency and Bankruptcy Code, 2016 and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

WHEREAS RP is required to share the Information Memorandum after receiving an undertaking from the member of the committee of creditors to the effect that such member shall maintain confidentiality of the information and shall not use such information to cause any undue gain or undue loss to itself or any other person and comply with the requirements under Section 29(2) of the Insolvency and Bankruptcy Code, 2016 as defined under Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

THEREFORE, the Financial Creditor/Resolution Applicant hereby declares and undertakes as follows:

WE HEREBY DECLARE AND UNDERTAKE that we will not divulge any part of the information contained in the Information Memorandum of Corporate Debtor, prepared as per Section 29 (1) of the Insolvency and Bankruptcy Code, 2016 and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, through oral or written communication or through any mode, to anyone.

WE FURTHER UNDERTAKE AND DECLARE that we shall comply with provisions of law for the time being in force relating to confidentiality and insider trading; and shall protect any intellectual property of the Corporate Debtor which we may have

access to. We shall take all necessary steps to safeguard the privacy and confidentiality and shall use our best endeavours to secure that no person acting on our behalf or ourselves divulge or disclose or use any part of the relevant information which shall include the financial position of the Corporate Debtor, all information related to disputes by or against the Corporate Debtor and any other matter pertaining to the Corporate Debtor as may be specified in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016.

PROVIDED THAT nothing contained in this Confidentiality Undertaking shall apply to any disclosure: (i) required by us by the order of a court of competent jurisdiction or an appropriate regulatory, statutory or judicial authority; (ii) of any information which is in the public domain otherwise than as a result of a breach of this Confidentiality Undertaking, or (iii) by us to our legal and other professional advisors.

Signed on behalf of

M/s \_\_\_\_\_  
by \_\_\_\_\_  
(Name and Designation)  
Authorised Signatory

**Annexure B: Sample list of Particulars that is required in an Information Memorandum**

- About the Corporate Debtor
- About the Promoters & Board of Directors
- Shareholding Pattern
- Assets and liabilities Statement as on ..... (insolvency commencement date)
- Latest annual financial statements
- Audited financial statements of the Corporate Debtor for the last two financial years & provisional financial statements for the current financial year made up to ..... (date not earlier than fourteen days from the date of application)
- List of creditors
- Particulars of debt due from or due to corporate debtor with respect to related parties
- Details of guarantees that have been given in relation to debts of the corporate debtor by other persons
- Names and addresses of members or partners J holding at least one per cent stake in the corporate debtor
- Details of all material litigations and ongoing investigations or proceedings initiated by Government and statutory authorities
- Details of number of workers and employees and liabilities of the corporate debtor towards them
- Copy of the Order passed by National Company Law Tribunal (NCLT) admitting the application of the Corporate Debtor
- Any other information relevant to the Committee of Creditors



**Notes:**

**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India  
IPA: Insolvency Professional Agency  
ICSI IIP: ICSI Institute of Insolvency Professionals  
IP: Insolvency Professional  
CIRP: Corporate insolvency resolution process  
IRP: Interim Resolution Professional  
AR: Authorised Representative  
COC: Committee of Creditors  
CD: Corporate Debtor  
FC: Financial Creditor  
OC: Operational Creditor  
Code: Insolvency and Bankruptcy Code, 2016

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