

Insolvency & Bankruptcy Code – 2016 – Opportunities for Valuer



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IN PRESENT SCENARIO, THERE ARE (4) FOUR ACTS ENACTED / AMENDED / WHICH CREATES OPPERTUNITY FOR VALUER

1. The Real Estate (Regulation & Development) Act, 2016
2. The Benami Transaction (Prohibition) Amendment Act – 2016
3. The Enemy Property (Amendment and Validation) Act, 2017
4. The Insolvency And Bankruptcy Code – 2016

THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016

- **The Real Estate (Regulation and Development) Act, 2016** is an Act of the Parliament of India which seeks to protect home-buyers as well as help boost investments in the real estate industry. The bill was passed by the *Rajya Sabha* on 10 March 2016 and by the *Lok Sabha* on 15 March 2016. The Act came into force from 1 May 2016 with 59 of 92 sections notified. RERA Act was implemented by 01.05.2017. The Central and state governments are liable to notify the Rules under the Act within a statutory period of six months.

THE BENAMI TRANSACTION (PROHIBITION) AMENDMENT ACT – 2016

- Rather than hoarding the black money in cash, the tax evader invest their accumulated illegal money in buying BENAMI properties.
- The whole process affects the revenue generation of government hampering growth and development of the state. due to lack of resources. A tough law against BENAMI properties was the need of the hour to check corruption
- Finally, **The BENAMI Transaction (Prohibition) Amendment Act – 2016** passed in the November-2016
- The New BENAMI Transaction (Prohibition) Amendment Act came into effect from 1st November, 2016. It prohibits illegal BENAMI transactions, under which up to seven years of imprisonment and penalty for those indulging in such activities could be handed out.

ENEMY PROPERTY (AMENDMENT AND VALIDATION) ACT, 2017

- The **Enemy Property Act, 1968** is an Act of the Parliament of India, which provides for the continuous vesting of enemy property in the Custodian. The Central Government through the Custodian of Enemy Property for India is in possession of enemy properties spread across many states in the country. In addition, there are also movable properties categorized as enemy properties.
- Any property belonging to or held on the behalf of the successors of those who moved to Pakistan or China during partition will have no right to claim what they left in India. Properties were earlier left with custodians.
- After the Indo-Pak war of 1965, the 'Enemy Property Act' was enacted in 1968 in order to regulate these properties and keep a tab on the powers custodians have.
- To avoid any litigation and encroachments because of the original law, necessary amendments have been imposed on it.



सत्यमेव जयते

THE INSOLVENCY AND BANKRUPTCY CODE - 2016

भारत का राजपत्र The Gazette of India

EXTRAORDINARY
PART II - Section 3

PUBLISHED BY AUTHORITY

नं. 57] नई दिल्ली, बुधवार, मई 28, 2016/मई 7, 1938 (सा.स.)
No. 57] NEW DELHI, SATURDAY, MAY 28, 2016/JYAISTHA 7, 1938 (S.A.S.)

इस भाग में कुछ सुधारों के संबंध में विचारों के एक आकांक्षित सत्र के आय में एक या अधिक
By order published in pursuance of the power conferred by section 3 of the Act of 1952.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 28th May 2016 (Under the 7, 1952 (Sole))
The following Act of Parliament received the assent of the President on the 28th May, 2016, and is hereby published for general information:—

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

No. 31 of 2016

[28th May, 2016]

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

It is enacted by Parliament in the sixty-seventh year of the Republic of India as follows:—

SHORT TITLE

1. (1) This Code may be called the Insolvency and Bankruptcy Code, 2016.

- (2) It extends to the whole of India:
- Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.
- (5) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

श्री अ. वि.
कानून और
संवैधानिक

भारत का राजपत्र The Gazette of India

EXTRAORDINARY
PART II - Section 3

PUBLISHED BY AUTHORITY

नं. 1287] नई दिल्ली, बुधवार, अक्टूबर 1, 2016/अश्विन 9, 1938
No. 1287] NEW DELHI, SATURDAY, OCTOBER 1, 2016/ASHWIN 9, 1938

भारतीय कर्तव्य संहिता सविज्ञापन

नई दिल्ली, 1 अक्टूबर, 2016

क.स. 211(31) - भारतीय कर्तव्य, विचार और जीवन संहिता, 2016 (2016 का 31) की धारा 180 की उपधारा (1) और उपधारा (2) द्वारा दिये गये अधिनियम के अंतर्गत 01 अक्टूबर, 2016 को भारतीय विचार और जीवन संहिता संहिता की प्रतियों के रूप में निम्न कक्षों में भारतीय विचार और जीवन संहिता संहिता की प्रतियां नई दिल्ली में होंगी:

नं.सं. 302/2016-संविधानीय संहिता
उपरोक्त विवरण, संपूर्ण संहिता

MINISTRY OF CORPORATE AFFAIRS NOTIFICATION

New Delhi, the 1st October, 2016

S.O. 211(31)-In pursuance of the power conferred by sub-section (1) and (2) of section 180 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints (1st October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi.

[F. No. 302/2016-Insolvency (Legal)]
AMARDEEP SINGH BHATIA, Jt. Secy.

SHRI NARENDRA MODI, HON'BLE PRIME MINISTER OF INDIA IN HIS ADDRESS
AT NATIONAL INITIATIVE TOWARDS STRENGTHENING ARBITRATION AND
ENFORCEMENT IN INDIA, 23RD OCTOBER, 2016 :

“Towards this end, we have initiated far-reaching legal reforms. Over a thousand archaic laws have been scrapped. We have enacted a comprehensive Insolvency and Bankruptcy Code, 2016, implemented the National Company Law Tribunals.....

.....Further, in harmony with the Bankruptcy Code, we have amended the SARFAESI and DRT Acts this year to suit the changing credit landscape and augment ease of doing business.”

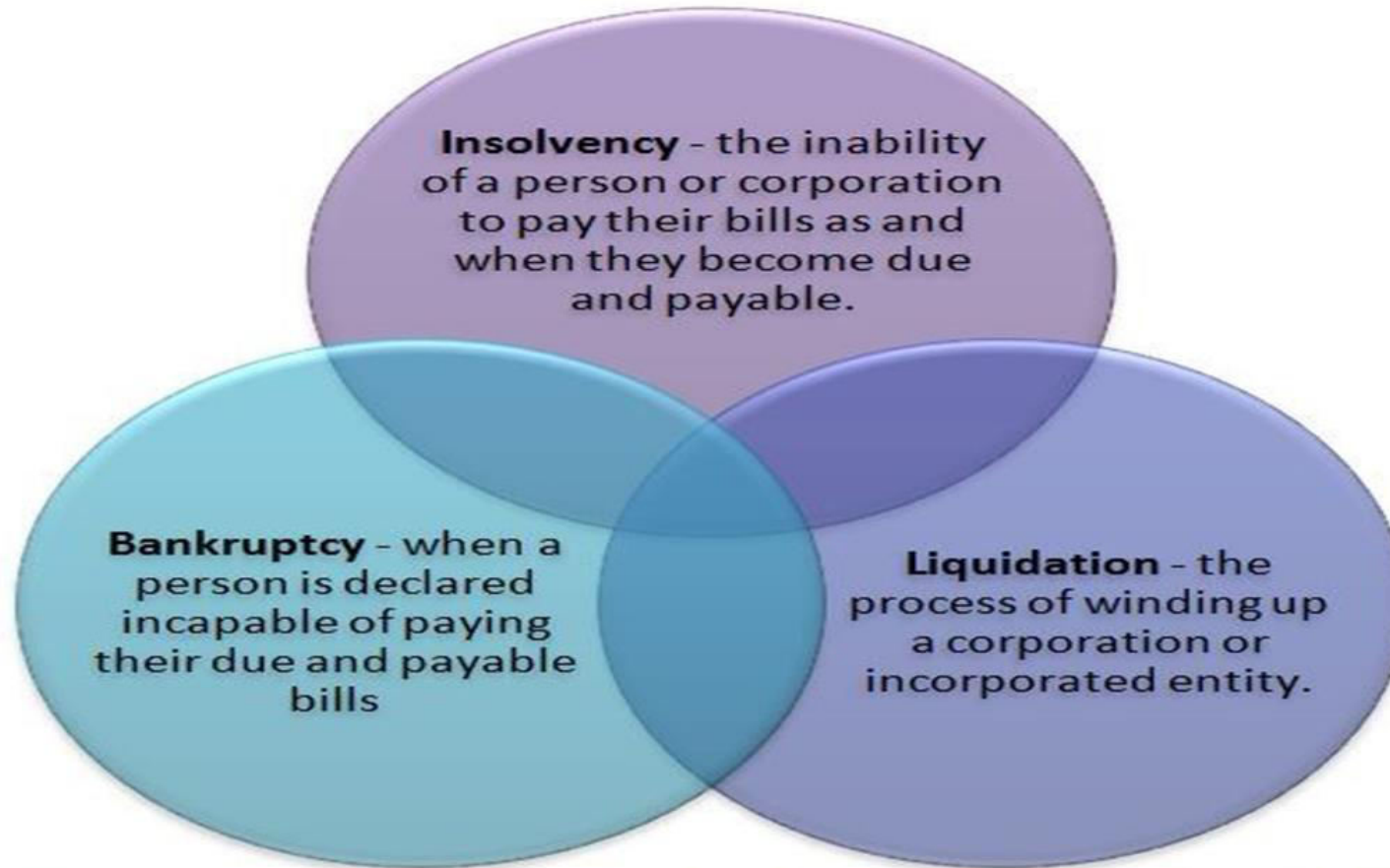
SHRI ARUN JAITLEY, HON'BLE MINISTER OF FINANCE AND CORPORATE AFFAIRS IN HIS ADDRESS AT THE INAUGURATION OF THE NISM CAMPUS, 24TH DECEMBER, 2016:

“We started the year with the implementation The Insolvency and Bankruptcy Law not only got passed, but by the end of the year, got effectively implemented.”

Ministry of Finance, Press Release dated 11th May, 2016:

- ▶ “This (The Insolvency and Bankruptcy Code, 2016) is considered as the biggest economic reform next only to GST.”

INSOLVENCY, BANKRUPTCY & LIQUIDATION



WHY “CODE” & NOT AN “ACT” ???

- A Code, as per Black’s Law Dictionary -
 - A Collection or Compendium of Laws

Systematic and comprehensive compilation of :

- Laws
- Rules & Regulations that are
- Consolidated and classified for
- **A Particular Subject**

THE CODES OF INDIA

- The Indian Penal Code, 1860
- The Code of Civil Procedure, 1908
- The Code of Criminal Procedure, 1973
- The Insolvency and Bankruptcy Code, 2016 (The IBC 2016)
- Land Revenue Code of Various States

THE IBC APPLIES TO

- Companies
- Company Governed by any Special Act
- LLPs
- Such Other Bodies as others notified
- Partnership Firm & Individuals

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI) WAS ESTABLISHED ON 1ST OCTOBER, 2016. IT IS USEFUL TO CHRONICLE THE CRITICAL STEPS LEADING TO ESTABLISHMENT OF THE IBBI AND THE STEPS TAKEN THEREAFTER

Date	Steps in the Journey
Developments up to 30th September, 2016	
10.07.2014	Hon'ble Finance Minister in his budget speech for 2014-15 stated as under: "Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit." (Para 106)
22.08.2014	Committee (Bankruptcy Law Reforms Committee / BLRC hereafter) under the Chairmanship of Dr. T. K. Viswanathan constituted to study Corporate Bankruptcy Legal Framework in India.
11.02.2015	BLRC submitted an interim report. Ministry of Finance sought suggestions / comments on the recommendations in the interim report by 20.02.2015.
28.02.2015	Hon'ble Finance Minister in his budget speech for 2015-16 stated as under: "Bankruptcy law reform, that brings about legal certainty and speed, has been identified as a key priority for improving the ease of doing business. SICA (Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in achieving these objectives. We will bring a comprehensive Bankruptcy Code in fiscal 2015-16, that will meet global standards and provide necessary judicial capacity." (Para 36)
04.11.2015	BLRC submitted its report. Ministry of Finance sought suggestions / comments on the report by 19.11.2015.
21.12.2015	The Insolvency and Bankruptcy Code, 2015 introduced in Lok Sabha.
28.04.2016	The report of the Joint Committee under the Chairmanship of Shri Bhupender Yadav on the Insolvency and Bankruptcy Code, 2015 presented to Parliament.
05.05.2016	Lok Sabha passed the Insolvency and Bankruptcy Code, 2016.
11.05.2016	Rajya Sabha passed the Insolvency and Bankruptcy Code, 2016.
28.05.2016	The Insolvency and Bankruptcy Code, 2016 (Code hereafter) enacted.
01.06.2016	National Company Law Tribunals constituted.
22.07.2016	Oversight Committee and Four Working Groups for implementation of the Code constituted.
29.07.2016	Ministry of Corporate Affairs entrusted with the responsibility of administration of the Code.
05.08.2016	The provisions relating to establishment of the IBBI in the Code came into force.
19.08.2016	The provisions relating to finance of the IBBI and other matters in the Code came into force.
23.08.2016	Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs directed the senior officers of the Ministry of Finance and Corporate Affairs to take suitable necessary action for implementation of Code in a time bound manner. (Press Release)
29.08.2016	The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and Members) Rules, 2016 came into force.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI) WAS ESTABLISHED ON 1ST OCTOBER, 2016. IT IS USEFUL TO CHRONICLE THE CRITICAL STEPS LEADING TO ESTABLISHMENT OF THE IBBI AND THE STEPS TAKEN THEREAFTER :

Developments during September – December, 2016	
01.10.2016	The IBBI established. Head office of the IBBI to be in Delhi.
	Dr. M. S. Sahoo appointed as Chairperson of the IBBI. He was administered oath of office by Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs.
	The following four ex-officio Members of the IBBI appointed: a. Shri Ajay Tyagi, Additional Secretary (Investment), Department of Economic Affairs, Ministry of Finance, b. Shri Amardeep S. Bhatia, Joint Secretary, Ministry of Corporate Affairs, c. Shri G. S. Yadav, Joint Secretary & Legal Adviser, Ministry of Law and Justice, Department of Legal Affairs, and d. Shri A. Unnikrishnan, Legal Adviser, Legal Department, Reserve Bank of India.
07.10.2016	Shri Arjun Ram Meghwal, Hon'ble Minister of State for Finance and Corporate Affairs addressed the 1 st meeting of the Governing Board of the IBBI.
18.10.2016	The IBBI constituted two Advisory Committees: one on Service Providers and the other on Corporate Insolvency Resolution and Liquidation.
01.11.2016	The provisions relating to powers and functions of the IBBI in the Code came into force.
15.11.2016	The provisions relating to Insolvency Professional Agencies (IPAs) and Insolvency Professionals (IPs) in the Code came into force.
22.11.2016	The IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and the IBBI (Insolvency Professional Agencies) Regulations, 2016, notified on 21.11.2016, came into force.
28.11.2016	Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs handed over certificates of registration to two Insolvency Professional Agencies registered with the IBBI.
29.11.2016	The IBBI (Insolvency Professionals) Regulations, 2016, notified on 23.11.2016, came into force.
30.11.2016	Shri Tapan Ray, Secretary to Government of India, Ministry of Corporate Affairs, handed over certificates of registration to 18 Insolvency Professionals.
01.12.2016	The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, notified on 30.11.2016, came into force.
01.12.2016	The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, notified on 30.11.2016, came into force.
01.12.2016	The provisions relating to corporate insolvency resolution in the Code came into force.
15.12.2016	The provisions relating to liquidation in the Code came into force.
15.12.2016	The IBBI (Liquidation Process) Regulations, 2016 came into force.
31.12.2016	The Limited Insolvency Examination commenced.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

- 5 Parts- 7 Chapters in each Part II,III,IV
- 255 Sections
- 11 Schedules (Sections 245 to 255)
- 9 Amendments

THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

- Part I – Preliminary – Sections 1 to 3
- Part II - Insolvency Resolution and Liquidation for Corporate Persons - 7 Chapter, Sections 4 to 77, Section 5 Definitions
- Part III – Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms – 7 Chapters, , sections 78 to 187, Section – 79 - Definitions
- Part IV – Regulation of Insolvency Professionals, Agencies and Information Utilities – 7 Chapters, sections 188 to 223
- Part V – Miscellaneous- Sections 224 to 255 (Section 224-255 enables amendments in other statues, 11 legislations)

REPEAL OF ENACTMENT AND SAVINGS BY THE IBC 2016 (S 243)

- ▶ The Presidency Towns Insolvency Act, 1909
- ▶ The Provincial Insolvency Act- 1920

II ENACTMENT AMENDED BY THE IBC 2016 (S 245 – S 255) SCHEDULE FIRST TO ELEVENTH)

Schedule	Suitably amended Respective Act
1	The Indian Partnership Act, 1932
2	The Central Excise Act, 1944
3	The Income-Tax Act, 1961
4	The Customs Act , 1962
5	The Recovery of Debts due to Banks and Financial Institution Act, 1993
6	The Finance Act, 1994
7	The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act – 2002
8	The Sick Industrial Companies (Special Provisions) Repeal Act – 2003
9	The Payment & Settlement Act, 2007
10	The Limited Liability Partnership Act, 2008
11	The Companies Act, 2013

IMPACT OF THE IBC 2016

- BIFR & SICA go off completely
- Corporate Resolution comes under NCLT
- Tight timelines under the new Law- Entire Process of Resolution to be over in 180 to 270 Days
- May lead to greater financial discipline
- Creditor have an upper hand in Resolution Plans
- Moratorium is not indefinite – Limited Moratorium
- If revival doesn't work out, entity is mandatorily goes in to Liquidation.
- Companies and Guarantors can be both brought under common forum – NCLT / DRT
- While borrowers may file resolution applications seeking moratorium, But borrower, will have to face the threat of Liquidation & Bankruptcy
- Can Debtors under banker – driven restrictions also go for NCLT / DRT resolution – Yes, in view of mandatory timelines , the case may reach bankruptcy stage faster
- Accelerating provisioning – Faster transition in to a case of loss assets

TIME LINE

180 days



90 days
(Maximum)



270 days

FAST TRACK :

90 days



45 days
(One time)



135 days

Adjudicating Authority after admission of application shall, by an order

Declare a
Moratorium

Cause a Public
Announcement

Appoint Interim
Resolution Professional

ABOUT ACT :

PART II - INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS

Chapter	Chapter Title
I	PRELIMINARY
II	CORPORATE INSOLVENCY RESOLUTION PROCESS
III	LIQUIDATION PROCESS
IV	FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS
V	VOLUNTARY LIQUIDATION OF CORPORATE PERSONS
VI	ADJUDICATING AUTHORITY FOR CORPORATE PERSONS
VII	OFFENCES AND PENALTIES

ABOUT ACT :

PART III - INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

Chapter	Chapter Title
I	PRELIMINARY
II	FRESH START PROCESS
III	INSOLVENCY RESOLUTION PROCESS
IV	BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS
V	ADMINISTRATION AND DISTRIBUTION OF THE ESTATE OF THE BANKRUPT
VI	ADJUDICATING AUTHORITY FOR INDIVIDUALS AND PARTNERSHIP FIRMS
VII	OFFENCES AND PENALTIES

ABOUT ACT :

PART IV - REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

Chapter	Chapter Title
I	THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
II	POWERS AND FUNCTIONS OF THE BOARD
III	INSOLVENCY PROFESSIONAL AGENCIES
IV	INSOLVENCY PROFESSIONALS
V	INFORMATION UTILITIES
VI	INSPECTION AND INVESTIGATION
VII	FINANCE, ACCOUNTS AND AUDIT

PART V – Miscellaneous

ADJUDICATING AUTHORITY

NCLT

- Deal with Insolvency matters of Company & LLP

Debt Recovery Tribunal

- Deal with Insolvency matters of Individual & Partnership firm

Appeal and Appellate Authority

Appeal to Supreme Court

Civil Court not to have Jurisdiction

RULES RELEVANT TO THE IBC 2016 (S 239)

- The Insolvency & Bankruptcy and Bankruptcy Board of India (Salary, Allowances, the other terms & condition of service of chair person and members) Rules, 2016 Dt : 29.08.2016, w.e.f : 29.08.2016
- The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Dt. 30.11.2016, w.e.f. 1.12.2016

REGULATIONS UNDER THE IBC 2016 (S 240)

Sr. No	Regulation
1	The Insolvency Bankruptcy Board of India (Model bye-Laws and Governing Boards of Insolvency Professional Agencies) Regulation,2016, Dt : 21.11.2016, w.e.f. 22.11.2016
2	The Insolvency Bankruptcy Board of India (Insolvency Professional Agencies) Regulation,2016, Dt : 21.11.2016, w.e.f. 22.11.2016
3	The Insolvency Bankruptcy Board of India (Insolvency Professional) Regulation,2016, Dt : 23.11.2016, w.e.f. 29.11.2016
4	The Insolvency Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulation,2016, Dt : 30.11.2016, w.e.f. 01.12.2016
5	The Insolvency Bankruptcy Board of India (Liquidation Process) Regulation,2016, Dt : 15.02.2016, w.e.f. 15.12.2016
6	The Insolvency Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulation,2017, Dt : 30.1.2017, w.e.f. 31.1.2017

REGULATIONS UNDER THE IBC 2016 (S 240)

Sr. No	Chapter Title
7	The Insolvency Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulation,2017, Dt : 30-1-2017 , w.e.f. 31-1-2017
8	The Insolvency Bankruptcy Board of India (Advisory Committee) Regulation,2017, Dt : 30-1-2017 , w.e.f. 31-1-2017
9	The Insolvency Bankruptcy Board of India (Information Utilities) Regulation,2017, Dt : 31-3-2017 , w.e.f. 1-4-2017
10	The Insolvency Bankruptcy Board of India (Voluntary Liquidation Process) Regulation,2017, Dt : 31-3-2017 , w.e.f. 31-1-2017)
11	The Insolvency Bankruptcy Board of India (Removal of Difficulties) Order ,2017, Dt : 24-5-2017, w.e.f. 31-1-2017)
12	The Insolvency Bankruptcy Board of India (Inspection & Investigation) Regulation,2017, Dt : 12-6-2017 , w.e.f. 12-6-2017
13	The Insolvency Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Person) Regulation,2017, Dt : 14-6-2017, w.e.f. 14-6-2017)

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017 NO. 8 OF 2018 [18TH JANUARY, 2018.]

- The President of India has given his assent today to the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (Code).
- The Ordinance amends sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new sections 29A and 235A in the Code.
- Gist of the amendments as contained in the Ordinance are as follows:
 - i. (1) Clause (e) of section 2 of the Code has been substituted with three clauses. This would facilitate the commencement of Part III of the Code relating to individuals and partnership firms in phases.
 - ii. Clause (25) and (26) of section 5 of the Code which define “resolution applicant” and “resolution plan” are amended to provide clarity
 - iii. Section 25(2)(h) of the Code is amended to enable the resolution professional, with the approval of the committee of creditors (CoC), to specify eligibility conditions while inviting resolution plans from prospective resolution applicants keeping in view the scale and complexity of operations of business of the corporate debtor to avoid frivolous applicants.

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017 NO. 8 OF 2018 [18TH JANUARY, 2018.]

(iv) Section 29A is a new section that makes certain persons ineligible to be a resolution applicant. Those being made ineligible inter alia include:

- willful defaulters,
- those who have their accounts classified as non-performing assets for one year or more and are unable to settle their overdue amounts including interest thereon and charges relating to the account before submission of the resolution plan,
- those who have executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor undergoing a corporate insolvency resolution process or liquidation process under the Code,
- and connected persons to the above, such as those who are promoters or in management of control of the resolution applicant, or will be promoters or in management of control of corporate debtor during the implementation of the resolution plan, the holding company, subsidiary company, associate company or related party of the above referred persons.

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017 NO. 8 OF 2018 [18TH JANUARY, 2018.]

- (v) It has also been specifically provided that CoC shall reject a resolution plan, which is submitted before the commencement of the Ordinance but is yet to be approved, and where the resolution applicant is not eligible as per the new section 29A. In such cases, on account of the rejection, where there is no other plan available with the CoC, it may invite fresh resolution plans.
- (vi) Section 30(4) is amended to explicitly obligate the CoC to consider feasibility and viability of the resolution plan in addition to such conditions as may be specified by IBBI, before according its approval.
- (vii) The sale of property to a person who is ineligible to be a resolution applicant under section 29A has been barred through the amendment in section 35(1)(f).
- (viii) In order to ensure that the provisions of the Code and the rules and regulations prescribed there under are enforced effectively, the new section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.
- (ix) Consequential amendments in section 240 of the Code, which provides for power to make regulations by IBBI, have been made for regulating making powers under section 25(2)(h) and 30(4).
- **Ordinance was passed by parliament and become Act :**
- **THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017 NO. 8 OF 2018 [18th January, 2018.]**

PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

■ **Ordinance to amend the Insolvency and Bankruptcy Code, 2016 promulgated;**

Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code.

- The Government of India promulgated today the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (the Code). Earlier the President of India had given his assent to the Ordinance to amend the Code.
- The Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The amendments aim to keep-out such persons who have wilfully defaulted, are associated with non-performing assets, or are habitually non-compliant and, therefore, are likely to be a risk to successful resolution of insolvency of a company. In addition to putting in place restrictions for such persons to participate in the resolution or liquidation process, the Amendment also provides such check by specifying that the Committee of Creditors ensure the viability and feasibility of the resolution plan before approving it. The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers.
- It may be recalled that the Regulations by the IBBI were also amended recently to ensure that information on the antecedent of the applicant submitting the Resolution Plan along with information on the preferential, undervalued or fraudulent transactions are placed before the Committee of Creditors in order for it to take an informed decision on the matter.

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MINISTRY OF CORPORATE AFFAIRS

(iv) Section 29A is a new Section that makes certain persons ineligible to be a Resolution Applicant. Those being made ineligible inter alia include:

- Willful Defaulters,
- Those who have their accounts classified as Non-Performing Assets (NPAs) for one year or more and are unable to settle their overdue amounts include interest thereon and charges relating to the account before submission of the Resolution Plan,
- Those who have executed an enforceable guarantee in favour of a creditor, in respect of a Corporate Debtor undergoing a Corporate Insolvency Resolution Process or Liquidation Process under the Code
- and connected persons to the above, such as those who are Promoters or in management of control of the Resolution Applicant, or will be Promoters or in management of control of Corporate Debtor during the implementation of the Resolution Plan, the holding company, subsidiary company, associate company or related party of the above referred persons.

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Along with other steps towards improving compliances, actions against defaulting companies to prevent misuse of corporate structures for diversion of funds, reforms in the banking sector, weeding-out of unscrupulous elements from the resolution process is part of ongoing reforms initiated by the Government. These would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment.

The Ordinance amends Sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new Sections 29A and 235A in the Code. Gist of the amendments is given below:

- (i) Clause (e) of Section 2 of the Code has been substituted with three Clauses. This would facilitate the commencement of Part III of the Code relating to individuals and partnership firms in phases.
- (ii) Clause (25) and (26) of Section 5 of the Code which define “Resolution Plan” and “Resolution Applicant” are amended to provide clarity.
- (iii) Section 25(2)(h) of the Code is amended to enable the Resolution Professional, with the approval of the Committee of Creditors (CoC), to specify eligibility conditions while inviting Resolution Plans from prospective Resolution Applicants keeping in view the scale and complexity of operations of business of the Corporate Debtor to avoid frivolous applicants.

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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

(V) It has also been specifically provided that CoC shall reject a Resolution Plan, which is submitted before the commencement of the Ordinance but is yet to be approved, and where the Resolution Applicant is not eligible as per the new Section 29A. In such cases, on account of the rejection, where there is no other plan available with the CoC, it may invite fresh resolution plans.

(vi) Section 30(4) is amended to explicitly obligate the CoC to consider feasibility and viability of the Resolution Plan in addition to such conditions as may be specified by IBBI, before according its approval.

(vii) The Sale of Property to a person who is ineligible to be a Resolution Applicant under Section 29A has been barred through the amendment in Section 35(1)(f).

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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

(viii) In order to ensure that the provisions of the Code and the Rules and Regulations prescribed thereunder are enforced effectively, the new Section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

(ix) Consequential amendments in Section 240 of the Code, which provides for power to make Regulations by IBBI, have been made for regulating making powers under Section 25(2)(h) and 30(4).

CORPORATE INSOLVENCY RESOLUTION PROCESS AS OF THE END OF SEPTEMBER, 2017, 353 CORPORATES WERE UNDERGOING THE RESOLUTION PROCESS, AS SHOWN IN TABLE 4. THE DISTRIBUTION OF STAKEHOLDERS WHO TRIGGERED RESOLUTION PROCESSES ARE GIVEN IN TABLE 5.

Table 4: Corporate Insolvency Resolution Transactions

Quarter	No. of Corporates undergoing Resolution at the beginning of the Quarter	Admitted	Closure by			No. of Corporates undergoing Resolutions at the end of the Quarter
			Appeal / Review	Approval of Resolution Plan	Commence-ment of Liquidation	
Jan - Mar, 2017	0	37	1	-	-	36
Apr - Jun, 2017	36	125	10	-	-	151
Jul - Sep, 2017	151	214	3	2	7	353
Till Date	NA	376	14	2	7	353

Table 5: Initiation of Corporate Insolvency Transactions

Quarter	No. of Resolutions Processes Initiated by			Total
	Financial Creditor	Operational Creditor	Corporate Debtor	
Jan - Mar, 2017	9	7	21	37
Apr - Jun, 2017	31	59	35	125
Jul - Sep, 2017	82	101	31	214
Till Date	122	167	87	376

REGISTRATION OF INSOLVENCY PROFESSIONALS AS ON 30TH SEPTEMBER, 2017 AS PER TABLE : 7

REPLACEMENT OF IRP WITH ANOTHER IP AS RP AS ON 30TH SEPTEMBER, 2017 AS PER TABLE : 8

Table 7: Registration of Insolvency Professionals as on 30th September, 2017

City/Region	Enrolled with			Total
	The Indian Institute of Insolvency Professionals of ICAI	ICSI Insolvency Professionals Agency	Insolvency Professional Agency of Institute of Cost Accountants of India	
Delhi	131	103	29	263
Rest of the Northern Region	101	67	16	184
Mumbai	133	53	16	202
Rest of Western Region	81	44	7	132
Chennai	28	27	3	58
Rest of Southern Region	67	57	16	140
Kolkata	72	15	6	93
Rest of the Eastern Region	26	5	4	35
All India	639	371	97	1107

Table 8: Replacement of IRP with another IP as RP as on 30th September, 2017

CIRP initiated by	No. of CIRPs where IRP has been replaced by another IP as RP
Corporate Applicant	25
Operational Creditor	5
Financial Creditor	5
Total	35

KEY CHALLENGES TO THE IMPLEMENTATION OF THE CODE

- Significant uncertainties and challenges would have to be surmounted before the Code could be a success on the ground

Mind-set of existing stakeholders: Lenders, Borrowers and Judiciary

- A complete transformation of the banking system is needed
- Specially, aspects related to the development of early warning mechanism, astute credit monitoring, proactive commercial decision making with respect to the way forward and elimination of inter-creditor conflicts would need to be overhauled.
- Banks would also need to exercise professional judgement in the selection of appropriate IPs/advisors and not follow a “lowest cost” policy without consideration of technical credentials and experience commensurate with the complexity and magnitude of the situation

KEY CHALLENGES TO THE IMPLEMENTATION OF THE CODE

- **Stressed/distressed business owners/managers should acknowledge** and **focus on the inefficiencies** in their current business models in a timely manner and communicate any Liquidity issues to financial creditors and other stakeholders well in advance – along with a turnaround plan
- **Funds** availed from lenders (or other sources) by business owners should be **utilized** for the purpose for which they were granted/**intended**
- **Dues should be paid off on time** as against using operational creditors as a source of working capital financing by inordinately delaying payments.
- **Government authorities** (local, state and central) need to ensure that all commitments made (land allocation, approvals etc.) are completed as per scheduled/reasonable timelines and dues payable are paid on time to the business community.
- The Code is very clear that **Insolvency** or **Bankruptcy is a commercial issue**, backed by law to enforce transparency and objectivity.
- It is **not another law behind which the inevitable can be delayed**.
- The **judiciary should support** the implementation of the law as intended.

KEY CHALLENGES TO THE IMPEMENTATION OF THE CODE

Legal matters

- There are numerous matters (such as sale of part of an organization and carve-out of business) that may need the **approval of shareholders** as per constitutional documents, shareholder agreements and other similar documents.
- The resolution plan will take effect notwithstanding such approval. However, the Code and **regulations are silent on whether such actions contemplated in the resolution plans** (or otherwise can be completed without specific approvals as required under the Companies Act.
- It is more broadly worded than that envisaged under the international legislative instruments or in the Context of netting arrangement for financial collateral under the **ISDA framework**
- It will be good to have some of these issues clarified in the **rules and regulations**
- The **regulations** have stipulated a **minimum payment to the operational creditors and dissenting financial creditors** to the extent of the estimated liquidation value, i.e., the amount payable to them in the event of a liquidation.
- The liquidation value due to operational creditors should be paid **within 30 days** of the date of approval of the resolution plan by NCLT.
- The **Code and the regulations** are **silent** about the **treatment of creditors who abstains from voting in the CoC meeting.**

OPPORTUNITY FOR VALUER UNDER INSOLVENCY AND BANKRUPTCY CODE 2016

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

CHAPTER V :

VOLUNTARY LIQUIDATION OF CORPORATE PERSONS

Section : 59 (3) (b)– II : a report of the valuation of the assets of the company, if any prepare by a registered Valuer;

OPPORTUNITY FOR VALUER UNDER INSOLVENCY AND BANKRUPTCY CODE 2016

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

CHAPTER VIII

CONDUCT OF CORPORATE INSOLVENCY RESOLUTION PROCESS :

27. Appointment of Registered Valuers.

The interim resolution professional shall within seven days of his appointment, appoint two Registered Valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35:

Provided that the following persons shall not be appointed as registered Valuers:

- (a) A relative of the interim resolution professional;
- (b) A related party of the corporate debtor;
- (c) An auditor of the corporate debtor in the five years preceding the insolvency commencement date; or
- (d) A partner or director of the insolvency professional entity

OPPORTUNITY FOR VALUER UNDER INSOLVENCY AND BANKRUPTCY CODE 2016

CHAPTER X

RESOLUTION PLAN

35. Liquidation value.

1. Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.
2. Liquidation value shall be determined in the following manner:
 - A. The two Registered Valuers appointed under Regulation 27 shall submit to the interim resolution professional or the resolution professional, as the case may be, an estimate 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 interim resolution professional or the resolution professional, as the case may be, the two estimates are significantly different, he may appoint another Registered Valuer who shall submit an estimate computed in the same manner; and
 - C. The average of the two closest estimates shall be considered the liquidation value.
3. The resolution professional shall provide the liquidation value to the committee in electronic form.

OPPORTUNITY FOR VALUER UNDER INSOLVENCY AND BANKRUPTCY CODE 2016

Various Regulations also speaks about the role of Valuers under the provision of IBC 2016.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016

CHAPTER VI

REALISATION OF ASSETS

Section

35.Valuation of assets intended to be sold.

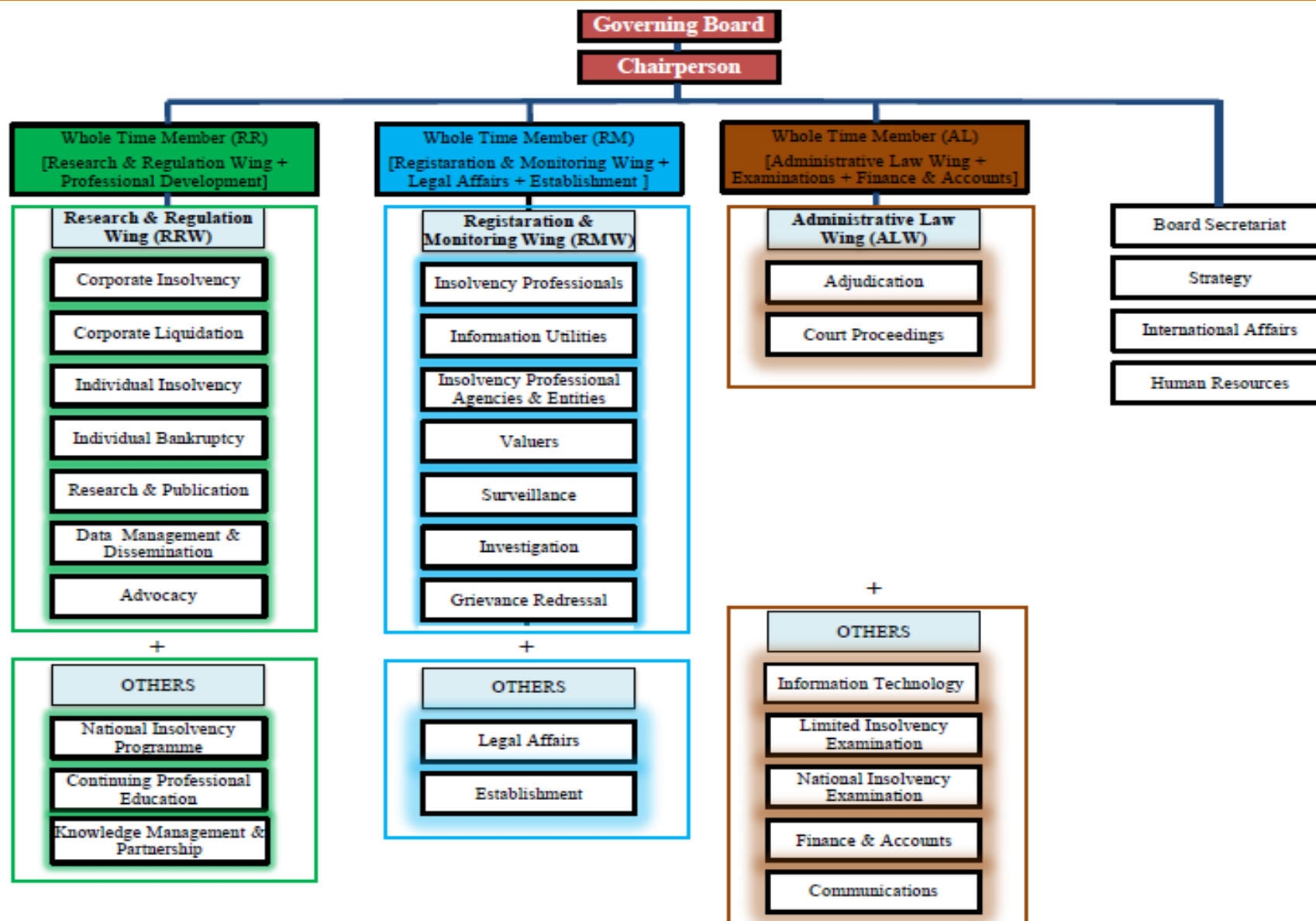
- (1) The liquidator shall appoint at least two **Registered Valuers** to value the assets as required under Regulation 34
- (2) The provisions of Regulation 7 shall apply mutatis mutandis to **Registered Valuers** appointed under sub regulation (1).
- (3) The Registered Valuers appointed under sub-regulation (1) shall independently submit to the liquidator the estimates of the realizable value of the asset(s) computed in accordance with internationally accepted valuation standards, after physical verification of the assets of the corporate debtor.
- (4) The average of the estimates received under sub-regulation (3) shall be considered the value of the assets.



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

Insolvency and Bankruptcy Board of India

ORGANISATIONAL STRUCTURE :



4 PILLERS OF IBBI

- INSOLVENCY PROFESSIONALS (IPs) – 826 (as on 1st August, 2017)
- INSOLVENCY PROFESSIONALS AGENCIES (IPAs) – 3 Nos.
- INFORMATION UTILITIES (IUs) - Nil
- INSOLVENCY PROFESSIONALS ENTITIES – 26 Nos.

INSOLVANCY PROFESSIONALS ELIGIBILITY

- The IBBI (Insolvency Professionals) Regulations, 2016 allow
- Chartered Accountants, Company Secretaries, Cost Accountants and Advocates with 10 years' of post-membership experience (practice or employment).
- Graduates with 15 years' of post qualification managerial experience

Can be registered as IPs on passing the Limited Insolvency Examination. For this purpose, the IBBI launched the Limited Insolvency Examination on 31st December, 2016.

INSOLVANCY PROFESSIONALS (I P EXAMINATION)

- The IBBI has assigned administration of the Limited Insolvency Examination to National Institute of Securities Markets (NISM).
- The format of examination is as under:
 - a) The examination is conducted online (computer-based in a proctored environment) with objective multiple choice questions;
 - b) The duration of the examination is two hours;
 - c) A candidate is required to answer 90 questions in two hours for a total of 100 marks;
 - d) There is a negative marking of 25% of the marks assigned for the question;
 - e) Passing mark for the examination is 60%;
 - f) A candidate is issued a temporary mark sheet on the submission of examination paper;
 - g) Passing candidate is awarded a certificate by the IBBI;
 - h) No workbook or study material is provided.

INSOLVANCY PROFESSIONALS (I P EXAMINATION)

► **The frequency of examination is as under:**

- ❑ The examination is available from 100 + locations in the country;
- ❑ The examination is available from 31st December, 2016 between 9:30 AM and 5:30 PM;
- ❑ The enrolment for examination is open from 15th December, 2016;
- ❑ A candidate pays an examination fee of Rs.1000 (Rupees one thousand only) online on every enrolment.

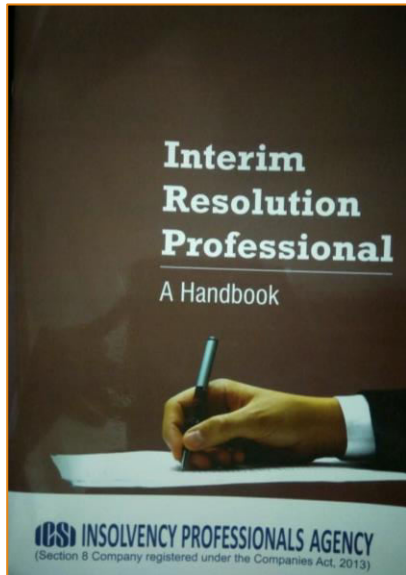
How can I take the IBBI - Limited Insolvency Examination?

- www.ibbi.gov.in/limited-insolvency.html
- www.nism.ac.in/certification

INSOLVANCY PROFESSIONALS EXAMINATION

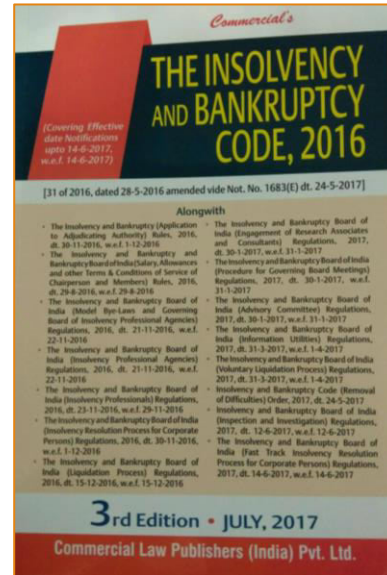
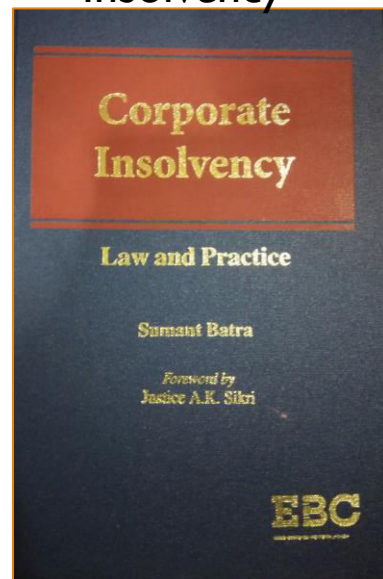
- You will be provided on a computer screen a question paper which carries 90 questions for 100 marks. Each question has four alternate answers. You need to select the correct answer. A wrong answer attracts negative marks. Answer all the 90 questions within two hours and submit the answer paper at any time within the said two hours. If you do not submit the answer paper earlier, the paper will be auto submitted by the system on expiry of two hours. Immediately on submission of the answer paper or expiry of two hours, whichever is earlier, a temporary mark sheet would be displayed on the computer screen indicating the marks you have scored in the examination. If you score 60 marks or above, you are declared successful in the examination. In that case, you would be issued a pass certificate by the IBBI within 30 days of the examination. You would be eligible to apply for registration as an insolvency professional with the temporary mark sheet and you need not wait to get the pass certificate from the IBBI. If you do not pass the examination and wish to take the examination again, you need to repeat stage II and stage III, as many times as you wish.

READING MATERIAL FOR IP EXAMINATION



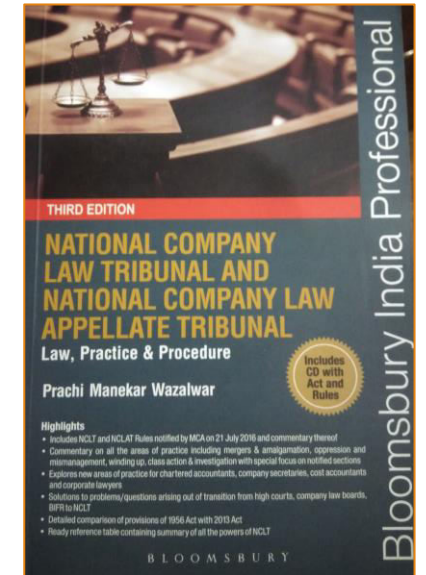
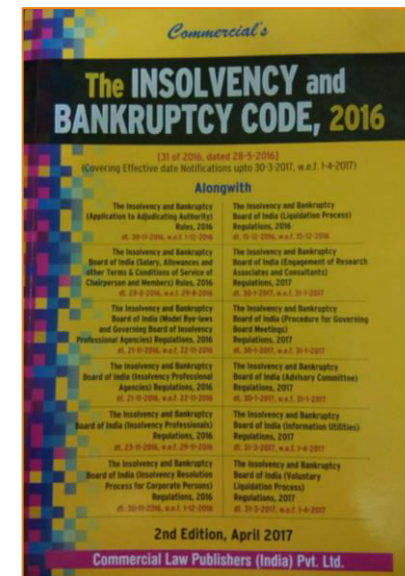
Interim Resolution Professionals

Corporate Insolvency



The Insolvency & Bankruptcy Code-2016

The Insolvency & Bankruptcy Code-2016



National Company Law Tribunal & National Company Law Appellate Tribunal

THANK YOU



PARAG SHETH

FIE, FIV, MICA, MASCE, LL.B, DPM

**CHARTERED ENGINEER • ARBITRATOR • GOVT. REGD. VALUER
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