

Emerging opportunities for CMAs - Insolvency professionals under Insolvency & Bankruptcy Code Valuers under Companies Act & IBC

Organised by
Noida Chapter of Cost Accountants
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FCMA. MBA, LL.B., M.COM., PGDTL, PGDFM, PGDIM, DISA(CMA), AIISLA, LIII

INSOLVENCY PROFESSIONAL

Ist CMA to Qualify Insolvency Examination

Ist CMA to Appear before NCLT, NCLAT & Supreme Court as IP

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 - Presently 3, Other professional body has one. CMA body yet to get registered with IBBI
- Registration with IBBI

IBC

- The biggest economic reform next only to GST
- In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards
- IBC is the outcome of decades of thought process for resolution of stressed businesses

IBC

- A game changer for business organisations, bankers, regulators, judiciary & of course
- Professionals
- Who will be in control of the business in case default happen
 - IP & COC
 - Promoters to lose control of business
- Alignment with WB ranking for Ease of doing business

What is Insolvency & Bankruptcy

- **Insolvency** is the state of being unable to pay the money owed, by a person or company, on time; those in a state of insolvency are said to be *insolvent*. There are two forms: cash-flow insolvency and balance-sheet insolvency.

CFI/Actual Insolvency : Unable to meet debt obligations

BSI/Technical Insolvency: Debts exceed Assets

- **Bankruptcy** is a legal status of a person or [other entity](#) that cannot repay debts to [creditors](#). In most jurisdictions, bankruptcy is imposed by a [court order](#), often initiated by the [debtor](#).

TABLE 1.1 Ease of doing business ranking

DB 2018 Rank	Economy	DTF score	DTF change	DB 2018 Rank	Economy	DTF score	DTF change	DB 2018 Rank	Economy	DTF score	DTF change
1	New Zealand	86.55	-0.18	65	Albania	68.70	+0.96	129	St. Vincent and the Grenadines	55.72	+0.01
2	Singapore	84.57	+0.04	66	Bahrain	68.13	+0.01	130	Palau	55.58	+0.46
3	Denmark	84.06	-0.01	67	Greece	68.02	+0.01	131	Nicaragua	55.39	+0.09
4	Korea, Rep.	83.92	0.00	68	Vietnam	67.93	+2.85	132	Barbados	55.20	-0.09
5	Hong Kong SAR, China	83.44	+0.29	69	Morocco	67.91	-0.03	133	Lebanon	54.67	-0.10
6	United States	82.54	-0.01	70	Jamaica	67.27	+0.57	134	St. Kitts and Nevis	54.52	+0.18
7	United Kingdom	82.22	-0.12	71	Oman	67.20	+0.08	135	Cambodia	54.47	+0.23
8	Norway	82.16	-0.25	72	Indonesia	66.47	+2.25	136	Maldives	54.42	+0.64
9	Georgia	82.04	+2.12	73	El Salvador	66.42	+3.54	137	Tanzania	54.04	+0.11
10	Sweden	81.27	+0.03	74	Uzbekistan	66.33	+4.46	138	Mozambique	54.00	+0.97
11	Macedonia, FYR	81.18	-0.21	75	Bhutan	66.27	+1.06	139	Côte d'Ivoire	53.71	+2.04
12	Estonia	80.80	+0.05	76	Ukraine	65.75	+1.90	140	Senegal	53.06	+3.75
13	Finland	80.37	-0.11	77	Kyrgyz Republic	65.70	+0.54	141	Lao PDR	53.01	+0.43
14	Australia	80.14	0.00	78	China	65.29	+0.40	142	Grenada	52.94	-0.11
15	Taiwan, China	80.07	+0.41	79	Panama	65.27	+1.25	143	Mali	52.92	+0.30
16	Lithuania	79.87	+1.05	80	Kenya	65.15	+2.59	144	Niger	52.34	+2.26
17	Ireland	79.51	-0.19	81	Botswana	64.94	+0.07	145	Nigeria	52.03	+3.85
18	Canada	79.29	-0.09	82	South Africa	64.89	-0.08	146	Gambia, The	51.92	-0.01
19	Latvia	79.26	-0.79	83	Qatar	64.86	+0.61	147	Pakistan	51.65	+0.71
20	Germany	79.00	-0.19	84	Malta	64.72	+0.43	148	Burkina Faso	51.54	+0.20
21	United Arab Emirates	78.73	+1.87	85	Zambia	64.50	+3.92	149	Marshall Islands	51.45	+0.03
22	Austria	78.54	-0.15	86	Bosnia and Herzegovina	64.20	+0.42	150	Mauritania	50.88	+1.56
23	Iceland	78.50	+0.01	87	Samoa	63.89	+2.06	151	Benin	50.47	+1.85
24	Malaysia	78.43	+0.96	88	Tunisia	63.58	-0.20	152	Bolivia	50.18	+0.32
25	Mauritius	77.54	+2.09	89	Tonga	63.43	+0.50	153	Guinea	49.80	+0.32
26	Thailand	77.44	+5.68	90	Vanuatu	63.08	+0.02	154	Djibouti	49.58	+3.99
27	Poland	77.30	+0.18	91	St. Lucia	62.88	+0.01	155	Micronesia, Fed. Sts.	48.99	+0.01
28	Spain	77.02	0.00	92	Saudi Arabia	62.50	+2.92	156	Togo	48.88	+0.64
29	Portugal	76.84	-0.14	93	San Marino	62.47	-0.03	157	Kiribati	48.74	-0.31
30	Czech Republic	76.27	+0.03	94	Uruguay	61.99	+0.35	158	Comoros	48.52	+0.47
31	France	76.13	-0.06	95	Seychelles	61.41	+1.01	159	Zimbabwe	48.47	+0.80
32	Netherlands	76.03	+0.51	96	Kuwait	61.23	+1.52	160	Sierra Leone	48.18	-0.06
33	Switzerland	75.92	+0.19	97	Guatemala	61.18	-0.43	161	Ethiopia	47.77	+2.08
34	Japan	75.68	+0.07	98	Dominica	60.96	+0.34	162	Madagascar	47.67	+3.05
35	Russian Federation	75.50	+0.81	99	Dominican Republic	60.93	+2.52	163	Cameroon	47.23	+2.18
36	Kazakhstan	75.44	+1.06	100	India	60.76	+4.71	164	Burundi	46.92	+0.06
37	Slovenia	75.42	+0.99	101	Fiji	60.74	+0.04	165	Suriname	46.87	+0.11
38	Belarus	75.06	+0.55	102	Trinidad and Tobago	60.68	-0.19	166	Algeria	46.71	-0.01
39	Slovak Republic	74.90	-0.25	103	Jordan	60.58	+2.38	167	Gabon	46.19	+1.33
40	Kosovo	73.49	+4.98	104	Lesotho	60.42	+0.54	168	Iraq	44.87	+0.48
41	Rwanda	73.40	+3.21	105	Nepal	59.95	+2.35	169	São Tomé and Príncipe	44.84	+0.39
42	Montenegro	73.18	+1.64	106	Namibia	59.94	+0.54	170	Sudan	44.46	+0.17
43	Serbia	73.13	+0.26	107	Antigua and Barbuda	59.63	+0.98	171	Myanmar	44.21	+0.30
44	Moldova	73.00	+0.20	108	Paraguay	59.18	+0.06	172	Liberia	43.55	+3.10
45	Romania	72.87	+0.17	109	Papua New Guinea	59.04	+0.17	173	Equatorial Guinea	41.66	+1.77
46	Italy	72.70	+1.15	110	Malawi	58.94	+6.33	174	Syrian Arab Republic	41.55	+0.08
47	Armenia	72.51	+0.59	111	Sri Lanka	58.86	+0.13	175	Angola	41.49	+1.38
48	Hungary	72.39	+0.26	112	Swaziland	58.82	+0.25	176	Guinea-Bissau	41.45	+0.23
49	Mexico	72.27	+0.18	113	Philippines	58.74	+0.42	177	Bangladesh	40.99	+0.15
50	Bulgaria	71.91	+0.10	114	West Bank and Gaza	58.68	+3.80	178	Timor-Leste	40.62	-0.07
51	Croatia	71.70	+0.05	115	Honduras	58.46	-0.07	179	Congo, Rep.	39.57	-0.52
52	Belgium	71.69	-0.23	116	Solomon Islands	58.13	-0.01	180	Chad	38.30	-0.28
53	Cyprus	71.63	-0.49	117	Argentina	58.11	+0.07	181	Haiti	38.24	+0.01
54	Israel	71.42	+0.05	118	Ecuador	57.83	-0.01	182	Congo, Dem. Rep.	37.65	+0.22
55	Chile	71.22	+0.37	119	Bahamas, The	57.47	+0.82	183	Afghanistan	36.19	-1.80
56	Brunei Darussalam	70.60	+5.83	120	Ghana	57.24	+0.34	184	Central African Republic	34.86	+0.78
57	Azerbaijan	70.19	+3.12	121	Belize	57.11	+0.03	185	Libya	33.21	+0.03
58	Peru	69.45	+0.01	122	Uganda	56.94	+0.42	186	Yemen, Rep.	33.00	+0.06
59	Colombia	69.41	-0.11	123	Tajikistan	56.86	+0.93	187	South Sudan	32.86	-0.33
60	Turkey	69.14	+1.16	124	Iran, Islamic Rep.	56.48	+0.26	188	Venezuela, RB	30.87	-0.79
61	Costa Rica	69.13	+1.23	125	Brazil	56.45	+0.38	189	Eritrea	22.87	+0.42
62	Mongolia	69.03	+1.27	126	Guyana	56.28	+0.39	190	Somalia	19.98	-0.31
63	Luxembourg	69.01	+0.35	127	Cabo Verde	56.24	+0.42				
64	Puerto Rico (U.S.)	68.85	+0.05	128	Egypt, Arab Rep.	56.22	+0.10				

Source: Doing Business database.

Note: The DB 2018 rankings are benchmarked to June 2017 and based on the average of each economy's distance to frontier (DTF) scores for the 10 topics included in the aggregate ranking. For the economies for which the data cover two cities, scores are a population-weighted average for the two cities. A positive change indicates an improvement in the score between 2016 and 2017 (and therefore an improvement in the overall business environment as measured by Doing Business), while a negative change indicates a deterioration and 0.00 indicates no change in the score.

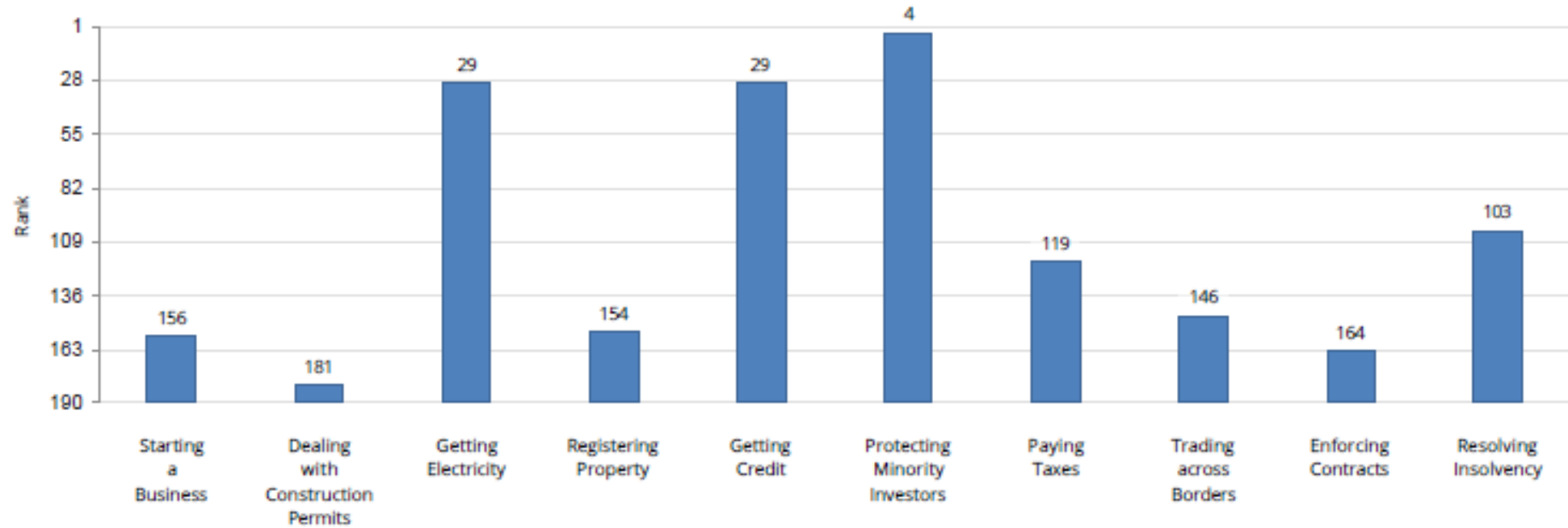
Economy Profile of India

Doing Business 2018 Indicators (in order of appearance in the document)

Starting a business	Procedures, time, cost and paid-in minimum capital to start a limited liability company
Dealing with construction permits	Procedures, time and cost to complete all formalities to build a warehouse and the quality control and safety mechanisms in the construction permitting system
Getting electricity	Procedures, time and cost to get connected to the electrical grid, the reliability of the electricity supply and the transparency of tariffs
Registering property	Procedures, time and cost to transfer a property and the quality of the land administration system
Getting credit	Movable collateral laws and credit information systems
Protecting minority investors	Minority shareholders' rights in related-party transactions and in corporate governance
Paying taxes	Payments, time and total tax rate for a firm to comply with all tax regulations as well as post-filing processes
Trading across borders	Time and cost to export the product of comparative advantage and import auto parts
Enforcing contracts	Time and cost to resolve a commercial dispute and the quality of judicial processes
Resolving Insolvency	Time, cost, outcome and recovery rate for a commercial insolvency and the strength of the legal framework for insolvency
Labor market regulation	Flexibility in employment regulation and aspects of job quality

Excerpts from WB report 2017

Rankings on Doing Business topics - India



Data from WB on EODB

- [Data sheet from WB](#)

WB Report EODB

Resolving Insolvency - Mumbai

Indicator	Mumbai	South Asia	OECD high income	Overall Best Performer
Recovery rate (cents on the dollar)	26.4	32.7	71.2	93.1 (Norway)
Time (years)	4.3	2.6	1.7	0.4 (Ireland)
Cost (% of estate)	9.0	9.9	9.1	1.00 (Norway)
Outcome (0 as piecemeal sale and 1 as going concern)	0
Strength of insolvency framework index (0-16)	8.5	4.9	12.1	15.00 (6 Economies)

CMAs increasing role in the new statutes: IBC/Companies Act

- IP
- Liquidator
- Valuer
- Forensic Auditor
- Insolvency Consultant/Advisor

Government committees on bankruptcy reforms

Year	Committee	Outcome
1964	24th Law Commission	Amendments to the Provincial Insolvency Act, 1920.
1981	Tiwari Committee (Department of Company Affairs)	SICA, 1985.
1991	Narasimham Committee I (RBI)	RDDDBFI Act, 1993.
1998	Narasimham Committee II (RBI)	SARFAESI Act, 2002.
1999	Justice Eradi Committee (GOI)	Companies (Amendment) Act, 2002, Proposed repeal of SICA.
2001	L. N. Mitra Committee (RBI)	Proposed a comprehensive bankruptcy code.
2005	Irani Committee (RBI)	Enforcement of Securities Interest and Recovery of Debts Bill, 2011. (With amendments to RDDDBFI and SARFAESI).
2008	Raghuram Rajan Committee (Planning Commission)	Proposed improvements to credit infrastructure.
2013	Financial Sector Legislative Reforms Commission (Ministry of Finance)	Draft Indian Financial Code which includes a 'Resolution Corporation' for resolving distressed financial firms.

Other Committees

- Bankruptcy Law reforms Committee: 2014
 - Interim & Final Report submitted in 2015
- The Joint Committee On The Insolvency And Bankruptcy Code, 2015
 - Presented to Lok Sabha on 28th April 2016
- Final IBC notified on 28th May 2016

Back Ground

- Default arises also from mismatches between cash inflows and outflows.
- Default is a state of insolvency and is often a legitimate outcome of business operations.
- It does not necessarily warrant the closure of a business, which destroys organisational capital. It is necessary to have a mechanism to resolve insolvency in an orderly manner.
- The absence of such a mechanism hitherto denied effective recourse to lenders to recover their debt and thereby discouraged them from lending. This reduced availability of finance for even genuinely viable projects. Further, low and delayed recovery pushed up the cost of lending, and consequently, fewer projects became viable

Broad Objectives of IBC

- Objectives desired from implementing a new Code to resolve insolvency and bankruptcy are:
 - 1. Low time to resolution.
 - 2. Low loss in recovery.
 - 3. Higher levels of debt financing across a wide variety of debt instruments.
- **The performance of the new Code** in implementation will be based on measures of the above outcomes.

Purpose behind enactment of Insolvency and Bankruptcy Code, 2016

- a) To consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals;
- b) To fix time periods for execution of the law in a time bound manner;
- c) To maximise the value of assets of interested persons;
- d) To promote entrepreneurship;
- e) To increase availability of credit;
- f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues; and
- g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

Erstwhile Insolvency Mechanism

- the Sick Industrial Companies (Special Provisions) Act, 1985,
- the Recovery of Debt Due to Banks and Financial Institutions Act, 1993,
- the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and
- the Companies Act, 2013.
- Liquidation of companies was handled by the High Courts.
- Individual Bankruptcy and Insolvency is dealt with by the Courts.
 - Presidential Insolvency Act
 - Provincial Insolvency Act

Need for IBC

- The erstwhile framework for insolvency and bankruptcy was inadequate, ineffective and resulted in undue delays in resolution.
- Need to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship.
- To improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

Excerpts from Mr M S Sahoo's address

- It has been a paradox that an economy which allowed free entry and free competition **did not permit free exit** and in the process suffered the inefficiencies of several zombie entities in the system for so long.
- The third pillar has now been erected in the form of the Insolvency and Bankruptcy Code, 2016.
- This Code offers a **market directed, time bound mechanism for resolution of insolvency**, wherever possible, or exit, wherever required, and thereby ensures freedom to exit.

What is Insolvency & Bankruptcy Code

- 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.

IBC in the eyes of law makers

- *“The Insolvency and Bankruptcy Code, the National Company Law Tribunal, a new arbitration framework and a new IPR regime are all in place. New commercial courts have also been set up. These are just a few examples of the direction in which we are going. My Government is strongly committed to continue the reform of the Indian economy.”*
- **Hon’ble Prime Minister, Shri Narendra Modi at the inauguration of the Vibrant Gujarat Global Summit, 2017 on 10th January, 2017.**

IBC in the eyes of law makers

- *“The focus on resolution of stressed legacy accounts of Banks continues. The legal framework has been strengthened to facilitate resolution, through the enactment of the Insolvency and Bankruptcy Code and the amendments to the SARFAESI and Debt Recovery Tribunal Acts.”*
- **Hon’ble Union Finance Minister, Shri Arun Jaitley, Budget Speech 2016-17, 1st February, 2017.**

IBC in the eyes of law makers

- *“Government accords the highest priority to this reform (The Insolvency and Bankruptcy Code, 2016)”*
- **Hon’ble Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal, during the inauguration of the premises of the IBBI on 29th March, 2017**

IBC

- Is it a recovery mechanism or is it a resolution mechanism
- Resolution
- Why it is so

Four Pillars of Institutional Infrastructure of IBC

- The first pillar of institutional infrastructure is a class of regulated persons, the 'Insolvency Professionals'. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by 'Insolvency Professional Agencies'.

The second pillar of institutional infrastructure is a new industry of 'Information Utilities'. These would store facts about lenders and terms of lending in electronic databases. This would eliminate delays and disputes about facts when default does take place.

The third pillar of institutional infrastructure is in adjudication. The NCLT will be the forum where firm insolvency will be heard and DRTs will be the forum where individual insolvencies will be heard. These institutions, along with their Appellate bodies, viz., NCLAT and DRATs will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.

- The fourth pillar of institutional infrastructure is a regulator viz., 'The Insolvency and Bankruptcy Board of India'. This body will have regulatory over-sight over the Insolvency Professional, Insolvency Professional agencies and information utilities.

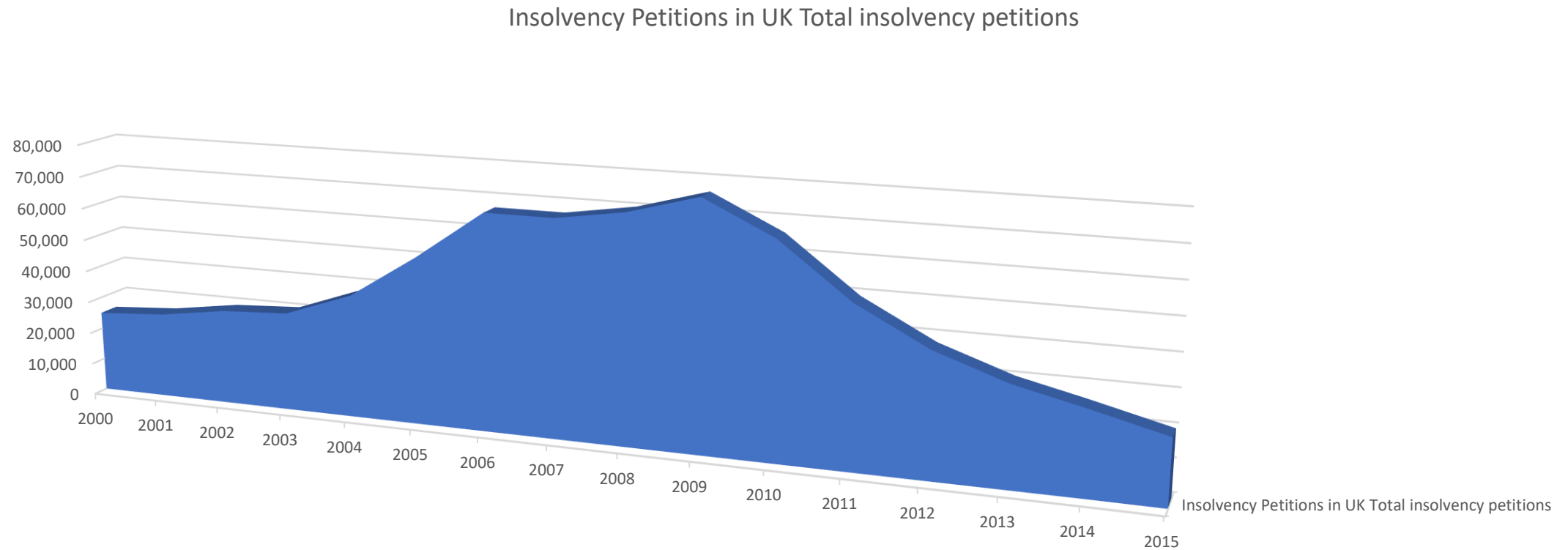
IBC Regulatory Framework

- IBBI
- IPA
- IP
- Information Utilities (NeSL: National E-Governance Services Limited (NESL))
- NCLT/NCLAT
- SC

IBC is governed through

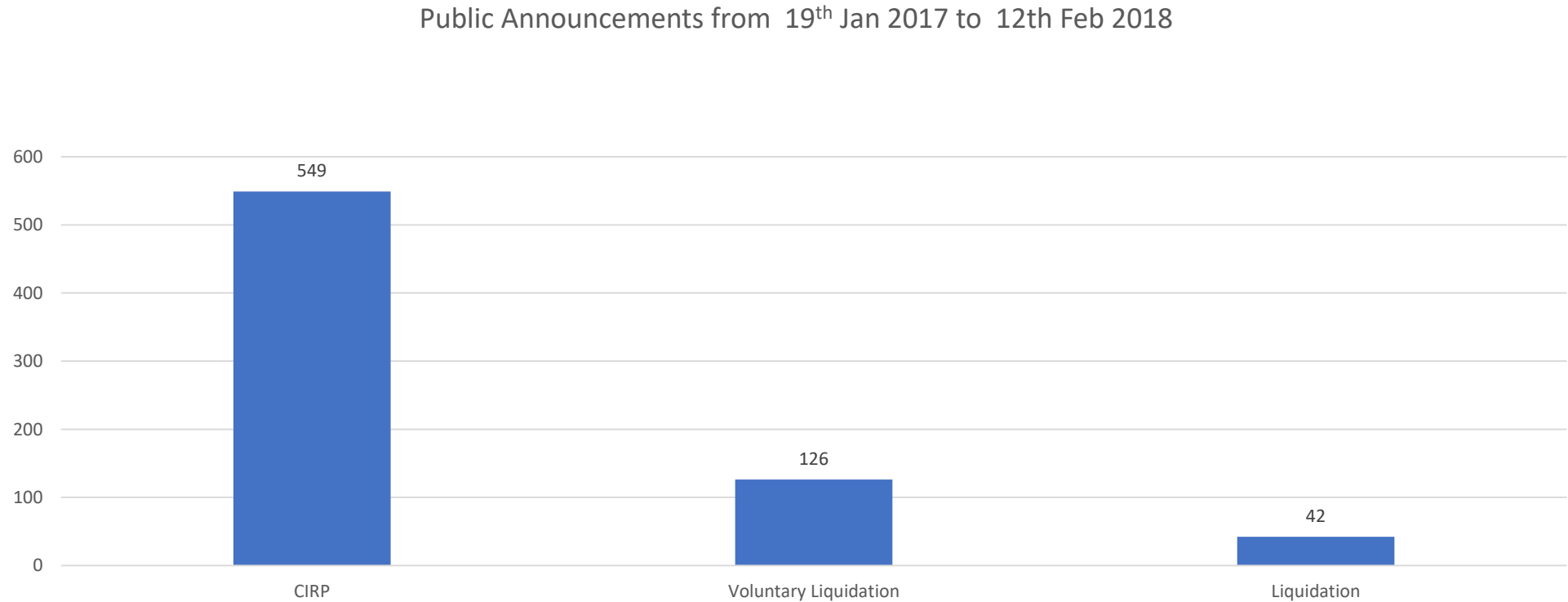
- Act
 - IBC 2016
- RULES
 - 18 Oct 2017 The Companies (Registered Valuers and Valuation) Rules, 2017
 - 30 Nov 2016 (Application to Adjudicating Authority) Rules, 2016.
- Regulations (Separate List)
- Circulars
- Notifications
- Guidelines By Other Regulators
- Case Laws (NCLT/NCLAT/Supreme Court)

Insolvency Petitions in UK



What is in Store for us

- In India How many Petitions would have been filed



Should we Become IP or Not

- Let us qualify the exam first
- How much it is going to cost us?
 - Hardwork for few days
 - Rs 1500/- fee
 - Books if you want to purchase May be another 2000/-
- For registration 10000 plus GST for Five year to IBBI
- Rs 10000/- plus GST p.a. to IPA

Triggering insolvency provisions

DEFAULT

In case of Co. & LLP

Minimum amount of ₹ 1 lakh

In case of Partnership & Individual

Minimum amount of ₹ 1 thousand

Minimum amount of ₹ 1 lakh & ₹ 1 thousand can be increased upto ₹ 1 Cr & ₹ 1 lakh respectively by CG

Where any Company or LLP commits-

A default in paying its

Financial debt

Operational debt

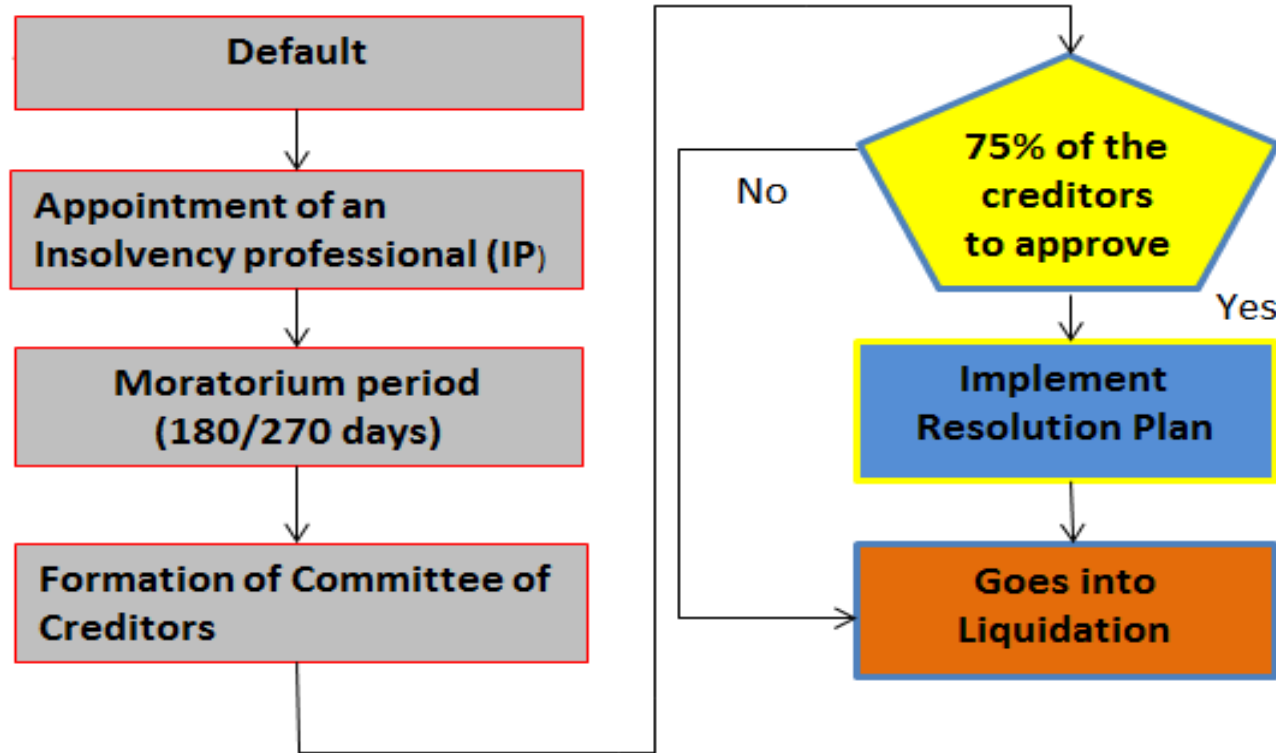
Then a financial creditor/ operational creditor/ Company & LLP itself

May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016

Corporate Insolvency Resolution and Liquidation

Resolution timeline and process



Corporate Insolvency Resolution Process (CIRP)

Preparation of information memorandum by RP for formulation of Resolution Plan. The contents of Resolution Plan should be *as per Chapter X of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 30th Nov 16.*

Submission of Resolution Plan by Resolution Applicant to be examined by RP and to be approved by 75% of voting share of financial creditor. RP should include its implementation schedule, manner of determination of liquidation values, components of resolution process costs and scope of essential supplies. CC to fix Resolution Professional cost to be incurred on or by RP, which includes resolution professional fees and other expenses including cost of engaging other professionals.

RP to submit approved Resolution Plan to NCLT which shall Approve or Reject/Order for Liquidation.

The approved plan shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Moratorium ends on the date of approval.

Appeal may be made to NCLAT on Rejection

Summarised List of Regulations

- IPA
- Model Bye Laws (IPA)
- IP
- CIRP
- Fast Track CIRP
- Liquidation
- Voluntary Liquidation
- IU
- Inspection and Investigations
- Employees service
- Advisory Committee
- Procedure for governing Board Meetings
- Engagement of Research Associates & Consultants

Regulations

- 07 Feb 2018 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018
- 06 Feb 2018 IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018
- 31 Dec 2017 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017
- 31 Dec 2017 IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017
- 07 Dec 2017 IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
- 07 Nov 2017 IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017
- 07 Nov 2017 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017

Regulations

- 07 Nov 2017 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Amended upto 07 NOV 2017)
- 07 Nov 2017 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Amended upto 07 Nov 2017)
- 05 Oct 2017 IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017
- 05 Oct 2017 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2017
- 05 Oct 2017 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Amended upto 05 Oct 2017)
- 05 Oct 2017 IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Amended upto 05 Oct 2017)
- 29 Sep 2017 Insolvency and Bankruptcy Board of India(Information Utilities) Regulations, 2017 (last amended on 29 September 2017)

Regulations

- 29 Sep 2017 Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2017
- 24 Aug 2017 The Insolvency and Bankruptcy Board of India (Employees' Service) Regulations, 2017
- 24 Aug 2017 The Insolvency and Bankruptcy Board of India (Employees' Service) Regulations, 2017
- 16 Aug 2017 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
- 16 Aug 2017 Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
- 15 Jun 2017 The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
- 14 Jun 2017 The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017
- 14 Jun 2017 The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017
- 05 May 2017 Clarification for IBBI (Voluntary Liquidation Process) Regulations, 2017

Regulations

- 31 Mar 2017 Insolvency and Bankruptcy Board of India(Information Utilities) Regulations, 2017
- 31 Mar 2017 Insolvency and Bankruptcy Board of India (Voluntary Liquidation process) Regulations, 2017
- 31 Mar 2017 Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Procedure For Governing Boards Meetings) Regulations, 2017.
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Advisory Committee) Regulations, 2017.
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Engagement Of Research Associates And Consultants) Regulations, 2017.
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Procedure For Governing Boards Meetings) Regulations, 2017.
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Advisory Committee) Regulations, 2017
- 31 Jan 2017 Insolvency and Bankruptcy Board of India(Engagement Of Research Associates And Consultants) Regulations, 2017.

Regulations

- 15 Dec 2016 Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 15 Dec 2016 Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 30 Nov 2016 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016.
- 23 Nov 2016 Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- 23 Nov 2016 Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016
- 21 Nov 2016 Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.
- 21 Nov 2016 Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
- 21 Nov 2016 Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
- 21 Nov 2016 Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

Stakeholders in IBC

- Creditors (Financial/Operational)
- Debtors
- IPs
- NCLT
- Workers/Employees
- Govt Departments/Taxes

Speed: Stringent Timelines

- Speed is of essence for the working of the bankruptcy code
- Timelines must be adhered to.

Insolvency Professionals (IPs)

- **Without Qualifying The Exam (Validity Only For Six Months) (Not Available Now)**
 - Particulars Of Insolvency Professionals Registered Under Regulation 7 Read With Regulation 9 Of Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016
 - 847
 - From 30th Nov To 6th July 2017 (Last Date)
- **After Qualifying The Exam**
 - 1700 approx (from 31st Dec 2016 to 20th Mar -18)
 - (Insolvency Professionals Registered Under Regulation 7 Read With Regulation 5 Of Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016)
 - Fee of Rs 1500/- plus GST is required to be paid

Exam process

- Access <http://ibbi.gov.in/limited-insolvency.html>
- Limited Insolvency Examination w.e.f. 31st December, 2016 to 30th June, 2017
- Limited Insolvency Examination w.e.f. 1st July, 2017 to 31st December, 2017
 - Immediately get registered for exam
- Limited Insolvency Examination w.e.f. 1st January, 2018

Eligibility Criteria

- if person
- has passed the National Insolvency Examination; (Not started yet)
- has passed the Limited Insolvency Examination, and **has fifteen years of experience in management**, after he received a Bachelor's degree from a university established or recognized by law; or
- has passed the Limited Insolvency Examination and **has ten years of experience** as -
 - a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - **a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or**
 - an advocate enrolled with a Bar Council.

Criteria for getting registered with IPA & IBBI

- The person who has qualified examination is required to submit:
- application for Enrolment with Insolvency Professional Agency as its member with a ***non-refundable fee of Rupees Eleven Thousand Eight Hundred only*** (Rs. 10,000 plus 18% GST) in favour of “Insolvency Professional Agency of Institute of Cost Accountants of India”; and

•

application for registration with Insolvency and Bankruptcy Board of India (IBBI) in Form A of the Second Schedule to the said Regulations to the Insolvency Professional Agency of Institute of Cost Accountants of India along with ***a non-refundable application fee of eleven thousand and eight hundred rupees (Rs. 10000 plus 18 % GST on 10000)*** in favour of “*Insolvency and Bankruptcy Board of India*”. This application along with said cheque/ draft will be collected by the said insolvency professional agency on behalf of the Insolvency and Bankruptcy Board of India.

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Examination

- 1st edition Limited Insolvency Examination w.e.f. 31st December, 2016 to 30th June, 2017
- 2nd edition Limited Insolvency examination applicable from 1st July, 2017 to 31st December, 2017
- The syllabus for Limited Insolvency Examination w.e.f. 1st January, 2018 New

Steps

- Register for exam (Creation of login etc)
- Register & Enrol online (for specific exam)
- Step 1: Selection of Examination
 - IBBI-Limited Insolvency Examination - wef 1-Jan-2018 (English)
- Step 2: Check Seat Availability at location
- Step 3: Select a Time Slot
- Step 4: Make Payment
- Step 5: Print Admit Card
- Take the admit card and appear for exam
- Result will be displayed and can be downloaded from your login
- Prepare form A and submit to IPA of your choice (preferably IPA-CMA)
- Number will be assigned to you by IPA and IBBI separately
- Once your name is displayed on IBBI site, you are ready to take the assignments

Frequency of Examination

- The frequency of Examination is as under:
- a) The examination centers will be available from 100 + locations in the country.
- b) The examination will be available from 1st July, 2017.
- c) A candidate needs to enrol for examination at www.nism.ac.in. He needs to select IBBI-Limited Insolvency Examination and enrol himself for the examination by choosing the time, the day and the examination centre for his examination.
- d) A candidate needs to provide PAN and Aadhaar to enrol for the examination.
- e) A candidate needs to pay examination fee of Rs.1000 (One thousand rupees only) online on every enrolment.

Format of Examination

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

Seats availability for examination as on 2 dec 2017: Only for reference

Examination Name: **IBBI-Limited Insolvency Examination - wef 1-July-2017 (English)**

Seat availability status of **Delhi-BVB-Usha & Lakshmi Mittal Institute of Mgmt, Delhi**

	Date	Day of Week	Exam Time	No. of Seats Available
	08 Dec 2017	Friday	15:00 To 17:00	34
	08 Dec 2017	Friday	17:00 To 19:00	46
	09 Dec 2017	Saturday	17:00 To 19:00	35
	16 Dec 2017	Saturday	17:00 To 19:00	34
	17 Dec 2017	Sunday	10:00 To 12:00	13
	17 Dec 2017	Sunday	15:00 To 17:00	10
	30 Dec 2017	Saturday	10:00 To 12:00	13
	30 Dec 2017	Saturday	12:00 To 14:00	21
	30 Dec 2017	Saturday	15:00 To 17:00	32
	31 Dec 2017	Sunday	10:00 To 12:00	45
	31 Dec 2017	Sunday	12:00 To 14:00	32
	31 Dec 2017	Sunday	15:00 To 17:00	36

1st edition Limited Insolvency Examination w.e.f. 31st December, 2016 to 30th June, 2017

- [Syllabus and Reading Material](#)
- [Model Question Paper for Limited Insolvency Examination](#)
- [Insolvency and Bankruptcy Board of India issued FAQs on Limited insolvency Examination.....](#)
- [Registration Open for Limited Insolvency Examination](#)
- [Syllabus for Examination](#)

IP in different Roles in CIRP

- CIRP
- IRP : 30 Days
- RP : upto 180 Days (90 days extension)
- Liquidator

Steps in the Journey : **IBC**

- [Journey from beginning to commencement of examination](#)
- IBC Notified on 28th May 2016
- Exam started on 31/12/2016

Duties and powers of the interim resolution professional

- The interim resolution professional, may, from the insolvency commencement date, require the
- following persons to report to, take instructions from and extend all cooperation to him, in all matters
- arising from and in connection with the terms of their engagement with the corporate debtor:
- (a) the board of directors, promoters and the members and partners of the corporate debtor, the
- personnel, the officers and managers, and any other person associated with the management of
- the business and operations of the corporate debtor;
- (b) the auditors and other professional advisors, if any, of the corporate debtor; and
- (c) the financial institutions maintaining the accounts of the corporate debtor.
- In addition to above, the interim resolution professional shall have the authority to access the books of account, records and other relevant documents and information of the corporate debtor held with:

Duties and powers of the interim resolution professional

- (a) any depositories of securities;
- (b) professional advisors of the corporate debtor;
- (c) information utilities;
- (d) any other registry that records the ownership of assets;
- (e) members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and
- (f) contractual counterparties of the corporate debtor.
- The Interim Insolvency Professional shall also appoint two registered valuers to calculate the liquidation value of the corporate debtor in accordance with Regulations.

Powers And Duties Of The Resolution Professional

- Section 25(1) of Insolvency and Bankruptcy Code 2016: It shall be the duty of the resolution professional
- to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
- (2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions,
- namely:—
- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

Powers And Duties Of The Resolution Professional

- (c) raise interim finances subject to the approval of the committee of creditors under section 28;
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;
- (e) maintain an updated list of claims;
- (f) convene and attend all meetings of the committee of creditors;
- (g) prepare the information memorandum in accordance with section 29;
- (h) invite prospective lenders, investors, and any other persons to put forward resolution plans;

Powers And Duties Of The Resolution Professional

- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
- (k) such other actions as may be specified by the Board.

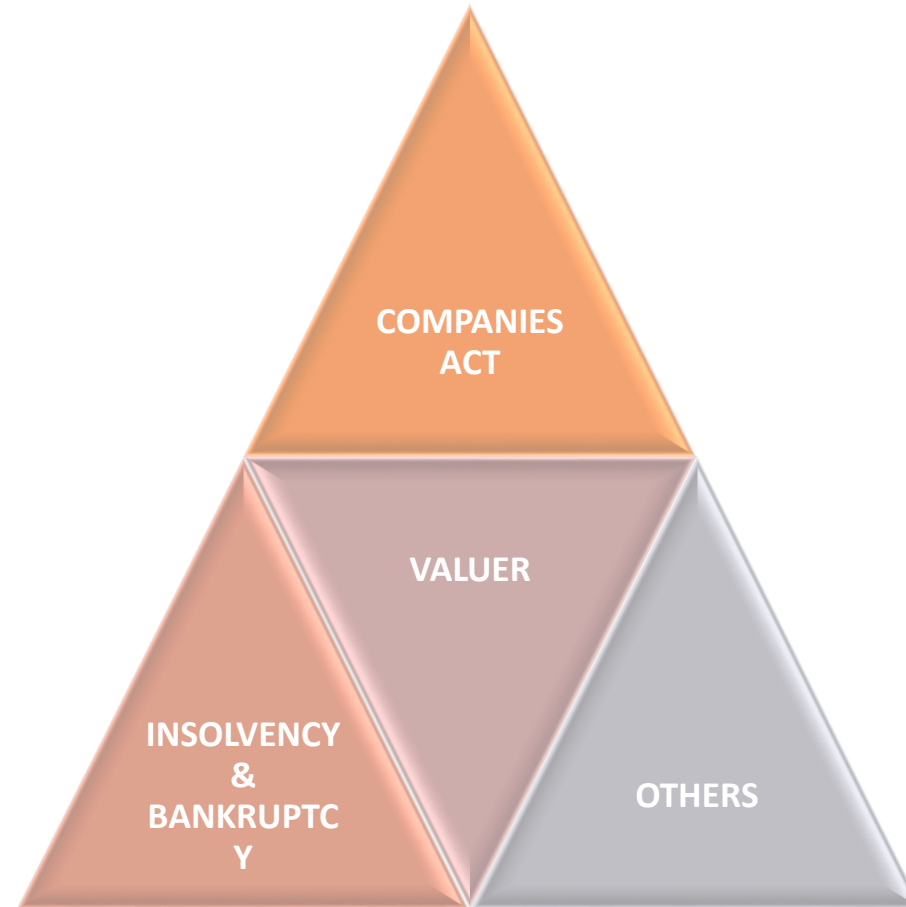
In furtherance to the duties to be performed by the resolution professional under section 25,

- The resolution professional shall also undertake the following:
- (1) **manage the operations of the corporate debtor as a going concern**;
- (2) without prejudice have the authority to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the insolvency commencement date;

Powers And Duties Of The Resolution Professional

- (3) have the authority to do all acts and to execute, in the name and on behalf of the corporate debtor, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the seal of the corporate debtor, if any; and
- (4) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the corporate debtor as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the normal course of its business.

Role of CMA as Valuer: Specific Class of Assets



Valuations Rules (MCA)

- “registered valuer” is a valuer registered with the Registration Authority under Rule 7(6) for carrying out valuation of assets belonging to a class or classes of assets;
- “Registration Authority” means the Insolvency and Bankruptcy Board of India established under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

Registered Valuers

- Companies Act 2013
 - —expert|| includes an engineer, **a valuer**, a chartered accountant, a company secretary, **a cost accountant** and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
- CIRP (IBC)
 - “registered valuer” means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder;

Registered Valuers

- Under Companies Act
- Registration as Valuers.
- the Central Government or any authority, institution or agency, as may be notified by the Central Government, shall maintain a register to be called as the Register of Valuers in which there shall be registered the names, address and other details of the persons registered as valuers in pursuance of section 247.
- (2) The following persons shall be eligible to apply for being registered as a valuer:
 - (a) a chartered accountant, company secretary or
 - **cost accountant who is in whole-time practice, or**
 - retired member of Indian Corporate Law Service or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognise by an order; Provided that such foreign qualification acquired by Indian citizen.

Registered Valuers

- (b) a Merchant Banker registered with the Securities and Exchange Board of India, and who has in his employment person(s) having qualifications prescribed under (a) above to carry out valuation by such qualified persons;
- (c) member of the Institute of Engineers and who is in whole-time practice;
- (d) member of the Institute of Architects and who is in whole-time practice;
- (e) A person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time.

Registered Valuers

- Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have **not less than five years continuous experience after acquiring membership of respective institutions.**
- Provided also that persons referred to in (a) and (b) shall be in respect of requirement for a “**financial valuation**” and the persons referred to in (c) and
- (d) shall be in respect of requirement for a “**technical valuation**” and a person or a firm or Limited Liability Partnership or merchant banker possessing both the qualifications may act in dual capacity.

Registered Valuers

- with the object of arriving at financial value of the asset being valued;
or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to valuation.
- (3) An application for registration as valuer shall be made in Form No. 17.1 by individuals and firms and Form No. 17.2 by others, along with the fee as provided in Annexure 'B'.
- Companies Act 2013 Previous Companies Act 2013

Appointment of registered valuers-IBC -CIRP

- IBC requires appointment of 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 relative of the interim resolution professional;
 - a related party of the corporate debtor;
 - an auditor of the corporate debtor in the five years preceding the insolvency commencement date; or
 - a partner or director of the insolvency professional entity.

Liquidation value: CIRP:IBC

- 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.
- Liquidation value shall be determined in the following manner:
 - 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;
 - 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
-
- the average of the two closest estimates shall be considered the liquidation value.

Provisions of Companies Act where services of valuers are required

- 62. Further issue of share capital
- 192. Restriction on non-cash transactions involving directors.
- 230. Power to compromise or make arrangements with creditors and members.
- 247. Valuation by registered valuers

Role of Valuer : Companies Act: Registered Valuers

- 247. Valuation by registered valuers.— (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act,
- it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed (Refer Valuation rules)
- and appointed by the audit committee or in its absence by the Board of Directors of that company.
- (2) The valuer appointed under sub-section (1) shall,— (a) make an impartial, true and fair valuation of any assets which may be required to be valued; (b) exercise due diligence while performing the functions as valuer; (c) **make the valuation in accordance with such rules as may be prescribed;** and (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

Role of Valuer : Companies Act

- **62. Further issue of share capital.—**
- (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered.....
- (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b),
- either for cash or for a consideration other than cash,
- if the price of such shares is determined by the **valuation report of a registered valuer** subject to such conditions as may be prescribed.

Role of Valuer : Companies Act

- **192. Restriction on non-cash transactions involving directors.**
- Directors to enter into Non cash transaction
- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Role of Valuer : Companies Act

- **230. Power to compromise or make arrangements with creditors and members.—**
- For Corporate Debt Restructuring : Now not required (recently scrapped)
- (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—.....
- ...(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

Role of Valuer : Companies Act

- **236. Purchase of minority shareholding.—**
- *Purchase to be offered at price determined by registered valuer*
- (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.
- (2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

Role of Valuer : Companies Act

- **281. Submission of report by Company Liquidator.—**
- (1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:— (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:
- Provided that the valuation of the assets shall be obtained from **registered valuers** for this purpose;

Role of Valuer : Companies Act

- 305. Declaration of solvency in case of proposal to wind up voluntarily.
- the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.
- (2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless—
-(d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

Role of Valuer : Companies Act

- 319. Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company.—
-(3) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—
 - (a) to abstain from carrying the resolution into effect; or
 - (b) to purchase his interest at a price to be determined by agreement or the registered valuer.

Thanks

CMA Navneet Kumar Jain

Insolvency Professional

Please feel free to contact at navneetic@yahoo.com for any further help