INSOLVENCY AND BANKRUPTCY CODE 2016

A dawn of new era

PART 2

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INSOLVENCY PROFESSIONAL AGENCIES

What is an Insolvency Professional Agency?

"Insolvency Professional Agency" means any person registered with the Board under section 201 of the Code as an Insolvency Professional Agency.

Who is the Governing Board?

"Governing Board" means the Board of Directors, as defined under Section 2(10) of Companies Act, 2013 of the Company registered as an Insolvency Professional Agency;

Composition of Governing Board:

Insolvency Professional Agencies to have Bye-Laws:

On November 21, 2016 the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 was introduced, according to which:

- Insolvency Professional Agencies shall have Bye-Laws;
- The Bye-Laws shall provide for all matters specified in the model bye-laws;
- A company shall submit to the Board its bye-laws along with the application for its registration as an insolvency professional agency;
- The Bye-Laws, the committees formed and details of its composition and all other policies created under such bye laws shall be published by the company on its website;

Amendment of Bye-Laws:

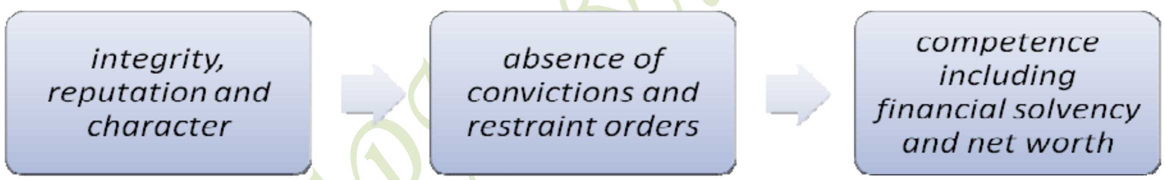
- Governing Board may amend the bye-laws by passing a resolution;
- The resolution for amendment of bye-laws shall be passed by votes in favour being not less than 3 times the number of votes, if any, cast against the resolution by the directors;
- **Within 7 days** the resolution shall be filed with the Board (Insolvency and Bankruptcy Board of India) for its approval;
- Amendments shall be effective only on the seventh day of the receipt of the approval, unless otherwise specified by the Board;
- **Within 15 days** from the date when the amendment is made effective, a printed copy of the amended Bye-Laws shall be filed by the Insolvency Professional Agency with the Board;

Who can get registered as an Insolvency Professional Agency?

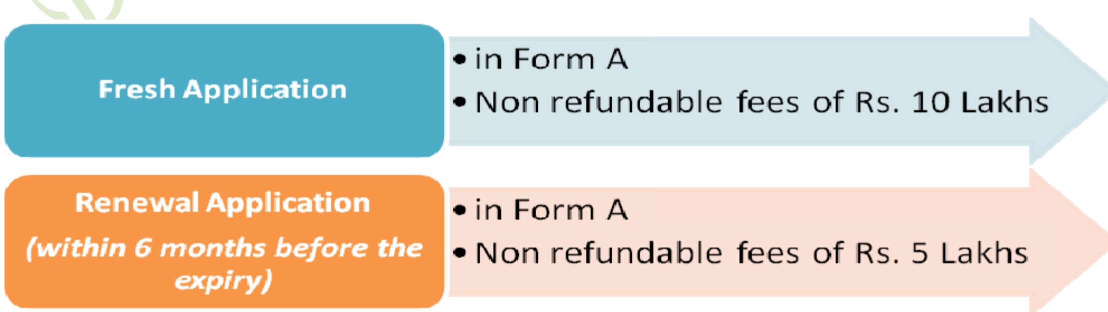
A company registered under Section 8 of the Companies Act, 2013 which satisfies all the below mentioned eligibility criteria's can get itself registered as an Insolvency Professional Agency:

- its sole object is to carry on the functions of an insolvency professional agency under the Code;
- it has Bye-Laws and governance Structure as mentioned above;
- minimum net worth of 10 Crore rupees;
- Paid up share capital of 5 Crore rupees;
- It is not under the control of person(s) resident outside India;
- not more than 49% of its share capital is held, directly or indirectly, by persons resident outside India;
- not a subsidiary of a body corporate through more than one layer;
- itself, its promoters, its directors and persons holding more than 10% of its share capital are **fit and proper persons**;

Fit and Proper: *The Board may take account of any consideration as it deems fit for determining whether a person is fit and proper, including but not limited to the following criteria:*



Procedure for Registration as Insolvency Professional Agency or renewal thereof:



- Application to be made to the Insolvency and Bankruptcy Board of India (Board)
- Within 7 days of receipt the Board shall acknowledge the application;
- Post examination of the application, the Board may:
    - Given an opportunity to the applicant to remove deficiencies, if any in the application;
    - require the applicant within reasonable time, to submit additional documents, information's or clarifications as may be required;
    - require the applicant to appear within reasonable time, before the Board in person or through its authorised representatives for providing clarifications;
- **Certificate of Registration shall be valid for 5 years from the date of issue;**

Grant of Certificate of Registration for Insolvency Professional Agency:

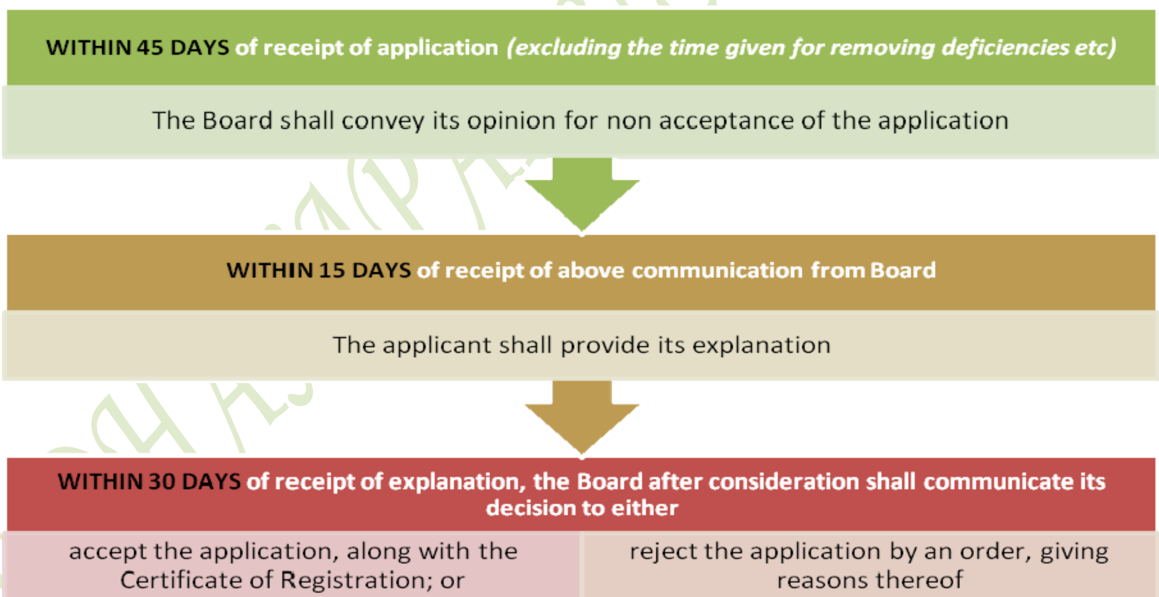
Within 60 days of receipt of application the Board shall grant the Certificate of Registration / Renewal in **Form B**, if it is satisfied after such inspection or inquiry and having **regard to the principles** provided under Section 200 of the code, that the applicant:

- ✓ is satisfying the eligibility criteria's as mentioned above;
- ✓ has adequate infrastructure to perform its functions under the Code;
- ✓ has in its employment, persons having adequate professional and other relevant experience, to enable it to perform its functions under the Code; and
- ✓ has complied with the conditions of the certificate of registration or renewal;

The Company upon registration as an Insolvency Professional Agency shall:

- abide by the Code, rules, regulations and guidelines there under and its bye-laws;
- at all times continue to satisfy the eligibility requirements and other requirements mentioned under The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016;
- pay a fee of Rs. 5 Lakhs to the Board, payable every year after the year in which the certificate is granted or renewed;
- seek approval of the Board when a person, other than a statutory body, seeks to hold more than ten per cent, directly or indirectly, of the share capital of the insolvency professional agency;
- take adequate steps for redressal of grievances;
- abide by such other conditions as may be specified;

Procedure for rejecting the application of Insolvency Professional Agency by the Board



Surrender of Registration of Insolvency Professional Agency:

Step 1 : Application for surrender to be made by the Insolvency Professional Agency along with necessary details

Step 2 : Within 7 days of application the Board shall publish a notice on its website inviting objections if any within 14 days from the publication

Step 3 : Within 30 days from the last date for submission of objections, the Board may approve the application for surrender subject to such conditions as it may deem fit

Step 4 : The board may require the Insolvency Professional Agency to

- discharge any pending obligations; or
- continue to function till such time as may be specified, to enable the enrolment of its members with another insolvency professional agency;

Step 5 : The Board after being satisfied the requirements of Step 4 has been complied with, shall publish the surrender of registration on its website

Grant of In-principle approval for Insolvency Professional Agency:

Upon an application being made by any person for in-principle approval to establish an Insolvency Professional Agency along with a non refundable application fee of Rs. 10 Lakhs, the Board may subject to such conditions grant the same which shall be valid for a period not exceeding 1 year. During the validity period of the in-principle approval, the company may make an application for certificate of registration but shall not be required to pay any fees for registration.

Disciplinary Proceedings against Insolvency Professional Agency:

If the Board is of the opinion that sufficient cause exists to take action under Section 220, it shall issue a show cause notice in writing to the Insolvency Professional Agency along with relevant documents and extracts from the investigation or inspection report. The Board shall constitute a Disciplinary Committee for disposal of the show cause notice and the committee shall endeavour to dispose of the show cause notice within a period of 6 months of the assignment. The disposal order for the show cause notice passed by the Disciplinary Committee shall not become effective until 30 days have elapsed from the date of issue of the order unless otherwise stated in the order. The order shall also be published by the Board on its website.

INSOLVENCY PROFESSIONALS

Having seen about the Insolvency Professional Agency, now let us understand who an Insolvency Professional is.

According to Section 3(19) of the Code an "Insolvency Professional" means a person enrolled under Section 206 with an Insolvency Professional Agency as its member and registered with the Board as an Insolvency Professional under section 207.

Insolvency Examinations: The Insolvency & Bankruptcy Board of India shall either on its own or through a designated agency conduct a 'National Insolvency Examination' or a 'Limited Insolvency Examination' to test the knowledge, its application and practical skills of Individuals in the area of Insolvency, Bankruptcy and allied subjects.

The syllabus, format and frequency of the examinations including the qualifying marks shall be published by the Board on its website atleast one month before the examination.

Eligibility for Registration as Insolvency Professional

Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides for eligibility criteria's for an individual to get himself registered as an Insolvency Professional.

Qualifications and Experience requirement for Registration as Insolvency Professional

Criteria	1	2	3
Qualification	Passing of National Insolvency Examination	Passing of Limited Insolvency Examination	Passing of Limited Insolvency Examination
Experience	-	15 years in management,	10 years of experience as a:

		after Bachelors degree from a university established or recognised by Law	• CA enrolled as member of ICAI; • CS enrolled as member of ICSI; • Cost Accountant enrolled as member of Institute of Cost Accountants of India; or • An advocate enrolled with Bar Council;

Procedure for Registration as Insolvency Professional

- An individual enrolled with an Insolvency Professional Agency as a Professional Member may make an application to the Board in **Form A;**
- A non refundable **fees of Rs. 10,000/-** shall be paid along with Form A;
- **Within 7 days** the Board shall acknowledge the application;
- The Board may require the applicant within reasonable time:
  - To submit additional documents / information / clarification as it may deem fit; or
  - To appear before it in person / through his authorised representative for clarifications;
- **Within 60 days** from the date of application (excluding the time provided for presenting additional documents / clarifications etc) the board may if satisfied grant the Certificate of Registration;
- **Within 45 days** from the date of application, if the Board is of the opinion that the registration ought not to be granted, it shall communicate the reasons and give the applicant an opportunity to explain why his application should be accepted;
- **Within 15 days** of hearing from the Board the applicant shall provide his explanations;
- **Within 30 days** of receipt of explanation from the application the board may accept / reject the application as it may deem fit;

Upon registration the Insolvency Professional shall:

- ✓ at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;
- ✓ at all times continue to satisfy the requirements under Regulation 4 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
- ✓ pay a fee of Rs. 10,000/- to the Board, every five years after the year in which the certificate is granted;
- ✓ not render services as an insolvency professional unless he becomes a partner or director of an insolvency professional entity recognised by the Board under Regulation 13, if he is not a citizen of India;
- ✓ take prior permission of the Board for shifting his professional membership from one insolvency professional agency to another, after receiving no objection from both the concerned insolvency professional agencies;
- ✓ take adequate steps for Redressal of grievances;
- ✓ maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment;
- ✓ abide by the Code of Conduct specified in the First Schedule to the Insolvency Professional Regulations;
- ✓ abide by such other conditions as may be imposed by the Board;

Registration as Insolvency Professional for Limited Period:

An individual who is in practice for 15 years as:

- a CA enrolled as a member of ICAI;
- a CS enrolled as a member of ICSI;
- a Cost Accountant enrolled as a member of Institute of Cost Accountants of India; or
- an advocate enrolled with a Bar Council;

can register himself as an Insolvency Professional for a limited period of 6 months by submitting an application in Form A to the Insolvency Professional Agency with which he is enrolled on or before December 31, 2016 along with a non refundable fee of Rs. 5,000/-.

The Insolvency Professional Agency shall submit the application and the fee collected to the Board.

The Insolvency Professional so registered may complete all the pending assignments and shall not undertake any assignment as an Insolvency Professional after the expiry of his registration.

Temporary Surrender:

If any of the professional members of an Insolvency Professional Agency has temporarily surrendered or revived his certificate of membership after temporary surrender, the Insolvency Professional Agency shall **within 7 days** of approval of such application inform the Board and the Board shall take note of the same.

Disciplinary Proceedings against Insolvency Professional:

If the Board is of the opinion that sufficient cause exists to take action under Section 220, it shall issue a show cause notice in writing to the Insolvency Professional along with relevant documents and extracts from the investigation or inspection report. The Board shall constitute a Disciplinary Committee for disposal of the show cause notice and the committee shall dispose of the show cause notice within a period of 6 months by a reasoned order in adherence to principles of natural justice and after considering the submissions, if any made by the Insolvency Professional. The disposal order for the show cause notice passed by the Disciplinary Committee shall not become effective until 30 days have elapsed from the date of issue of the order unless otherwise stated in the order. The order shall also be published by the Board on its website.

INSOLVENCY PROFESSIONAL ENTITIES:

Who is eligible?

- A **Limited Liability Partnership** – where majority of partners are registered as Insolvency Professionals;
- A **registered partnership firm** - where majority of partners are registered as Insolvency Professionals;
- A **Company** – where majority of Whole Time Directors are registered as Insolvency Professionals;

Application?

Application for registration shall be made in **Form C** and the Certificate of Recognition as an Insolvency Professional Entity shall be granted by the Board in **Form D.**

Conditions to be followed?

The Insolvency Professional Entity shall:

- ✓ At all times continue to satisfy the requirements of Regulation 12 of Insolvency Professional Regulations, 2016;
- ✓ Inform the Board, within 7 days of cessation of any Insolvency Professional as director / partner as the case may be;
- ✓ Inform the Board, within 7 days of appointment of any Insolvency Professional as director / partner as the case may be;
- ✓ Abide by such other conditions as may be specified;

Wrap up

The important objective of The Insolvency and Bankruptcy Code 2016 is to provide a specialised and quick resolution mechanism for debt recovery. The Code attempts to provide one stop solution by amending various laws relating to insolvency and reorganisation of corporate persons, partnership firms and individuals in a time bound manner and for providing rehabilitation opportunity to persons who are unable to repay their debts and for maximization of value of the assets of such persons and matters connected therewith or incidental thereto. Further the primary objective of the National Company Law Tribunal is to provide a specialised and quick dispute resolution mechanism for Indian Companies. Also all the pending suits before the Company Law Board, BIFR etc will be resolved by the NCLT. The constitution and functioning of NCLT is also providing a wider scope for professionals in their practice areas including appearance before the Tribunal.

Post your reflections to

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