

IBBI UPDATES FOR THE MONTH OF AUGUST, 2019

A. APPOINTMENT OF REGISTERED VALUER.

- In exercise of the powers conferred by section 196(1) under clause (aa), (g) and (p) of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Registered Valuer and Valuations) Rules, 2017 vide **Circular No. IBBI/RV/019/2018** dated 17Th October, 2018.

In these regulations appointment of any person other than a registered valuer, that is valuer registered with IBBI on or after 1st February 2019 to conduct valuation under the IBBI code 2016 or any regulations made thereunder, including the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is illegal and amounts to violation of this Circular.

Payment made to such person other than the registered valuer for valuation shall not be part of the insolvency process cost or liquidation cost.

- The link for the said circular is as under
<https://ibbi.gov.in/uploads/legalframework/148100a687e1999f77ce625ec22a82c1.pdf>

B. IBBI-LIQUIDATION PROCESS

- In exercise of the powers conferred by section 196 of IBC , 2016.The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (Amendment Regulations) on 25th July, 2019. Effective date is on or after 25th July, 2019.

That the provisions of the Amendment Regulations are not applicable to the liquidation processes, which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to liquidation processes.

- The link for the said circular is as under:
<https://ibbi.gov.in/uploads/legalframework/01b8d1e3005e6a99db299685ba318bde.pdf>

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C. THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (AMENDED UPTO 06-08- 2019)

An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization 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. Amendments in the IBC Code 2016 are effective from 16th August 2016 and these amendments are inserted in exercise of its powers are as follows:

- Explanation of Resolution plan under Section-2
For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.
- Insertion by Act No. 26 of 2019, Section. 3
It is provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.
- Insertion by Act No. 26 of 2019, Section. 4
It is provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.
- Insertion by Act No. 26 of 2019, Section. 5- (3A)
Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote” of more

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than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).

➤ Substitution by Act No. 26 of 2019, Section.6-

Before Substitution it stood as “provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;”

After Substitution it stood as - [(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.”

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) Where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

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(iii) Where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

- Insertion by Act No. 26 of 2019, Section. 7-
Including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed.
- Insertion by Act No. 26 of 2019, Section.8-
Explanation – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.
- Substitution by Act No. 26 of 2019, Section. 9
Before substitution, it stood as “repayment of debts of operational creditors”.

After Substitution it stood as- payment of debts.

- The link for the said act is as under:
<https://ibbi.gov.in/uploads/legalframework/17139a881bcc8a56c9f641e8e3a2f6b9.pdf>

D. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT 2019. **(No-26 of 2019).**

- An Act further to amend the Insolvency and Bankruptcy Code, 2016.
- It is effective from 16th August 2019.
- In section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principall Act), in clause (26), the following Explanation shall be inserted, namely:-
"Explanation.- the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

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- In section 7 of the principal Act, in sub-section (4), the following proviso shall be inserted, namely:-
"Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

- In Section 12 of the principal Act, in sub-section (3), after the proviso, the following provisos shall be inserted, namely:-

"Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act,2019."

- In Section 25A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-

"(3A) notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. Of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section

12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3)."

- In section 30 of the principal Act,-

(a) in sub-section (2), for clause (b), the following shall be substituted shall be substituted, namely:

(b) Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

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- (i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

Whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2— For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) Where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force: or
- (iii) Where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"

(b) in sub section (4), after the words "feasibility and viability," the words, brackets and figures "the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor" shall be inserted.

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- In Section 31 of the principal Act, in sub-section (1), after the words "members, creditors,", the words "including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any Jaw for the time being in force, such as authorities to whom statutory dues are owed," shall be inserted.
- In Section 33 of the principal Act, in sub-section (2), the following Explanation shall be inserted, namely:-

"Explanation-the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."
- In section 240 of the principal Act, in sub-section (2), in clause (w), for the words "repayment of debts of operational creditors", the words "payment of debts" shall be substituted.
- The link for the said act is as under
<https://ibbi.gov.in/uploads/legalframework/630af836c9fbbcd047c42dbdfd2aca13.pdf>

E. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (CONTINUING PROFESSIONAL EDUCATION FOR INSOLVENCY PROFESSIONALS) GUIDELINES, 2019

Effective Date: 6th August, 2019

- Short title and commencement.
 - (a) These guidelines may be called the Insolvency and Bankruptcy Board of India (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019.
 - (b) These Guidelines have been prepared in consultation with all the three Insolvency Professional Agencies (IPAs).

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(c) These Guidelines shall come into force with effect from 1st January, 2020.

(d) These Guidelines are issued in exercise of the powers under Section 196(1)(aa) of the Insolvency and Bankruptcy Code, 2016 read with regulation 7(2)(ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

➤ **Background.**

(a) Insolvency Professionals (IPs) constitute a key institution of the insolvency regime and market economy. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals in distress. His work affects the lives and livelihood of all stakeholders of the person in distress. He needs an array of abilities to deliver on his statutory duties and obligations in an ever-evolving market environment.

(b) Section 196(1)(aa) of the Insolvency and Bankruptcy Code, 2016 mandates the Insolvency and Bankruptcy Board of India (Board) to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions. It has been endeavor of the Board to make available a cadre of competent and accountable IPs matching the dynamic market realities.

(c) Accordingly, regulation 7(2) (ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 mandates that the registration of an IP is Subject to the condition that he shall undergo continuing professional education (CPE) as may be required by the Board. Clause 10 under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain and upgrade his professional knowledge and skills to render competent professional service.

➤ **Objective.**

(a) Continuing professional education is a planned and systematic attempt to introduce, review, or alter the competencies and thereby improve the performance of professionals. It meets post-registration professional development needs of IP.

(b) An IP needs to continuously upgrade himself through CPE to remain relevant and provide value added services. He needs to attend today's work with today's technology.

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An anecdote from an unknown source illustrates the objective.

There was a woodcutter who had been cutting wood for years. But he never got a raise. Others who joined later to him were getting raises every year even though some of them took rest in between, and some others took off for weeks. He met his boss with resentment. The boss replied: “You are cutting the same number of trees today you were cutting five years ago. How can we give a raise?”

The woodcutter went back, worked harder, put in longer hours, but not much improvement. He consulted his colleagues and learnt that they took five minutes break each time after cutting a tree. Still they cut more trees. How? They use those five minutes to sharpen the axe. Some of them use tools sharper than axe. The woodcutter realized his folly that he had never sharpened his axe for years, nor tried to use sharper tools. He sharpened the axe and the productivity improved; he got a raise. He learnt to use mechanized tools and productivity improved further. He got further raise.

➤ **Application.**

(a) An IP shall undertake CPE in compliance with these Guidelines to keep his registration valid.

(b) Authorization for assignment shall not be issued or renewed to an IP who fails to comply with these Guidelines.

(c) These Guidelines shall not apply to IPs who have completed the age of 65 years.

Illustration

An IP attains the age of 65 years on 24th November, 2026. He may not undertake CPE for the calendar year 2026.

➤ **CPE Requirements.**

(a) An IP shall undertake a minimum of 10 credit hours of CPE each calendar year and a minimum of 60 credit hours of CPE in each rolling block of three calendar years:

Provided that an IP is not required to undertake any CPE in the calendar year in which he is registered.

Illustration

An IP registered on 30th June, 2019 shall undertake CPE for at least-

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- (i) 10 credit hours in each calendar year, namely, 2020, 2021, 2022, 2023 and so on; and
- (ii) 60 credit hours in each rolling block of three calendar years, namely, 2020-2022, 2021-2023, 2022-2024 and so on.

Clarification 1

An IP shall undertake CPE even when his registration is suspended, or he has ceased to have an authorization for assignment.

Clarification 2

The minimum CPE of 10 hours may be exempted by the IPA for a year on application by the IP, provided that the IP undertakes a minimum of 60 hours in every rolling block of three years.

(b) An IP, whose registration is suspended or who ceased to have an authorization for assignment, shall undertake the backlog of CPE hours before he seeks revival of registration or authorization for assignment, as the case may be, if he has not undertaken CPE in accordance with (a) above.

Illustration

An IP ceased to have an authorization for assignment on 15th January, 2020. He seeks authorisation for assignment on 16th November, 2027. He has not undertaken any CPE during 2020-2027. He shall undertake CPE for such hours as he would have done had he continued to have authorization for assignment.

(c) Within seven days of completion of a learning activity, an IP shall submit such details of learning activity and credit hours earned by him, as may be required by his IPA.

(d) The IPA shall take note of the credit hours earned by an IP, on being satisfied that the IP has earned credit hours in accordance with the Guidelines.

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➤ Learning activities.

(a) An IP may earn credit hours from the learning activities in two ways:

(i) By participation in learning activities offered by the Board, an IPA, a Registered Valuer

Organisation, a statutory professional institute, a university or any other entity, as may be approved by the Board from time to time; or

(ii) By publishing articles / delivering lectures, in the areas relevant for IPs, an indicative list of which is at Schedule to these Guidelines.

(c) The following is an indicative format of learning activities in areas relevant for IPs and credit hours thereof:

SI No.	Learning Activity in the areas relevant for IPs	Credit Hours
1	Workshops, Conferences, Seminars, Training Programmes, Refresher Programmes, Certificate Courses, Conventions and Symposia and the like	Half day: Two hours Full day: Four hours
2	Acting as faculty in any of the activities in Sl. No. 1	Equivalent to the duration of the activity
3	Publication of article in any national newspaper	Four hours
4	Publication of article in a journal of the Board, an IPA, a RVO, a Professional Institute, or a referred national or international journal.	Eight hours
5	Publication of a Book	Thirty hours in the year of publication
6	Completing a two-year Post- Graduation Course	Twenty hours in the year of

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		completion
7	Completing Ph. D	Forty hours in the year of conferment of Ph.D.
8	Pass in Limited Insolvency Examination	Forty hours in the year of passing
9	Pass in Valuation Examination of an asset Class	Twenty hours in the year of passing

➤ Monitoring.

(a) The IPA shall monitor and maintain records of CPE in respect of its professional members in a manner accessible to IPs and the Board.

(b) The record of CPE shall include the details of learning activity undertaken by an IP, year wise and rolling block wise, including dates of each learning activity, the area of such activity, the credit hours earned for such activity, etc.

(c) The IPA shall submit an exception report every quarter to the Board and make available detailed records to the Board when called upon to do so.

(d) The Board shall make random check to verify the quality of learning activity and records of the IPAs in respect of CPE of their professional members.

➤ Non-compliance.

An IP, who fails to earn the credit hours in accordance with these Guidelines, shall be deemed to have contravened provisions of regulation 7(2)(ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with clause 10 of the Code of Conduct under the First Schedule thereof.

➤ Review.

The Board may review these Guidelines from time to time, in consultation with the IPAs.

➤ Abbreviations

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Board: Insolvency and bankruptcy Board of India

CPE: Continuing Professional Education

IP: Insolvency Professional

IPAs: Insolvency Professional Agency.

Schedule

Areas Relevant for Insolvency Professionals for the Purpose of Continuing Professional Education

S. No	Particulars
1	General
	Laws of Insolvency and Bankruptcy
	Emerging Jurisprudence
	UNCITRAL Legislative Guide (Part I, II, III and IV)
	Interface with Company Law
	Corporate Affairs and Corporate Governance
	Interface with Tax Laws
	Interface with Foreign Exchange Laws
	Interface with Securities Laws
	Interface with Property Laws
	Interface with Labour Law
	Economics of Insolvency and Bankruptcy
	UNCITRAL Legislative Guide
	Financial Markets
Indian Constitution	

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2	Insolvency Professionals
	Appearance before Adjudicating Authority
	Agreements and Contracts
	Companies Act, 2013
	Finance for Insolvency Professionals
	Statistics for Insolvency Professionals
	Data Management for Insolvency Professionals
	Using Services of Information Utilities
	Record Keeping and Maintenance
	Management and Leadership for Insolvency Professionals
	Mediation, Conciliation, and Negotiation for Insolvency Professionals
	Artificial Intelligence for Insolvency Professionals
	Valuation for Insolvency Professionals
	Forensic Audit for Insolvency Professionals
	Avoidance Transactions for Insolvency Professionals
	Hiring and Supervising other Professionals
	Conflict of Interests
	Remuneration for Insolvency Professionals
	Code of Conduct for Insolvency Professionals
	Transparency and disclosures to IBBI, IPA, and Stakeholders
	Risk Management by Insolvency Professionals
	Inspection and Investigation by IBBI and IPA

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	Disciplinary Proceeding by IBBI and IPA
	Grievance Redressal
	Best Practices
3	Corporate Insolvency Resolution Process
	CIRP Regulations
	Taking over the Corporate Debtor
	Moratorium
	Dealing Committee of Creditors and CoC Meetings, Voting
	Interim Finance
	Running the CD as a Going Concern
	Hostile Situations: Handling Crowds, Unlawful Assemblies, Law and Order Problems,
	Dealing with Non-cooperation
	Information Memorandum
	Administering Section 29A
	Compliance with Applicable Laws under Section 30(2)(2) of the Code
	Form H Certificate
	Fast Track CIRP
	Group Insolvency
	Cross Border Insolvency
	Pre-packs
	Balancing Interests of Stakeholders

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	Treatment of MSME
	Post Resolution Plan Management
	Ethics, Integrity, Fairness and Equity
	Best Practices
4	Liquidation Process
	Liquidation Process Regulations
	Voluntary Liquidation Regulations
	Liquidation Estate
	Sale under Regulation 32 of Liquidation Regulations
	Sale as a Going Concern
	Moratorium
	Managing Stakeholders
	Best Practices
5	Individual Insolvency
	Fresh Start Process
	Individual Insolvency Resolution Process
	Bankruptcy Process
	Insolvency and Bankruptcy of Personal Guarantors
	Micro-finance and Indebtedness
	Best Practices
6	Any other topic to be added or removed from the list depending on the evolving environment.

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- The link for the said guidelines is as under

<https://ibbi.gov.in/uploads/legalframework/cb449573a584beebacb4b4ce3c33fcae.pdf>

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By Amita Desai/ Hetvi Karelia

Amita Desai & Co.

Company Secretaries

1005, Hubtown Solaris

Prof N S Phadke Marg,

Andheri (East), Mumbai -400 069,

Landline : + 91-22-2684-5920/21

Fax : + 91-22-6678-7499

Mobile : + 91-982-017-7691

Website : www.amitadesai.com

Email : info@amitadesai.com