

## Professional Opportunities for Indian CAs in the Insolvency and Bankruptcy Code, 2016



*The Insolvency and Bankruptcy Code, 2016 has been introduced with the primary objective to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. It is aimed at maximisation of value of assets and expansion of the credit market in India. It envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP's and individuals. Besides the primary objective of the Code as stated above, the Code has also led to the advent of new professionals called Insolvency Professionals. It offers a host of opportunities to the existing professionals including Chartered Accountants, Company Secretaries, Cost Accountants and Lawyers. Read on to know more...*

### Role of an Insolvency Professional

An Insolvency Professional plays a pivotal role in conducting the corporate insolvency resolution process. He performs a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. He acts as a guardian of the interests and rights of all the stakeholders and has to ensure that the debtor do not dupe or deceive the creditors to his own personal advantage. It is a job which bears responsibility and prudence.

The role of an Insolvency Professional is similar to that of a doctor, he has to diagnose the rooting problem of the defaulting debtor and see if it can be treated. Just like a person requires treatment to treat his disease, a sick company also requires some form of treatment to overcome its problem of debts. This treatment may be in the form of restructuring of a company. An Insolvency Professional has to assess the performance of the debtor, evaluate whether it can be revived or else the debtor will be liquidated by process of law. The following are the key tasks to be performed by a resolution professional:-

- Obtaining Valuation of the entity
- Preparation of Information Memorandum

- Preparation of Resolution plan
- Obtaining consent of the Committee of Creditors for the Resolution plan
- Periodic reporting to the Board
- Realisation of the assets of the debtor
- Sale of assets and collection of money, due to debtor
- Evaluation of Creditors' claims
- Distribution of money collected after paying costs.

In some cases, the Insolvency Professional gives advice to a debtor immediately before a formal insolvency process begins. He advises and monitors his clients in matters related to insolvency, bankruptcy and liquidation.

### Need of Insolvency Professionals in India

According to the data from World Bank for the year 2016, the number of years taken to resolve insolvency in major economies such as the US, the UK and China are 1.5, 1 and 1.7 years respectively. However, time for insolvency process in India is 4.3 years. The Insolvency and Bankruptcy Code has huge expectations, as stated by Ministry of Finance, "When decisions are taken in a time-bound manner, there is a greater chance that a corporate entity can be saved as a going concern and productive resources of the economy (labour and capital) can be put to best use." Thus, there are tremendous business opportunities in this law.

(Contributed by the Corporate Laws and Corporate Governance Committee of ICAI. Comments can be sent to [clcg@icai.in](mailto:clcg@icai.in).)

Though there isn't any clear number as to how many Insolvency Professionals are required in India but as per estimates, India has a very large number of cases relating to insolvency, bankruptcy and liquidation which are pending and with the introduction of the Insolvency and Bankruptcy Code, now, only insolvency professionals can handle these cases.

## Functions and Obligations of an Insolvency Professional

The task of an Insolvency Professional begins when an insolvency resolution, fresh start, liquidation or bankruptcy process is initiated. He/she shall be responsible to take such actions as may be necessary in the following matters:-

- A fresh start order process - To act as Resolution Professional
- Individual insolvency resolution process - To act as Resolution Professional
- Corporate insolvency resolution process Professional - To act as Interim Resolution & subsequently as Resolution Professional
- Individual bankruptcy process - To act as Bankruptcy Trustee
- Liquidation of a corporate debtor - To act as Liquidator

It shall be the duty of Insolvency Professional to ensure that the time-limits prescribed under the Code are adhered to at all the times. He/she must carefully plan and manage the actions and promptly communicate with all stakeholders involved for timely discharge of his duties under different processes.

## Code of Conduct for Insolvency Professional

An Insolvency Professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships. He must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process independent of external influence. Every insolvency professional shall abide by the following code of conduct:-

- He shall take reasonable care and diligence while performing his duties.
- He should comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member.
- He shall allow the insolvency professional agency to inspect his records.
- He shall submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member.

- Where he is dealing with assets of a debtor during liquidation or bankruptcy process, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or bankruptcy process and the approval of the Board has been obtained in the matter.
- He must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
- It must be ensured to maintain written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision.
- He must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.
- An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.
- He must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times.
- They or their relatives must not accept gifts or hospitality which undermines or affects his independence as an insolvency professional.

## As a Career Prospect: Being an Insolvency Professional

The role of an Insolvency Professional is challenging as well as rewarding. Insolvency practitioners can find themselves running businesses, construing and negotiating deals or investigating and advising on the viability of a business and possibility of a sound restructuring plan. In the current environment, where cases of default of debts and loans are at quite an alarming level, with big cases of default, the role of Insolvency Professionals will be of high importance. The Insolvency practitioners need the skills to deal

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# Insolvency

**An Insolvency professional can explore a range of opportunities including 'Identifying and evaluating distressed companies for restructuring and rescue planning,' 'Developing the Strategies to mitigate Risks,' 'Working out a detailed bankable financial structure of the business,' 'Assessment of distressed assets, cash position, due diligence and turnaround feasibility,' 'Advice on the utilisation of resources to the optimum level,' and 'Drafting insolvency petitions,' etc.**

with the creditors, the anxious directors, the concerned employees and a range of other stakeholders in the business.

The work of the insolvency practitioner affects the lives, prospects and livelihoods of both creditors and debtors. Insolvency work is as much about people as it is about figures. The profession will be able to rescue the banks and creditors from the increasing number of NPA's (Non-Performing Assets) and losses which are sinking the banking industry and causing peak price inflation affecting the entire economy in general.

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- ✓ Identifying and evaluating distressed companies for restructuring and rescue planning.
- ✓ Developing the Strategies to mitigate Risks.
- ✓ Working out a detailed bankable financial structure of the business.
- ✓ Working out a detailed plan for restructuring the business from all angles.
- ✓ Assessment of distressed assets, cash position, due diligence and turnaround feasibility.
- ✓ Advice on the utilisation of resources to the optimum level.
- ✓ Drafting insolvency petitions.
- ✓ Representation before the Debt Recovery Tribunals.
- ✓ Representation before the National Company Law Tribunal and National Company Law Appellate Tribunal
- ✓ Negotiating settlements.
- ✓ Advising for merger or acquisition or takeover.
- ✓ Advisory services to management on an ongoing basis.

## Process of Registration as an Insolvency Professional

Any individual who wants to become an insolvency professional has to seek requisite registration with an insolvency professional agency. The Insolvency and Bankruptcy Board of India has prescribed

following persons to be eligible for registration as an Insolvency Professional with an Insolvency Professional Agency:-

- a) An individual who has passed the National Insolvency Examination.
- b) An individual who has passed the Limited Insolvency Examination, and has 15 years of experience in management, after he/she received a Bachelor's degree from a university established or recognised by law.
- c) An individual who has passed the Limited Insolvency Examination and has 10 years of experience as a Chartered Accountant, Company Secretary, Cost Accountant or an Advocate.

Any person who qualifies the aforesaid criteria may apply for enrolment with any Insolvency Professional Agency.

## Eligibility Criteria for Appointment of an Insolvency Professional as a Resolution Professional

As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- ✓ He is eligible to be appointed as an independent director on the board of the corporate debtor u/s. 149 of the Companies Act, 2013, where the corporate debtor is a company.
- ✓ He is not a related party of the corporate debtor.
- ✓ He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
- ✓ He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

## Conclusion

While the law provides opportunities to all professionals for enrolling as Insolvency Professional, it is quite often that Insolvency Professionals have an accountancy background. In the United Kingdom there are currently around 1,735 Licensed Insolvency Practitioners and majority of them are accountants with only a few active practitioners who are lawyers.

The Insolvency laws are an unexplored area of law and Chartered Accountants can take advantage of this opportunity to become expert insolvency professionals. ■