



The Companies Act 2013

Enlightening Nation

E-newsletter

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About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the February month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

OPPORTUNITIES IN CORPORATE INSOLVENCY AND RESTRUCTURING

The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha on 21st December, 2015 and referred to the Joint Parliamentary Committee. The Committee had presented its recommendations and modified the Bill based on its suggestions. Later the Insolvency and Bankruptcy Code, 2016 was passed by both the Houses of Parliament in May 2016 and the same has been notified. This is one of the major economic reforms Bill moved by the Government. The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner so as to make it easy for the investors to exit within a fixed time frame in an effort to improve the ease of doing business in India. Since there is no single law in India that deals with insolvency and bankruptcy, one of the most important reforms envisaged in this bill is to make substantive changes in eleven enactments and repealing some to avoid conflicting rules, i.e., now only 1 Act to be followed, instead of 11 different Acts. It also opens up a new window of professional opportunity for Chartered Accountants as Insolvency Professionals, Registered valuer & associate Insolvency professional.

• CAREER AS 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 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.

An Insolvency professional can explore the following opportunities:-

- 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 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.

● **SCOPE FOR OTHER ROLES UNDER IBC FOR PROFESSIONALS**

Apart from IP, CA and other professionals have following opportunities

- **As Valuer :** As per IBC code IRP need to appoint two valuers to determine liquidation value. Valuers also required for valuation of current assets (akin to stock audit) Valuer is also required for valuing the assets under liquidation. Chartered Accountants with over 10 years of practice are allowed to do valuation.
- **Preparation of Resolution Plan :** Multiple resolution plan can be submitted to IP by interested parties who are called as resolution applicant. CA can assist resolution applicants in preparation of Resolution plan.
- **Due Diligence :** As per code IRP need to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
 - (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;
- **Data processing :** As per IBC code IRP and RP are needed to collate and verify claims of the creditors. In a large operating company data could be huge. IRP/RP may avail services of practicing CA for data processing
- **Management of borrower :** IRP/RP are required to manage business of the borrower on a going concern basis. IRP/RP may engage CA and other professionals for assisting in management e.g. as CFO
- **Secretarial and legal work :** CIRP process requires huge amount of book keeping, holding of meeting, recording minutes, communication with NCLT etc. IP are expected to take help of professionals in this regard.

- **Representing lenders** : Any creditor who is part of COC are allowed to appoint other IP (other than RP) as their representative in COC. FCCB and ECB holders are expected to use this facility.
- **Representing before NCLT / NCLAT** : A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more Chartered Accountants to present his case before the Tribunal or the Appellate Tribunal.
- **Forensic Audit** : IBC provides for look back period of 2 years in case of related parties and 1 years in case of other parties. It might be needed to conduct an forensic audit in some matters wherein Chartered Accountants can provide services.
- **Stock Audit** : Most corporate Debtors enjoy working capital limits. It may be necessary to conduct periodic Stock Audit of the CD during the CIRP process.
- **Internal / Concurrent Audit** : RP can appoint Internal / Concurrent Auditors during the business under CIRP.
- **Monitoring and Supervision of Resolution Plan** : IBC requires provision of Monitoring and Supervision of Resolution Plan after its approval by NCLT during its period. CAs can provide services of such monitoring and supervision.
- **Consultation and Strategizing** : Enjoy the fruit with less risk and legal responsibility. IRP/ RP/ Liquidator may avail services of other Chartered Accountants in profession.

- **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.



NOTIFICATIONS

A. G.S.R.(E) The Companies (Significant Beneficial Owners) Amendment Rules, 2019 dated 08.02.2019.

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 90 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Significant Beneficial Owners) Rules, 2018, namely:-

1. (1) These rules may be called the Companies (Significant Beneficial Owners) Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), for clauses (b) to (e), the following clauses shall be substituted, namely:-

(b) "control" means control as defined in clause (27) of section 2 of the Act

(c) "form" means the form specified in Annexure to these rules;

(d) "majority stake" means;-

(i) holding more than one-half of the equity share capital in the body corporate; or

(ii) holding more than one-half of the voting rights in the body corporate; or

(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

(e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(f) "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;

(g) "section" means a section of the Act;

(h) "significant beneficial owner,, in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or, together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;

(ii) holds indirectly,- or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;

(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:

Explanation I. - For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely:-

(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;

(ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company.

Explanation III. - For the purpose of this clause, an individual shall be considered_ to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -

(i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a liability partnership, and the individual,-

(a) holds majority stake in that member; or

(b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

(ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;

(iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-

(a) is a partner; or

(b) holds majority stake in the body corporate which is a partner of the partnership entity; or

(c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv) where the member of the reporting company is a trust (through trustee), and the individual,-

(a) is a trustee in case of a discretionary trust or a charitable trust;

(b) is a beneficiary in case of a specific trust;

(c) is the author or settler in case of a revocable trust.

(v) where the member of the reporting company is,-

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle,

based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(B) is an investment manager; or

(C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

Explanation IV.- Where the member of a reporting company is,

(i) a pooled investment vehicle; or

(ii) an entity controlled by the pooled investment vehicle,

based in a jurisdiction which does not fulfill the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Explanation V. - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'

Explanation VI. - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

(i) "significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies'.

3. In the principal rules, for rules 3 and 4, the following rules shall be substituted, namely:-

"2A. Duty of the reporting company.- (1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than ten per cent. of its;-

(a) shares, or

(b) voting rights, or

(c) right to receive or participate in the dividend or any other distribution payable in a financial year, give notice to such member, seeking information in accordance with sub section (5) of section 90, in Form No. BEN-4.

3. Declaration of significant beneficial ownership under section 90.- (1) On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.

(2) Every individual, who subsequently becomes a significant beneficial owner/ or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.

Explanation.- Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

4. Return of significant beneficial owners in shares.- Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014."

4. In the said principal rules, for rules 7 and 8, the following rules shall be substituted, namely:-

"7. Application to the Tribunal.-

The reporting company shall apply to the Tribunal, -

- (i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or
- (ii) where the information given is not satisfactory,

in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –

- (a) restrictions on the transfer of interest attached to the shares in question;
- (b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- (c) suspension of voting rights in relation to the shares in question;
- (d) any other restriction on all or any of the rights attached with the shares in question.

8. Non-Applicability.-These rules shall not be made applicable to the extent the share of the reporting company is held by,-

- (a) the authority constituted under sub-section (5) of section 125 of the Act;
- (b) its holding reporting company:

Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.

- (c) the Central Government, State Government or any local Authority;
- (d) (i) a reporting company, or
 - (ii) a body corporate, or
 - (iii) an entity,

controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

- (e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

5. In the principal rules, for Form No. BEN-1, Form No. BEN-2, Form No. BEN-3 and BEN-4 shall be substituted.

- B. [G.S.R.\(E\) Companies \(Prospectus and Allotment of Securities\) Second Amendment Rules, 2019 dated 19.02.2019](#)
- C. [G.S.R.\(E\) Companies \(Adjudication of Penalties\) Amendment Rules, 2019 dated 19.02.2019](#)
- D. [G.S.R.\(E\) Companies \(Registration offices and Fees\) Amendment Rules, 2019 dated 21.02.2019](#)
- E. [G.S.R. \(E\) Companies \(Incorporation\) Amendment Rules, 2019 dated 21.02.2019](#)

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- [General Circular 1/2019: Extension of last date of filing initial return in MSME Form I](#)
- [Companies \(Incorporation\) Amendment Rules, 2019](#)
- [Companies \(Registration offices and Fees\) Amendment Rules, 2019](#)
- [Companies \(Prospectus and Allotment of securities\) Second Amendment Rules, 2019.](#)
- [Companies \(Adjudication of Penalties\) Amendment Rules, 2019.](#)
- [Companies \(Significant Beneficial Owners\) Amendment Rules, 2019.](#)

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