



The Companies Act 2013

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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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THE
BANKRUPTCY
CODE

All about forms notified under various rules framed to implement Insolvency and Bankruptcy Code 2016

Introduction:

The Insolvency And Bankruptcy Code, 2016 is an act which came into existence 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. This Act is assented by President of India on 28 May 2016. This Act is applicable on whole India. However the Part III is not applicable in the State of Jammu & Kashmir. In this article we have covered Forms prescribed under the Insolvency and Bankruptcy Code and its related Rules and Regulations notified till 28th February, 2017.

At present the individual and corporate bankruptcy is governed by a host of legislations making the procedure quite complex and cumbersome. The Insolvency and Bankruptcy Code, 2016, however is a consolidated single code that will govern insolvency and bankruptcy proceedings in the future.

The new code aims at speedy winding up of insolvent companies, relocating capital profitably and lowering the Non Performing Assets. Considering the bad-loan crisis in the banking sector, the Insolvency and Bankruptcy code will prove to be a powerful reform that will be beneficial to all the sectors of the society.

The resolution professional shall conduct the entire insolvency resolution process and manage the operations of the debtor during the insolvency resolution process period. It shall be the duty of the resolution professional to preserve and protect the assets of the debtor including the continued business operations of the debtor. While taking decisions involving financial aspects etc. the resolution professional shall obtain approval of the Committee of Creditors.

The National Company Law Tribunal (NCLT) is the adjudicating authority over a company's insolvency and liquidation process. It will be an overarching body for resolving insolvency. National Company Law Appellate Tribunal (NCLAT) will have appellate jurisdiction over NCLT.

Debt Recovery Tribunal (DRT) is the adjudicating authority over the Individuals And Partnership Firms insolvency and liquidation process. Debt Recovery Appellate Tribunal (DRAT) shall have the appellate jurisdiction over DRT.

The decisions of the NCLAT/DRAT can only be appealed only to the Supreme Court.

In this Article we have summed the provisions related to various forms to be used by the stakeholders during the insolvency resolution process.

1. Forms prescribed in “Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016” (Notified w.e.f. 01.12.2016 vide Notification no G.S.R. 1108(E) Dt. 30.11.2016 [F. No. 30/10/2016-Insolvency])

Form No. and Rule	Form Name	To be filed/ delivered by	To be filed with /delivered to	Purpose
Form 1 Sub-Rule (1) Of Rule 4	Application By Financial Creditor(S) To Initiate Corporate Insolvency Resolution Process Under The Code	Financial Creditor	Jurisdictional - The National Company Law Tribunal	For Initiating Corporate Insolvency Resolution Process For Recovering Financial Debt From Corporate Debtor .
Form 2 (See Sub-Rule (1) Of Rule 9)	Written Communication By Proposed Interim Resolution Professional	Insolvency Resolution Professional	Jurisdictional - The National Company Law Tribunal	Consent To Act As Insolvency Professional On Appointment.
Form 3 (See Clause (A) Of Sub-Rule (1) Of Rule 5)	Form Of Demand Notice / Invoice Demanding Payment Under The Insolvency And Bankruptcy Code, 2016	Operational Creditor	Corporate Debtor At (I) The Registered Office By Hand, Registered Post Or Speed Post With Acknowledgement Or (ii) By Electronic Mail Service To A Whole Time Director Or Designated Partner Or Key Managerial Personnel, If Any, Of The Corporate Debtor	To Serve Demand Notice In Case Invoice Not Available

<p>Form 4 (See Clause (B) Of Sub-Rule(1) Of Rule(5))</p>	<p>Form Of Notice With Which Invoice Demanding Payment Is To Be Attached</p>	<p>Operational Creditor</p>	<p>Corporate Debtor At : (i)The Registered Office By Hand, Registered Post Or Speed Post With Acknowledgmt Or (II) By Electronic Mail Service To A Whole Time Director Or Designated Partner Or Key Managerial Personnel, If Any, Of The Corporate Debtor</p>	<p>To Serve Copy Of An Invoice Attached With A Notice For Recovering Operational Debt (In Case Invoice Is Available)</p>
<p>Form 5 (See Sub-Rule (1) Of Rule 6)</p>	<p>Application By Operational Creditor To Initiate Corporate Insolvency Resolution Process Under The Code.</p>	<p>Operational Creditor</p>	<p>Adjudicating Authority (The National Company Law Tribunal)</p>	<p>For Initiating Corporate Insolvency Resolution Process For Recovering Operational Debt From Corporate Debtor .</p>
<p>Form 6 (See Sub-Rule(1) Of Rule 7)</p>	<p>Application By Corporate Applicant To Initiate Corporate Insolvency Resolution Process Under The Code</p>	<p>Corporate Applicant</p>	<p>Adjudicating Authority (The National Company Law Tribunal)</p>	<p>For Initiating Corporate Insolvency Resolution Process For Recovering Their Debts From Corporate Debtor</p>

2. Forms Prescribed In “ Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016” : (Notified W.E.F. 15th December, 2016 Vide Notification No IBBI/2016-17/GN/REG005

Form No. And Regulation	Form Name	To Be Filed/ Delivered By	To Be Filed With /Delivered To	Purpose
Form A {Under Regulation 8 Of The Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 }	Performa For Reporting Consultations With Stakeholders	Liquidator	To Stakeholders	For Consultations With Stakeholders For Their Claims
Form B (Regulation 12 Of The Insolvency And Bankruptcy (Liquidation Process) Regulations, 2016)	Public Announcement	Liquidator Shall Give Public Announcement In 2 News Papers & Website Of Corporate Debtor Or Any Other Website Designated By The Board Within 5 Days From His Appointment .	To Stakeholders	Call Upon Stakeholders To Submit Their Claims As On The Liquidation Commencement Date .
Form C (Under Regulation 17 Of The Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016)	Proof Of Claim By Operational Creditors Except Workmen And Employees	Operational Creditors	To Liquidator	Shall Submit Proof Of Claim To The Liquidator By Post Or By Electronic Means Within 30 Days From The Commencement Of Liquidation Process

Form D (Under Regulation 18 Of The Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016)	Proof Of Claim By Financial Creditors	Financial Creditors	To Liquidator	Shall Submit Proof Of Claim To The Liquidator By Post Or By Electronic Means Within 30 Days From The Commencement Of Liquidation Process
Form E (Under Regulation 19 Of The Insolvency And Bankruptcy (Liquidation Process) Regulations, 2016)	Proof Of Claim By A Workman Or Employee	Workman Or Employee	To Liquidator	Shall Submit Proof Of Claim To The Liquidator By Post Or By Electronic Means Within 30 Days From The Commencement Of Liquidation Process
Form F (Under Regulation 19 Of The Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016)	Proof Of Claim By Authorized Representative Of Workmen Or Employees	Authorized Representative Of Workmen Or Employees	To Liquidator	Shall Submit Proof Of Claim To The Liquidator By Post Or By Electronic Means Within 30 Days From The Commencement Of Liquidation Process
Form G (Under Regulation 20 Of The Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016)	Proof Of Claim By Any Other Stakeholder	Any Other Stakeholder	To Liquidator	Shall Submit Proof Of Claim To The Liquidator By Post Or By Electronic Means Within 30 Days From The Commencement Of Liquidation Process

3. Forms Prescribed In “Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016” : (Notified W.E.F. 1st December, 2016 Vide Notification No IBBI/2016-17/GN/REG004

Form No. And Regulation	Form Name	To Be Filed/ Delivered By	To Be Filed With /Delivered To	Purpose
Form A [Under Regulation 6 Of The Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016]	Public Announcement	Insolvency Professional Shall Give Public Announcement In 2 News Papers & Website Of Corporate Debtor Or Any Other Website Designated By The Board Within 3 Days From His Appointment	To Stakeholder	Call Upon Stakeholders To Submit Their Claims From The Date Of Appointment Of The Interim Resolution Professional..
Form B [Under Regulation 7 Of The Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016]	Proof Of Claim By Operational Creditors Except Workmen And Employees	Operational Creditors	Interim Resolution Professional / Resolution Professional	Shall Submit Proof Of Claim To The Interim Resolution Professional / Resolution Professional By Post Or By Electronic Means Within 14 Days From The Date Of Appointment Of The Interim Resolution Professional.

Form C [Under Regulation 8 Of The Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016]	Proof Of Claim By Financial Creditors	Financial Creditors	Interim Resolution Professional / Resolution Professional	Shall Submit Proof Of Claim To The Interim Resolution Professional / Resolution Professional By Post Or By Electronic Means Within 14 Days From The Date Of Appointment Of The Interim Resolution Professional.
Form D [Under Regulation 9 Of The Insolvency And Bankruptcy (Insolvency Resolution Process For Corporate Persons) Regulations, 2016]	Proof Of Claim By A Workman Or An Employee	Workman Or An Employee	Interim Resolution Professional / Resolution Professional	Shall Submit Proof Of Claim To The Interim Resolution Professional / Resolution Professional By Post Or By Electronic Means Within 14 Days From The Date Of Appointment Of The Interim Resolution Professional.
Form E (Under Regulation 9 Of The Insolvency And Bankruptcy (Insolvency Resolution Process For Corporate Persons) Regulations, 2016)	Proof Of Claim Submitted By Authorized Representative Of Workmen And Employees	Authorized Representative Of Workmen And Employees	Interim Resolution Professional / Resolution Professional	Shall Submit Proof Of Claim To The Interim Resolution Professional / Resolution Professional By Post Or By Electronic Means Within 14 Days From The Date Of Appointment Of The Interim Resolution Professional.

4. Forms Prescribed In “Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016 : (Notified W.E.F. 29th November, 2016 Vide Notification No IBBI/2016-17/GN/REG003.

Form No. And Regulation	To Be Filed/ Delivered By	To Be Filed With /Delivered To	Purpose
Form A Of Second Schedule [Under Regulation 6 Or Regulation 9 Of The Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016]	Insolvency Professional	Chairperson Of Insolvency And Bankruptcy Board Of India	Insolvency Professional Shall Make Application For Certificate Of Registration Along With A Non-Refundable Application Fee Of Ten Thousand Rupees To The Board.
Form B Of Second Schedule [Under Regulation 7 Of The Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016]	Insolvency And Bankruptcy Board Of India	Insolvency Professional	If Board Is Satisfied With Application Of Insolvency Professional Then Board May Issue Certificate Of Registration Within 60 Days From Receipt Of The Application, Excluding The Time Given By The Board For Presenting Additional Documents, Information Or Clarification, Or Appearing In Person, As The Case May Be.
Form C Of Second Schedule [Under Regulation 12 Of The Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016]	LLP Firm Or A Company May Be Recognized As An Insolvency Professional Entity	Chairperson Of Insolvency And Bankruptcy Board Of India.	<p>*Eligible Person May Make An Application For Recognition As An Insolvency Professional Entity To The Board .</p> <p>Eligible Person : A Limited Liability Partnership, A Registered Partnership Firm Or A Company May Be Recognized As An Insolvency Professional Entity If-</p> <p>(a) A Majority Of The Partners Of The Limited Liability Partnership Or Registered Partnership Firm Are Registered As Insolvency Professionals; or</p> <p>(b) A Majority Of The Whole-</p>

			Time Directors Of The Company Are Registered As Insolvency Professionals, As The Case May Be
Form D Of Second Schedule [Under Regulation 13 Of The Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016]	Insolvency And Bankruptcy Board Of India	LLP Firm Or A Company May Be Recognized As An Insolvency Professional Entity	For Granting A Certificate Of Recognition As An Insolvency Professional Entity To LLP Firm Or Company Recognized As An Insolvency Professional Entity .

5. Forms Prescribed In “:Insolvency And Bankruptcy Board Of India (Insolvency Professional Agencies) Regulations, 2016: (Notified W.E.F. 21st November, 2016 Vide Notification No No IBBI/2016-17/GN/REG002.

Form No. And Regulation	To Be Filed/ Delivered By	To Be Filed With /Delivered To	Purpose
Form A (Under Regulation 4 Of The Insolvency And Bankruptcy Board Of India (Insolvency Professional Agencies) Regulations, 2016)	Company May Make An Application Along With A Non-Refundable Application Fee Of Ten Lakh Rupees.	Chairperson Of Insolvency And Bankruptcy Board Of India	(I)For Registration As An Insolvency Professional Agency. (li) If Company Is Already Registered Then Such Company Shall Make Application For Renewal Of Registration, Before Six Months The Expiry Of Registration,
Form B	Insolvency And Bankruptcy Board Of India	Applicant Company *(Eligible Company)	If Board Is Satisfied With Application Of Company Then Board May Issue Certificate Of Registration Within 60 Days From Receipt Of The Application, Excluding The Time Given By The Board For Presenting Additional Documents, Information Or Clarification, Or

Explanation : Eligible Company

No Person Shall Be Eligible To Be Registered As An Insolvency Professional Agency Unless It Is A Company Registered Under Section 8 Of The Companies Act, 2013, And –

- (A) Its Sole Object Is To Carry On The Functions Of An Insolvency Professional Agency Under The Code;
- (B) It Has Bye-Laws And Governance Structure In Accordance With The Insolvency And Bankruptcy Board Of India (Model Bye-Laws And Governing Board Of Insolvency Professional Agencies), 2016;
- (C) It Has A Minimum Net Worth Of Ten Crore Rupees;
- (D) It Has A Paid-Up Share Capital Of Five Crore Rupees,
- (E) It Is Not Under The Control Of Person(S) Resident Outside India,
- (F) Not More Than 49% Of Its Share Capital Is Held, Directly Or Indirectly, By Persons Resident Outside India; And
- (G) It Is Not A Subsidiary Of A Body Corporate Through More Than One Layer: Explanation: “Layer” In Relation To A Body Corporate Means Its Subsidiary;
- (H) Itself, Its Promoters, Its Directors And Persons Holding More Than 10% Of Its Share Capital Are Fit And Proper Persons. Explanation: For Determining Whether A Person Is Fit And Proper Under These Regulations, The Board May Take Account Of Any Consideration As It Deems Fit, Including But Not Limited To The Following Criteria-
- (I) Integrity, Reputation And Character,
- (Ii) Absence Of Convictions And Restraint Orders, And
- (Iii) Competence Including Financial Solvency And Net Worth.

Prepared by the team of thecompaniesact2013.com

NOTIFICATIONS

A. S.O. 554 (E) Notification regarding IEPF Authority

Dated 20.02.2017

In exercise of the powers conferred by sub-section (5) and (6) of section 125 of the Companies Act, 2013 (18 of 2013) read with rule 6 of the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding meetings and provision for offices and officers) Rules, 2016, the Central Government hereby extends the period of tenure of Shri Amardeep Singh Bhatia, as Chief Executive Officer (Additional Charge) in the Investor Education and Protection Fund Authority for a further period of one year with effect from the 1st November, 2016 or till further orders, whichever is earlier.

B. G.S.R. (E): Companies (Transfer of Pending Proceedings) Amendment Rules, 2017.

Dated 28.02.2017

In exercise of the powers conferred under sub-sections (1) and (2) of sections 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016, namely:-

1. Short title and Commencement: -

(1) These rules may be called the Companies (Transfer of Pending Proceedings) Amendment Rules, 2017.

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

2. In the Companies (Transfer of Pending Proceedings) Rules, 2016, in rule 5, in sub-rule (1) in the proviso for the words "sixty days" the words "six months" shall be substituted.

CIRCULAR

A. General Circular 01/2017 Section 391(2) closure of place of business by a Foreign Company

Dated 22.02.2017

Sub-Section (2) of Section 391 of the Companies Act, 2013, states that the provision of Chapter XX shall apply mutatis mutandis for closure of place of business of a foreign company in India as if it were a company incorporated in India. These provisions have been brought into force on 15th December, 2016. Stakeholders have sought clarification with regard to scope of application of the said sub-section.

The matter has been examined in the Ministry and it has been noted that sub-section (1) and sub-section (2) of section 391 needs to be read harmoniously. Accordingly, it is clarified that provisions of sub-section (2) of section 391 of the Companies Act, 2013 would apply only in case of a foreign company which has issued prospectus or IDRs pursuant to provisions of Chapter XXII of the Companies Act, 2013.

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- **Securities and exchange Board of India (listing obligation and disclosure requirement) (Amendment) Regulation, 2017 .**
- **Insolvency and bankruptcy Board of India (Voluntary liquidation) Regulation, 2017**
- **SEBI Circular on integrated reporting by listing entities .**
- **Investor Education And Protection Fund Authority (Recruitment, Salary and other terms and conditions of services of general manager and assistant general manager) Rules, 2017**

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