



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME (OLD SYLLABUS)

for

December, 2021 Examination

**CORPORATE RESTRUCTURING,
VALUATION AND INSOLVENCY**

MODULE 1

PAPER 3

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

LESSON 2

MERGERS AND AMALGAMATIONS – LEGAL AND PROCEDURAL ASPECTS

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

According to the Amendment Rules, Rule 25(1A) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read as under:

“A scheme of merger or amalgamation under section 233 of the Act may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

Explanation.-

It may be noted that “Start-up Company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.”

Impact: Rule 25(1A) dealing with merger or amalgamation of two or more start-up companies; or one or more start-up company with one or more small company.

For

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MDY=&docCategory=Notifications&type=open>

Details:

LESSON 3

ECONOMIC AND COMPETITION LAWS ASPECTS OF MERGERS AND AMALGAMATIONS

Central Government exempts all cases of combinations under section 5 of the Competition Act involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors

In exercise of the powers conferred by Section 54(a) of the Competition Act, 2002, the Central Government in the public interest hereby exempts all cases of combinations under section 5 of the Act involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors under the Petroleum Act, 1934 and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, from the application of the provisions of sections 5 and 6 of the Act, for a period of five years from the date of publication of this notification in the Official Gazette.

For

Details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjgzMA==&docCategory=Notifications&type=open>

LESSON 9

TAKEOVERS

SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021

According to the Amendment Regulations, Regulation 1(3), Regulation 3(5), Regulation 6(4), Regulation 26(6), Regulation 29(1)& 29(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 read as under:.

Regulation 1(3):

These regulations shall apply to direct and indirect acquisition of shares or voting rights in,

or control over Target Company.

Provided that these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the Innovators Growth Platform of a recognised stock exchange.

Regulation 3(5):

For the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as “forty-nine percent.

Regulation 6(4):

For the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as “forty-nine percent.

Regulation 26(6):

Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:

Provided that such committee shall be entitled to seek external professional advice at the expense of the target company.

Provided further that while providing reasoned recommendations on the open offer proposal, the committee shall disclose the voting pattern of the meeting in which the open offer proposal was discussed.

Regulation 29(1):

Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified:

Provided that in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to “five per cent” shall be read as “ten per cent.

Regulation 29(1):

Any person together with persons acting in concert with him, holds shares or voting

rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Provided that in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to “five per cent” shall be read as “ten per cent” and any reference to “two per cent” shall be read as “five per cent”

Impact: “Institutional Trading Platform” shall be substituted with the words “Innovators Growth Platform” and specifies the per cent in case of listed entity which has listed its specified securities on Innovators Growth Platform of a recognised stock exchange.

For Details: https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2021_50077.html

LESSON 17

CORPORATE INSOLVENCY RESOLUTION PROCESS

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP)

Micro, small, and medium enterprises (MSMEs) are critical for India’s economy. They contribute significantly to gross domestic product and provide employment to a sizeable population. The COVID-19 pandemic has impacted their business operations and exposed many of them to financial stress. Resolution of their stress requires different treatment, due to the unique nature of their businesses and simpler corporate structures. Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under the Code for corporate MSMEs, that ensures quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses, and which preserves jobs. Accordingly, President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April, 2021 to introduce PPIRP under the Code for this purpose. PPIRP is built on trust and honours the honest MSME owners by enabling resolution when the company remains with them.

PPIRP is available for resolution of stress of corporate MSMEs. It is available as an alternate

option, should the stakeholders like to use it. PPIRP has the features, which make a CIRP sacrosanct, and has the rigour and discipline of the Corporate Insolvency Resolution Process (CIRP). It is informal up to a point and formal thereafter. It blends debtor-in-possession with creditor-in-control. It is neither a fully private nor a fully public process - it allows the company, if eligible under section 29A, to submit the Base Resolution Plan (BRP) which is exposed to challenge for value maximisation. It safeguards the rights of stakeholders as much as in CIRP and has adequate checks and balances to prevent any potential misuse. It entails a limited role of the courts and IPs. Unlike CIRP, it does not yield liquidation if there is no resolution plan. Though PPIRP and CIRP are alternate options, some stakeholders may prefer one over the other in certain circumstances.

Governing Framework

The provisions governing PPIRP are available in:

- Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2021(Chapter III-A contains Section 54A to 54 P);
- Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and
- Insolvency and Bankruptcy Board of India (Pre Packaged Insolvency Resolution Process) Regulations, 2021.

Eligibility for PPIRP

A Corporate Debtor(CD), which is an MSME under sub-section (1) of the section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, is eligible to apply for initiation of PPIRP, if it-

- (i) has committed a default of at least ₹10 lakh;
- (ii) is eligible to submit a resolution plan under section 29A of the Code;
- (iii) has not undergone a PPIRP during the three years preceding the initiation date;
- (iv) has not completed a CIRP during the three years preceding the initiation date;
- (v) is not undergoing a CIRP; and
- (vi) is not required to be liquidated by an order under section 33 of the Code.

To evidence that the CD is an MSME, the application shall attach either a copy of the latest and updated Udyam Registration Certificate or proof of investment in plant and machinery or equipment and turnover as per Notification No. 2119(E) dated 26th June, 2020 of the Ministry of MSMEs.

Pre-initiation Phase

PPIRP envisages a hybrid process, where pre-initiation phase is largely informal and post-initiation stage is formal. The informality at pre-initiation stage offers flexibility for the CD and its creditors to swiftly explore and negotiate the best way to resolve stress in the

business, while the post-initiation stage drives value maximisation and bestows the resolution plan with the statutory protection.

The following activities need to be undertaken in pre-initiation stage:

- For seeking approval of creditors under section 54A(2)(e) and (3), the applicant (corporate applicant filing an application for initiation of PPIRP) shall convene meetings of the Unrelated Financial Creditors (UFCs), that is, financial creditors who are not related parties of the CD. Where the CD has no financial debt or where all financial creditors are related parties, the applicant shall convene meetings of unrelated Operational creditors (UOCs) and the UOCs shall perform the same duties and functions as the UFCs.
- For convening a meeting of UFCs, the applicant shall serve the notice of the meeting to UFCs at least five days before the date of the meeting (s) unless a shorter time is agreed to by all of them. The notice of the meeting shall indicate the date, time, and venue of the meeting and specific agenda items for discussion.
- The applicant shall enclose a list of creditors and the amount due to each of them in Form P2, along with the notice convening the meeting seeking approval for appointment of an IP as RP.
- In the meeting of UFCs, creditors having at least 10% of the value of debt shall propose the name of an IP eligible under the Regulations, for appointment as RP. An IP is eligible to be appointed as RP if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. A person is considered independent if he meets the requirements specified under regulation 7.
- The UFCs representing not less than 66% in value of debt due to such creditors shall approve the appointment as RP and the terms of appointment in Form P3. The terms of appointment shall include: fee payable to him for performing duties in relation to pre-initiation phase under section 54B, (b) fee payable to him and expenses to be incurred by him for conducting the PPIRP, and (c) fee payable to him and expenses to be incurred by him in case management of the CD is vested with him under section 54J.
- The majority of director/partners of the CD shall make a declaration in Form P6 stating (a) that the CD shall file an application for initiation within a definite time not exceeding 90 days, (b) that the PPIRP is not being initiated to defraud any person, and (c) the name of the IP approved by creditors to be appointed as the RP.
- The members of the CD shall pass a special resolution, or at least three-fourth of the total number of partners of the CD shall pass a resolution, approving the filing of an application for initiating PPIRP as required in section 54A(2)(g).
- The CD shall prepare a BRP in conformity with the requirements under section 54K.
 - Along with the notice for convening the meeting(s) seeking approval for filing of an application for initiating PPIRP, the applicant shall enclose (a) a list of creditors and the amount due to each of them in Form P2, (b) declaration in Form 6, (c) the resolution of members or partners referred to in section 54A(2)(g), and (d) the BRP.
 - In the meeting of UFCs, creditors representing not less than 66% in value of

debt due to such creditors shall approve filing of application for initiation of PPIRP of the CD under section 54A(3), in Form P4.

- The Insolvency Professional(IP) (proposed to be appointed as the RP) shall ascertain creditors in class(es), if any, from the list of creditors in Form P2, identify three IPs to act as authorised representative (AR) and obtain their consent in Form P5, seek choice of creditors in the class, select the IP, who is the choice of the highest number of creditors in the class to act as the AR, and inform the name of the IP, along with his consent in Form P5, to the applicant, in accordance with regulation 15.
- The IP (proposed to be appointed as the RP) shall prepare report in Form P8 confirming if the CD is eligible for PPIRP and the BRP confirms the requirements.

Application for Initiation

- (i)** Only a corporate applicant can file an application for initiation of PPIRP.
- (ii)** The applicant shall file the application in Form 1, in electronic form, before the AA for initiating PPIRP.
- (iii)** The application shall be accompanied by the following documents:
 - (a) Record of default;
 - (b) Consent of the IP proposed to be appointed as RP, in Form P1;
 - (c) Approval of UFCs for initiation, in Form P4;
 - (d) Consent of the IP proposed to act as AR, if any, in Form P5;
 - (e) Declaration by Directors/Partners, in Form P6;
 - (f) Members' resolution or Partners' resolution;
 - (g) Declaration by CD regarding avoidance transaction(s), in Form P7;
 - (h) Report of the RP, in Form P8;
 - (i) Audited financial statements of the last two financial years;
 - (j) Provisional financial statements for current financial year made up to the date of declaration under section 54A(2)(f);
 - (k) Latest and updated Udyam Registration Certificate, or proof that the CD is an MSME; Affidavit stating that the CD is eligible under section 29A of the Code to submit resolution plan in the PPIRP of the CD;
 - (l) A statement of affairs made up to a date not earlier than 14 days from the date of application;
 - (m) A statement giving the names and addresses of the members or partners of the CD, with details of their respective shareholdings;
 - (n) Proof that the application fee of ₹15,000 has been paid;
 - (o) Proof that a copy of the application has been served to the IBBI; and
 - (p) Document that records the authority of the applicant to make the application, where the applicant is a member or partner of the CD.
- (iv)** The applicant shall serve a copy of the application (for initiating PPIRP) to the IBBI before filing it with the AA.
- (v)** Within 14 days of the receipt of the application, the AA shall admit the application, if the application is complete or reject the same, if incomplete. However, before rejecting the

application, the AA shall provide a period of seven days to the applicant for rectifying the defects, if any, in the application. The AA shall also deal with any application for initiation of CIRP pending for admission in accordance with the Code while deciding on the application.

(vi) The PPIRP shall commence on the date of admission of the application.

(vii) The AA shall, on the PPIRP commencement date along with the order of admission, declare a moratorium of the purposes of sub-sections (1) and (3) of section 14 of the Code, appoint the IP named in the application as the RP, and cause a public announcement to be made by the RP.

(viii) The duties of the IP shall cease if the application is either not filed within the time specified in declaration in Form 6 or is not admitted by the AA.

Post-initiation Phase

(i) The process is required to be completed within a time frame of 120 days from the PPIRP commencement date.

(ii) During the PPIRP, (a) the management of the affairs of the CD shall continue to vest in the Board of Directors / the partners of the CD; (b) the Board of Directors / the partners of the CD shall make every endeavour to protect and preserve the value of the property of the CD, and manage its operations as a going concern; and (c) the promoters, members, personnel and partners of the CD shall exercise and discharge their contractual or statutory rights and obligations in relation to the CD.

(iii) The CD shall, within two days of the PPIRP commencement date, submit to the RP, updated as on that date, (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, in Form P10, and (b) a preliminary information memorandum (PIM) containing information relevant for formulating a resolution plan. If any person sustains any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the PIM, every person who (a) is a promoter or director or partner of the CD at the time of submission of the list of claims or the PIM, or (b) has authorised the submission of the list of claims or the PIM, shall be liable to pay compensation.

(iv) The CD shall submit the BRP to the RP within two days of the PPIRP commencement date. It may revise the BRP if permitted by the CoC.

(v) The RP shall make a public announcement, in Form P9, within two days of the commencement of the process in the manner specified in regulation 19.

(vi) The RP shall exercise powers and carry out duties as required under section 54F.

Approval of Resolution Plan

(i) If BRP does not impair claims owed to operational creditors (OCs), the CoC may approve it for submission to the AA.

(ii) If the CoC does not approve the BRP or the BRP impairs the claims of OCs, the RP shall invite prospective resolution applicants to submit resolution plans to compete with the BRP. He shall publish brief particulars of the invitation for resolution plans in Form P11, not later than 21 days from the PPIRP commencement date, in accordance with regulation 43.

- (iii) The invitation for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the RP and the resolution applicant, along with corresponding timelines. It shall include (a) the basis for evaluation; (b) the basis for considering a resolution plan significantly better than another resolution plan; (c) the tick size; and (d) the manner of improving a resolution plan. It shall not require any non-refundable deposit for submission of or along with resolution plan.
- (iv) The resolution plans received in response to invitation and complying with the requirements of the Code and the Regulations shall be evaluated on the basis for evaluation. The resolution plan which gets the highest score shall be selected as best alternate plan (BAP) for competition with the BRP.
- (v) The CoC may consider BRP for approval if no resolution plan is received.
- (vi) The CoC may consider the BAP for approval if it is significantly better than the BRP. If it does not approve a significantly better BAP, the process terminates.
- (vii) If the BAP is not significantly better than the BRP, the RP shall disclose the scores of the BAP and BRP to submitters of these plans and invite them to improve their plans in accordance with regulation 48.
- (viii) The process of improvement shall continue till either of the submitters fails to use the option within the specified time. The resolution plan having higher score on completion of process of improvement shall be considered by the CoC for approval. If the CoC does not approve it, the process terminates.

Closure of PPIRP

The PPIRP closes in the following circumstances:

- (i) On approval of either the BRP or the BAP by the AA.
- (ii) On expiry of 90 days if no resolution plan is submitted to the AA for approval.
- (iii) On rejection of resolution plan by the AA.
- (iv) On approval by the AA of application filed by the RP for termination of PPIRP, where the CoC approves termination with 66% of voting share.
- (v) On conversion into CIRP based on an application filed by the RP, where the CoC approves so with 66% of voting share, and the CD is eligible for CIRP. The RP of the PPIRP is appointed as the IRP of the CIRP.
- (vi) On an order of termination in case either no resolution plan is approved by CoC or the resolution plan approved by the CoC does not result in change in management, where the AA has vested the management of the CD with the RP under section 54J.

For

Details:

<https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021

IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated March 15, 2021 to provide for the following:

(a) A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

(b) The IRP/RP shall file Form CIRP 7 within three days of the due date, where any of the following activities is not completed:

- Public announcement is not made by T+3 day; th
- Appointment of RP is not made by T+30 day;
- Information memorandum (IM) is not issued within 51 days from the date of public announcement;
- Request for resolution plan is not issued within 51 days from the date of issue of IM;
- CIRP is not completed by T+180 days.

[For Details:](#)

<https://www.ibbi.gov.in/uploads/legalframework/32795d31dcbe1c6f81318044a753bd71.pdf>

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021

Amendments to Liquidation Process Regulations IBBI amended the IBBI (Liquidation Process) Regulations, 2016, vide notification dated March 4, 2021, requiring the Liquidator to file the list of stakeholders, as modified from time to time, on the website of the Board. It discontinued the requirement of announcement of filing of list of stakeholders with the Adjudicating Authority in the newspapers.

[For Details :](https://www.ibbi.gov.in/uploads/legalframework/2a0408cf690dc73b21a2faa8805281fe.pdf)
<https://www.ibbi.gov.in/uploads/legalframework/2a0408cf690dc73b21a2faa8805281fe.pdf>
