

## **Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018**

30<sup>th</sup> November, 2018

### **Provisions in the Insolvency and Bankruptcy Code, 2016**

Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board, within ten days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend the name of an IP to AA against whom no disciplinary proceedings are pending.

2. Section 34(4) of the Code requires the AA to replace the resolution professional, if (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent under section 34(1). For the purposes of clause (a) and clause (c) of section 34(4), the AA may direct the Board under section 34(5) of the Code to propose the name of another IP to be appointed as a liquidator. The Board is required under section 34(6) to propose the name of another IP along with written consent from him within ten days of the direction issued by the AA under section 34(5).

### **Guidelines**

3. When a reference or direction is received under section 16 or 34 of the Code from the AA for recommending / proposing the name of an IP, the Board has no information about the volume, nature and complexity of the CIRP or Liquidation Process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for a CIRP / Liquidation. In fact, the bill titled “The Insolvency and Bankruptcy Code, 2015”, as introduced in Lok Sabha, provided that the Board shall recommend the name of an IP who has the relevant expertise for various processes under the Code. These provisions were dropped based on the recommendations of the Joint Parliamentary Committee, which observed that there are sufficient safeguards to ensure that the competent persons are enrolled as insolvency professionals.

4. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It takes also some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment of an IRP or Liquidator may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel while issuing the Order.

5. Given that every IP is equally qualified to be appointed as the IRP/Liquidator of any CIRP/Liquidation, if otherwise not disqualified, and in the interest of avoiding administrative delays, it is necessary to have guidelines to prepare a Panel of IPs for the purpose of section 16(4) and 34(6) from amongst the registered IPs.

## Panel of IPs

6. The Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or Liquidation process, respectively. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months. For example, the first panel under these Guidelines will be valid for appointments during January - June, 2019, the next panel will be valid for June - December, 2019, and so on.

7. An IP will be eligible to be in the Panel of IPs if -

- (a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him;
- (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;
- (c) he expresses his interest to be included in the Panel for the relevant period; and
- (d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA.

8. An IP will be included in the Panel against the Bench under whose jurisdiction his registered office (his address as registered with the Board) is located. For example, an IP located in Kolkata will be included in Panel against the Kolkata Bench of the AA. The areas covered in respect of different Benches of the AA are as under:

<b>Benches at</b>	<b>Area covered</b>
<b>New Delhi</b>	<b>1. Union territory of Delhi</b>
<b>Ahmedabad</b>	<b>1. State of Gujarat 2. State of Madhya Pradesh 3. Union territory of Dadra and Nagar Haveli 4. Union territory of Daman and Diu</b>
<b>Allahabad</b>	<b>1. State of Uttar Pradesh 2. State of Uttarakhand</b>
<b>Bengaluru</b>	<b>1. State of Karnataka</b>
<b>Chandigarh</b>	<b>1. State of Himachal Pradesh 2. State of Jammu and Kashmir 3. State of Punjab 4. Union territory of Chandigarh 5. State of Haryana</b>
<b>Chennai</b>	<b>1. State of Tamil Nadu 2. Union territory of Puducherry</b>
<b>Guwahati</b>	<b>1. State of Arunachal Pradesh 2. State of Assam 3. State of Manipur 4. State of Mizoram 5. State of Meghalaya 6. State of Nagaland 7. State of Sikkim 8. State of Tripura</b>

<b>Benches at</b>	<b>Area covered</b>
<b>Hyderabad</b>	<b>1. State of Andhra Pradesh</b> <b>2. State of Telangana</b>
<b>Jaipur</b>	<b>1. State of Rajasthan</b>
<b>Kolkata</b>	<b>1. State of Bihar</b> <b>2. State of Jharkhand</b> <b>3. State of Odisha</b> <b>4. State of West Bengal</b> <b>5. Union territory of Andaman and Nicobar Islands</b>
<b>Kochi</b>	<b>1. State of Kerala</b> <b>2. Union territory of Lakshadweep</b>
<b>Mumbai</b>	<b>1. State of Chhattisgarh</b> <b>2. State of Goa</b> <b>3. State of Maharashtra</b>

### **Expression of Interest**

9. The Board shall invite expression of interest from IPs in Form A to act as an IRP or Liquidator by sending an e-mail to IPs at their email addresses registered with the Board. The expression of interest must be received by the Board in Form A by the specified date. For example, the Board shall invite expression of interest by 7<sup>th</sup> December, 2018 from IPs for inclusion in the Panel for January - June, 2019. The interested IPs shall express their interest by 15<sup>th</sup> December, 2018. The Board will send the Panel to the AA by 25<sup>th</sup> December, 2018.

10. It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, must not:

- (a) withdraw his interest to act as IRP or Liquidator, as the case may be;
- (b) decline to act as IRP or Liquidator, as the case may be, if appointed by the AA; or
- (c) surrender his registration to the Board or membership to his IPA during the validity of the Panel.

11. It must be explicitly understood that:

- (a) the AA may require the Board to recommend an IP from or outside the Panel and in such cases, the Board shall accordingly recommend an IP;
- (b) an IP in the Panel can be appointed as IRP or as Liquidator, at the sole discretion of the AA;
- (c) the submission of expression of interest is an unconditional consent by the IP to act as an IRP or Liquidator, for any corporate debtor; and
- (d) an IP who declines to act as IRP or Liquidator, as the case may be, on being appointed by the AA, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the Board.

### **Ongoing Assignments**

12. The eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will get a score of 0. The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending on volume of their ongoing assignments.

**Take an example:**

IP	Volume of ongoing assignments	Difference between the highest volume and the volume of ongoing assignments of the IP	Formula	Score
1	20	100	$100 / 100 * 100$	100
2	40	80	$80 / 100 * 100$	80
3	60	60	$60 / 100 * 100$	60
4	80	40	$40 / 100 * 100$	40
5	100	20	$20 / 100 * 100$	20
6	120	00	$00 / 100 * 100$	00

13. An ongoing assignment shall be valued as under:

Ongoing assignments	Volume
IRP of a Corporate Insolvency Resolution Process	05
RP of a Corporate Insolvency Resolution Process	10
IRP of a Fast Track Process	03
RP of a Fast Track Process	06
Liquidation / Voluntary Liquidation	05
Individual Insolvency	01
Bankruptcy Trustee	01

14. Where two or more IPs get the same score, they will be placed in the Panel in order of the date of their registration with the Board. The IP registered earlier will be placed above the IP registered later.

15. The above process will be undertaken by a team of officers of the Board, as may be identified by a Whole-Time Member.

**Review**

16. These guidelines will be reviewed by the Board from time to time.

17. These Guidelines shall come into effect for appointments as IRPs and Liquidators with effect from 1<sup>st</sup> January, 2019.

18. These Guidelines replace the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018.

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**Form A**

**EXPRESSION OF INTEREST TO ACT AS AN IRP IN CIRP AND LIQUIDATOR IN LIQUIDATION PROCESS**

1.	Name of Insolvency Professional	
2.	Registration Number	
3.	Address and contact details, as registered with the Board: a. E-mail b. Mobile c. Address	
4.	Number of ongoing assignments on hand:	
	a. As IRP of CIRP	
	b. As RP of CIRP	
	c. As IRP of Fast Track	
	d. As RP of Fast Track	
	e. Liquidation/Voluntary Liquidation	
	f. Individual Insolvency	
5.	Number of assignments completed as on date:	
	a. As IRP of CIRP	
	b. As RP of CIRP	
	c. As IRP of Fast Track	
	d. As RP of Fast Track	
	e. Liquidation/Voluntary Liquidation	
	f. Individual Insolvency	
6.	Whether IP has been convicted at any time in the last three years by a court of competent jurisdiction? (Give details)	
	Whether IP is serving a suspension or debarment from serving as an IP? (Give details)	
8.	Whether any disciplinary proceeding, whether initiated by the Board or the IPA, is pending against the IP? (Give details)	

**Declaration:** I hereby: -

- a. confirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and express my interest to act as IRP or Liquidator, as the case may be, if appointed by the Adjudicating Authority.
- b. undertake that if my name is included in the Panel, I shall abide by the Insolvency Professionals to act as Interim Resolution Professionals and Liquidators (Recommendation) (Second) Guidelines, 2018.
- c. undertake that submission of this form is my unconditional consent to act as an IRP or Liquidator at the sole discretion of the Adjudicating Authority during the validity period of the Panel under the Guidelines (1<sup>st</sup> January, 2019 – 30<sup>th</sup> June, 2019).
- d. undertake that I shall not decline to act as IRP or Liquidator, as the case may be, on being appointed by the Adjudicating Authority.

**Signature of Insolvency Professional**

**Place:**

**Date:**