

Recent amendments in IBBI Regulations

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About Us



- Vinod Kothari and Company, consultants and advisors
 - Based out of Kolkata, New Delhi, Mumbai and Bengaluru
- We are a team of consultants, advisors & qualified professionals having over 35 years of practice.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Coverage

IBBI (Liquidation Process) (Amendment) Regulations, 2024

IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024

IBBI (Voluntary Liquidation) (Amendment) Regulations, 2024

IBBI (Insolvency Professionals) (Amendment) Regulations, 2024

IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024

IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024

IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2024

IBBI Circulars dated 1st February, 2024 and 13th February, 2024

Laundry list of the major amendments notified (1/2)

Liquidation Process

- Enhancement in the role of SCC
- Monthly meetings of SCC [**reg. 31A(6)**]
- Proposal for compromise and arrangement can be filed only up to 30 days from LCD [**Reg. 2B(1)**]
- Disclosure of valuation methodology to SCC [**Reg. 35(5)**]
- Sharing of valuation report with the SCC [**Reg. 35(6)**]
- Process w.r.t. making claim from Corporate Liquidation Account prior to dissolution and post dissolution [**Reg. 46**]
- Wherever CD has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate [**Reg. 46A**]
- Timeline for paying balance sale consideration may be extended beyond 90 days with SCC approval [**Sch. I**]
 - Payments made after 30 days shall attract interest @12%
 - Sale stand cancelled if payment not made within time
- Compliance Certificate under Form H has been modified [**Sch. II**]
 - to capture details regarding the realisation and distribution
- Form A for reporting consultation with the stakeholders has been modified to capture the meetings details [**Sch. II**]

CIRP Regulation

- Monthly meetings of CoC [**Reg. 18(1)**]
- Max. timeline for keeping the voting window open has been prescribed [**Reg. 25(5)**]
- Placing operational status of the CD in each CoC meeting and taking approval for all costs, which are part of insolvency resolution process cost [**Reg. 31B**]
- Disclosure of valuation methodology to the CoC [**Reg. 35(1)**]
- Sharing of valuation report with the CoC [**Reg. 35(2)**]
- Disclosure of fair value in the IM (discretionary) [**Reg. 36(2)**]
- In case CD is into real estate activities
 - Mandatory requirement of operating separate account for each project [**Reg. 4D**]
 - Separate plan for each project may be invited [**Reg. 36A(1)**]
- Constitution of monitoring committee for plan implementation [**Reg. 38(3)**]
 - RP may be a made a part of the MC

Laundry list of the major amendments notified (2/2)

VL Process

- Additions in the declaration of solvency by directors: **[Reg. 3(1)]**
 - Disclosure of pending proceedings before statutory authorities concerning the CD
 - CD has made sufficient provision to meet the obligations arising on account of pending matters
- Reduction in the timeline for holding the meeting of contributories if VL process not concluded within prescribed timeline **[Reg. 37(2)]**
- Process w.r.t. making claim from Corporate VL Account prior to dissolution and post dissolution **[Reg. 39]**

IP Regulations

- Explicit provisions w.r.t. IP resignation as IRP/RP/Liquidator **[1st Sch]**
- Relaxation in the code of conduct for IPs **[1st Sch]**

Model bye-laws

- Clarificatory amendment w.r.t. AFA validity **[Schedule]**

Bankruptcy process for personal guarantor

- The disqualification of an IP/IPE, acting as IRP or liquidator of the CD, has now been removed **[Reg. 3(1)]**
- Similar disqualification has been removed for appointment of professionals too **[Reg. 5(1)]**

Insolvency resolution process for personal guarantor

- Removal of restriction for appointment of IRP/RP/liquidator of the CD as RP in the insolvency resolution process for personal guarantors to CDs **[Reg. 4(1)]**
- Mandatory requirement for placing repayment plan in meeting of creditors **[Reg. 17A]**
 - If no plan received, RP shall notify the same in a meeting of creditors



Liquidation Process (Amendment) Regulations, 2024- SCC related



Stakeholders Consultation Committees in liquidation

- Sec 35(2) provides -

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

- If liquidator takes a decision different from the advice given by SCC, he shall
 - record the reasons for the same in writing and
 - submit the records relating to the said decision, to the AA and Board within 5 days of the said decision; and include it in the next progress report
- Important distinction between CoCs and SCCs
 - CoCs are mainly comprised of banks/ARCs; people who have been in resolution business
 - These are the creditors whose claims are large, and they can easily correlate their recoveries with the resolution process
 - Mostly, they are first-ranking creditors

- SCC members come from diverse priority levels; mostly, will have very little chance of any recovery
- They will mostly have no prior experience of resolution process
- Questions:
 - Decision-making is directly related to incentives of the decision; will a creditor (operational creditor, government claims, employees), with very little chance of any realisation, make meaningful contribution to the decision-making process?
 - Is SCC a decision-making body, or advisory body?
 - In any decision-making forum, the incentive to deciding is the consequence of indecision
 - Creditors lose their last chance to be masters of the process by not agreeing to resolution; are they still properly considered master of the process?
 - Incentives of SCC members at different priority levels are completely misaligned:
 - Note that it includes promoters without voting rights and shareholders too

Liquidation Process (Amendment) Regulations, 2024 (1/3)

Amended provision

Reg. 14: Application for early dissolution

- Liquidator shall consult SCC and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to AA

Reg. 31A(6): Frequency of SCC meetings

- Liquidator shall convene subsequent meetings of SCC within 30 days of the previous meeting, unless SCC has extended the period
- At least one meeting in each quarter to be called

Reg. 31A(6B): Min. information to be placed in SCC meetings

- In every meeting, the liquidator shall present to SCC:
 - (a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;
 - (b) the consolidated status of all the legal proceedings; and
 - (c) the progress made in the process

Amended provision

Reg. 31A(1): Matters on which SCC consultation is required

- Additional items for SCC consultation has been included in reg. 31A
 - review of marketing strategy in case of failure of GCS
 - continuation or institution of any suits or legal proceedings by or against CD
 - extension of payment of balance sale consideration as provided in clause (12) of Para I of Schedule I, beyond 90 days, to be disclosed in the auction notice

Reg. 31A(6A): SCC consultation in case of continuation/initiation of legal proceedings

- For initiating/continuing, the liquidator shall, after presenting the economic rationale for the proposal, seek the advice of SCC

Reg. 31A(9): Consideration of votes cast by representative Clarification in reg. 31A(9) provides that votes shall be mean votes cast by the representative of SCC

Liquidation Process (Amendment) Regulations, 2024 (2/3)

Amended provision

Reg. 32A(5): SCC approval for running CD as a going concern

- Where liquidator is of the opinion that it is viable to run CD as a going concern,
 - he shall consult the SCC and only on its advice he shall run the affairs of the CD as a going concern to the extent approved

Reg. 35(2): SCC consultation for obtaining fair valuation

- Fresh valuation can be obtain if the liquidator after prior consultation with SCC is of the opinion that the same is required

Reg. 35(6): Sharing of valuation report with SCC

- The liquidator shall share the valuation reports with SCC after obtaining an undertaking that they shall maintain the confidentiality of such reports and shall not use these reports to cause an undue gain or undue loss to itself or any other person

Amended provision

Reg. 33(2) & Sch-I para 2(3A): Private sale of assets of CD

- Private sale permitted only after prior consultation with SCC
- The option for the private sale of an asset by liquidator in case
 - ‘the asset is sold at a price higher than the reserve price of a failed auction’, has been removed.
- Private sale shall be confirmed to the buyer after consultation with SCC

Reg. 35(5): Meeting of SCC before finalisation of valuation report

- Liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the SCC before finalisation of valuation reports

Reg. 35(6): Deviation of 25% in the value

- In case there is deviation of 25% in the valuation of an asset class, the liquidator shall facilitate a meeting wherein the registered valuers shall explain the reasons for the difference to the SCC

Liquidation Process (Amendment) Regulations, 2024 (3/3)

Amended provision

Sch - I para 1(4): Reduction in reserve price

- The liquidator may reduce the reserve price by up to 25% for assets with existing valuation of CIRP on one occasion with the approval of the SCC at any time during the process.
- For assets where fresh valuation is conducted during liquidation, the reserve price can be reduced by up to 10% in subsequent auctions

Amended provision

Sch-I para 1(12): Timeline for paying the balance sale consideration

- On the close of the auction, HI bidder shall pay balance sale consideration within 90 days or such period as mentioned in the auction notice [SCC consultation required for increasing the timeline (See reg. 31A)]
- Payments made after thirty days shall attract interest @12%
- Sale shall be cancelled if the payment is not received within the period provided under this clause



Liquidation Process (Amendment) Regulations, 2024- Other misc. amendments



Liquidation Process (Amendment) Regulations, 2024 - Other amendments

Amended provision

2nd proviso reg. 2B(1): Filing for compromise and arrangement

- Liquidator shall file the proposal of compromise or arrangement only in cases where CoC has made such a recommendation during CIRP
 - such proposal shall not be filed after the expiry of 30 days from LCD

Reg. 32A(4): Clarification w.r.t. GCS

- CD can be sold as going concern only at the first auction and not thereafter.
- However, this does mean GCS the only option for bidders after the first auction

Reg. 46(7), (7A), (7B), (7C), (7D) & (7E): Corporate Liquidation A/c

- Process relating to claim from “Corporate Liquidation Account” by the stakeholders prior to dissolution of the CD and after dissolution of the CD has been prescribed

Reg. 45A: Exclusion of certain assets from the liquidation estate

- Wherever CD has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate

Sch-II Form-A

- Form A for reporting consultation with SCC has been modified to capture the meetings details such as the interval between two meetings, dissent by the SCC etc.

Sch-II Form-H

- To capture additional details regarding the realisation and distribution made during the process, the Compliance Certificate under Form H has been modified



Insolvency Resolution Process of Corporate Persons (Amendment) Regulations, 2024



IRPCP (Amendment) Regulations, 2024 (1/2)

Amended provision

Reg. 4D: Operating separate bank account for each real estate project

- Where the CD has any real estate project, the IRP/RP, as the case may be, shall operate a separate bank account for each real estate project

Reg. 25(5)(b): Voting procedures

- RP shall seek a vote of the CoC members who did not vote at the meeting, by electronic voting system in accordance with regulation 26
- Voting shall be kept open, from the circulation of the minutes, for such time as decided by the CoC
 - Voting timeline shall not be less than 24 hours and shall not exceed 7 days
- On a request for extension made by a creditor, the voting window shall be extended in increments of 24 hours period
 - RP shall not extend the voting window where-
 - the matters listed for voting have already received the requisite majority vote and
 - one extension has been given after the receipt of requisite majority vote

Amended provision

Reg. 18(1): Monthly meetings of CoC

- RP shall convene a meeting of the CoC before lapse of thirty days from the last meeting;
- CoC may decide to extend the interval between such meetings
 - subject to at least one meeting in each quarter

Reg. 31B: Approval of CoC for insolvency resolution process costs

- IRP/RP as the case may be, shall place in each CoC meeting, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs

IRPCP (Amendment) Regulations, 2024 (2/2)

Amended provision

Proviso to reg. 35(1)(a): Disclosure of valuation methodology

- RP shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to CoC members before computation of estimates

Reg. 36(2)(k): Disclosure of fair value in the IM

- Amended provision provides that CoC may decide to not disclose “fair value” as a part of IM.
- However, CoC, after recording the reasons, can decide not to share such information

Reg. 38: Monitoring committee for implementation of resolution plan

- CoC may consider constituting a monitoring committee while approving any plan
- MC may include RP, any other IP or any other person as its member
 - In case the RP is made part of MC, monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process

Amended provision

Reg. 35(2): Sharing of fair value, liquidation value and valuation report

- After receipt of the resolution plans, the RP shall in addition to the fair value and liquidation value, shall also share the valuation report with the CoC members on receiving of an undertaking confirming confidentiality of the information contained therein.

Reg. 36A(1): Flexibility in inviting resolution plans in real-estate cases

- RP with the approval of the CoC may invite a resolution plan for each real estate project or group of projects of the CD

Reg. 40(2): Continuation of resolution process pending extension application

- RP shall continue to discharge his responsibilities under the CIRP, till the application for extension is decided by the AA.



Voluntary Liquidation Process (Amendment) Regulations, 2024



Snapshot of amendments in VL Regulations (effective from 31st Jan, 2024)

Amended provisions

Reg. 3(1): Disclosure w.r.t. pending proceedings

- Disclosure about pending proceedings before statutory authorities, and pending litigations, in respect of CD to be given with Director's affidavit along with an affirmation in the affidavit that-
 - the CD has made sufficient provision to meet the obligations arising on account of pending matters

Reg. 8(1)(b) & 37 “annual status report” to “status report”

- From the list of documents which the liquidator has to prepare, in the "annual status report", the word "annual" has been omitted.
- If applies, status report to also contain reasons for not completing the VL process within timeline prescribed

Reg. 37(2): Timeline for holding the meeting of contributories

- If the VL process is not concluded within the time limit of 90/270 days, as the case may be, meeting of contributories to be called within 15 days from the conclusion of every 90/270 days
- Status report to be filed with the Board within 7 days from the date of meeting of contributories

Reg. 39(7), (7A), (7B), (7C), (7D) & (7E): Corporate Voluntary Liquidation A/c

- Process relating to claim from “Corporate Voluntary Liquidation Account” by the stakeholders prior to dissolution of the CD and after dissolution of the CD has been prescribed



Amendments in other IBBI Regulations



Amendments in other IBBI Regulations (effective from 31st Jan, 2024) (1/2)

IBBI (Insolvency Professionals) Regulations

IP resignation	<ul style="list-style-type: none">• An IP may resign as an IRP/RP/liquidator as the case may be subject to the recommendation of:<ul style="list-style-type: none">• CoC in case of CIRP• Consultation committee in liquidation process• debtor or creditor in the insolvency resolution process of personal guarantor to the CD• And approval of NCLT
Relaxation in the Code of Conduct for IP	<ul style="list-style-type: none">• Relaxation in case of IPEs w.r.t. from appointment of partners or directors of IPE, as the case may be, for any work relating to any of its assignments handled• Excluding work related to valuation and audit of the CD

IBBI (Model Bye-Laws and Governing Board of IPAs) Regulations

Validity of authorisation for assignment (AFA)	<ul style="list-style-type: none">• AFA shall be valid for 1 year from the date of issuance/ renewal, as the case may be. Provided that- AFA issued or renewed shall be valid till 30.06 of the year where the expiry falls from 01.01 to 30.06, or till 31.12 of the year where the expiry of the period of 1 year falls from 01.07 to 31.12.• If the professional member attains the age of 70 years during this period, AFA shall be valid till such date.
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Amendments in other IBBI Regulations (effective from 31st Jan, 2024) (2/2)

IBBI (Bankruptcy Process for Personal Guarantors to CD) Regulations

Eligibility to act as a bankruptcy trustee	<ul style="list-style-type: none">The disqualification of an IP/IPE, acting as IRP or liquidator of the CD, has now been removed
Appointment of the professionals by the bankruptcy trustee	<ul style="list-style-type: none">An IP who has acted or is acting as an IRP/ RP/liquidator in respect of the CD can be appointed as professional for providing assistance in discharge of duties by bankruptcy trustee

IBBI (Insolvency Resolution Process for PGs to CD) Regulations

Eligibility of RP in insolvency process of PG of CD	<ul style="list-style-type: none">IRP/RP/liquidator of the CD is now permitted to be appointed as RP in the insolvency resolution process for personal guarantors to CDs
Placing replacement plan before creditors	<ul style="list-style-type: none">The RP shall place the repayment plan (as u/s 105) in a meeting of the creditors for its consideration.If no repayment plan has been received within period stipulated u/s 106, the RP shall notify the same in a meeting of creditors



Misc: IBBI Circulars dated 1st Feb and 13th Feb, 2024



IBBI Circulars dated 1st Feb, 2024

1. Measures for rationalisation of the regulatory framework for IPEs

- In case the assignment is undertaken by the IP, which is an IPE, the SCN shall be issued to
 - partner or director, as the case may be, who is an IP and was authorised to sign and act on behalf of it for the respective assignment; and/or
 - IPE if in the opinion of the Board, there are either
 - repeated instances of contravention against one or more partners or directors of the IPE or
 - instance of systemic failure on the part of such IPE.
- Restriction on the number of assignments that can be undertaken by an IP does not apply to IPEs
- Reg. 34B of CIRP reg. which stipulates the minimum fixed fee structure and a performance-linked incentive fee for the IPs does not apply to IP which is an IPE.

2. Measures for facilitating efficient conduct of the processes by IPs

- In order to facilitate smooth implementation of the resolution plan, IP may render professional service in relation to implementation of resolution plan approved by the AA, provided details of such service are mentioned in the resolution plan approved by the AA
- Bill or invoice for services availed by IP from professionals may be raised in the name of the IPE or the professional or the firm in which such professional is a partner

IBBI Circulars dated 13th Feb, 2024

1. Compliances for initiation of VL of a Financial Service Provider

- liquidator of the corporate person falling under FSP category shall declare that:
 - (i) the category of FSP has been notified by the CG u/s 227, and
 - (ii) the corporate person has obtained prior permission from the appropriate regulator
- Liquidator shall submit a copy of Form H and the final report filed before AA and the order for dissolution to the Board to the email ID: liqvol@ibbi.gov.in

2. Format for making application for release of funds from the “Corporate Voluntary Liquidation Account”

- For release of the amount for onward distribution to the stakeholders from the Corporate Voluntary Liquidation Account, liquidator shall apply to the Board in the format prescribed

Request by liquidator for withdrawal from Corporate Voluntary Liquidation Account for onward distribution to the stakeholders under regulation 39 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Details of withdrawal request -

Sl. No. (1)	Description (2)	Particulars (3)
1	Name of the Corporate Person	
2	Identification Number of Corporate Person (CIN/LLPIN)	
3	Voluntary Liquidation Commencement Date	
4	Date of Deposit into the Corporate Voluntary Liquidation Account	
5	Acknowledgement number issued by the Board	
6	Amount (Rs.) deposited into Corporate Voluntary Liquidation Account	
7	Amount (Rs.) being requested for withdrawal	
8	Name of the stakeholder to whom the amount proposed to be distributed	
9	S.No. at which name of stakeholders appeared in the list submitted to the Board	
10	Reason for earlier non-distribution of such an amount	
11	Justification for the present request	
12	Details of the account where the amount is to be refunded	
	a. Name of the Bank	
	b. Account number	
	c. Bank Name and address	
	d. MICR	
	e. IFSC Code (Supported by copy of cancelled cheque)	

I (Name of Liquidator) hereby certify that the details provided in this Form are true and correct to the best of my knowledge and belief, and nothing material has been concealed.

(Signature)

Name of the Liquidator

IP Registration No:

Address as registered with the Board:

Email ID as registered with the Board:

Date:

Place:

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