

FREQUENTLY ASKED QUESTIONS ON REGULATIONS ON INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended up to 18 September 2023) (**CIRP Regulations**) were formulated to carry out the provisions of the Insolvency and Bankruptcy Code, 2016 (**Code**). These regulations are applicable to the corporate insolvency resolution process (**CIRP**). These FAQs deal with the overview of the CIRP Regulations and the related procedure involved.

Please click [here](#) if you want to know more about the Code.

1. What is CIRP?

CIRP is the process of resolution of a corporate debtor prescribed in the Code and corresponding regulations such as CIRP Regulations.

2. What are the powers of the interim resolution professional (IRP) under the CIRP Regulations?

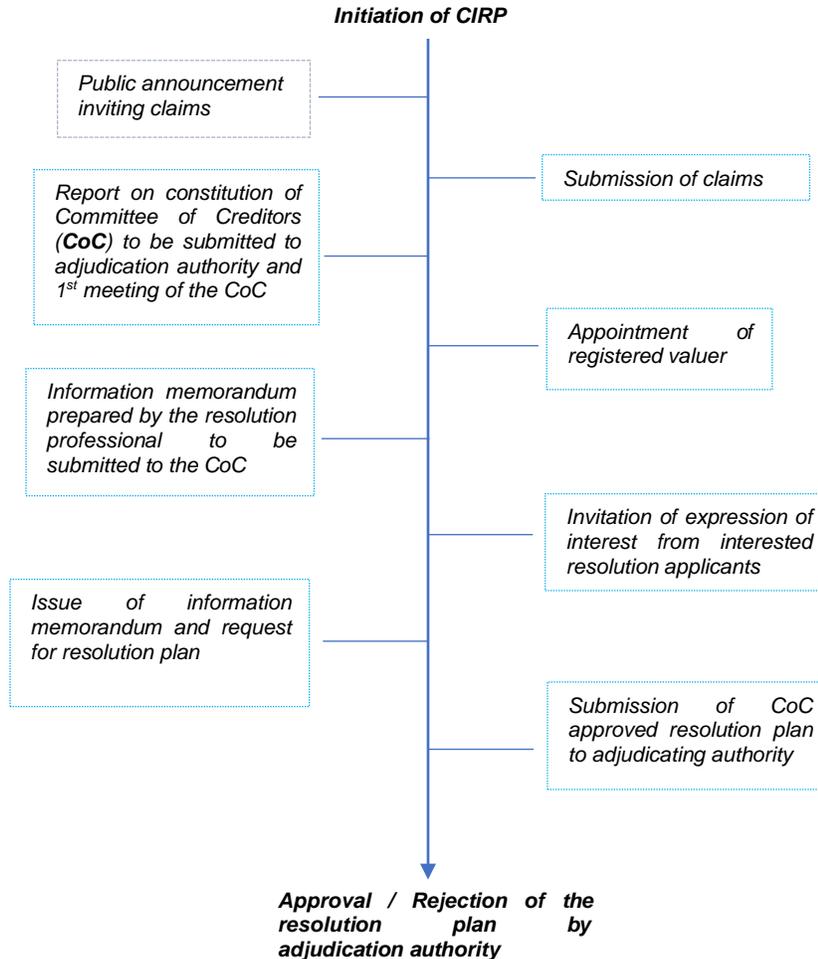
In addition to the powers of the board of directors, management of the corporate debtor, control over the assets owned by the corporate debtor etc. provided under the Code, the IRP has access to the books of account, records and other relevant documents and information of the corporate debtor held with depositories of securities, professional advisors, members, promoters, partners, board of directors, joint venture partners and contractual counter parties. On an examination of books of account and other relevant records of the corporate debtor, the IRP shall ascertain class of creditors, if any. Regarding the claims submitted, the IRP may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

3. What are the duties of the IRP?

The IRP is required to make a public announcement within three days from the date of her appointment. The applicant shall bear the expenses of the public announcement which may be reimbursed by the CoC to the extent it ratifies them. The IRP shall verify every claim within seven days from the last date of the receipt of the claims and also maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted

and the security interest, if any, in respect of such claims, and also update the list. The IRP must also submit an information memorandum and invite expression of interest for resolution plans.

4. What is the overview of the steps involved in CIRP?



5. Can a claim be submitted by a creditor after the expiry of the stipulated time in the public announcement?

Yes, a creditor may submit its claim with supporting evidence to the IRP or the RP up to the date of issue of request for resolution plans or 90 days from the insolvency commencement date, whichever is later. However, the creditor will be required to provide the reasons for the delay in case the claim is submitted beyond 90 days of commencement of insolvency process.

6. Who constitutes the CoC if the corporate debtor does not include a financial creditor?

The CoC will be formed consisting of the eighteen largest operational creditors by value and if the number of operational creditors is less than eighteen, then all the operational creditors shall form the CoC. The members of such CoC will have voting rights in proportion of the debt due to such creditor.

7. Who is an authorized representative during CIRP?

The IRP identifies different classes of creditors and must identify three insolvency professionals for representation of the creditors in a class. Thereafter, the creditors may choose one insolvency professional to act as the authorized representative of the creditors in the respective class and apply to the adjudicating authority for her appointment.

8. What are the rights and duties of an authorised representative?

The authorised representative can participate and vote in meetings of the CoC on behalf of the financial creditor she represents in accordance with instructions from such creditors. The authorised representative also circulates the agenda and minutes of the meeting of the CoC to the financial creditor and will not act against their interest.

9. What is the fee payable to the authorised representative appointed for a class of creditors?

The fee payable to the authorised representative for a class of creditors is as per the following:

| No. of creditors in the class | Fee per meeting of the CoC (INR) |
|--------------------------------------|---|
| 10-100 | 30,000 |
| 101-1000 | 40,000 |
| More than 1000 | 60,000 |



10. Can the authorized representative be replaced by the financial creditors?

Yes, the financial creditors (in a class representing at least 10% voting share) can seek replacement of the authorized representative with an insolvency professional of their choice by making a request to the RP or IRP, as applicable.

11. How often does CoC meet?

A resolution professional may convene a meeting of the CoC as and when considered necessary and shall convene a meeting if a request to that effect is made by members of the CoC representing thirty-three per cent of the voting rights. A meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. The CoC may reduce the notice period from five days to such other period of not less than twenty-four hours and not less than forth-eight hours in case the notice is to be sent to representative of a class of creditors.

12. Is there a quorum requirement for a meeting of the CoC?

A meeting of the CoC shall be quorate if members of the CoC representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means. The CoC may modify the percentage of voting rights required for quorum in respect of any future meetings of the CoC.

13. Who presides over the meeting of the CoC?

The resolution professional will act as the chairperson of the meeting of the CoC.

14. Who appoints the valuers to determine the valuation of the corporate debtor?

The resolution professional must appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor. However (a) a relative of the resolution professional; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director, are ineligible to be appointed as the valuer.



15. What is the next step if the value of the estimates of the two appointed valuers are significantly different?

In the opinion of the resolution professional, if the two estimates of a value are significantly different, she may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

16. Can the Corporate Debtor be audited? If yes, who bears the cost of such audit?

Yes, any CoC member can propose an audit of the Corporate Debtor. The proposal should include details such as scope, objectives, timelines, and estimated costs. The CoC must approve the proposal for the audit to proceed. The audit expenses will be considered to be a part of the insolvency resolution process costs.

17. Can the creditor assign or transfer the debt during the CIRP?

Yes, the creditor can assign or transfer its debt during the CIRP. The terms of such transfer or assignment must be provided to the IRP.

18. Can a creditor withdraw the application made for the initiation of CIRP post the constitution of CoC?

An application for withdrawal of application may be made to the adjudication authority. However, a bank guarantee towards estimated expenses incurred on or by the interim resolution professional is to be provided.

In case the invitation of expression of interest for interested applicants has been issued, the creditor must state the reasons justifying withdrawal after issue of such invitation. A bank guarantee towards estimated expenses incurred for purposes of payment of fee and out of pocket expenses incurred by authorised representatives, expenses incurred on or by the interim resolution professional is to be incurred by the applicant.



19. What are the essential supplies that cannot be terminated or suspended or interrupted during moratorium period?

Electricity, water, telecommunication services, information technology services and other supplies that the resolution professional deems critical to protect and preserve the value of the corporate debtor and manage its operations as a going concern are not to be terminated, suspended or interrupted during moratorium period.

20. Who pays the costs of the interim resolution professional?

Expenses to be incurred by IRP shall be fixed by applicant and same is reimbursed by CoC to the extent ratified by them. If the applicant fails to fix the expenses, the adjudicating authority will fix the expenses.

21. What does the insolvency resolution process costs include?

The CIRP costs include amount of any interim finance along with cost of raising such finance, fee and expenses of IRP or resolution professional ratified / approved by the CoC, fee of the authorised representative representing class of creditor, fee of the auditors appointed during the resolution process (if any), cost incurred for running the corporate debtor as going concern, amount due to suppliers of essential goods and services, etc.

22. Who will fix and bear the expenses / cost incurred by the resolution professional?

The CoC will fix the expenses to be incurred on or by the resolution professional and such expenses shall form part of insolvency resolution process costs.

23. Who bears the expenses of public announcement?

The applicant initiating CIRP bears the expenses of the public announcement which may be reimbursed to the extent ratified by the CoC.

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