

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi-110001

CIRCULAR

No.: IBBI/CIRP/38/2021

6th January, 2021

To

All Registered Insolvency Professionals

All Recognised Insolvency Professional Entities

All Registered Insolvency Professional Agencies

(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Retention of records relating to Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 (Code) read with various Regulations require an insolvency professional (IP) to maintain several records in relation to the assignments conducted by him under the Code. Keeping in view the importance of such records, clause (g) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) provides that the registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Clause 19 of the Code of Conduct appended to the First Schedule to the IP (Regulations) mandates an IP must provide all records as may be required by the Board or the insolvency professional agency (IPA) with which he is enrolled.

2. Clause (a) of sub-regulation (4) of regulation 3 of the IBBI (Inspection and Investigation) Regulations, 2017 (Inspection Regulations) provides that the Board may conduct inspection, inter alia, to ensure that the records are being maintained by an IP in the manner required under the relevant regulations. Sub-regulation (2) of regulation 4 and sub-regulation (2) of regulation 8 of the Inspection Regulations empower the Inspecting Authority / Investigating Authority to direct the IP to submit records, as may be required, and it is his duty to produce such records in his custody or control before such Authority.

3. Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandates the interim resolution professional (IRP) and the resolution professional (RP) to preserve a physical as well as an electronic copy of the records relating to the corporate insolvency resolution process (CIRP) of the corporate debtor (CD), as per the record retention schedule as communicated by the Board in consultation with IPAs.

4. Keeping in view the above provisions and in consultation with the IPAs, the Board directs retention of records under regulation 39A of the CIRP Regulations as under:

(i) An IP shall preserve -

(a) an electronic copy of all records (physical and electronic) for a minimum period of eight years, and

(b) a physical copy of physical records for minimum period of three years,

from the date of completion of the CIRP or the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later.

(ii) An IP shall preserve records relating to that period of a CIRP when he acted as IRP or RP, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion. For example, an IP served for three months as RP before he was replaced by another IP, who served till conclusion of the CIRP. The former shall preserve records relating to the first three months, and the latter shall preserve records relating to the balance period of the CIRP.

(iii) An IP shall preserve copies of records relating to or forming the basis of:

- a. his appointment as IRP or RP, including the terms of appointment;
- b. handing over / taking over by him;
- c. admission of CD into CIRP;
- d. public announcement;
- e. the constitution of CoC and CoC meetings;
- f. claims, verification of claims, and list of creditors;
- g. engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;
- h. information memorandum;
- i. all filings with the AA, Appellate Authority and their orders;
- j. invitation, consideration and approval of resolution plan;
- k. statutory filings with IBBI and IPA;
- l. correspondence during the CIRP;
- m. insolvency resolution process cost;
- n. applications for avoidance transactions or fraudulent trading; and
- o. any other records, which is required to give a complete account of the CIRP.

(iv) An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. For example, he may store copies of records in electronic form with an Information Utility. Notwithstanding the place and manner of storage, the IP shall be obliged to produce records as may be required under the Code and the Regulations.

5. This Circular supersedes the earlier Circular No. IBBI/CIRP/37/2021 dated 04th January, 2021 which carried minor inadvertent mistakes.

6. This is issued in exercise of the powers under clauses (aa) and (g) of sub-section (1) of section 196 of the Code read with regulation 39A of the CIRP Regulations.

Yours faithfully,
Sd/-
(Dr. Kokila Jayaram)
Deputy General Manager
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