

# Info Capsule

## **MCA ISSUED NOTICE FOR THE PURPOSE OF SURRENDER OF DIRECTOR IDENTIFICATION NUMBER<sup>1</sup>**

MCA has deployed an e-form for DIR-5 as an application for surrender of Director Identification Number which will be made available for filing purposes w.e.f June 21, 2017.

Stakeholders who wish to surrender DINs shall be required to file this e-form instead of it being filed as an attachment to form RD-1.

Presently, Form DIR-5 is filed an attachment to existing Form RD-1 as provided under the Rule 11 of Companies (Appointment and Qualification of Directors) Rules, 2014 which deals with Cancellation, Surrender or Deactivation of DIN.

## **IBBI ISSUED CLARIFICATION ON "NO PERSON TO FUNCTION AS AN INSOLVENCY PROFESSIONAL WITHOUT CERTIFICATE OF REGISTRATION"<sup>2</sup>**

IBBI released a clarification dated June 15, 2017 to the position under the Insolvency and Bankruptcy Code, 2016 as to who can render services as INSOLVENCY PROFESSIONALS.

As stated under the provisions of Section 3 (19) of the Insolvency and Bankruptcy Code, 2016 (Code):-

'Insolvency Professional' means a person enrolled under section 206 with an insolvency professional agency (IPA) as its member and registered with the Insolvency and Bankruptcy Board of India (IBBI) as an insolvency professional (IP) under section 207.

Further, Section 206 of the Code prohibits a person from rendering services as IP under the Code unless he is:

- (a) Enrolled as a member of an IPA, and
- (b) Is registered with the IBBI.

Furthermore, Section 207 requires a person first to obtain membership of an IPA and then register himself with the IBBI. It empowers the IBBI to specify the categories of professionals or persons possessing such qualifications to be eligible for registration as IPs.

In exercise of the powers under sections 196, 207 and 208 read with section 240 of the Code, the IBBI has made the IBBI (Insolvency Professionals) Regulations, 2016 (Regulations).

The IBBI (Insolvency Professionals) Regulations, 2016, inter alia, provide for registration, regulation and oversight of IPs.

<sup>1</sup> Available at: <http://www.mca.gov.in/MinistryV2/homepage.html>

<sup>2</sup> Available at: <http://ibbi.gov.in/webadmin/pdf/press/2017/Jun/IBBI.pdf>

Under the Regulations, only three sets of persons are eligible for registration as IPs:

- (a) Chartered accountants, Company Secretaries, Cost Accountants, and Advocates, who have been in practice for 15 years, were eligible to seek registration for limited period as IPs till 31st December, 2016;
- (b) Chartered Accountants, Company Secretaries, Cost Accountants and Advocates with 10 years' of post-membership experience (practice or employment) and graduates with 15 years' of post-qualification managerial experience are eligible for registration as IPs on passing the Limited Insolvency Examination; and
- (c) Any other person is eligible for registration as IP on passing the National Insolvency Examination.

The Regulations provide for the code of conduct for IPs whereby IPs are required to inter alia adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation and avoid conflict of interests.

Thus, the Code read with the Regulations allow only a person having the required qualification and experience to be enrolled as a member of an IPA and thereafter registered as an IP with the IBBI. Only such a person can act as IP and render services as an IP under the Code. No person other than persons registered as IPs with the IBBI can act as IP. Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI. They cannot act as IPs under the Code.

***Team ICSI***

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