

India

Appointments

There is no classification of an IP in India. All advocates are eligible to represent parties in liquidation proceedings under the Companies Act 1956. However, they cannot be appointed as liquidators. Restructuring proceedings are held under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Advocates, chartered accountants and other experts can represent parties in these proceedings.

There is an Official Liquidator (OL) attached to every Company Court in High Court. The Company Court is vested with liquidation jurisdiction under the Companies Act 1956. The OL is an employee of Department of Company Affairs, Company Affairs, Government of India. The OL acts under the supervision of the Company Court. However, under the Companies (Second Amendment) Act 2002 (which has yet to come into force), professional firms of accountants, advocates, company secretaries, cost and work accountants or firms having a combination of these firms, or corporate entities consisting of such professionals or officers appointed by Central Government can be appointed as liquidators.

In restructuring proceedings under SICA, there is no concept of administrator. An Operating Agency (a bank or financial institution) may be appointed to assist the Board for Industrial and Financial Reconstruction to prepare the scheme for revival.

Qualifications

All advocates are eligible to practise insolvency except getting appointed as liquidators. There is no separate classification.

The Companies Act 1956 permits advocates to represent parties in court proceedings but restricts the appointment of liquidator to Official Liquidator.

Selection

All insolvency proceedings are managed by the Official Receiver who is an officer of the court. The Official Receiver is an employee of the Department of Company Affairs. Creditors or other related parties do not have a choice in the appointment.

Supervision

The Official Liquidator (OL) is supervised by the Company Court, which is presided by a High Court Judge. Creditors however have the right to request the supervisor to examine particular aspects of a case.

Remuneration

The Official Liquidator (OL) is a permanent employee and is paid a salary by the Central Government.

Regulation

IPs are regulated by The Ministry of Company Affairs along with the Company Court. Unfortunately, the current state of affairs is very ineffective.