

INDIA EXPERT

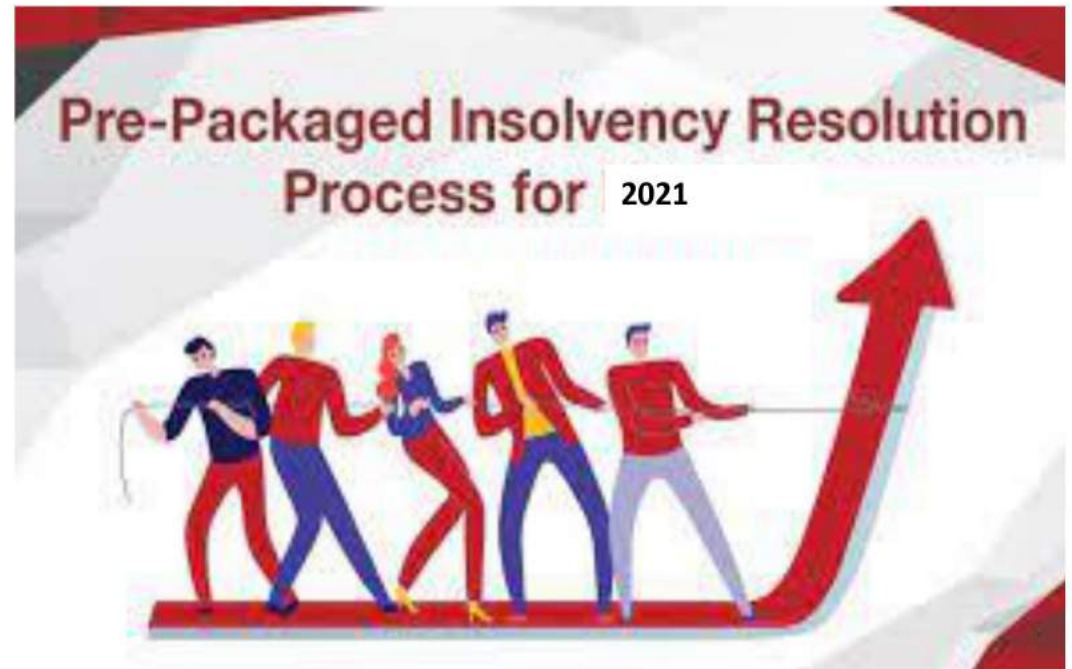
# INDIA EXPERT



**Pre-Pack Insolvency**

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# Pre-packaged Insolvency Resolution Process (PPIRP)

12<sup>th</sup> May, 2021

***Disclaimer:** This presentation is designed for the sole purpose of creating awareness on the subject and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise.*

# Design and Implementation

- Blend of formal and informal resolution processes
  - Informal up to a point, formal thereafter
  - Debtor-in-possession (run the business), but Creditor-in-control (decide commercial matters)
  - Preference for existing promoters, but Swiss Challenge
- Commencement with consent of 66% of unrelated financial creditors and special majority of shareholders
- Liquidation remote: Possibility of closure without any consequence
- Process to be completed in 90 days
- Adequate checks and balances to prevent any abuse
- Implementation in phases – Currently only for MSMEs
- MSMEs with minimum default of INR 10 lakh are eligible for initiating PPIRP

## Within Basic Structure of the Code

- Creditor-in-control
- Limited Moratorium during resolution
- Binding nature of an approved resolution plan
- Avoidance transactions and liabilities for offences
- Ineligibility of resolution applicants under section 29A

## Extant CIRP Framework Vs PPIRP

Parameter	CIRP	PRIRP
<b>Objective</b>	Resolution through a resolution plan	Resolution through a resolution plan
<b>Applicability</b>	Companies and LLPs	Companies and LLPs
<b>Initiation of process</b>	Default above Rs.1 crore, excluding COVID-19 Default	MSME, Minimum default of Rs.10 lakh
<b>Initiation by</b>	FC, OC, or CD	CD, with consent of 66% of unrelated FCs
<b>Management of the CD</b>	IP-in-possession with creditor-in-control	Debtor-in-possession with creditor-in-control
<b>Role of IP</b>	IRP proposed by the applicant and then RP by the CoC; Managing affairs of the CD and conducting the process	RP, approved with consent of 66% of unrelated FCs Conducting the process
<b>Claim collation</b>	IRP to invite and collate	CD to provide. RP to confirm.
<b>Information memorandum</b>	Prepared by RP	Draft prepared by CD and finalised by RP
<b>Moratorium</b>	Moratorium under section 14	Limited Moratorium
<b>Interim finance</b>	Yes	Yes
<b>Avoidance transactions</b>	Yes	Yes
<b>Valuation</b>	By two valuers	By two valuers

## Extant CIRP Framework V PPIRP

Parameter	CIRP	PPIRP
<b>IRPC</b>	Includes cost of running operations	Does not include cost of running operations
<b>Invitation for resolution plans</b>	Public process	First right of offer to promoters, Swiss Challenge
<b>Ineligibility for resolution plan</b>	Section 29A to applies	Section 29A to apply
<b>Early closure of process</b>	Under section 12A, on request of the applicant	With approval of 66% of voting share; Suo moto by CoC
<b>Approval of resolution plan by CoC</b>	66% of voting share	66% of voting share
<b>Consequence of termination of process</b>	No termination allowed	Closure without outcome Option to initiate CIRP
<b>Binding outcome</b>	Resolution plan binding	Resolution plan binding
<b>Regulatory benefits</b>	Yes	Yes
<b>Clean Slate, post resolution</b>	Yes	Yes
<b>Role of IP and AA</b>	Relatively more	Relatively less
<b>Timeline</b>	180 days till approval of resolution plan by the AA	90 days for filing of resolution plan with the AA plus 30 days for the AA to approve it
<b>Cooling off</b>	12 months between two CIRPs	Three years between two Pre-packs

# Pre-Initiation

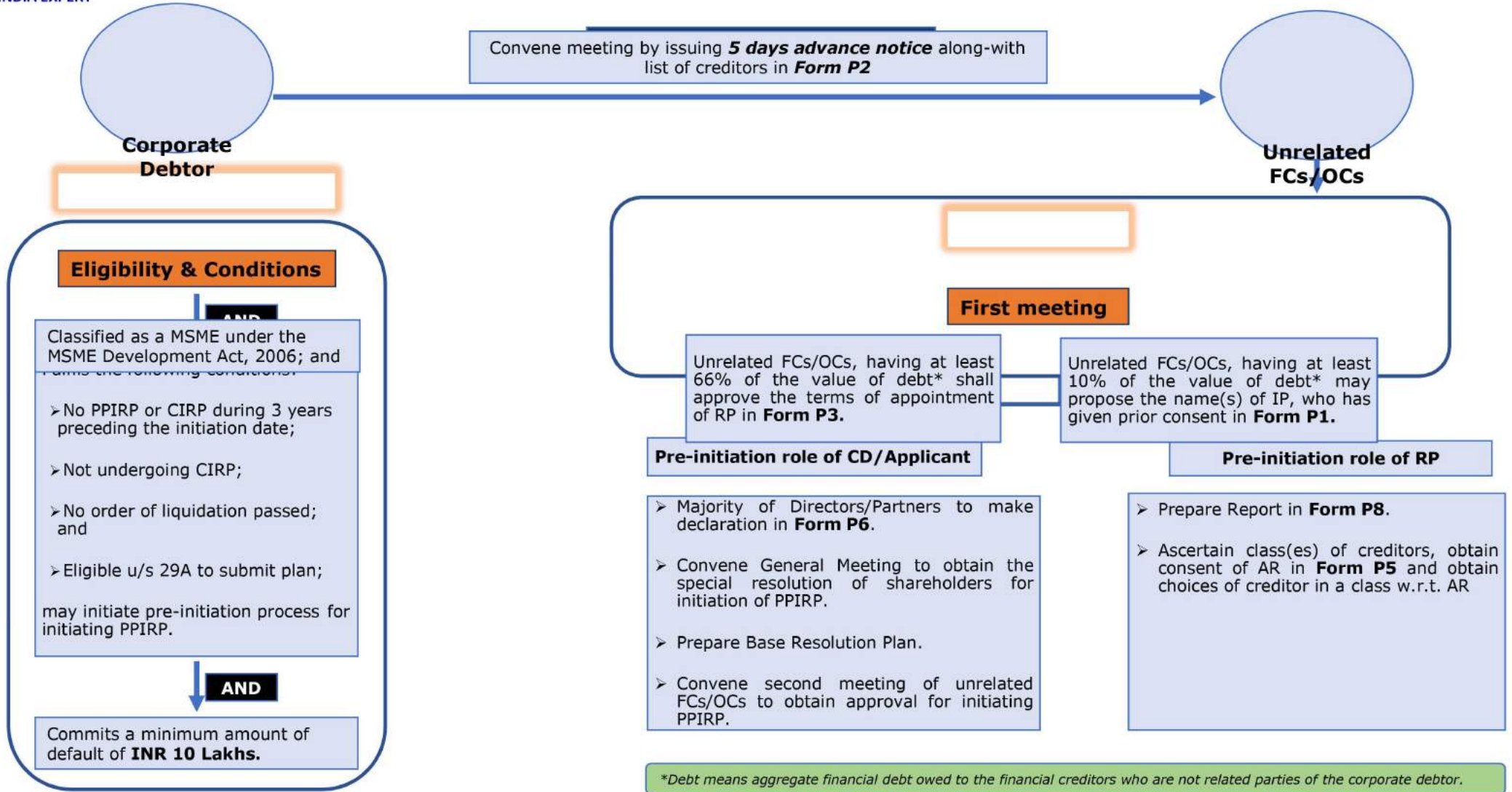
- Pre-initiation process not entirely codified
- IP to ensure pre-initiation due diligence
- Limited time for initiation after creditors' consent
- Admission by way of approval from AA
- Prepack commences on date of admission

## No parallel proceedings of CIRP and PPIRP against a CD

- CIRP ongoing - no PPIRP
- PPIRP ongoing - no CIRP
- Cooling off period – 3 years

## Pre-requisites for initiation

- Existence of debt and default
- Declaration and disclosures by board of directors
- Consent of unrelated FCs having 66% of value of debt for approving the terms of appointment of IP and initiation of PPIRP
- Approval of shareholders with special resolution
- Unrelated FCs having at least 10% of the value of debt may propose the name(s) of RP



\*Debt means aggregate financial debt owed to the financial creditors who are not related parties of the corporate debtor.



# Insolvency Professional

- No IRP
- Appointment of RP with approval of unrelated FCs
- Formal role of RP to begin with admission of pre-pack
- Replacement of RP only by order of the AA
- Conduct
  - To ensure transparency & fairness
  - Safeguard the interest of creditors
  - Ensure compliances with law
- Responsibilities :
  - Attend the Board meetings as observer
  - CoC formation
- Reasonable fees

## Role of Insolvency Professional

### Pre-initiation phase

- Advisory capacity
- Assist in negotiation with FCs
- Advising in preparation of resolution plan
- Oversight
- Consent from requisite number of unrelated FCs
- Report fraudulent or wrongful activity by promoters to the best of her knowledge
- Ascertain class(es) of creditors, obtain consent of AR and choices of creditor in a class w.r.t. AR

### Post-initiation

- Running the process,
- No management of affairs of CD.

**APPLICATION FOR INITIATION**

Application for initiating PPIRP in **Form 1**

**Applicant**

Documents to be accompanied with Application:-

- Declaration by Directors/Partners in **Form P6**
- Members' Resolution or Partners' Resolution
- Unrelated FCs/OCs Approval for initiation in **Form P4**
- Written Consent of proposed RP in **Form P1**
- Report of RP in **Form P8**
- Declaration by CD in **Form P7** regarding avoidance transaction(s)
- Audited financial statements of last two FYs
- Provisional financial statements for current FY made upto the date of declaration under section 54A(2)(f)
- Consent of the AR in **Form P5**, if any
- Latest & Updated Udyam Registration Certificate, or proof of MSME classification

Shall serve the copy of the application to the Board, before filing it with AA

**Adjudicating Authority**

**Admit the application, if it is complete**

- Along with admission, AA shall:
- Declare moratorium, limited to section 14 (1) and (3) of Code.
  - Appoint RP
  - Cause Public Announcement to be made by RP in **Form P9**

**Effects of Admission**

**Reject the application, if it is incomplete**

Before rejecting an application, AA shall provide seven days to the applicant for rectifying the defects in the application

*Benefits of section 14(2) & (2A) not available to CD unless the management of CD is vested with RP under section 54J.*

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# Committee of Creditors

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- CD to provide list of creditors, RP to confirm
- RP to constitute CoC with unrelated FCs
- Voting share in proportion to value of debt
- Authorized Representatives to represent class of creditors
- CoC may terminate the Process or convert to CIRP
- Transactions above a threshold with the approval of CoC

# Activities as part of formal process

## Public Announcement

- Electronic publication of public announcement
- Dissemination through the Information Utility

## Claim collation

- CD to provide information
- Confirmed by RP in consultation with creditors
- Criminal and civil liability, if willful misinformation/ omission of information

## Information Memorandum

- Preliminary IM to be prepared by the CD
- Adequate information similar to that contained in IM
- RP to prepare final IM on the basis of preliminary IM
- Final IM to be submitted before CoC within 14 days of PPIRP commencement date
- Used for inviting resolution plans – prospective resolution applicants will indicate gaps, if any

## Valuation of assets of CD

- RP to appoint two registered valuers
- To estimate fair value and liquidation value

# Design Elements

## Moratorium

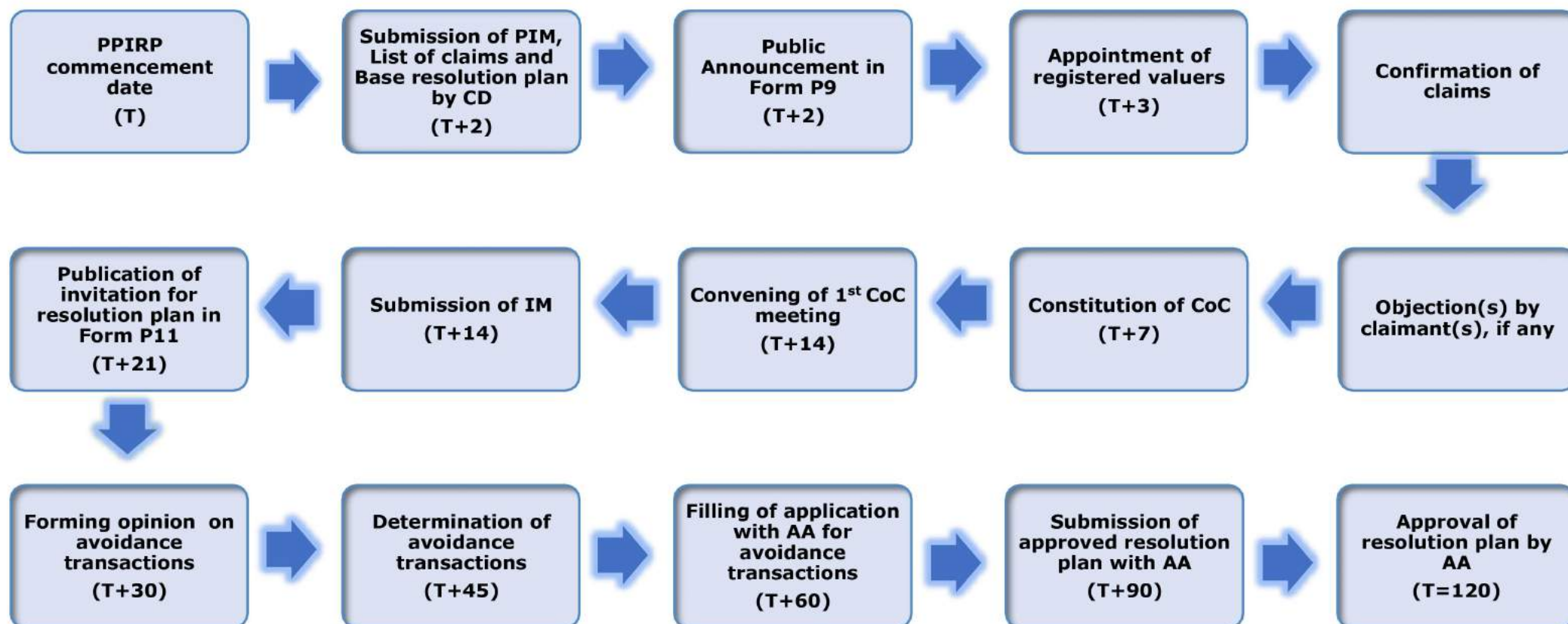
- Only by an order of AA
- Available for 120 days from admission
- Does not cover essential and critical services

## Process Cost

- Does not cover cost incurred on running the business operations to keep the CD as going concern
- Includes
  - interim funding secured during the process,
  - fees of the RP
  - Other process related costs
- Approved by the CoC

## Measures to prevent abuse

- Limited access – updated, audited financial statement, creditors' consent
- Avoidance transaction determination
- CD to declare avoidable transactions upfront
- CoC to close the process or migrate to CIRP
- S. 29A applicability
- Value maximisation by Swiss Challenge
- Protection of OCs & dissenting FCs
- Cooling off period

**POST-INITIATION PROCESS  
(PPIRP TIMELINE)**

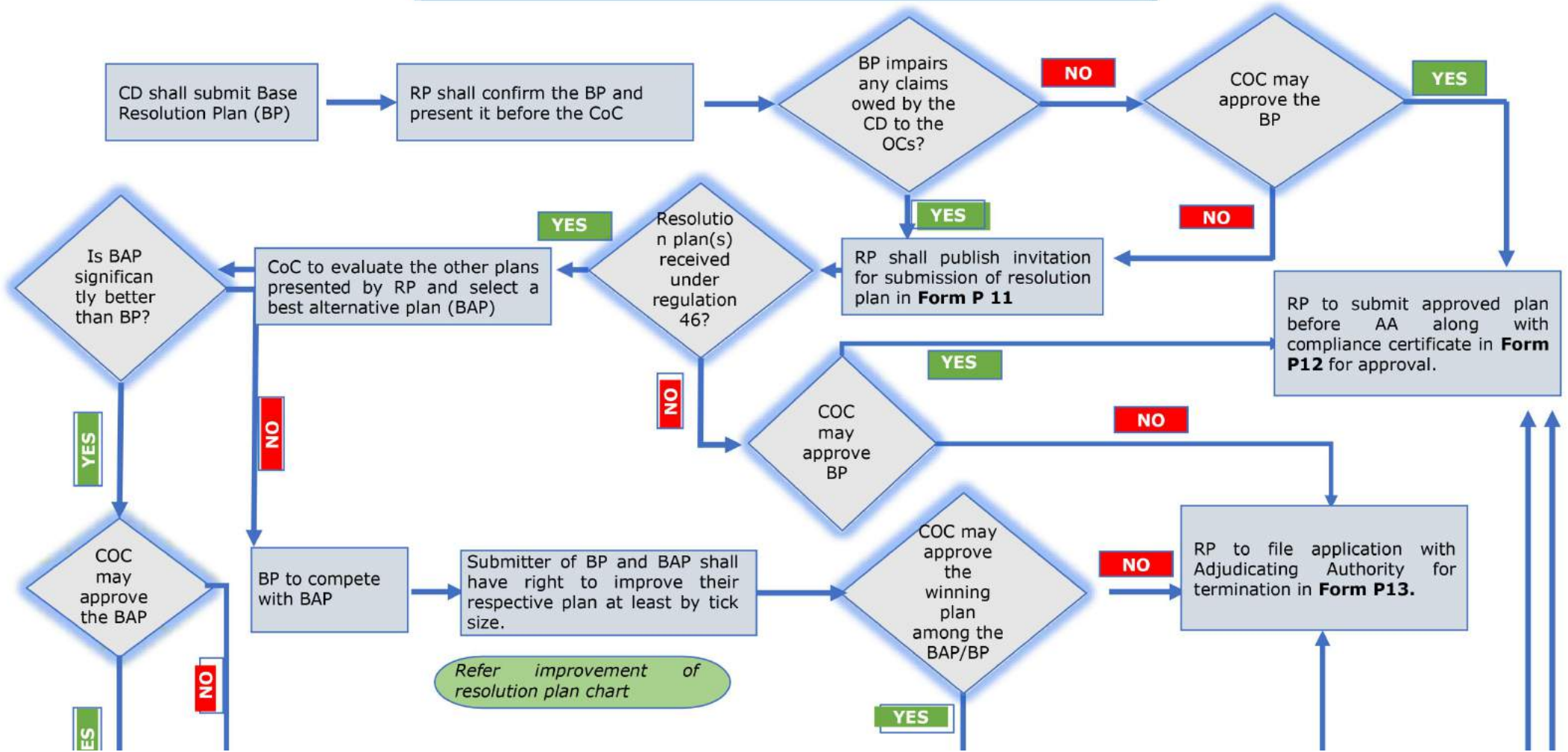
# Resolution Plans

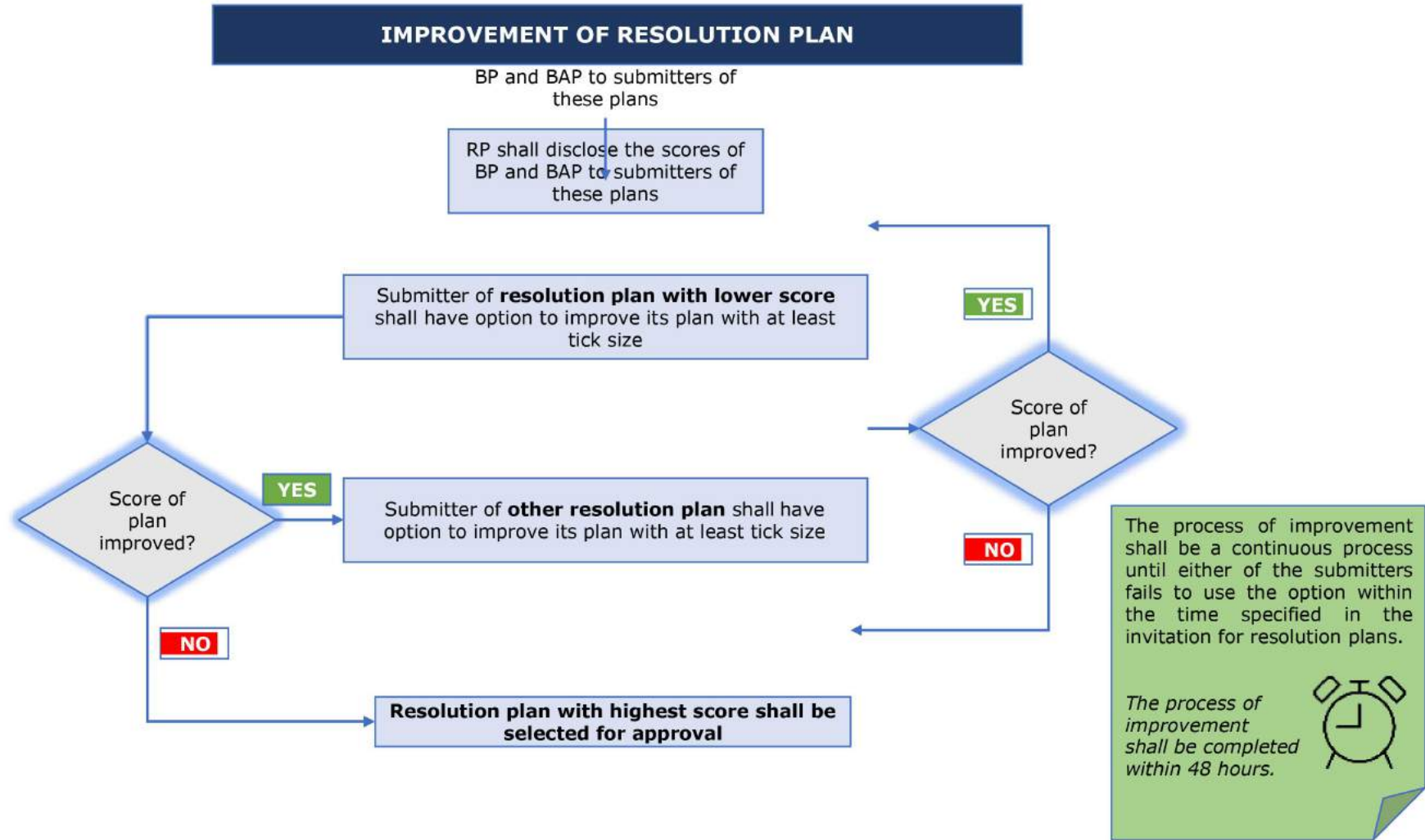
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- Section 29A to apply to resolution applicants as in CIRP
- Base plan proposed by the CD
- Base plan to offer shares in control to creditors, if they desire
- CoC may approve base plan, if it does not impair rights of operational creditors
- If base plan impairs rights of operational creditors or is not satisfactory otherwise, Swiss Challenge is mandatory
- Swiss challenge for value maximisation
  - Promotor and Challenger to outbid the other
- Resolution plan may provide for any permutation or combination of measures
- All regulatory benefits to be available for resolution plan
- Shall be binding on all stakeholders
- Subject to requirement of section 32A



## EVALUATION AND CONSIDERATION OF RESOLUTION PLAN(S)





# Timeline and Closure of PPIRP

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- Resolution Plan to be submitted to AA within 90 days, No extension
- 30 days for AA to approve
- Moratorium for these 120 days
- Process closes
  - If CoC decides to terminate it or to convert it to CIRP
  - If no plan is approved by CoC with 66% of voting power within 90 days
  - On expiry of 90 days: except where application of approval of plan is pending with AA
  - On approval of resolution plan
- Option for CoC to seek control from Debtor

**CLOSURE OF PROCESS**

**TERMINATION OF PPIRP**

- CoC, with 66% voting share, resolves to terminate the PPIRP
- OR**
- BP/BAP, selected after improvement process, was not approved by CoC
- OR**
- No resolution plan approved by CoC within 90 days

**Consequences**

- Termination of PPIRP
- AA to provide for manner in which the proceedings initiated for avoidance of transactions is to be continued
- CD shall bear the PPIRP cost

**TERMINATION OF PPIRP AND INITIATION OF CIRP**

CoC may, by 66% voting share, resolve to initiate CIRP against the CD.

- Order for initiation of CIRP to be deemed as order of admission for an application under section 7
- Insolvency commencement date for CIRP shall be date of order for initiation of CIRP
- AA to appoint RP of PPIRP as IRP, subject to submission of written consent
- PPIRP cost, if any, to be included as part of insolvency resolution process costs
- Proceedings initiated for avoidance of transactions shall continue during CIRP

**TERMINATION OF PPIRP AND LIQUIDATION OF CD**

➤ Where AA has ordered for vesting of management of CD with RP under section 54J and:

- CoC approved a resolution plan which does not result in change in management or control of CD
- OR**
- BP/BAP, selected after improvement process, was not approved by CoC
- OR**
- No Resolution Plan approved by CoC

**Consequences**

- Termination of PPIRP
- Initiation of liquidation
- AA to provide for manner in which the proceedings initiated for avoidance of transactions is to be continued
- PPIRP cost, if any, to be included as part of liquidation costs

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