

# PROFESSIONAL PROGRAMME

## CORPORATE RESTRUCTURING, INSOLVENCY LIQUIDATION & WINDING-UP

Corporate restructuring is a collective term for a variety of different business transactions. Mergers, amalgamations, acquisitions, compromises, arrangement or reconstruction are all different forms of corporate restructuring exercises in the corporate world. Corporate restructuring might result in changes like change in share capital or capital structure, change of shareholders, change of control, change of business, change of operating entities, etc. Corporate restructuring serves different purposes for different companies at different points of time. It may take up various forms. The purpose of each of these restructuring activities is different but each one of them is targeted to rebuild or rearrange the corporate structure.

A company may grow his business either by internal expansion or by external expansion. In the case of internal expansion, a company grows gradually overtime in the normal course of the business, through acquisition of new assets, replacement of the technologically obsolete equipments and the establishment of new lines of products. But in external expansion, a firm acquires a running business and grows overnight through corporate restructuring.

Corporate Restructuring is a non-recurring exercise for an organisation but it has a lasting impact on the business and other concerned agencies due to its numerous considerations and immense advantages viz., improved performance, better corporate governance etc. The regulatory provisions and the multitude of judicial and unresolved issues enunciate that the professionals dealing with restructuring should possess unequivocal and explicit knowledge of the objective approach and perspective of the subject.

Companies use restructuring as a business strategy to ensure their long-term viability. Shareholders or creditors might force a restructuring if they observe the company's current business strategies as insufficient to prevent a loss on their investments. The nature of these threats can vary, but common catalysts for restructuring involve a loss of market share, the reduction of profit margins or decline in the power of their brand. Other motivators of restructuring include the inability to retain talented professionals and major changes to the marketplace that directly impact the corporation's business model.

Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination. The material may, therefore, be regarded as the basic material and must be read along with the original Bare Acts, Rules, Regulations, Case Law, Student Company Secretary e-bulletin and Chartered Secretary published by the Institute as well as recommended readings.

This Study Material is based on the provisions which are notified under Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016. The amendments made up to August, 2021 have been incorporated in this study material. However, it may so happen that some developments might have taken place during the printing of the study material and its supply to the students. The students are therefore, advised to refer to the website of the Institute for updation of the study material.

Although care has been taken in publishing this study material, yet the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.



Should there be any discrepancy, error or omission noted in the study material, the Institute shall be obliged if the same are brought to its notice for issue of corrigendum in the Student Company Secretary e-bulletin. In the event of any doubt, students may write to the Directorate of Professional Development, Perspective Planning and Studies in the Institute for clarification at academics@icsi.edu.

## Relevance of the Subject for the Profession

Corporate restructuring as a business re-organisation tool holds lot of scope and potential as an area of practice. Corporate restructuring is been growing day by day and becoming a useful tool to overcome difficult times for the troubled businesses or the business who aspire to grow at a faster pace using the ample growth opportunities available in the global market. But it being a complex and technical area require lot of know-how of legal, financial, taxation, management and other related areas. These complexities require involvement of professionals to seamlessly conduct the corporate restructuring exercise.

The subject is inherently technical and is subjected to constant refinement through new legislations, rules and regulations made thereunder, court decisions on specific legal issues and corporate business dynamics. In Indian scenario various regulatory approvals and compliances are required to complete a scheme of arrangement, therefore, it becomes necessary for professionals to constantly update with the various legislative changes made as well as judicial pronouncements rendered from time to time by referring to the law/professional journals. This study aims to provide an in-depth understanding of all aspects and intricacies of law and practical issues affecting and arising out of Corporate Restructuring, Valuation as well as Insolvency.

The role of professionals becomes more relevant in the wake of cross-border mergers and takeovers since legal and taxation requirements vary from one nation to another. Corporate restructuring involves decision on various technical and legal aspects such as valuation of organizations involved in restructuring process, swap ratio of shares if any, legal and procedural aspects with regulators such as Registrar of Companies, Tribunal, etc., optimum tax benefits after merger, human and cultural integration, stamp duty cost involved, etc. All these activities requires professionals including business experts, Company Secretaries, Chartered Accountants, HR professionals, etc., who have a role to play in various stages of restructuring process.

Since corporate restructuring activities in India are primarily governed by the Companies Act, 2013, SEBI, FEMA and other allied laws which are expert areas for a Company secretary, it is an emerging area of practice for Company Secretaries to help companies in carrying out restructuring practices. Company Secretaries have in-depth knowledge of provisions of Companies Act, rules and regulations, NCLT rules, valuation and allied areas affecting the compromise and arrangement and other regulatory and compliance requirements as per prevailing law.

It is an area of specialization where the stakeholders expect the Company Secretaries to be experts. The study will enable students/members to acquire competence and professional skills to develop themselves into 'Corporate Managers' / 'Corporate Advisors'.

**Hybrid Subject** - Corporate Restructuring, Insolvency, Liquidation & Winding-Up is a hybrid subject which require expertise and integrated application of several core areas such as Company Law, Securities Laws, Insolvency Law, FEMA, etc. and ancillary areas such as Accounts, Finance, Taxation, Business and Financial Management, etc.

## Broad Orientation

Expert Knowledge - comprehending, integrating and advising to resolve complex issues/problems, and decision making.



## Guidance on how to study the subject

Corporate Restructuring, Insolvency, Liquidation & Winding-Up is a technical subject which require in-depth knowledge of both law and procedures. Students may follow these steps to study the subject:

1. Focus on understanding concepts and principles;
2. Students should develop art of reading, interpreting and understanding the law.
3. Students should read the relevant sections of the bare acts for basic understanding of the underlying law.
4. To study practical problems, judicial pronouncements, case studies, compliance requirements, etc. for understanding practical aspects and intent of law.
5. To study Act, Rules, Regulations, Notifications, Clarifications, Removal of Difficulties Orders, Guidelines, circulars, forms, etc.
6. To study Institutes publications such as Chartered Secretary, Student Company Secretary e-bulletin for recent updates.
7. To visit websites of regulatory bodies for the recent amendments/notifications/orders, etc.