

Comments on the proposed
Insolvency and Bankruptcy Regulator

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3 Questions

1. Is the regulator required?
2. What should be the role of the regulator
3. How should the regulator function?

Profession of Insolvency Resolution and Liquidation

- The *practice* exists but not the *profession*
- Emergence of Insolvency Professionals essential to the proposed bankruptcy reforms
- To begin with, the profession would overlap with legal and accountancy professions, but eventually some professionals may not have overlapping affiliations
- The practices will evolve fairly rapidly in early stages, and some may be codified in the profession.
- How should we see the regulator in this?

Professionals in India

Profession	Act	Regulator	Self-regulator
Accountants	Chartered Accountants Act, 1949	-	ICAI
Actuaries	Actuaries Act, 2006	-	Institute of Actuaries of India
Company Secretaries	Company Secretaries Act, 1980	-	ICSI
Doctors	The Indian Medical Council Act, 1956; Dentists Act, 1948	-	MCI. DCI
Financial Planners	-	Financial regulators (consumer protection regulation)	Financial Planning Standards Board of India
Lawyers	Advocates Act, 1961	-	Bar Councils
Pilots	Aircraft Act, 1934	DGCA	-

Regulator and Professional: Different Perspectives

Regulator	Professional
Top-down: State at the top, directing the professionals to serve the larger good	Centre-periphery: Profession at the centre; serving stakeholders at the periphery
Output-focused (emphasis on certain outputs)	Practice first; output only one consideration
Rules-driven (focus on compliance)	Aspirations, values, practice-driven (especially for the experienced professional)
Quantitative, objective evaluation by outsiders	Qualitative, subjective evaluation by peers
Theoretical knowledge of the profession	Practical knowledge of the profession
Bureaucratisation	Professionalisation

Regulator and SRO

- IBR profession likely to evolve rapidly in the first few years
 - Feedback loop of SRO more frictionless than that of regulators
- Proposal to establish regulator and SROs at the same time
 - Regulator will come to dominate the professional bodies
- *View: provide for SROs in the Code, let them develop, and then, in a decade, take a view on the need for a regulator*

Role of the Regulator

- Registration of SROs (eligibility and process in the Code)
- Monitor the profession, and its performance
- Suspension of SROs (grounds and process in the Code)
- *Do not let it meddle in professional standards and conduct*

Regulatory Process

- The Code should provide detailed requirements for
 - Regulation-making process (consultation, test of proportionality, mandated consideration of professional bodies' views)
 - Review of regulations (periodic, independent, comprehensive reviews)
 - Inspection and investigation process (limits on powers; process of starting investigation)
 - Quasi-judicial process (show cause notices, followed by orders issued by administrative law members)

Summary

- In our setting, we cannot do away with expectations of some standards
- The State always reserves the right to intervene (eg. MCI)
- However, self-regulation should be given a chance before state regulation
- If there is a regulatory agency, initially it should have a very limited role, largely as an observer of the profession
- The regulator should be bound by procedural, transparency and reporting requirements that ensure “rule of law” in its functioning