

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