

Insolvency and Bankruptcy Board: Role of a regulator in insolvency

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The insolvency eco-system

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- 1 Insolvency, properly effected, is about deriving or preserving the best value of the firm.
- 2 It requires multiple parties with different interests in the firm to interact and negotiate.
- 3 This process requires reliance on critical information and technical expertise.
- 4 The IBC creates IUs to resolve the process of bad information and IPs for providing technical expertise and advice.
- 5 A competitive, private market of IUs is envisaged. IUs will be utilities storing authentic financial information about a firm's liabilities and defaults.
- 6 IPs may be professional individuals (or firms) with expertise in in insolvency, bankruptcy, finance, law and accountancy, and management, providing services relating to insolvency, bankruptcy and liquidation.

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 - 3 IPs provide low quality of service, leading to losses.
 - 4 IPs cheat debtors/ creditors, or are negligent in their performance.
- 2 The adjudicatory mechanism cannot function without these services either.
- 3 This requires a regulatory apparatus to protect the consumers of these services.
- 4 IPAs act as the primary regulators for IPs.

Creating a good regulator

- 1 A regulator makes rules, monitors their compliance, and penalises violators.
- 2 Key to this is –
 - 1 the emphasis on a good rule making process; and
 - 2 respect for due process of law while performing its supervisory and adjudicatory role.
- 3 the IFC provides a template for sound administrative practices in these aspects.

Role, powers and functions of IBBI

- 1 Regulates IUs, IPs and IPAs (for IPs, there are two levels of regulation: IPAs and IBBI).
- 2 Has powers to create entry barriers, monitor and investigate, and penalise and de-license these service providers.
- 3 Developmental function - create the regulatory system such that consumers of IPs and IUs find the regulator beneficial. This will create demand side incentives for better services.
- 4 Regulatory overreach will inhibit development (higher compliance costs, arbitrariness are costs implicitly passed on to consumers).

Concerns and issues

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...make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code.
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- 3 This has severe repercussions on the accountability of the IBBI to Parliament – excessive delegation.
- 4 Clause 196(1)(u) allows regulator to frame its own regulation making process. The agent will always create the easiest rules it is supposed to abide by.
- 5 The IFC template mandating CBAs in addition to public consultations, and specifying the exact process for rule-making must be considered.

Concerns and issues

- ➊ Greater emphasis on due process requirements for inspection and enforcement. There must be a greater burden on the regulator to create uniformity and regulatory certainty:
 - show cause notices, orders, etc must have standardised formats.
 - if action is contemplated against someone, access to all relevant information must be provided.
 - investigation and adjudication must be separate, and orders well reasoned.

Thank you.