

# Building an institution of Insolvency Practitioners for India

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  - Why a different profession
- 2 Functions of Insolvency Practitioners
  - Identifying role
  - Role of Institution
- 3 Regulating Insolvency Practitioners
  - Going Forward

# Why insolvency practitioners?

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- Bankruptcy is a legal function
- both functions have some common transactions

# Debt renegotiation

- Debt renegotiation is a commercial function
- Really no need for a “regulated profession” for this

# Bankruptcy

- This is the first time a legal *coercion* is taking place
- Debt contracts between debtor and creditors is being recast
- Different creditors (strangers before) are being put in a single relationship

# Why a regulated profession

- Law does not need to recognise most professions: Market creates them
- Objective of Regulation should be established before creating a regulated profession
  - What are the failures we are trying to protect?



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- State coercion should be exercised by officers of the state i.e. regulated persons
  - Police officers, judges, executive are all effectively regulated professions
- Isn't that the role of the bankruptcy judge?
- Yes and No
- There are judicial decisions being taken in a bankruptcy
- *There are also processes and systems being done in bankruptcy (comparable to execution)*

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- Judge depends on the IP to do this professionally
- The more the IP does this professionally the more the judge trusts the IP
- The worse the IP does it the more the judge starts interfering and causing delays

# What does the IP Not Do?

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IP is like an auditor or lawyer: only carrying out expert functions which are *duplicable and predictable* to a large extent



# Failures in bankruptcy

- Collusion between debtor and bankruptcy professional
- Collusion between a class of creditors against another class
- Collusion against debtor by creditors
- Poor quality of execution of the processes and systems

# Objective of Regulation

- Prevent collusion
- Provide minimum standards

# Role

- The Role of IP Practitioners outside Bankruptcy
- The Role of IP Practitioners inside Bankruptcy

# Key Common Functions

- Procedural
- Accounting/Finance

# Procedural Functions - before bankruptcy

- Identifying creditors
- Carrying out Due Processes in the bankruptcy procedure
  - Holding meetings of creditors
  - Presenting information to debtor and creditors
  - Checks on title and claims
  - Making statutory forms and certificates
- Record keeping

# Procedural Functions - after bankruptcy

- Holding auctions - free and fair
- Maintaining liquidation records
- Executing sale
- Due process compliance
- Reporting to Court

# Accounting and Finance - before bankruptcy

- Identification of assets and liabilities
  - Especially important for individual bankruptcy
  - Making financial records as per statutory requirements
  - Valuation of assets and liabilities
  - Financial reporting as per statutory requirements

# Accounting and Finance - after bankruptcy

- Maintaining the distribution waterfall



# Accounting and Finance - after bankruptcy

- Maintaining the distribution waterfall
- Maintaining separate accounts as per statutory requirements
- Managing records of sales (Financial Aspects)
- Financial Certificates of closure as per statutory requirements

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  - **Fairness**: on a legal level and not at personal level
  - **Standardisation**: across the nation
  - **Legal Protections & Delays**: lack of standardisation leads to less delays
- <https://www.insolvencydirect.bis.gov.uk/TechnicalManual/>

## 2 stages of regulators

- The *club* regulator
- The modern *state* regulator

# Club Regulators

## Knee jerk Responses

- Be a *responsive* regulator
- Fight to keep systems closed and inaccessible
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## Results

- Growing frustration with consumers
- Side-lined by the economy – LPO
- Vicious cycle - Defensive and Unethical behaviour
- Devastating response from the Political establishment - MCI takeover

# Responses - Long term

## Long term response

- Pre-empt the crisis
- Re-focus on highest value services
- Align with client interest
- Create a regulatory state (Club - State)

## Results

- Long term survival

# Features of a State

- Clubs are not bad
  - Only good for first level of development
- State
  - *More Preventive*
  - More cruel on defaulters
  - More standardised
  - Has clear separation of functions

Professional organisations are regulators which in turn are mini-states

# Good SRO

- **Legislative Functions:** Making codes of conduct and entry conditions
- **Executive Functions:** Holding exams as entry barrier, **inspections** and investigating complaints
- **Judicial Functions:** Disciplining Members

# What do we do in India

- **Legislative Functions:** Sometimes good Sometimes bad
- **Executive Functions:** Extreme attention on entry barrier at the cost of investigation
- **Judicial Functions:** Never shown to the public: Seen as a failure of the SRO

# How to get a modern SRO - Legislative

- Make detailed codes of conduct
- Make them available to the public
- Make them readable - FAQ's, How To's
- Provide more information about grievance redress

# How to Get a Modern SRO - Executive

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  - Entry barrier
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- Use statistical methods
- Have a graded consequence of failure
  - Death or nothing wont work
  - Slap on the wrist → Minor Pain → Major Pain → Death Penalty

# Going Forward

# Going there

- A law is required
- The law has to be very 'anti-professionals'
- The corporate standards of the governing body has to be the best
- Create a system of improving standards
- Getting transparency



# Transparency

- You can find all pending and decided disciplinary action against a lawyer in New York - on their bar website
- In the City itself - 65 disciplinary actions (12 disbarment)
- Consumers can see it any time
- <http://members.calbar.ca.gov/fal/Member/Detail/277779>
- <http://members.calbar.ca.gov/fal/Member/Detail/127209>

# Thanks