



Indian Institute of
Corporate Affairs
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INSOLVENCY RESEARCH FOUNDATION

**REPORT
OF JOINT STEERING COMMITTEE**

JANUARY 2019

BACKGROUND

1. The Indian Institute of Corporate Affairs (IICA), Ministry of Corporate Affairs, Government of India and SIPI, a national think tank on insolvency, constituted a Joint Steering Committee (JSC) under the chairmanship of the Director General and Chief Executive Officer (DG & CEO) of the IICA to make recommendations in respect of establishment of an insolvency academics forum. The composition of JSC is provided in *Appendix A* and its terms of reference are provided in *Appendix B*. The JSC was established following the deliberations of the roundtable organized by SIPI on 12 November 2018, which was attended by the representatives of the Insolvency and Bankruptcy Board of India, the World Bank Group, INSOL International, INSOL India, eminent academics, insolvency professionals, bankers and others.

2. The member of the JSC were selected by IICA & SIPI keeping in view their wide-ranging experience and included professionals from diverse backgrounds. The JSC met on 11 December 2018. A sub-group comprising of Sumant Batra, Chairperson, SIPI and Managing Partner & Head at Kesar Dass & Associates, Abizer Diwanji, National Leader Financial Services at Ernst Young and Ashwin Bishnoi, Partner at Khaitan & Co. was formed to examine the options for the legal structure for the proposed forum and to recommend the most efficient and cost-efficient structure of the forum, to the JSC.

3. The recommendations of JSC are submitted below.

NEED AND IMPORTANCE OF RESEARCH IN INSOLVENCY

4. Insolvency regime is an important part of a well-governed polity and efficient economy. It enables creation of an environment that is conducive for entrepreneurship and appropriate risk taking, while safeguarding creditors, as well as providing expertise and a service for businesses and consumers facing financial difficulty.

5. It is often difficult to measure the contribution of insolvency system in national prosperity. Direct measures of the impact tend to underestimate its importance as they may fail to account for the 'enabling' role played by the insolvency system. But, it is now well

recognized that an efficient and effective insolvency system is absolutely vital to stability in commercial relationships and financial systems, and fundamental to economic growth, wealth creation and encouraging both enterprise and investment. An effective exit law promotes responsible corporate behaviour by encouraging higher standards of corporate governance, including financial discipline and to avoid consequences of insolvency. It helps preserve employment through an effective system of rehabilitating otherwise sound but financially distressed enterprises, while assuring the maximization and a fair reallocation of the enterprise value to those creditors and other stakeholders. It advances important social objectives of maintaining public confidence in the corporate and financial sectors and investment enable market participants to more accurately price, manage and control default risks and corporate failure, and encourage sound credit practice

6. Particularly for an emerging economy, the existence of an efficient insolvency regime has vital economic ramifications. Investors draw confidence from an insolvency system to take risks and make crucial economic decisions. Absence of a well-functioning insolvency law can impact the availability of cost-effective credit, which is often crucial to the sustainable development of an emerging economy. Insolvency issues have also become more and more decisive in the globalisation of capital and financial markets.

7. India commenced establishment of a robust, modern and sophisticated insolvency framework with the enactment of the Insolvency and Bankruptcy Code, 2016 (Code). Since its implementation, the Code has made rapid strides and remains one of the success stories of recent Indian economic reform and continues to develop as it gains maturity. The Code, with its structure and the accompanying intent to implement, has earned praise from all quarters. It is steadily getting entrenched and becoming the preferred route for corporate distress resolution. While the full impact of the new insolvency regime is not expected to be visible in the short term, some successes have been recorded already. It is widely believed that the Code has had an impact of around INR 3 lakh crore on non-performing assets (NPAs), with more than 1,300 cases undergoing corporate insolvency resolution process. The impact would only get bigger and better.

8. The success of any law depends on its

implementation. The scholars assert that law inherently is “incomplete” and its effectiveness relies heavily on the institutions of implementation. It is increasingly recognized by law and finance scholars that in lawmaking a gap opens up between law on the books and law in action. This gap is a central focus of research for empirical socio-legal scholars of law worldwide.*

9. Academic knowledge, evidence and expertise can help inform, design, improve and test policy – and ultimately make government policy better. Deep research can bring together evidence to support policy makers in achieving real-world outcomes. This includes the development and use of a sound evidence base such as peer-reviewed literatures, or, even better, systematic reviews. Scholars and think tanks are uniquely placed to broker links between different sectors and assist with cross cutting approaches to achieving the sustainable development goals of insolvency industry. The policy makers can build on experience of scholars. In countries with advanced insolvency laws, academics continue to play a very important role in supporting policy development, industry research and finding innovative solutions.

10. It is crucial to continue to study the impact of the insolvency framework created by the Code, look at its future, and investigate its strengths, weaknesses, opportunities and threats on a regular on-going basis. Deep research can identify how the framework will need to adapt to meet future challenges and how the policy and regulatory framework may complement the country's aspirations to climb up and remain among the top of international competition. This will also contribute to robust policy making.

Recommendation

11. The JSC recommends that a forum in the name and style of 'Insolvency Research Foundation' be established as the center of excellence for research in insolvency and related areas. The Foundation should strive to cultivate and invest in a fraternity of insolvency academics in pursuit of research and scholarship in insolvency and related laws.

**Lawmaking and institution building in Asian insolvency reforms: between global norms and national circumstances, Terence C. Halliday, FAIR, OECD (2006).*

ROLE AND OBJECTIVES OF INSOLVENCY RESEARCH FOUNDATION

12. The JSC discussed the various roles that Insolvency Research Foundation (IRF) can perform as a centre of excellence. There was a consensus among members of the JSC that IRF should focus on research. It should not replicate the work already being done by organisations like SIPI, Insolvency Professionals Agencies the World Bank Group, and other bodies and look to work alongside, and in collaboration with other agencies for the overall development of the Code and the infrastructure supporting it. IRF should not be perceived as a medium for lobbying by any particular stakeholder. Research should be central to IRF work and other activities of IRF should aim at advancing this goal. This will help IRF stand apart from other institutions, fill the vacuum in space of research and create recognition and niche space in the insolvency industry. This will also prevent distraction and ensure deployment of resources to serve its central role.

Recommendation

13. The JSC recommends that:

- IRF should be an independent institution to serve public good through deep research and sharing of leaning with the policy makers and the insolvency industry.
- In the initial period, IRF should encourage, support and promote research by external scholars. As IRF develops capacity over time, it can undertake in-house research.
- It should focus on development and use of a sound evidence based research such as, systematic peer-reviewed literature.
- IRF should aim to develop a community in pursuit of education, research and scholarship in the field of insolvency in India.
- It should undertake assessment studies to read the impact of insolvency system on the economy and society. It should play an effective role in identifying how the insolvency framework will need to adapt to meet future needs and challenges; and constantly engage on issues that can complement India's efforts to continue to climb up and remain on the top in the Ease of Doing Business ranking.
- The data gathered and collated by IRF should be

made available to larger community of scholars and researchers to support and advance studies and research in field of insolvency and other related fields.

- IRF should identify challenges and propose innovative solutions for improvement in policy and regulatory framework so that the Indian insolvency regime develops amongst the most effective and efficient insolvency regimes.
- One of the key aims of IRF should be to strengthen the interaction between the Government and academics in public policy making in due course. IRF should serve as a bank of credible resources from which the policy makers can access need-based assistance by way of secondment or through commissioned research.
- IRF should collaborate with NCLT, NCLAT, Government, Reserve Bank of India, IBBI and other stakeholders of insolvency system to add value to their role and functions.
- Another primary mission of IRF should be to encourage, support and assist in the development of research initiatives in the field of insolvency and related areas, build capacity for research amongst members and others engaged in teaching, training and research in insolvency law; facilitate the exchange of information and ideas with policy makers, regulators and market players; and disseminate its work for the benefit of the insolvency industry and society.
- A bi-product of its main activities should lead to emergence of a cadre of scholars who are able to serve as insolvency teachers in law, business and management schools, and other institutions.
- IRF should serve as a robust network of academics, scholars, insolvency experts, jurists, stakeholders and others interested in area of insolvency who meet on regularly basis.
- IRF should undertake knowledge sharing, capacity building and other educational activities to advance its central role.

INTERNATIONAL CHARACTER OF IRF

14. IRF should aspire to be international in its work and approach. Its work should benefit not only the country but also other jurisdictions. India has made rapid progress in two years in implementation of the Code.

Many new institutions have been set up, jurisprudence developed and success stories created. The concept of IRF is very unique and the first of its kind in the world. The success stories can be documented and disseminated by IRF. These stories can be analyzed and case studies produced which can benefit other jurisdictions. IRF should work with scholars in other jurisdictions to undertake research that benefits the global insolvency industry. Initially, the work can be localized for emerging economies where insolvency system has been introduced recently and is in the process of evolution or likely to be reformed in future or in countries where similar insolvency systems and cultures exists.

Recommendation

15. It is recommended that the governance structure of IRF should provide for collaboration with academic institutions in other jurisdictions and developmental and other multilateral bodies like, the World Bank Group, INSOL International, INSOL Europe, International Insolvency Institute and Asian Business Law Institute. An advisory board comprising of eminent experts from other jurisdictions should be established.

STRUCTURE

16. The sub group reviewed the various options for the legal form and structure of IRF, such as its registration as a 'society' under the Societies Registration Act 1860, as a 'trust' under the Indian Trust Act, 1882 or as a 'company' under section 8 of the Indian Companies Act, 2013. The tax implication in each structure was also discussed. A comparative analyses of the three structures is annexed as *Appendix 3*.

17. After reviewing all the options, the sub-group proposed that IRF be set up as a not for profit private company under section 8 of the Indian Companies Act, 2013. IRF would thus be a private company with limited liability, with no profits as its objective.

18. For registration, an application in the prescribed format would be required to be filed to the Central Government to form a company under section 8 of the Indian Companies Act, 2013. It would need a minimum of 2 members and will be incorporated by filling an application to the Registrar of Companies (ROC). An application would also be required to be filed for

obtaining the Director Identification Number (DIN) for the proposed directors of the Company and for obtaining Digital Signature Certificate (DSC) for the Company. It is expected to take about 60 days to complete the entire registration / formation process.

Recommendation

19. It is recommended that IRF be set up as a not for profit private company under section 8 of the Indian Companies Act, 2013. It would be a company with limited liability, with no profits as its objective. IICI and SIPI should be the two shareholders of the company in equal ratio. The DG & CEO of IICA should be ex-officio chairperson of IRF and the President of SIPI should be the ex-officio Secretary-General. Both positions shall be honorary positions. The strength of the board should be a maximum of 8, to be appointed by DG & CEO of IICA and Chairperson of SIPI by mutual agreement.

20. It is further recommended that after registration under the Indian Companies Act, 2013, an application under the Income Tax Act, 1961 be filed with the jurisdictional commissioner of Income tax (CIT) under section 12A of Income Tax Act, 1961 and with Chief Commissioner of Income Tax (Exemption) and Commissioner of Income Tax for exemption under section 80G of Income Tax Act, 1961.

SEAT OF IRF

21. The JSC recommends that IRF should be based in the National Capital Region of New Delhi, with its headquarters located in the IICA. The IICA has world class infrastructure and rapidly expanding resources in its campus, which can be shared with IRF. IRF can also complement the IICA in delivery of its programmes, such as the Graduate Insolvency Programme.

FUNDING

22. For any research institution, funding is the key. A predictable and certain funding is imperative for developing and sustaining a research institution of the kind contemplated in the form of IRF. The Government, IBBI, banks, corporate houses, advisory and law firms are key stakeholders in the insolvency industry and likely to be the main consumers of IRF's work. It is quite

possible therefore, that the main funding may come from these sources. Developmental institutions may too extend some support.

Recommendation

23. IRF should not hesitate to receive grants or project based from funding from any credible source. Effort should be made to ensure that there is no over-reliance on any particular stakeholder or stakeholders for funding, and the terms of funding do not compromise the independence of IRF or influence the outcome of its work. Corporate houses should be encouraged to fund research, generally or in specific areas of interest to them, as a part of their corporate social responsibility initiative and funding.

RESOURCES

24. The IRF should strive to have both, full time and need based resources, to deliver its projects. At a minimum, IRF will need one experienced resource to anchor the IRF activities and projects on dedicated basis. Requirement of other resources, full time and otherwise, can be decided based on the projects undertaken in the initial phase and availability of funding.

PROJECTS

25. The JSC discussed various potential projects that could be started by IRF. It was agreed that IRF should undertake limited but high quality work, with optimum output and utility for the insolvency industry, that will help in establishing the standing and credentials of IRF.

Recommendation

26. It is recommended that to begin with IRF may consider the following projects:

- *Support Graduate Insolvency Programme.* (i) Provide technical support to GIP by producing research papers and holding discussion on them at GIP forums and in class rooms; provide E-library for GIP students; (iii) organize the roundtables, seminars, symposiums as part of GIP course structure; and (iv) complement the work of GIP Chairs.
- *Technical Paper Series.* This bi-annual project will involve inviting papers from scholars on identified

subjects. These will be reviewed by a jury of eminent scholars. The authors of best papers can be awarded and extended other forms of recognition. Such recognitions will motivate and inspire other aspiring scholars to invest in their work.

- *Technical Journal.* Publish a bi-annual journal of high quality research papers, which may include the best papers from the Technical Paper Series. These papers may be taught as part of the GIP at IICA.
- *Bi-annual Roundtable.* The paper shortlisted from Technical Paper Series can be presented by authors at a bi-annual roundtable, combined with the GIP.
- *Case Studies.* Case studies can be commissioned from leading scholars and insolvency professions. These can also be used for the GIP course.

- *Request Based Research.* Specific research projects can be undertaken at the request of the Government, IIBI and other bodies.
- *Undertake Survey of the NCLT.* A study may be conducted with the NCLT on the challenges faced by the NCLT and to identify steps/measures needed to enhance their efficiency.
- *Academic Forum.* Establish a forum of scholars which meet annually, similar to INSOL International and INSOL Europe Academic Forums.

27. JSC would like to thank the participants of the SIPI Roundtable for their invaluable suggestions and contributions, and EY for generously hosting the meeting of JSC.

APPENDIX-A : JOINT STEERING COMMITTEE

Dr. S. Sharma (Chairman)

Director General
Indian Institute of Corporate Affairs
Ministry of Corporate Affairs
Government of India
Haryana

Mr. Sumant Batra (Co-chair)

President
Society of Insolvency Practitioners of India

Dr. Anuradha Guru (Member)

Chief General Manager
Insolvency and Bankruptcy Board of India

Mr. V.G. Kannan (Member)

Chief Executive
Indian Banks' Association

Mr. Abizer Diwanji (Member)

Partner and Head of Restructuring Practice, Ernst & Young

Mr. Shuva Mandal (Member)

General Counsel
TATA Group

Ms. Susan Thomas (Member)

Indira Gandhi Institute of Development Research

Mr. Jason Baxter (Member)

COO, INSOL International
London

Mr. Shahib Anzari Azhar (Member)

The World Bank Group

Ms. Shreya Prakash (Member)

Vidhi Centre for Legal Policy

Mr. Manish Kharbanda (Member)

Executive Director (Legal)
Jindal Steel and Power Limited

Mr. Ashwin Khaitan (Member)

Nominee
INSOL India

Mr. Harish Chander (Member)

Executive Vice President
Edelweiss Asset Reconstruction Company Limited

Mr. Dhananjay Kumar (Member)

INSOL Fellow
Partner, Cyril Amarchand Mangaldas
Mumbai

Dr. Neeti Shikha

Associate Professor and Head- International Cell
Symbiosis Law School Noida.

Ms. Renuka Sane,

Associate Professor
National Institute of Public Finance and Policy

Ms. Swarupma Chaturvedi,

Advocate-on-Record,
Supreme Court of India

Mr. Pulkit Gupta

Chairman, SIPI Task Force on Insolvency Best Practices

APPENDIX-B : TERMS REFERENCE

The Terms of Reference of JSC are:

- The form and structure of the Insolvency Academics Forum (Forum)
- The name of the Forum
- Names for initial appointment to various positions recommended by the JSC
- The mission, vision, goals and objectives of the Forum
- Identify sources of funding
- Identify institutions and bodies for potential partnerships and collaboration and reach out to them for collaboration and support
- Propose a roadmap including projects and main activities in the first 3 years of establishment
- The seat of the Forum
- Any other suggestion relevant to the ToR.

The JSC shall endeavour to submit its recommendations before 31 January, 2019.

APPENDIX-C : LEGAL FORMS OF NGO

	SECTION 8 COMPANY	SOCIETY	PUBLIC TRUST
Form of entity	A company with limited liability formed for "promoting commerce, art, science, religion, charity or any other useful object," with no profits objective	An association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose	The concept of 'trust' flows from the faith of one person in another person. If a person, out of free will, entrusts his property to the care of another person for a specific purpose or period, that other person has to uphold the trust reposed in him
Objective	Non-profit Activities	Literary, Charitable, Scientific and resource oriented	Social Benefits and charitable
Statute/ Legislation	Indian Companies Act, 2013	Societies Registration Act 1860, which is an all- India Act. Many states, however, have variants on the Act	Indian Trust Act, 1882
Registration Documents	Memorandum and articles of association; and regulations	By laws and Rules & Regulation	Trust deed
Stamp Duty	No stamp duty required for MoA and AoA of the company	No stamp duty required for MoA and and rules and regulations.	Trust deed to be executed on non-judicial stamp paper, vary from state to state
Members Required	Minimum 2 for a private company and 7 for a public Ltd company. No upper limit	Minimum: - 7 members for state level society - 8 members required from separate states for formation o national level society. No upper limit	Minimum 2 trustees for a public charitable trust. In general, Indian citizens serve as trustees, although there is no prohibition against non-natural legal persons or foreigners serving in this capacity. No upper limit
Board of Management	Board of directors/ Managing committee	Governing body or council/ managing or executive committee	Trustees

	SECTION 8 COMPANY	SOCIETY	PUBLIC TRUST
Annual Compliance	Filing of annual accounts and return of company with the RoC	Societies must file annually, with the Registrar of Societies, a list of the names, addresses and occupations of their managing committee members	There is no requirement of annual return filing
Online filing facility	Online facility is available. The Compliances, like annual filing, appointment & removal of directors, shifting of registered office, increase in capital, change in object clause & others can be done online at MCA portal. It is very easy, time saving and transparent process.	Online filing facility is not available. Everything has to be submitted in the office of Registrar of Societies in hard copy. Compliances are more complicated & time consuming.	Online filing facility is not available. Compliances are more complicated & time consuming
Time Period involved in registration/ formation	60-75 days	30-45 days	10-15 days
Liability	Limited	Unlimited	Limited
Annual reports and other documents to be submitted apart from ITD	Audited accounts at the end of FY	Annual list of managing body is to be filed every year. Resolution and other documents have to be submitted as per state laws	No annual report, resolution or any documents are required to be submitted after registration of Trust to registering authorities. Only the general body or executive committee have to maintain their own records
Annual reports and other documents to be submitted apart from ITD	Audited accounts at the end of FY to RoC	Annual list of managing body is to be filed every year. Resolution and other documents have to be submitted as per state laws	No annual report, resolution or any documents are required to be submitted after registration of Trust to registering authorities. Only the general body or executive committee have to maintain their own records
From the point of view of Registration with Income Tax u/s. 12A & 80G as NGO	Most preferred	Less preferred	Less preferred
From the point of view of FCRA registration	Most preferred	Less preferred	Less preferred