

## Insolvency and Bankruptcy Board of India

6<sup>th</sup> August, 2025

### Discussion Paper – Measures to enhance integrity of the Corporate Insolvency Resolution Process (CIRP)

The Insolvency and Bankruptcy Code, 2016 (IBC/Code), has evolved as a cornerstone of India's economic and financial ecosystem, enabling timely resolution of distressed assets while safeguarding value. Over the years, judicial pronouncements, stakeholder feedback, and practical experiences in the implementation of the CIRP and liquidation have highlighted the need for continuous refinement of the regulatory framework to ensure greater transparency, accountability, and efficiency.

2. As the insolvency regime matures, it becomes imperative to strengthen institutional safeguards, streamline compliance mechanisms, and adopt technology-driven reforms to uphold the integrity and efficiency of the resolution framework. The Committee of Creditors (CoC) is increasingly expected to play a active role in ensuring compliance with statutory mandates, including the ineligibility criteria under section 29A, beneficial ownership disclosures, and the application of immunity under section 32A.

3. Parliamentary Committees and expert groups have underscored the urgent need for robust digital infrastructure to promote procedural fairness, transparency, and confidentiality in the insolvency process.

4. Against this backdrop, this discussion paper sets out following key regulatory proposals aimed at strengthening institutional safeguards, improving procedural clarity, and harmonising key processes under CIRP and liquidation, in furtherance of the objectives of the Code -

#### Proposal No.

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5. **Public comments:** The Insolvency and Bankruptcy Board of India (IBBI/Board) accordingly solicits comments on the proposals discussed above and the draft regulations proposed above. After considering the comments, the Board proposes to make regulations under clauses (aa) and (t) of sub-section (1) of section 196 of the Code. The process for submission of comments is provided at **Page 7**.

The last date for submission of comments is **27<sup>th</sup> August, 2025**.

## Proposal 1 – Recording of CoC’s deliberation on RA’s eligibility under section 29A

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### Statement of Problem –

Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) provides that the Invitation for Expression of Interest (i.e. Form G) must state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants (sub-regulation 4). It also provides that the Expression of Interest shall be unconditional and be accompanied by an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable. Further, regulations 38 of CIRP Regulations requires the resolution professional to conduct a due diligence to satisfy that the prospective resolution applicant complies with the applicable provisions of section 29A. Section 30 read with regulation 39 also requires a resolution applicant to submit an affidavit along-with the resolution plan stating that he is eligible under section 29A. Further, in the compliance certificate (i.e. Form H), the RP has to confirm that the affidavit provided by resolution applicant is in order. Moreover, the RP has to attach the Due Diligence Certificate u/s 29A of IBC regarding the resolution applicant while submitting a Form H.

2. As observed, while there are various provisions regarding section 29A compliance on the part of the Resolution Professional (**RP**) and the resolution applicant, there is currently no specific provision under CIRP regulations for the CoC to formally record its deliberations on the resolution applicant’s eligibility under section 29A. Although it is implied that the CoC, while exercising its commercial wisdom, will also ensure eligibility, an express duty cast on the CoC to deliberate on this aspect will enhance transparency, accountability, and ultimately, the integrity of the CIRP.

3. Therefore, it is proposed that the CoC formally discusses and records its deliberation on section 29A eligibility of the resolution applicant. Adopting this practice can strengthen the process in several respects. Firstly, it will encourage CoC members to engage more deeply in the due diligence process, including seeking additional information or clarification from the RP or the resolution applicant, where necessary. Secondly, such a framework would reduce potential litigation on eligibility-related issues under section 29A. Moreover, an explicit record of the CoC’s deliberation would enhance transparency. Lastly, deliberation with the CoC would further uphold the legislative intent of the Code by promoting fair and lawful participation in the resolution process, consistent with the spirit of law under section 29A.

4. While the responsibility to ensure compliance of section 29A will be that of the RP and the SRA, this proposal aims to strengthen the diligence process by facilitating a deliberation on the eligibility of the resolution applicant under section 29A, due-diligence report submitted by the resolution professional, the affidavit of the resolution applicant and such other information as provided in the resolution plan, in CoC meetings.

### **Proposed Solution -**

5. Accordingly, it is proposed to further amend the CIRP Regulations to explicitly mandate the CoC to deliberate on the eligibility of the resolution applicant under section 29A of the Code, the due-diligence report of the resolution professional, the affidavit of the resolution applicant and such other information as provided in the resolution plan. The RP will record the details of this deliberation in the minutes of the meeting.

### **Proposed Draft Regulation -**

6. The draft of proposed regulation is as follows –

“In the principal regulations, in regulation 39, after sub-regulation (3B), the following sub-regulation shall be inserted, namely:-

*“(3C) The committee shall, before voting on a resolution plan under sub-regulation (3) above, deliberate on the eligibility of the resolution applicant under section 29A, due-diligence report submitted by the resolution professional, the affidavit of the resolution applicant and such other information as provided in the resolution plan, and the resolution professional shall record the committee’s deliberations in the minutes of the meeting.”*

## Proposal 2 – Enhanced disclosures in Resolution Plans regarding section 32A

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### Statement of Problem -

Section 32A of the Code grants immunity to the corporate debtor (CD) and its property from prosecution for offences committed prior to commencement of the CIRP, provided the approved resolution plan effects a change in management or control in favour of a person who is **not**—

- (a) a promoter, or in the management or control of the CD, or a related party of such a person; **or**
- (b) a person against whom the investigating authority, on material in its possession, has reason to believe that he abetted or conspired in the commission of the offence and has filed the requisite report/complaint.

2. While section 32A is vital, its effective implementation faces challenges, particularly with complex, multilayered ownership structures. When prospective resolution applicants use intricate holding arrangements, the ultimate beneficial owners can be obscured. The absence of adequate disclosure makes it difficult to establish the identity of potential beneficiaries under section 32A and undermines the spirit of the law. The benefit of the clean slate principle under the IBC can only be availed if the conditions laid down in section 32A are stringently fulfilled. The ultimate beneficiaries of the Successful Resolution Applicant must be disclosed in advance to uphold the integrity of the process and prevent any potential abuse.

3. Introducing a disclosure requirement regarding beneficial ownership of the resolution applicant, will enable the RP and CoC to establish the identity of such potential beneficiaries. It will also foster informed and transparent decision making, deter ineligible or conflicted bidders, and ultimately enhance the integrity of the resolution process.

### Proposed Solution -

4. Hence, it is proposed to amend regulation 38 to mandate every Prospective Resolution Applicant (PRA) to file, as part of the plan, the following:

- (a) **a statement of beneficial-ownership**, in a format specified by the Board, covering details of all natural persons who ultimately owns or controls the PRA, together with the shareholding structure and jurisdiction of each intermediate entity; and
- (b) **an affidavit**, in a format specified by the Board, stating that the PRA is eligible / not eligible for the benefit of section 32A.

## **Proposed Draft Regulation -**

5. In regulation 38 of the principal regulations, after sub-regulation (3), the following sub-regulation shall be inserted, namely:-

*“(3A) Every resolution plan shall include:*

*(a) a statement of beneficial-ownership, in a format specified by the Board, covering details of all natural persons who ultimately owns or controls the resolution applicant, together with the shareholding structure and jurisdiction of each intermediate entity; and*

*(b) an affidavit, in a format specified by the Board, that the resolution applicant is eligible / not eligible for the benefit of section 32A.”*

## Proposal 3 - Invitation and submission of Resolution Plan(s) through electronic platform

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### Statement of Problem -

IBBI has mandated the exclusive use of the specified online auction platform for conducting auctions during liquidation processes, effective from April 1, 2025. This directive represents a significant step towards streamlining and digitalizing the liquidation process under the IBC. The platform was initially introduced in pilot mode through a circular in October 2024 and has demonstrated encouraging adoption since its implementation.

2. The success of the platform in digitalizing liquidation processes presents a compelling case for extending similar technological solutions to other aspects of insolvency proceedings.

3. The 10<sup>th</sup> Report of the Standing Committee on Finance on 'Demands for Grants (2025-2026)' of the Ministry of Corporate Affairs (MCA)' has recommended that the MCA implement a direct submission system for resolution plans through a central online portal. The committee emphasized that such a system would ensure sensitive information remains confidential, thereby preventing any undue advantage for involved parties.

4. Further supporting this direction, the IIIPI Study Group Report – 'Developing Market for Stressed Assets in India,' released in May 2025, noted that *"Currently, eBkay portal as mentioned above caters to listing and e-Auctions under Liquidation process. However, to be more effective in removing information asymmetry during the resolution process, a preferred method would be for resolution proposals to also be listed on the eBkay portal."*

5. The convergence of successful platform implementation, parliamentary recommendations, and expert analysis highlights a clear opportunity to extend digitalization beyond liquidation processes. There is a pressing need to digitalize the resolution plan receipt process to maintain fairness, transparency, and efficiency in the resolution framework while ensuring the confidentiality of sensitive commercial information.

### Proposed Solution -

6. Based on the demonstrated success of the digital platform for liquidation process, parliamentary committee recommendations, and IIIPI study group findings, it is proposed to amend the CIRP Regulations to empower the Board to notify an online portal for activities, in relation to invitation and submission of resolution plans, thereby extending the digitalization benefits currently realized in liquidation processes to the broader resolution framework.

### Proposed Draft Regulation -

7. After regulation 36A, the following regulation shall be inserted, namely: -

***"36AA. Invitation and submission of resolution plan(s) through electronic platform.***

*The Board may, by circular and with effect from such date as specified therein, mandate that any activity, in relation to invitation and submission of resolution plans, shall be carried out exclusively through an electronic platform recognised by the Board."*

## Process for submission of Public Comments

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The comments may be submitted electronically by **27<sup>th</sup> August, 2025**. For providing comments, please follow the process as under:

- i. Visit IBBI website at [www.ibbi.gov.in](http://www.ibbi.gov.in);
- ii. Select '**Public Comments**';
- iii. Select '**Discussion paper – Process Division August 2025**'
- iv. Provide your Name and Email-ID;
- v. Select the stakeholder category, namely, -
  - a. Corporate Debtor;
  - b. Personal Guarantor to a Corporate Debtor;
  - c. Proprietorship firms;
  - d. Partnership firms;
  - e. Creditor to a Corporate Debtor;
  - f. Insolvency Professional;
  - g. Insolvency Professional Agency;
  - h. Insolvency Professional Entity;
  - i. Academics;
  - j. Investor; or
  - k. Others.
- vi. Select the kind of comments you wish to make, namely, \
  - a. General Comments; or
  - b. Specific Comments.
- vii. If you have selected 'General Comments', please select one of the following options:
  - a. Inconsistency, if any, between the provisions within the regulations (intra regulations);
  - b. Inconsistency, if any, between the provisions in different regulations (inter regulations);
  - c. Inconsistency, if any, between the provisions in the regulations with those in the rules;
  - d. Inconsistency, if any, between the provisions in the regulations with those in the Code;
  - e. Inconsistency, if any, between the provisions in the regulations with those in any other law;
  - f. Any difficulty in implementation of any of the provisions in the regulations;
  - g. Any provision that should have been provided in the regulations, but has not been provided; or
  - h. Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

- viii. If you have selected 'Specific Comments', please select Proposal Number on which you want to give the comment, and write comments under the selected Proposal Number.
- ix. You can make comments on more than one Proposal, by clicking on more comments and repeating the process outlined above from point (vi) onwards.
- x. Click 'Submit' if you have no more comments to make.

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