



COMMITTEE OF CREDITORS' STATEMENT OF STANDARDS IN CONDUCT AND PERFORMANCE FOR CREDITORS

ABOUT INSOLVENCY LAW ACADEMY

INSOLVENCY LAW ACADEMY IS AN INDEPENDENT INDIAN INSTITUTION OF EXCELLENCE DEDICATED TO INSOLVENCY. ILA CONTRIBUTES TO ROBUST POLICY MAKING AND ENHANCEMENT OF STANDARDS OF THE INSOLVENCY INDUSTRY THROUGH CUTTING-EDGE RESEARCH, INNOVATION AND DEVELOPMENT OF BEST PRACTICES. ANOTHER KEY HALLMARK OF ILA IS TO DEVELOP A COMMUNITY IN PURSUIT OF EDUCATION, RESEARCH AND SCHOLARSHIP IN THE FIELD OF INSOLVENCY.

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BACKGROUND

In October, 2022, Insolvency Law Academy constituted a Working Group (WG) under the Chairmanship of Abizer Diwanji, Head, Financial Services, EY India to propose "A voluntary code of conduct for Committee of Creditors (CoC) comprising of 'best practices'; a mechanism for independent periodical assessment of performance of the members of CoC against the code of conduct; and incentives for higher standards of performance and disincentives for nonobservance."

The WG submitted its Draft Report in November, 2022. The Draft Report was shared with the stakeholders and industry associations for their comments. The ILA Insolvency Scholars Forum (ISF) also provided its feedback on the recommendations of the WG. A session to discuss the proposed Statement of Standards of Conduct and Performance for Creditors was held in the ILA Conference on Saturday February 4th, 2023, in New Delhi. The Standards of Conduct and Performance for Creditors was finalised by the WG after considering the feedback and suggestions received from stakeholders and experts.

The Report of the WG is annexed as Annexure A and the composition of WG is provided in Annexure B.



COMMITTEE OF CREDITORS' STATEMENT OF STANDARDS IN CONDUCT AND PERFORMANCE FOR CREDITORS

Under the Insolvency and Bankruptcy Code 2016 (IBC), the committee of creditors (CoC) has a statutory role and serves as the custodian of public confidence. The CoC is entrusted with the task of unlocking the valuable assets for their optimum contribution to the gross domestic production. The decisions taken by CoC impact not only the life of the corporate debtor (CD) and consequently, its stakeholders, but also have wider ramifications for the country's economy. Even though it is the resolution professional who is responsible for the management of the day-to-day affairs of the corporate debtor, IBC envisages CoC as the supreme decision-making body during the corporate insolvency resolution process (CIRP). Commercial decisions are left to the collective wisdom of the CoC. The Hon'ble Supreme Court has repeatedly recognized the importance of the CoC and supremacy of its commercial wisdom. The collective decisions of CoC are non-justiciable. It is only right that the CoC's decision-making process is impartial, open and inspires public confidence. The CoC should set highest levels of standards in conduct and performance. Recognising the pivotal role of CoC, there is a merit in providing a code of conduct comprising of a set of standards and best practices to guide its actions and decision making.

A code of conduct cannot by itself create a culture of compliance and ethics. However, it can support such a culture, and help communicate the financial creditor's (FC) commitment to maintaining such a culture. This code of conduct comprises of best practices and standards to guide an ideal CoC behaviour and enhance the standards of its functioning during the CIRP. It also complements the code of conduct prescribed for insolvency professionals. There cannot be a 'one size fits all' code of conduct, but these best practices, competency criteria should work for all classes of creditors and can be applied to nearly all situations.

This code has two parts. The first part contains the Standards in Conduct and Performance for Creditors and the second, on adoption and implementation of the Statement of Standards.

I. Standards in Conduct and Performance for Creditors

ALIGNING DECISIONS WITH THE OBJECTIVES OF IBC

1. The object of IBC is to maximise the value of assets of corporate debtor by finding a resolution of its insolvency. The CoC plays a key role in the process of revival and meeting the objectives of IBC. It is crucial that this role is performed by members of CoC diligently and in a commercially prudent manner. CoC should set the highest level of standards in its conduct and performance to effectively assess the viability and feasibility of the business of corporate debtor and facilitate its revival.

2. The focus of the COC needs to change towards operational efficiency, enterprise value and investor value creation.

3. IBC seeks to balance the interest of all the stakeholders. The CoC has a duty of care and trust and must operate in the best interests of all stakeholders. In all its decision making, the members of the CoC should be guided by the objective of IBC. A member must respect the collective wisdom of the CoC.

TIMELINESS

4. The processes under IBC are time bound. It is critical that all stakeholders recognise the importance of timely resolution. The code of conduct for insolvency professionals requires them to adhere to the time limits prescribed in IBC and the rules, regulations and guidelines thereunder. Although the CoC does not have a similar code of conduct, it should also take decisions in timely manner.

5. A resolution professional is required to plan his actions and promptly communicate with all stakeholders. On many matters, resolution professional is required to seek approval or consult the CoC. Adherence to timelines by resolution professional can often be dependent on how promptly the CoC responds. CoC must complement the efforts of resolution professional by observing prescribed timelines.

COMPETENCE AND EFFECTIVE PARTICIPATION

6. The member should be fully acquainted with the provisions of the IBC and its regulations, and stay updated on the evolving jurisprudence concerning IBC.

7. Endeavour should be made to nominate sector experts from creditor groups to the CoC to enable them in better decision making by the CoC with respect to operational aspects. CoC should also consider having operational sector experts who may advise them on operational as well as resolution matters.

8. The member should stay aware of the state of country's economy and developments in the sector in which the corporate debtor operates.

9. The member must be fully aware of the roles and responsibility of the CoC.

10. The member should be abreast with the corporate debtor's financial, business and operational history and the reasons for distress and stay up to date with affairs and operations of the corporate debtor during the insolvency process to be able to take well informed decisions. Regular comprehensive updates should be sought from the resolution professional. These should be carefully studied and actively discussed in the CoC meetings.

COC MEETINGS

11. The member must respect the Chairperson of the CoC and maintain an atmosphere of politeness and cooperation with other members for a smooth and peaceful conduct of meetings.

12. The meetings should be meaningful and productive. Member must attend meeting with sufficient prior preparation of the concerned agenda and other issues requiring discussion and participate actively, constructively and effectively in deliberations.

13. The member attending meeting, must have sufficient prior authorization to take decisions and vote.

14. If a member is not able to attend a scheduled CoC meeting for any unexpected and unavoidable reasons, it should notify the Chairperson in advance and nominate a person who is well acquainted to the concerned meeting.

15. The member should read the draft minutes of the meetings carefully and inform the chairperson promptly in case of any discrepancy or omission.

16. The COC should request for a detailed agenda and background information upfront as a part of the CoC process to enable effective meetings.

APPOINTMENT OF THE RESOLUTION PROFESSIONAL AND ADVISORS

17. The selection of an insolvency professional for appointment as interim resolution professional or replacing a resolution professional should be made keeping in mind the specific skill set and capacity required to manage the affairs of the corporate debtor and keep it as a going concern.

18. The shortlisted insolvency professionals should be asked to present a preliminary 'action plan' (read, strategy) and a 'roadmap' for finding a timely resolution, stabilising of operations of the corporate debtor, cashflow management, maximisation of the value of assets and returns for all stakeholders and other steps within the framework and in accordance with provisions of the IBC. It should be made clear to the insolvency professional that if selected, he would be expected to back up the action plan with concrete action.

19. The CoC must approve a reasonable fees for the resolution professional in accordance with IBC and its regulations commensurate with the quantum and scope of work involved.

20. IBC allows the resolution professional to engage services of professionals. This is essential for a time bound and effective discharge of functions by resolution professional. It is the prerogative of resolution professional to hire professionals of his choice. However, CoC approval is required for fees to be paid to such professionals as it constitutes CIRP costs. CoC should promptly approve the fees after ascertaining the justification and reasonability of costs involved. While CoC must keep control on the costs of resolution to keep them reasonable, it should not result in compromising the objectives of maximising the value of assets.

21. The CoC should consider engaging the services of the

professionals to assist it in assessing the feasibility and viability of the resolution plans where ever considered necessary. Care should be taken that advisors of the resolution professional and the CoC are aligned on the common objectives.

22. The CoC must ensure that any costs incurred by the CoC are not included in CIRP costs, nor should the advisors of the resolution professional be entrusted with tasks which do not form a part of duties of a resolution professional in particular.

INTERIM FINANCE

23. The member should be aware of the benefits of raising interim finance for saving insolvent companies from liquidation. Interim finance is not only a requisite to meet the cost of insolvency resolution process, but also crucial for making regular payments to avail critical input supplies. Interim finance raised during the CIRP could help a company remain as a going concern, making an easier case for revival. Interim finance is treated as a CIRP costs and has the status of a super priority in distribution in resolution and liquidation processes.

24. Interim finance can be critical for the continuation of corporate debtor as a going concern. Access to interim finance assumes greater importance where the debtor hardly has any cash flow or deposits available, but has operational capacity to generate revenue and stand on its own feet. The members must extend full cooperation and support to the resolution professional to obtain interim finance in such cases.

25. The existing lenders of a corporate debtor are the beneficiaries of the higher chances of resolution and higher resolution amount. So, their interest in the outcome runs much deeper than an independent financier. They should be supportive of proposal for interim finance and take prompt decision for its approval.

COOPERATING WITH THE INSOLVENCY PROFESSIONAL

26. The member must extend full cooperation and proactively provide all information and material support to the resolution professional to effectively discharge

functions and duties under the IBC and achieve time bound resolution.

27. It needs to be understood that the insolvency professional is appointed for the maximisation of value for the creditors and hence he/she works towards that goal which is also the fiduciary duty of CoC. Accordingly, CoC should also consider if there is a need to appoint separate legal and financial consultants of its own (at its own cost), though all advisors to the insolvency professional effectively work for CoC too. The scope of work should appropriately capture the expectation from these consultants.

INFORMATION MEMORANDUM

28. The IBC requires the resolution applicant to submit a resolution plan based on an information memorandum. What must be included in the information memorandum is prescribed by IBC and its regulations. The quality of the information memorandum has a direct co-relation with maximising the value of assets of the corporate debtor. Although it is the duty of the resolution professional to prepare the memorandum, the member must proactively share all relevant information available with the financial creditor to help the resolution professional in preparing a complete and high quality information memorandum.

29. The member must diligently analyse and examine the information memorandum prepared by the resolution professional and provide further inputs.

VALUATION

30. A resolution professional is required to commission reports of valuation of the corporate debtor and share it with the CoC members. Valuation report can provide valuable guidance to the CoC while considering resolution plans. The member must diligently examine and analyse the valuation reports and seek audience with the valuers to provide inputs and clarify doubts.

MONITORING AND SUPERVISION

31. The CoC should diligently monitor the affairs of the corporate debtor wherever required, with the help of suitable experts.

32. The CoC must monitor the actions of the resolution professional and the justification of decisions/measures taken by him. Any dereliction in duty by an insolvency professional should be reported to the IBBI by the CoC. A member should not file a complaint against the resolution professional or liquidator, motivated by individual grievance if the actions of the resolution professional or the liquidator is in accordance with the provisions of IBC and its regulations.

33. The CoC must stay informed of the litigation filed against or by the corporate debtor and take effective steps (as may be advised) to protect the interest of the corporate debtor.

RESOLUTION PLAN

34. The CoC should decide the terms and conditions for the submission of expression of interest, request for resolution plan and eligibility conditions for resolution applicants with the aim of attracting maximum resolution plans.

35. The member must support the resolution professional in adopting a suitable marketing strategy and engage suitable advisors wherever required, for the suitable marketing of invitations of expression of interest and resolution plans. Members should use their own organizational strengths and resources, management information system (MIS) and commercial relationships to complement the efforts of the resolution professional.

36. The CoC must act with diligence and not allow any person ineligible under section 29A of the IBC to submit a resolution plan. Members must promptly share with the resolution professional, information of default, invocation of guarantees and other relevant material available with the financial creditor it represents to enable the resolution professional to prepare a list of eligible potential resolution applicants.

37. The Resolution plan can entail a change of management, technology, or product portfolio or combination of all; acquisition or disposal of assets, businesses, or undertakings; restructuring of organization, business model, ownership, or balance sheet; strategy of turn- around, buy-out, merger, amalgamation, acquisition, or takeover; and so on, as may be necessary to resolve the

stress of the firm. Value maximisation with sustained resolution requires strategies much beyond restructuring of liabilities. The members of the CoC should apply commercial dexterity and acumen in the consideration and approval of the resolution plan.

38. Distribution in the resolution plan should be decided in accordance with the provisions of the IBC.

39. Decision on the resolution plan must be taken after due deliberations in the CoC meetings.

40. The member must not use the resolution plan as a tool for recovery of their dues.

41. The member should strive for value maximisation while maintaining the sanctity of the resolution process under the IBC and its regulations.

INDEPENDENCE AND OBJECTIVITY

42. The member must maintain professional integrity and independence while voting on CoC agendas so that all decisions are made in the collective interest of stakeholders without any bias, favour, fear, coercion, undue influence or conflict of interest and without adopting any illegal or improper means.

ETHICS

43. The member must not indulge in any unethical behaviour or activity which could undermine the objectives the of IBC.

44. The member must not interfere with or influence the resolution professional in performance of his roles and responsibilities as per the provisions of the IBC.

AVOIDANCE TRANSACTIONS

45. The member must extend full cooperation to the resolution professional in the investigation of avoidance transactions and provide the resolution professional, with the information, reports, data, account statements and/or any other relevant documents which may assist in the identification and clawback of avoidance transactions.

CONFIDENTIALITY

46. The members must maintain complete confidentiality

of the information that they receive or have access to as a part of the CoC all times.

TRANSPARENCY

47. The CoC must maintain demonstrable transparency in its decision making without compromising on the confidentiality of the process. The member must disclose any conflict of interest arising from any pecuniary or personal relationship with any of the stakeholders or other members, as soon as they become aware of it.

48. Deliberations and discussions by CoC must be properly recorded in the minutes of the meeting.

MORATORIUM

49. Every member must respect and abide by the Order of moratorium passed under the IBC by the Adjudicating Authority.

RESOLUTION OF DISPUTES

50. Insolvency process is not adversarial, yet disputes arise during the process. Litigation can prolong the process, create uncertainty and add to cost. Members must endeavour to resolve bi-lateral or multi-lateral disputes in the CoC amicably through negotiations. Mediation can be used to arrive at a resolution if direct negotiations do not bear fruit.

II. Adoption and Implementation of Statement of Standards

The financial creditors must regulate the conduct and behaviour of the CoC by adopting measures which will inspire the confidence of the stakeholders. By implementing these Statement of Standards, the members of the CoC will demonstrate commitment to perform functions and discharge responsibilities with the highest standards of ethics, exceeding legal minimums.

ADOPTION AND PROMOTION

51. In order for Statement of Standards to be a successful

vehicle for increasing user awareness, it must be accessible to the employees. It should be circulated widely by the Indian Banks' Association, individual banks and financial institutions.

52. It is important that the Statement of Standards have the imprimatur of the industry and the financial creditors which should consider adopting it. The industry association of banks, financial institutions, asset reconstruction companies, and stressed asset funds and other institutions which qualify as Financial Creditor, should adopt the Statement of Standards and observe it diligently. Individual CoCs may adopt these in respect of the process of insolvency resolution for which they have been constituted. Adoption by the Reserve Bank of India, Securities and Exchange Board of India will help in the enforcement of these standards and best practices. Insolvency and Bankruptcy Board of India (IBBI) may consider promoting the Statement by adopting it in the form of guidelines.

53. For critical meetings like insolvency professional and advisor appointments, investor process and relation discussions, value creation initiatives, bid assessments and negotiations, the financial creditors should depute senior management personnel with sufficient authorisation and instructions to enable effective deliberations and decision making.

54. Financial creditors should consider framing suitable frameworks for extending interim finance to the corporate debtors during the resolution process in consultation with the Reserve Bank of India.

55. The financial creditors should take reasonable steps in seeking to confirm satisfactory levels of compliance of the provisions of the IBC and this Code of Conduct by its representatives.

56. Financial creditors should use their organisational strengths and resources, management information systems, commercial relationships to complement the efforts of resolution professional to maximise the number of potential resolution applicants for the corporate debtor.

57. While there is an intrinsic assumption that financial creditors have adequate skills and knowledge of credit analysis, stressed business management and restructuring for applying commercial wisdom in various processes of

resolution and assessing the viability and feasibility of proposed resolution plans, the skills of members nominated to CoC should be strengthened to align with the objectives of the IBC by education and training.

OBSERVATION OF STANDARDS AND MONITORING BY IBBI

58. Most decisions by the CoC are taken in camera. Its conduct appears in public domain only when challenged before the Adjudicating Authority or when an adverse observation is made or when an order is passed. The minutes of CoC meetings are confidential. Only IBBI and resolution professional have access to the minutes. IBBI, as a regulator, is most suited to monitor the conduct of the CoC and serve as a sounding board. If it comes to the attention of IBBI that a member or the CoC as a whole has acted contrary to the spirit of the Statement of Standards in Conduct and Performance, it can notify the concerned financial creditor(s) of the non-observance of the provisions of the IBC. The financial creditor(s) must take suitable remedial measures to uphold the public confidence in the CoC.

59. IBBI can undertake regular audits and independent assessments of the compliance of the Code of Conduct by the CoC and suggest improvement.

60. Internal and external assessors should consider the efficacy, certifying periodic performance on the dimensions of the code of conduct.

61. Financial creditors should utilize the code as the basis for annual compliance certification. When assessing compliance, it is important to do so in light of its several purposes which include: awareness of the program and important policies, training and education, promotion of reporting and use in investigations, and promotion of an ethical culture. Assessments should also consider the value of the code as a training tool.

62. Financial creditors should devise suitable incentives and disincentives for their nominees to the CoC for optimal compliance of this Code of Conduct.

ADVOCACY

63. As the code is planned as a tool for behavioural

change, the members should be encouraged to use it through advocacy. The code should be used as the basis for periodic compliance training, and they should serve as a useful resource for the employees.

REPORTING

64. The code should be used by financial creditors to promote reporting and conduct of in-house investigations. While a well-written code can have significant value in raising awareness of the commitment to compliance and ethics and of important legal and compliance policies, codes are also sometimes used in the context of compliance investigations. If there is an allegation that an employee has acted in a manner that is inconsistent with or in violation of the code, the concerned financial creditor may need to be investigated for potential violations.

PERIODIC REVIEW AND REVISION

65. The Statement of Standards that comprise the code are dynamic and can evolve. It should be reviewed and revised quite frequently in light of the experiences under IBC.



ANNEXURE A

REPORT OF WORKING GROUP

Insolvency and Bankruptcy Code 2016 (IBC) introduced a shift from the 'debtor in possession' regime under the Sick Industrial Companies (Special Provisions) Act, 1985 (since repealed) to a 'creditor in control' regime. Section 21 of IBC specifies that all financial creditors (FCs), with the exception of the connected parties of the corporate debtor (CD), make up the committee of creditors (CoC). The voting shares are then assigned to FCs based on the amount of debt owed to them. An alternate provision provides that CoC is formed with operational creditors when the CD has no financial debt or when all FCs are related parties.

The CoC has a statutory role. IBC entrusts it with the responsibility of unlocking the valuable assets for their more productive use in the economy. The decisions taken by the CoC impacts not only the life of CD and consequently its stakeholders, but also has wider ramifications for the country's economy. Even though it is the resolution professional (RP) who is responsible for the management of the day-to-day affairs of CD, IBC envisages CoC as the supreme decision-making body during a corporate insolvency resolution process (CIRP). Commercial decisions are left to the collective wisdom of CoC. It decides the fate of CD by approving a plan for resolution of its insolvency or by opting for its liquidation. IBC has vested the CoC with the authority to pick the best feasible resolution plan for a company's long-term survival. Distribution to be made to the creditors is decided by CoC taking into consideration the relevant provisions of IBC. The Supreme Court has repeatedly recognized the importance of the CoC and supremacy of its commercial wisdom. This has been critical in establishing the IBC as a credible bankruptcy resolution process.

"With greater power comes greater responsibility." The CoC serves as a custodian of public confidence. It is only right that the CoC's decision-making process is impartial, open and inspires public confidence. It must exercise its powers with due care and take decisions responsibly keeping in mind the larger objectives of the IBC. It has a duty of trust and must operate in the best interest of all stakeholders. The resolution plan can entail a change of management, technology or product portfolio or combination of all of the following: acquisition or disposal of assets, businesses, or undertakings, restructuring of organisation, business model, ownership, or balance sheet, strategy of turn- around, buy-out, merger, amalgamation, acquisition, or takeover, and so on, as may be necessary to resolve the stress of the firm. Value maximisation with sustained resolution requires strategies which go beyond restructuring of liabilities. Members of CoC must demonstrate tremendous commercial dexterity and acumen while taking decisions. They must set highest levels of standards in conduct and performance.

STANDARDS OF PERFORMANCE OF COC

The conduct and decision making of the CoC is not subject to any regulations, instructions or guidelines. In its 32nd report, the Parliamentary Standing Committee on Finance stated that "there is an urgent need to have a professional code of conduct for the CoC which will define and circumscribe their decisions, as these will have larger implications for the efficacy of the Code". Following such report, the Insolvency and Bankruptcy Board of India (IBBI) published a discussion paper on 27th August 2021 (Discussion Paper) which states that while other components of the insolvency and bankruptcy ecosystem, such as insolvency professionals, are regulated, CoC "functions in an unregulated environment". It proposes to "put in place a code of conduct for CoC that shall elevate accountability and responsibility of the CoC to ensure *transparency in its functioning.*" Notably, the Discussion Paper does not state how such a code of conduct will be given a legal basis. It however, suggests that IBBI, proposes to put in place a code of conduct for CoC that shall elevate accountability and responsibility of CoC to ensure transparency in the functioning of a CoC. A draft code of conduct was presented in an annexure of the Discussion Paper which requires, among other things, that a member of the committee shall maintain integrity in performing their role and function under the IBC, not misrepresent any facts or situations and refrain from being involved in any action that is detrimental to the objectives of the code, maintain objectivity in exercising decisions, disclose details of any conflict of interest, not adopt any illegal or improper

means, cooperate with the resolution professional, not acquire any assets of the corporate debtor without disclosure to stakeholders, and so on.

CONSTITUTION OF ILA WORKING GROUP

In October, 2022, Insolvency Law Academy (ILA) constituted a Working Group comprising of Mr. Abizer Diwanji, (chairman) and Mr. R.K. Bansal, (member), Mr. Yogesh Rastogi, (member), Mr. Anuj Jain, (member), Mr. Suharsh Sinha, (member), Ms. Shivani Singla, (member), Mr. Sanjeev Pandey, (Convener) and Mr. Sumant Batra, (member), as its members. Ms. Vaidehi Gulati, Research Associate, ILA was appointed to serve as an assistant to the Working Group.

The terms of reference required that the Working Group propose, "A voluntary code of conduct for CoC comprising of 'best practice'; a mechanism for independent periodical assessment of performance of the members of CoC against the code of conduct; and incentives for higher standards of performance and disincentives for non-observance."

DELIBERATIONS OF WORKING GROUP

The Working Group held many meeting to deliberate on the various issues relevant to its task.

The Working Group noted that the UNCITRAL Legislative Guide on Insolvency Law provides, "It may be desirable, however, for an insolvency law to require committee members to act in good faith in carrying out committee functions and to provide that members of the committee would be immune from liability in respect of actions and decisions taken by them as members of the committee, unless they are found to have acted fraudulently or willfully or to have breached a fiduciary duty to the creditors they represent", such as taking advantage of confidential information received as a committee member. The Guide further states, "the standard of liability applicable to members of the committee can be distinguished from that of the insolvency representative; committee members are not required to satisfy any requirements as to knowledge or expertise and are acting in a voluntary capacity without remuneration. In considering the question of the liability of the committee, a balance may need to be struck between setting too high a level of responsibility that will effectively discourage creditors from participating and too low a level

that may lead to abuse and prevent the committee from functioning efficiently as a representative body."

A study of key jurisdictions like, the United States, the United Kingdom and Singapore was also undertaken. The Working Group noted that there is no prescriptive regulation of conduct of committee of creditors in any jurisdiction. Further, there appears to be no global consensus on the optimum approach to achieve an objective and transparent decision made by the creditors. Pertinently, while different players may be tasked with the proper conduct of the roles and responsibilities connected with the insolvency process, the conduct narrative is largely similar - the unbiased, independent and objective conduct of the entity that is steering the insolvency resolution process.

RECOMMENDATION OF WORKING GROUP

The Working Group noted that the "commercial wisdom" of CoC is non justiciable. The Adjudicating Authority cannot interfere with the commercial decision taken by CoC. The grounds for judicial review are also limited. Considering that the CoC is tasked with a pivotal role in the CIRP, which is not regulated by any authority under IBC, the members of Working Group are of one view that there was a definite merit in offering a code of conduct for CoC. The members are of the further view that such code of conduct should comprise of Statement of Standards and best practices. A regulated code of conduct would be construed as justiciable and may contribute to litigation, which has become a serious pitfall in the path of timely resolution of cases. Recognition of supremacy of decision making of CoC has played a very significant role in making IBC a viable mechanism for insolvency resolution. A regulated code may trespass on the freedom of CoC to take commercial decisions or perform its duties and functions, independently and fearlessly. The Working Group noted that the Standing Committee on Finance has recommended a 'professional' code of conduct but has not suggested that such professional code be regulated by way of rules or regulations. A regulated code could potentially lead to a quagmire of litigation on process related issues and slowdown decision making by CoCs, and in turn, CIRP when the pace of such CIRPs already leaves much to be desired for multiple reasons which incidentally are also highlighted as key concerns by the Standing Committee on Finance and Discussion Paper. It could also slow-down the

resolution process.

A Drafting Committee comprising of Mr. Abizer Diwanji, Mr. Sumant Batra and Mr. Sanjeev Pandey was set up to prepare the draft of code of conduct for CoC comprising of standards in conduct and performance. The draft was presented to the Working Group which held detailed deliberations in the backdrop of the experiences of last six years.

CODE OF CONDUCT: STATEMENT OF STANDARDS IN CONDUCT AND PERFORMANCE

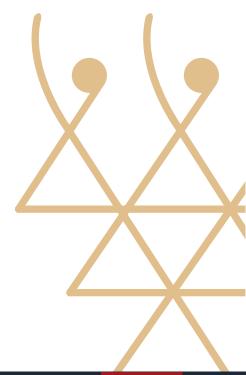
The Working Group proposing a code of conduct for CoC comprising of standards in conduct and performance (Code of Conduct) annexed as Part I of Annexure 1 to this report. There cannot be a 'one size fits all' code, but best practices competency criteria should work for all classes of creditors. The Code of Conduct is designed to serve as an influence to achieve an 'ideal CoC behaviour' in making commercial decisions. It is in the nature of suggestions to improve the quality of CoC decision making on commercial matters. Consistent with the approach articulated in IBBI Discussion Paper, it establishes broad principles that can be applied to every situation. Short and written in simple language, it is easy to follow and understand. Care has been taken not to make it prescriptive. It also complements the code of conduct prescribed for the insolvency professionals. The Code of Conduct is a dynamic document, which can evolve by periodical review. It should be reviewed and revised reasonably frequently in light of the experiences under IBC.

SELF-REGULATION WITH IBBI MONITORING

It is important that the Code of Conduct has the imprimatur of the insolvency industry including FCs. The Working Group is of the view that the FCs should formally adopt the Code of Conduct which will inspire the confidence of the stakeholders. The industry association of banks, financial institutions, asset reconstruction companies, and stressed asset funds and other institutions which qualify as FC, should encourage adoption of the Code of Conduct and observe them diligently. CoCs may also adopt the Code of Conduct. Its endorsement by Reserve Bank of India and Securities and Exchange Board of India will help in enforcement of the Code of Conduct. By implementing it, members of CoC will demonstrate commitment to perform functions and discharge responsibilities at the highest standards of ethics, exceeding legal minimums.

Most decisions by CoC are taken in camera. The CoC meetings are held in camera. Its conduct appears in public domain only when challenged before the Adjudicating Authority or an adverse observations or orders are passed against the CoC or any of its members. The minutes of CoC meetings are confidential and only IBBI has access to them. IBBI, as a regulator, is therefore, most suited to monitor the conduct of CoC and serve as a sounding board. If IBBI finds any member or CoC as a whole has acted contrary to the spirit of the Statement of Standards in Conduct and Performance it can notify the concerned financial creditors which must take suitable remedial measures. IBBI can undertake regular audit and independent assessment of use of this code by the CoC.

The Working Group proposes a framework of implementation of Code of Conduct annexed as Part II of *Annexure 1.* The Working Group is of the view that the Code of Conduct comprising of Standards in Conduct and Performance, combined with a monitoring mechanism by IBBI is likely to be fairly effective, having the necessary degree of force and produce desired outcomes. Such an approach, apart from allaying the valid concerns raised by the Standing Committee on Finance and IBBI and make CoC members accountable under IBC while avoiding the pitfalls of regulating CoCs under IBC.



COMPOSITION OF ILA WORKING GROUP

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Abizer Diwanji, Head, Financial Services, Ernst & Young India (Chairman)
Sumant Batra, Insolvency Lawyer and Founder, Insolvency Law Academy (Member)
R.K. Bansal, Managing Director and CEO, Edelweiss Asset Reconstruction Company (Member)
Yogesh Rastogi, General Manager, ICICI Bank (Member)
Anuj Jain, Insolvency Professional; Partner, KPMG (Member)
Suharsh Sinha, Partner, AZB & Partners (Member)
Shivani Singla, General Manager (Retd.), IDBI Bank; Partner, Trinetra Resolutions LLP (Member)
Sanjeev Pandey, Deputy General Manager (NCLT) (Retired), State Bank of India (Convener)
Vaidehi Gulati, Research Associate, Insolvency Law Academy (Secretary)

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