

# Code of Conduct for the Committee of Creditors



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# DISCUSSION PAPER



**01**

Need for accountability

**02**

Custodian of public trust vested with significant powers and responsibilities

**03**

Actions of CoC key to timely resolution

**04**

Judicial deference to 'commercial wisdom'

**05**

Case Laws



# RELEVANT LEGAL FRAMEWORK



## **Section 21, Insolvency and Bankruptcy Code 2016:**

*(2) ...The committee of creditors shall comprise all financial creditors of the corporate debtor...*

## **Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016:**

*Chapter 6: Committee of Creditors*

*Chapter 7: Meetings of the Committee of Creditors*



# Questions



Whether a Code of Conduct should be specified by the Board?

Any item of the draft Code of Conduct placed at Annexure, that should be omitted or modified.

Any item that is not part of the draft Code of Conduct placed at Annexure but should be included?

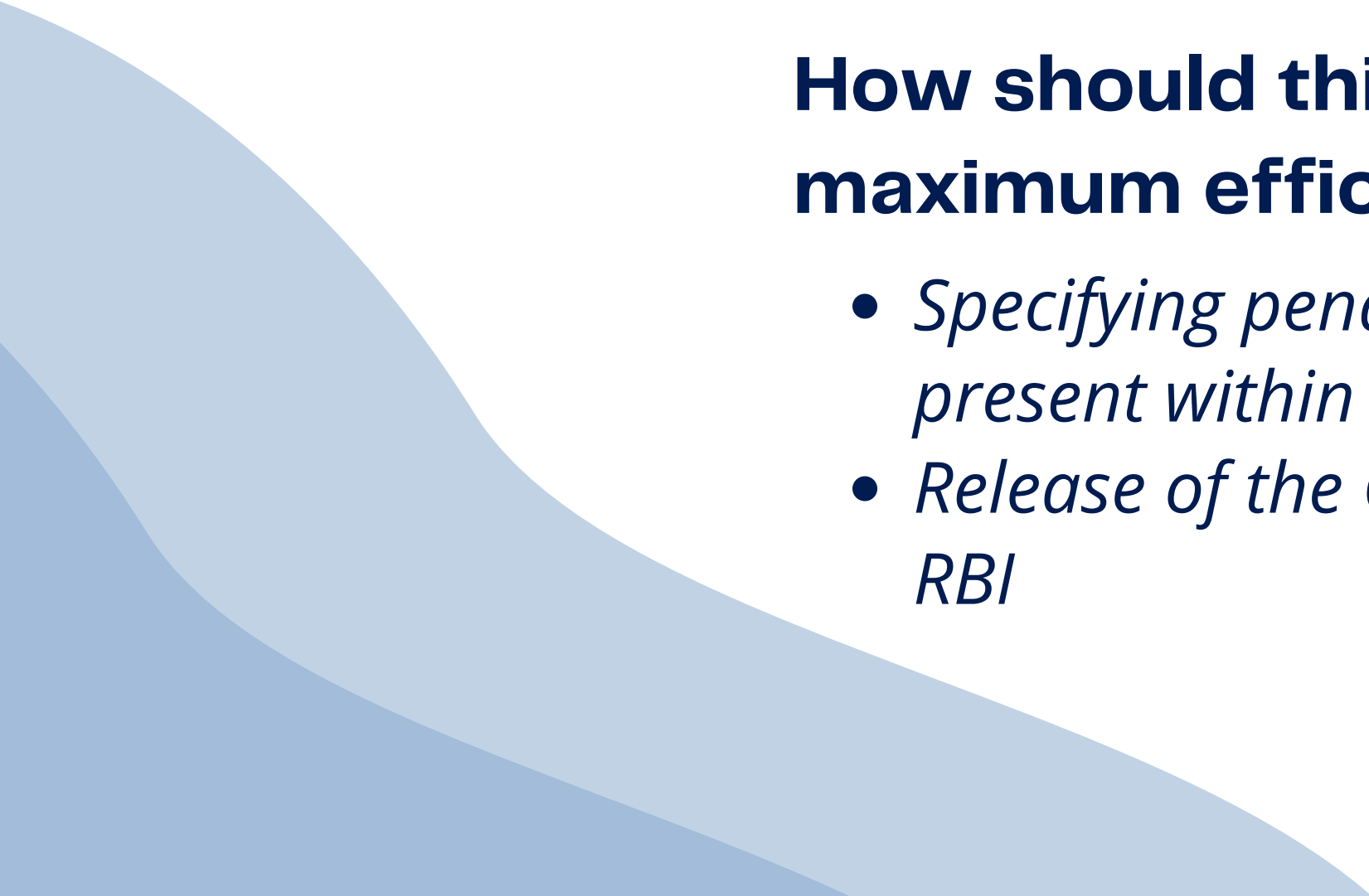
# OUR RECOMMENDATIONS



## **If a Code should be Specified?**

Yes, it should be.

## **How should this Code of Conduct be enacted to achieve maximum efficiency?**

- *Specifying penalties/repercussions in the event of a 'breach' of duties present within the Code of Conduct*
  - *Release of the Code of Conduct in association/consultation with the RBI*
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# POTENTIAL MODIFICATIONS, OMISSIONS AND ADDITIONS

Point/s	Issue	Why?	Comment
c, h, j	Repetitive	Objectivity breeds non-interference.	Combination of these ideas under a common Article titled “Objectivity in decision making” (addition of ‘no mala fide’)
m, y, f, cc	Repetitive, narrow scope	All points require members of CoC to have knowledge of the IBC and allied regulations.	Retain only one point of the four, and extend the scope of knowledge to the legal regime laid down by the RBI and Finance Ministry, as applicable.
t, u	Repetitive	Adherence to confidentiality and privacy obligations would entail similar practical steps.	Combination of these ideas under a common Article titled “Privacy and Confidentiality”, retain disclosure requirement.

Point/s	Issue	Why?	Comment
q, r, s, bb	Repetitive, narrow scope	Discussion of the obligation to adhere to timelines only at specific stages.	Remove specific instances pertaining to adherence, to avoid the scope being interpreted exhaustive.
d, <u>i</u>	Repetitive	Only a slight difference between the two. Latter akin to defining the scope of a conflict of interest as 'pecuniary or personal relationship'.	Utilize the criteria mentioned in Section 29A to define 'conflict of interest', and combine the two points.
dd	Narrow scope	Resolution bias, may potentially undermine commercial wisdom.	Endeavour must be to 'protect best interests of the corporate debtor at all times'.
n	Narrow scope	Merely nominating authorized representative not enough to prevent delays or increase efficiency.	Increase the scope of the Article to nominate authorized representatives having knowledge of the insolvency resolution process and statutory duties/timelines. Also, make reference to Section 24(5).

# MISC. RECOMMENDATIONS

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## 1. Changing the structure of the Code of Conduct

- *Presence of 'Articles' and 'definitions' wherever necessary*
- *'Draft Code of Conduct for Adjudicators in International Investment Disputes' by the ICSID and UNCITRAL Secretariat (2020)*

## 2. The international precedent cited in the Discussion Paper is potentially misleading

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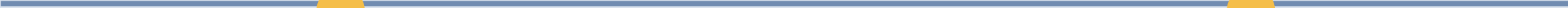


# Request for Resolution Plans and Use of Swiss Challenge in CIRP

**Diya Dutta**


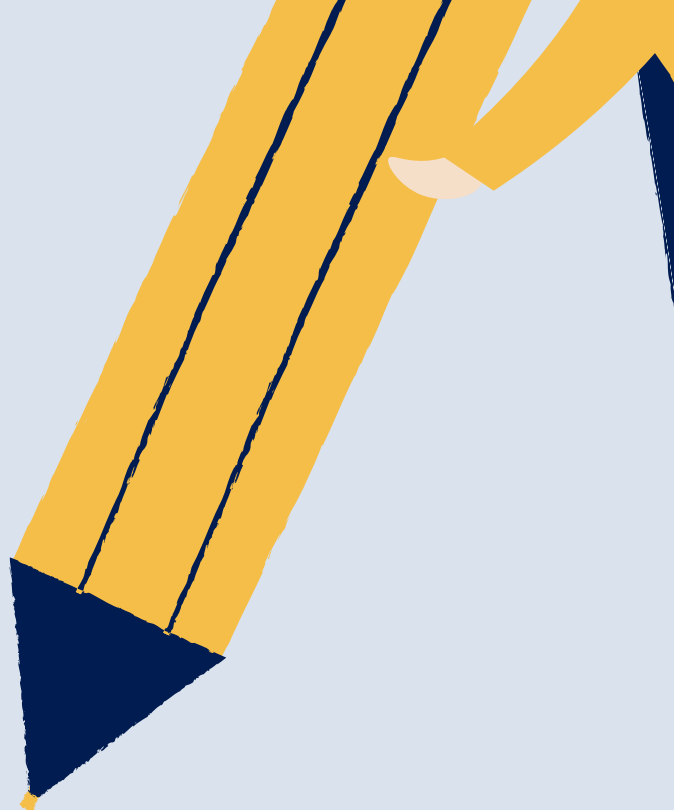


# Questions



Should there be any  
restrictions on the  
number of revisions  
in the RFRP?

Should swiss  
challenge mechanism  
be available in the  
CIRP regulations?



# Issue I:

Restrictions on the number of revisions in the RFRP

## 01

What is RFRP, and the underlying issues that exist

## 02

Time-boundness under the IBC

## 03

Current provisions at play

# Status of CIRP as of on 30.06.2021

S. No.	Statue of CIRP	No. of Cases
1.	Admitted	4541
2.	Closed on Appeal / Review / Settled	653
3.	Closed by Withdrawal under section 12A	461
4.	Closed by Resolution	396
5.	Closed by Liquidation	1349
6.	<b>Ongoing CIRP</b>	1682
7.	>270 days	1264
8.	> 180 days $\leq$ 270 days	82
9.	> 90 days $\leq$ 180 days	218
10.	$\leq$ 90 days	120

# RELEVANT LEGAL FRAMEWORK



## Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016:

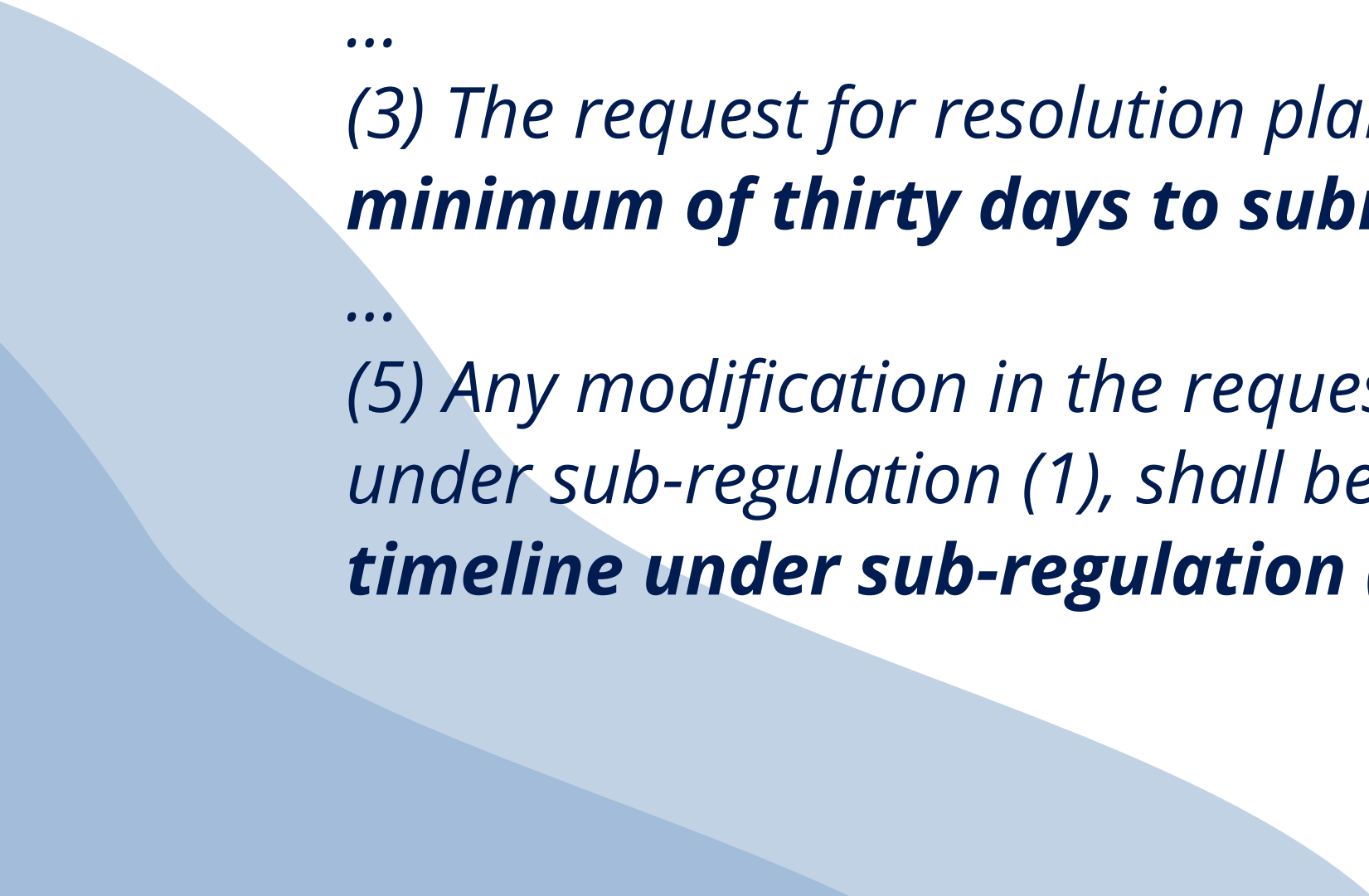
*Regulation 36B: Request for Resolution Plan*

...

*(3) The request for resolution plans shall allow prospective resolution applicants a **minimum of thirty days to submit** the resolution plan(s).*

...

*(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to **timeline under sub-regulation (3).***



# Issue II:

## Swiss Challenge Mechanism under CIRP Regulations

### 01

What is the Swiss Challenge Mechanism

### 02

Approach by the Indian Courts towards SCM

### 03

International Precedents set

**Ravi Development v. Shree  
Krishna Prathisthan & Ors  
[(2009) 7 SCC 462]**

**Bank of Baroda v. Mandhana  
Industries Ltd. [C. P. No.  
1399/I&BP/2017]**

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# OUR RECOMMENDATIONS

**1.** The number of rounds of swiss challenge should be restricted to **two rounds**

**2.** The rights and interests of promoters and RAs participating should be **balanced** carefully

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# Thank you!

