



23<sup>rd</sup> November, 2015

To,

The OSD (FSLRC & Law),  
Ministry of Finance,  
Dept. of Economic Affairs,  
Room No. 30, North Block,  
New Delhi 110001

**Sub: Comments/ Recommendations on the draft Insolvency and Bankruptcy Bill, 2015.**

Kind Attn: Mr. Praveen Trivedi

Dear Sir,

*Indian Securitisation Foundation (ISF)*

**ISF** is a not-for-profit entity representing the securitisation industry in India. The membership of the Foundation includes banks, NBFCs, microfinance institutions, other issuers and investors and securitisation professionals for promoting interest of securitisation and fixed income securities in India. As ISF is dedicated to the cause of promoting securitisation, asset-based financing and related areas in India, we humbly submit our recommendations herein below on the draft Insolvency and Bankruptcy Bill, 2015 which may have significant impact on the ultimate framework within the Code.

**INDIAN SECURITISATION FOUNDATION**

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## Comments on the Report of the BLRC and the Draft Bankruptcy Bill

Sl. No.	Clause No.	Text of the Bill	Our Comments/Recommendations	Rationale
1.	Clause 3(7) – Definition of “corporate person”	“corporate person” means a company, a limited liability partnership, or any other person with limited liability under any law for the time being in force as may be prescribed, provided that it shall not include any person engaged in the business of providing financial service	“corporate person” means a company, a limited liability partnership, or any other person with limited liability under any law for the time being in force as may be prescribed, provided that it shall not include any person <b>principally</b> engaged in the business of providing financial service <b>in terms of authorisation or registration under applicable regulations</b>	The term financial services as defined under Clause 3(15) is wider. In our view majorly all the companies undertake one or the other activity as specified under the term financial services. The intent of the law cannot be to cover the entire universe under the term corporate person. The Final Report of BLRC too, states, “The Code provides resolution for all entities other than those with a <b>dominantly</b> financial function which are covered in the Indian Financial Code proposed by the Srikrishna, 2013.”
2.	Clause 3 (30) – Definition of “transactions”	“transaction” means a gift, agreement or arrangement in writing for the <b>transfer of assets of funds</b> , goods or	“transaction” means a gift, agreement or arrangement in writing for the <b>transfer of assets of funds</b> , goods or services, from or to the corporate debtor	Typographical error

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		services, from or to the corporate debtor		
3.	Clause 5(5)– Definition of “financial creditor”	“financial creditor” means any person to whom a financial debt is owed, and includes a person to whom the such debt may have been legally assigned or transferred in accordance with law (including a person resident outside India);	“financial creditor” means any person to whom a financial debt is owed, and includes a person to whom <del>the</del> such debt may have been legally assigned or transferred in accordance with law (including a person resident outside India);	Typographical error
4.	Clause 5(28) & 5(30) – Definition of “resolution plan”	Repetition of definition of “resolution plan”	Clause 5(30) should be removed; consequently, subsequent serial numbers shall be revised.	
5.	Clause 20 - Management of operations of corporate debtor as going concern.	Clause 20 (2)(c) - to raise <b>interim fresh</b> provided that in doing so, no security interest may be granted over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property;	Clause 20 (2)(c) - to raise <b>interim finance fresh</b> provided that in doing so, no security interest may be granted over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property;	Typographical error
6.	Clause 18 - Duties of Insolvency Resolution	Clause 18(1) states as follows - XX (c) to constitute a committee of creditors;	Clause 18(1) states as follows - XX (c) to constitute a committee of creditors; XX	On one hand, clause 18 states that it is the responsibility of IRP to constitute a committee of creditors and on other hand

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	Professional (IRP)  Clause 21 - Committee of Creditors	XX  Clause 21 - (1) The resolution professional, after consolidation of all claims received against the corporate debtor shall review the financial position of the corporate debtor and constitute a committee of creditors.	Clause 21 - (1) The <b>interim</b> resolution professional, after consolidation of all claims received against the corporate debtor shall review the financial position of the corporate debtor and constitute a committee of creditors.	clause 21 pertaining to committee of creditors states that resolution professional needs to constitute a committee of directors. Both the clauses viz. 18 and 21 seem to be conflicting.
7.	Clause 26 - Replacement of resolution professional by committee of creditors  Clause 16 - Appointment and tenure of interim resolution professional	(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in sub-sections (3) and (4) of section 16: XX  Clause 16 (4): The term of the interim resolution professional shall not exceed fourteen days from date of his appointment	(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in sub-sections (3) of section 16: XX	The term of resolution professional cannot be restricted to 14 days. Therefore, reference to sub-clause (4) of clause 16 in clause 26(4) is not an appropriate reference.
8.	Clause 33 - Initiation of Liquidation	(2) Where the Adjudicating Authority does not receive a resolution plan under	(2) Where the Adjudicating Authority does not receive a resolution plan under <b>sub-section (7) (6) of section 30</b> on	Error of reference: clause 30, sub-clause (7) does not exist.

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		<b>sub-section (7) of section 30</b> on or before the expiry of the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process as the case may be, the Adjudicating Authority shall - <b>XX</b>	or before the expiry of the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process as the case may be, the Adjudicating Authority shall - <b>XX</b>	
9.	Clause 36 - Liquidation Trust	Clause 36(4)(b) - assets in security collateral held by financial services providers and are subject to netting and set-off <b>in multi-lateral trading or clearing</b> transactions	In case of netting arrangements for derivatives protection is given as are settled by multi-lateral clearing. However, centralized clearing does not exist in India. Hence the same needs to be reviewed.	
10.	Clause 59 - Voluntary Liquidation	Clause 59(3)(c)(ii) - a resolution of the shareholders of the company in a general meeting requiring the company to be wound of voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company, as the case may be and appointing	Clause 59(3)(c)(ii) - a resolution of the shareholders of the company in a general meeting requiring the company to be wound of voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company <b>shall be wound up</b> , as the case may be and appointing an insolvency professional to act as the liquidator	The sentence as used in the Bill seems to be incomplete.

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		an insolvency professional to act as the liquidator		
11.	Clause 59 – Voluntary Liquidation	(5) Subject to approval of the creditors under <b>sub-clause (c) of sub-section (3)</b> , the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under <b>sub-clause (b) of sub-section (3)</b>	(5) Subject to approval of the creditors under <b>sub-clause (d) of sub-section (3)</b> , the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under <b>sub-clause (c) of sub-section (3)</b>	Error of reference
12.	Clause 69 - Punishment for transactions defrauding creditors	(1) XX (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or <b>connived at the in the execution of a decree</b> or order against, the property of the corporate debtor,	(1) XX (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or <b>connived at—the in the execution of a decree</b> or order against, the property of the corporate debtor,	Typographical error.
13.	Clause 79(11)- Definition of Debtor	(11) “debtor” means – (a) . . . (b) <b>a person resident in India</b> , other than corporate debtor who, at any time during the preceding three years has carried on business in India:  Provided that for the purposes of sub-clause	(11) “debtor” means (a) . . . (b) <b>a person resident outside <del>in</del> India</b> , other than corporate debtor who, at any time during the preceding three years has carried on business in India:  Provided that for the purposes of sub-clause (b), a <b>person resident outside <del>in</del> India</b> , other	Person resident in India has already been covered under sub-clause (a).

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		(b), a <b>person resident in India</b> , other than corporate debtor, carrying on business includes – XX	than corporate debtor, carrying on business includes – XX	
14.	Clause 79(13) - excluded assets	(b) <b>unencumbered, furniture</b> , household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family	(b) <b>unencumbered, furniture</b> , household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family	Typographical error.
15.	Clause 93 - Standard of Conduct	The resolution professional shall perform his functions and duties in compliance with the <b>code of provided</b> under section 208	The resolution professional shall perform his functions and duties in compliance with the <b>code of conduct provided</b> under section 208	Error of omission; sentence as used in the Bill seems to be incomplete.
16.	Clause 129 - Statement of Affairs  Clause 130 - Public notice inviting claims from creditors.	Clause 129 (1) - Where a bankruptcy order is passed on the application for bankruptcy by a creditor under section 123, the bankrupt shall submit his statement of affairs to the bankruptcy trustee within <b>five days</b> from the <b>bankruptcy commencement date</b> .  Clause 130(1) - The Adjudicating Authority shall–	Clause 129 (1) - Where a bankruptcy order is passed on the application for bankruptcy by a creditor under section 123, the bankrupt shall submit his statement of affairs to the bankruptcy trustee within <b>five days</b> from the <b>bankruptcy commencement date</b> .  Clause 130(1) - The Adjudicating Authority shall– (a) send notices within <b>two ** days</b> of the <b>bankruptcy commencement date</b> , to the creditors mentioned in -	Clause 129 states that the bankrupt has the time period of 5 days from the date of bankruptcy commencement date, for submitting his statement of affairs. However, Clause 130 states that AA shall send notice to the creditors whose names are mentioned in the statement of affairs submitted by the bankrupt within 2 days of the bankruptcy commencement date.

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		(a) send notices within <b>two days</b> of the <b>bankruptcy commencement date</b> , to the creditors mentioned in - (i) the statement of affairs submitted by the bankrupt under section 129	(i) the statement of affairs submitted by the bankrupt under section 129	The requirement specified under clause 130 cannot be met unless and until the bankrupt submits the statement of affairs to the bankruptcy trustee.  **Therefore, the time limit mentioned in clause 130 shall be revised and enhanced such that the AA gets a time period of more than 5 days commencing from the bankruptcy commencement date to send the notices.
17.	Clause 133 - Summoning of meeting of creditor	(1) The bankruptcy trustee shall, <b>within sixteen days from the bankruptcy commencement date</b> , issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared by the bankruptcy trustee under section 132.  (2) The notices issued under sub-section (1) shall - (a) state the date of the meeting of the creditors, which <b>shall not be later</b>	(1) The bankruptcy trustee shall, <b>within sixteen days from the bankruptcy commencement date</b> , issue a notice for calling a meeting of the creditors, to every creditor of the bankrupt as mentioned in the list prepared by the bankruptcy trustee under section 132.  (2) The notices issued under sub-section (1) shall - (a) state the date of the meeting of the creditors, which <b>shall not be later than ## days from the bankruptcy commencement date</b> ;	Sub-Clause (1) states that the bankruptcy trustee has the time period of 16 days from the date to bankruptcy commencement date to issue a notice for calling the meeting of creditors. However, sub-clause (2) states that the meeting need to be held within a period of 21 days from the date of bankruptcy commencement date.  ## Therefore, effectively, there remains a gap of only 5 days from the last date of sending notices and holding the meeting which practically seems to be



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		than twenty-one days from the bankruptcy commencement date;		inconvenient. It is, therefore suggested to increase the time limit of “21 days from the bankruptcy commencement date” for holding the meeting.

Thanking you

For **Indian Securitisation Foundation**

Sd/-

(Vinod Kothari)