

**IBBI seeks public comments on contents of Request for Proposal (RFP) for inviting resolution plans for a corporate debtor going through Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016.**

1. The Resolution Professional (RP) invites resolution plans from prospective eligible resolution applicants. He may, based on the complexity and scale of operations of the corporate debtor, specify the eligibility criteria for prospective resolution applicant with the approval of the Committee of Creditors (CoC). The RP shall issue an invitation, including evaluation matrix, to the prospective resolution applicants in the form of Request for Proposal (RFP). He may modify the invitation as well as evaluation matrix with the approval of CoC. An abridged invitation shall be available on the website, if any, of the corporate debtor; and on the website, if any designated by the IBBI. IBBI has designated [www.ibbi.gov.in](http://www.ibbi.gov.in) for the purpose.
2. It is the endeavour of IBBI to attract broader market participation in the resolution process of corporates undergoing CIRP under Insolvency and Bankruptcy Code, 2016 (Code). Accordingly, IBBI, through its *Insolvency Resolution Process for Corporate Persons (Amendment) Regulations, 2018* has specified among other; (a) timelines for invitation of resolution plan under Regulation 36A, (b) Form G to publish brief particulars of the invitation, and (c) contents of the resolution plan under Regulation 37.
3. A healthy participation of market players in the resolution process requires that the RFP (a) provides relevant information, excluding those proscribed by the law, to help market participants make informed bids, and (b) clearly articulate the process, evaluation criteria, and timelines to bring transparency and efficiency to the process. To further this objective and facilitate a transparent and standard process for invitation and evaluation of resolution plans, IBBI is inviting comments from its stakeholders on the contents of the RFP for such resolution plans. Stakeholders can provide their comments citing their name, role (IP, IPA, Corporate Debtor, Creditor to Corporate Debtor, Investors, Academics, Others), and email address.
4. A stakeholder should read the Section “Proposed Contents of RFP” in the following section of the document and provide comments for:
  - addition/ deletion/ modification of content under bullet 1.1. “*Categories of Information*”, and/ or
  - addition/ deletion/ modification of content under bullet 1.2. “*Information Under proposed categories*”

The comments should be e-mailed to [feedback@ibbi.gov.in](mailto:feedback@ibbi.gov.in) with subject “*Comments on RFP Content*”. Last date for receipt of comments is 9<sup>th</sup> March, 2018.

**5. Illustration:**

A Corporate Debtor, wishes to provide a comment regarding *Projected pay-out to claimants* under *Evaluation Matrix*. He can prefix 1.2(H)(iv) and write his comments as follows:

***Corporate Debtor-1.2(H)(iv)***– *We should specify a benchmark for discount rate for present value (PV) calculation rather than leaving it to CoC/ RP. For example, PLR of SBI +5%.*

## Proposed Contents of RFP

*CIRP cases under the Code will have distinct characteristics and accordingly RFPs will be tailored to specific needs as ascertained by the CoC and the RP. The proposed contents of the RFP in the following sections is for guidance of the CoC and RP and does not limit their ability to suitably modify/add contents based on unique needs of the case, and as per the Code and IBBI Regulations.*

### 1.1. Categories of Information

- A. *Details of Corporate Debtor*: Information about the corporate debtor to help identify the legal entity, its corporate structure, promoters, scale of operations, locations, publicly available financial information etc. (If Information Memorandum is not provided with RFP)
- B. *Details of ongoing CIRP*: Information about the CIRP process, start and expected end-date, RP details, size of claims etc.
- C. *Bid Process*: The process of invitation, evaluation, and selection of bids
- D. *Compliance Requirements*: The compliance requirements including legally binding documents and undertakings that a potential RA needs to execute before, during, and after
- E. *Information Dissemination*: The process of sharing (CIRP) information with RAs
- F. *Apportioning of cost*: What costs will be borne by the RA.
- G. *Credentials of RA*: Information and documentation required to support eligibility & credibility of RA
- H. *Evaluation Matrix*: Financial and non-financial criteria that CoC will use to evaluate submitted resolution plans

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### 1.2 Information Under Proposed Categories

For each of the categories A-H under 6, following information should be provided for/sought after:

A. *Details of Corporate Debtor (CD)*

*(If Information Memorandum is not provided with RFP or does not capture such information)*

- i. Name of legal entity (CD)
- ii. Office address – Corporate office, Registered Office – (if different, primary location for correspondence)
- iii. Key locations (with segregation of geographic locations/ activities/ no. of employees/ subsidiary operations)

- iv. Group structure with ownership (Shareholding) – Holding Company, Operating Company, Subsidiaries etc.
- v. Promoters – Names, Board Positions – (Any relevant detail to help ascertain related party relationships)
- vi. Last publicly available financial details if any (with comments that current and other non-public financial position will be provided through data room after confidentiality undertaking)

*B. Details of ongoing CIRP*

*(If Information Memorandum is not provided with RFP or does not capture such information)*

- i. Date of Admission of CIRP Application in NCLT
- ii. Amount & number of Claims (Segregated by categories of claims)
- iii. Last Date (180<sup>th</sup>/ 270<sup>th</sup> Day)
- iv. Name of RP, Address of RP, Email of RP
- v. Members of CoC (Represented Institutions/ Key Individuals)
- vi. Tentative Location (City) for due-diligence/ meetings/ presentations

*C. Bid Process*

- i. Last date for receipt of proposals with cut-off time in IST
- ii. Communication protocol in case of revised timelines/ RFP with reference to regulation 36A
- iii. Communication protocol for evaluation matrix (if to be issued separately)
- iv. Process for responding to queries raised by CoC
- v. Process, if any, for revising bids/ reverse bidding/ open bidding
- vi. Process for opening of bids & due-diligence by CoC
- vii. Protocol for sharing bid details, including amounts among bidders – if at all.
- viii. Process for raising query by CoC to potential bidders
- ix. Communication modus operandi to selected bidders with reference to regulation 36A
- x. Statement on right to revise RFP with reference to regulation 36A, if intended

*D. Compliance Requirements*

- i. Confidentiality undertakings for non-disclosure of information
- ii. Legally binding undertaking from authorised person/s to ascertain mandate to participate in the bidding process. For example – Board Resolution, PoA, authorized signatories.
- iii. Credentials of individuals/ entities representing RAs such as – PAN/ TAN/ DIN
- iv. Earnest money deposit/ guarantee for protection against withdrawal during and after the process
- v. Bank guarantee for payment obligations, if required

*E. Information Dissemination*

- i. Access to data room – conditions precedent
- ii. Process for raising queries/ asking for additional information from RP/ CoC/ CD
- iii. Response timelines/ process to respond to queries raised by RAs

- iv. Process for 101 between Management of CD & RAs
- v. Schedule and modus-operandi of any pre-bid conference
- vi. Protocol for scheduling and conduct of site visits, if proposed
- vii. Obligations of the RP towards requests of RAs with/ without consent of CoC

*F. Apportioning of Cost*

- i. Cost to be apportioned to resolution cost
- ii. Cost to be borne by Resolution Applicant

*G. Credentials of Resolution Applicant*

- i. Financial health of the RA - Last 3 Years Annual Report, TTM financials, Auditors Report
- ii. Promoters'/ significant stakeholders' credentials (Individuals) – Directorship/ Ownership in other companies to ascertain fit and proper and credibility
- iii. Promoters' Credentials (Group Companies – Hold Co. Op Cos. Subsidiaries), Last 3 Year Annual Reports of Hold Co, TTM Financials, Auditor Reports
- iv. Debt of the Group - Guarantees and cross obligations relevant to assess group's financial leverage and obligations
- v. Relevant Experience – A brief description on industry knowhow, investing credentials, turnaround/ M&A experience, if any
- vi. Key Management Personnel
- vii. Synergies from Product, geography, technology, supply chain, cross-selling, diversification, integration etc.

*H. Evaluation Matrix*

The CoC may use the following criteria to specify suitable matrix for evaluation of resolution plan:

- i. Confirmation with IBC and CIRP regulations (Mandatory):
  - a. IBC Section 29A
  - b. IBC Section 30(2)
  - c. IBBI Regulation 36 (4)
  - d. IBBI Regulation 38
- ii. Projections for sources of cash:
  - a. Internal business operations –cash generation from continuing business of resolved entity
  - b. Upfront cash infusion proposed by the prospective RA
  - c. Future/ periodic cash infusion proposed by the prospective RA
  - d. Asset sale/ Business divestiture of the resolved entity envisaged as part of resolution plan and amount of cash generated
  - e. PV of cash infusion @ x% discount rate

*CoC may prescribe differentiated discount factors to incentivize upfront cash infusion. For example, cash pay-out in year 2 can be discounted @ 10% or PLR+x%, while pay-out in year 5 can be discounted @ 18% or PLR + Y%.*

- iii. Credibility of projection for business operations of resolved entity:
  - a. Show drivers for revenues and costs for x years (assumptions behind projections).  
*For example – a telecom operator will show revenue growth driven by addition to subscribers' base and average revenue per user (ARPU).*
  - b. Show projected cash flows and balance sheet for x years
  - c. Projection of capital structure leading to target capital structure and sustainable debt  
*For example: A resolution plan may peg sustainable leverage of 2:1 and sustainable coverage of 1.5x for the resolved entity after completion of resolution plan period, say 5 years.*
  - d. Planned sources and usage of cash for x years  
*For example: A resolution plan should segregate future usage of cash for agreed repayments to claimants, ongoing financial and operational obligations, capex with segregation for maintenance capex. This information is important to protect potential diversion of cash during resolution period.*
- iv. Projected pay-out to claimants:
  - a. Distinguish pay-out in cash & through financial instruments (e.g. equity/ debt instruments)
  - b. Distinguish upfront and deferred cash payments
  - c. Disclose PV of deferred cash payments with x% discount factor
  - d. Disclose intrinsic value/ PV of financial instruments issued in lieu of cash/ claims on maturity/ conversion date along with underlying assumptions
  - e. Present PV of pay-out as % of admitted claims across categories @ x% discount rate