

INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—India

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Restructuring & Insolvency analysis: We provide an overview of the various measures introduced by the Government of India, in the insolvency law landscape, to alleviate the effect(s) of the economic slowdown caused by the outbreak of the coronavirus (COVID-19) pandemic. Written by Surbhi Kapur & Animesh Khandelwal, Research Associates at Insolvency and Bankruptcy Board of India.

Introduction

The Insolvency and Bankruptcy Code 2016 (the Code), the primary legislation for a time bound resolution/reorganisation of insolvency of a corporate debtor (reeling under financial distress) is a systemic structural reform. The Code has impelled a behavioural transition by its justice-oriented realisations and distributions. With the enactment of the Code, the defaulter's paradise is lost and market-driven freedom of exit made available, for the maximisation of the value of assets of the firm concerned, promotion of entrepreneurship, availability of credit and balancing the interests of all the stakeholders. Apart from creating a new class of professionals viz the Insolvency Professionals (IPs), and regulating the other service providers in the insolvency arena, the Code has dispelled information asymmetry with the institution of the Information Utilities (IUs) as a credible repository of electronic evidence of default. The Code has made considerable progress on various fronts including, inter alia, bolstering the supporting judicial infrastructure.

Self-reliant India movement

With coronavirus being declared a 'pandemic' by the World Health Organisation (WHO), several mitigation policies and regulatory reforms have been notified by the Government of India in co-ordination with the State Governments. Starting with the enforcement of a nationwide *cordon sanitaire*, the government has been closely monitoring the differential impact of the virulent pandemic across all the sectors. On 12 May 2020, the Honourable Prime Minister of India, Shri Narendra Modi announced a special economic and comprehensive package of INR Twenty Lakhs Crores (20 Trillions) towards building Aatma Nirbhar Bharat Abhiyaan or Self-Reliant India Movement, outlining five pillars: Economy, Infrastructure, System, Vibrant demography and Demand.

In tune with the receptive and responsive mandate of the Government of India, the Honourable Finance Minister of India, Ms. Nirmala Sitharaman, unveiled key reforms and enablers across various sectors including employment, support to businesses, Ease of Doing Business and education and health related reforms. The fifth tranche of measures elaborated on the insolvency related reforms instituted by the Code (that provides a market mechanism for resolution of insolvency of a firm on a going concern basis). In effect, the Code furthers the ease of doing and exiting a business in India. It addresses honest failures through resolution of a failing but a viable firm and if the resolution fails, it provides for liquidation and utilisation of the resources of the firm. In this vein, many facilitative steps regarding the insolvency law landscape in India have been taken by the government.

Higher threshold for initiation of formal insolvency proceedings

The Ministry of Corporate Affairs (MCA), Government of India, increased the threshold for the determination of default in insolvency matters from INR One Lakh (100 Thousand) to INR One Crore (10 Million) through the amendment of section 4 of the Code (Notification dated 24 March 2020). This step was taken to, inter alia, assist and aid the functioning of micro, small and medium enterprises (MSMEs), who may be operational creditors under the Code, and may face disruptions and consequently, defaults owing to the economic slowdown and unprecedented lockdown.

Special insolvency resolution framework for MSMEs

MSMEs are the primary drivers of economic growth across all the sectors of the Indian economy. For this reason, the government has decided to notify a special insolvency resolution framework for the MSMEs. This will be in addition to the earlier announced measures regarding the increase in the threshold for the determination of 'default' under the Code. The measures would contribute to ensuring the continuity of business operations and ensure liquidity. This will contribute to cushioning the Indian economy from businesses that would have been pushed into insolvency due to disruptions caused by coronavirus.

Proactive insolvency regulator

Insolvency and Bankruptcy Board of India (IBBI), the Indian insolvency regulator, has been pro-active and considerate of the concerns of the IPs and other stakeholders of the ecosystem.

Suspension of enrolments

Taking a holistic view of the various Advisories issued by the Government of India, IBBI suspended the enrolment for the limited insolvency and valuation examinations until 31 May 2020. Furthermore, the Insolvency Professional Agencies (IPAs) have been allowed to conduct the pre-registration courses for prospective IPs via an online mode. The formal appeal made by the IBBI to the IPs displays the encouraging attitude of the Board and the pro-activeness in facilitation as well as the re-affirmation of trust in the IPs of India.

Exclusion of period of lockdown from timelines

Time and speed are of the essence in the expeditious conduct of processes under the Code. To insulate the stakeholders against procedural impediments, the MCA along with the IBBI has endeavoured to resolve the issue with respect to the adherence of timelines under the Code. By the issuance of various notifications, changes have been made in the subordinate legislation to exclude the period of the lockdown from the timelines under the Code. In effect, amendments have been undertaken in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 and the IBBI (Liquidation Process) Regulations 2016.

Supportive judicial rendition

With the government unequivocally endorsing social distancing measures, to avert any impediments to the continuity of judicial proceedings and hardships to the litigants, the highest court of the country, the Honourable Supreme Court of India in *Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition (Civil) No. 03/ 2020*-order dated 23 March 2020), took suo motu cognizance of the situation arising out of the challenge faced by the country on account of coronavirus. It recognised the resultant difficulties that may be faced by litigants across the country and extended the period of limitation for all matters with effect from 15 March 2020 until further order. [The National Company Law Tribunals](#) (NCLT—Adjudicating Authority under the Code) (NCLT suspended filings of fresh applications and petitions until further notice and decided to hear only urgent matters) and the [National Company Law Appellate Tribunal](#) (NCLAT) suspended their hearings and decided to exclude the lockdown period from the official duration of the time-bound insolvency process, thereby providing a big relief to IPs. Further, the judicial bodies have decided to forgo the period of court holidays and shall be functional throughout the rest of the year.

Possible practical impact of the reforms

The Self-Reliant India Movement of the Government of India will provide a renewed impetus to the MSMEs.

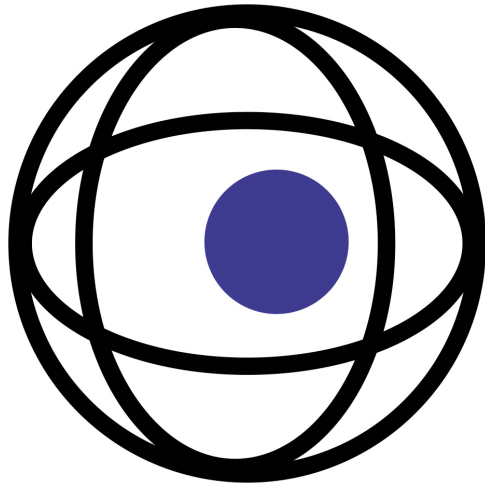
The importance and effect of legal doctrines of force majeure and vis major to cover the present outbreak of coronavirus may also be judicially considered.

In light of the current extraordinary economic situation, it is difficult for the IPs to conduct the CIRP and manage the stressed CDs (defaulting companies) as going concerns. It would be too onerous for an IP to ensure the attendance of the members in the meetings of the committee of creditors (CoC). The preparation and submission of the resolution plans by the prospective resolution applicants (PRA) is also seeming unviable. The interested Resolution Applicants may want to pull back or defer their decision on submission of a viable Resolution Plan.

Since the debts incurred due to coronavirus shall be excluded, the ones that had already accrued prior to the pandemic may be admitted, or if already admitted, shall be dealt with as per the process. During the period of suspension of fresh insolvency proceedings, other methods of resolution/reorganisation of distressed assets may be used by lenders, including the Alternate Dispute Resolution and other mutually agreeable arrangements.

INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by LexisNexis in partnership with INSOL Europe is now available: [Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



INSOL EUROPE

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.

INSOL Europe webinars: COVID coffee breaks

INSOL Europe in partnership with LexisPSL are pleased to present a series of free webinars: 'COVID Coffee Breaks'.

The COVID Coffee Breaks are short, 20 minutes webinars, in which two or three INSOL Europe Country Coordinators share their personal experiences of the coronavirus crisis in their countries and give highlights of reforms and changes to their national insolvency framework to address the current crisis.

The webinars published to date (and available on demand) are accessible on INSOL Europe's website here: <https://www.insol-europe.org/publications/web-series>.