

Indian cross-border provisions notified - but that's just the beginning

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10 April 2017



Connaught Place, in the heart of New Delhi iStock.com/mds0

The cross-border provisions in India's new Insolvency and Bankruptcy Code formerly came into effect at the beginning of this month after publication in the Gazette of India – but lawyers say there is still a long way to go before they are useful.

India's Ministry of Corporate Affairs published a [notification](#) on 31 March announcing that the provisions would become effective the day after.

Taking up only four paragraphs at section 234 and section 235 of the Code, the provisions give India's central government the power to organise "reciprocal arrangements" with other countries, so that the new Indian Code can be applied to the assets or property of a debtor situated abroad.

Where a reciprocal arrangement exists, a resolution professional, liquidator or trustee can make an application to the "adjudicating authority" to take action relating to the debtor's foreign assets. That authority, if it is satisfied the action is necessary, may issue a letter of request to a relevant court or authority in the foreign country to deal with it.

Siddharth Srivastava, a partner at Link Legal in New Delhi, points out that the provisions may have come into effect, but they mean little until the Indian government signs bilateral agreements with other countries.

"Needless to say that entering into bilateral agreement requires a lot of time and negotiation. There is a possibility of prolonged and difficult negotiations since different countries have wide variations in their substantive insolvency law regimes," he tells *GRR*. "Not only this, various bilateral agreements with substantial variations from country to country could lead to uncertainties in implementation," he warns.

Srivastava also notes that the new provisions in the Code are silent on the mechanics for an Indian court to seek or give assistance to a foreign court.

"The above issues need to be carefully considered before analysing the actual effect of notification of cross-border insolvency. In my view, this is only a start and much would be required to be done before the cross-border insolvency provisions yield desired results," he adds.

As the Indian government notified the cross-border provisions, it also [notified](#) portions of the new Code that govern the process for corporate voluntary liquidation.

The new process, embodied in sections 58, 196, 208 and 240, allows directors or designated partners of a debtor to initiate a voluntary liquidation if a majority of them declare the company will be able to pay its debts in full from the proceeds of the assets sold, and that it is not being liquidated with a view to defraud anyone.

If a liquidator finds either of those declarations to be untrue after further investigation, the liquidation will be suspended and the relevant adjudicating authority will “pass any such orders as it deems fit”, according to a press release from the Insolvency and Bankruptcy Board of India (IBBI) – the new regulator tasked with scrutinising Indian insolvency professionals and the agencies that oversee them.

Among other things, the new voluntary liquidation provisions also prohibit the appointment of liquidators who are “not independent” of the debtor, requiring full and continuing disclosure of any relationships with the company, and note that the firm of an insolvency professional acting as liquidator for a particular debtor cannot also represent other stakeholders in the same insolvency process.

Other parts of the new Code coming into force on 1 April concern the registration of “information utilities” – entities that will provide services under the new Code – with the IBBI, as well as the way they store debtors’ financial information.

While it was busy notifying these portions of the law, the IBBI announced it had inaugurated a new premises in Connaught Place, New Delhi. IBBI’s chairman **MS Sahoo** [explained](#) at the inauguration that the board would not only regulate the insolvency profession, but also the transactions undertaken by insolvency professionals.

Sahoo noted that the new regulator has set up three separate wings – research and regulation, registration and monitoring, and administrative law.

It has also already registered three insolvency professional agencies under the new Code: the Indian Institute of Insolvency Professionals of ICAI, ICSI Insolvency Professionals Agency, and the Insolvency Professional Agency of the Institute of Cost Accountants of India. Within those agencies, 977 insolvency professionals had been registered for a period of six months by the end of March, and 88 professionals had passed an insolvency exam for permanent registration.

Two insolvency professional entities that will provide professional support to IPs have also been recognised.

According to the IBBI, about 100 applications for corporate insolvency resolution have been filed with National Company Law Tribunals – specialist courts created to hear proceedings arising from the Code – to date, with about 20 of the cases being admitted so far.

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