

## LEGISLATION WATCH / INDIA



# Recent Insolvency and Proposed Bankruptcy Law Reforms in India

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In early November 2015, the Government of India-appointed committee called “The Bankruptcy Law Reforms Committee” (“BLR Committee”) released a draft Insolvency and Bankruptcy Bill, 2015 (the “Draft Bill”). The proposed reform, which covers both corporate and personal insolvencies, suggests sweeping changes in existing laws in India with a view to bringing about an effective insolvency and bankruptcy regime.

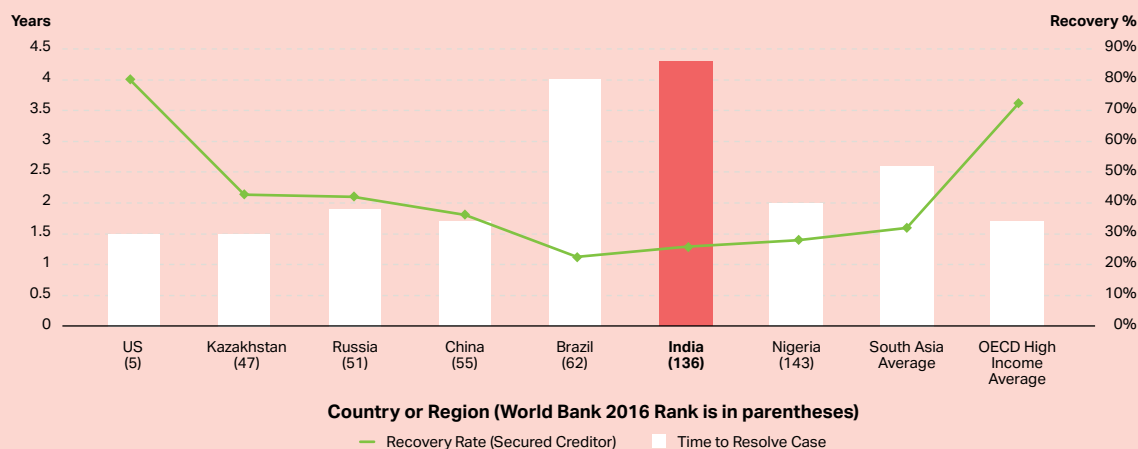
In his Budget Speech 2015-16, Indian Finance Minister Shri Arun Jaitley had identified bankruptcy law reform as a key priority for improving the ease of doing business in India. This was in the backdrop of the criticism around India’s current insolvency regime, which is believed to have pulled down India’s ranking in the World Bank’s Doing Business report, the most recent of which ranks India 136 out of the 189 economies for resolving insolvencies.

As the BLR Committee noted, the current bankruptcy laws in India are highly fragmented. Powers of a creditor and a debtor under insolvency are provided for under different statutes. It is also problematic that

these different laws are implemented in different judicial fora and at times, there is lack of clarity as to which forum has jurisdiction. Moreover, the fora entrusted with adjudicating on matters relating to insolvency and bankruptcy may not have sufficient business or financial expertise, information or bandwidth to handle these matters. This leads to delays and extensions in arriving at an outcome and increases the vulnerability to appeals of the outcome. The Committee noted that, according to the World Bank report, the average time to resolve insolvency in 2014 was four years in India, compared to 0.8 years in Singapore and one year in London.

More recently, while presenting the Indian General Budget 2016-17 on February 29, 2016, the Union Finance Minister Shri Arun Jaitley announced that a comprehensive “Code on Resolution of Financial Firms” will also be proposed as a Bill to deal with the void that exists with regard to bankruptcy situations in financial firms such as banks, insurance companies and other financial sector entities. Together with the Draft Bill, such proposed legislation should fill a major systemic vacuum in the area of bankruptcy laws in India.

**Insolvency Comparison – 2016: Recovery Rates & Years to Revolve Case**



Source: World Bank, Doing Business Database, 2016 rankings (end of 2015 data), available at: <http://doingbusiness.org/rankings>.

## Key Reforms Proposed In Draft Bill

**Consolidation** of the existing laws relating to insolvency of companies, limited liability entities (including limited liability partnerships), unlimited liability partnerships and individuals which are presently scattered in a number of legislations, into a single legislation.

Establishment of an **Insolvency Regulator** to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and informational utilities.

An **Adjudicating Authority** will have the jurisdiction to hear and dispose of cases by or against the debtor.

- In the case of individuals and unlimited liability partnership firms, the Adjudicating Authority will be the Debt Recovery Tribunal. Appeals from the orders of this tribunal will lie to the Debt Recovery Appellate Tribunal.
- The National Company Law Tribunal shall be the Adjudicating Authority with jurisdiction over companies and limited liability entities.
- Appeals from the order of this tribunal will lie to the National Company Law Appellate Tribunal and this body will also be the appellate authority to hear appeals arising out of the orders passed by the Insolvency Regulator in respect of insolvency professionals or information utilities.

**Regulation of insolvency professionals and insolvency professional agencies.** Under the Insolvency Regulator's oversight, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members, leading to the development of a competitive industry for insolvency professionals.

**Involvement of information utilities** which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.

**Revamp the revival/re-organisation regime** applicable to financially distressed companies and limited liability entities; and the insolvency related liquidation regime applicable to companies and limited liability entities. Introduction of a clear, coherent and speedy process for early identification of financial distress and revival of the companies and limited liability entities if the underlying business is found to be viable.

New swift process and timeline of **180 days for dealing with applications for insolvency** resolution. This can be extended for 90 days by the Adjudicating Authority only in exceptional cases. During the insolvency resolution period, the management of the debtor is placed in the hands of an interim resolution professional/resolution professional.

An insolvency resolution plan prepared by the resolution professional has to be approved by **75%** of recognised claims of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.

**New fast track insolvency resolution process** which may be applicable to certain categories of entities. In such a case, the insolvency resolution process has to be completed within a period of 90 days from the trigger date. However, on request from the resolution professional based on the resolution passed by the committee of creditors, a one-time extension of 45 days can be granted by the Adjudicating Authority. The order of priorities (waterfall) in which the proceeds from the realisation of the assets of the entity are to be distributed to its creditors is also envisaged.

**New insolvency regime for individuals and unlimited liability partnerships.** As a precursor to a bankruptcy process, the Draft Bill envisages two distinct processes under this part, namely, "Fresh Start" and "Insolvency Resolution".

- In the Fresh Start process, indigent individuals with income and assets lesser than specified thresholds shall be eligible to apply for a discharge from their “qualifying debts”. The resolution professional will investigate and prepare a final list of all qualifying debts within 180 days from the date of application. On the expiry of this period, the Adjudicating Authority will pass an order on discharging of the debtor from the qualifying debts and accord an opportunity to the debtor to start fresh, financially.
- In the Insolvency Resolution Process, the creditors and the debtor will engage in negotiations to arrive at an agreeable repayment plan for composition of the debts and affairs of the debtor, supervised by a resolution professional. The bankruptcy of an individual can be initiated only after the failure of the resolution process. The bankruptcy trustee is responsible for administration of the estate of the bankrupt and for distribution of the proceeds on the basis of the priority.

**New transition provision** during which the Central Government of India will exercise all the powers of the Insolvency Regulator until the time the Insolvency Regulator is established. This transition provision will enable quick starting of the process on the ground without waiting for the proposed institutional structure to develop.

1. Main sources: The draft Insolvency and Bankruptcy Bill, 2015 and the Summary of the Recommendations of the Bankruptcy Law Reforms Committee released by the Press Information Bureau, Government of India.

