

Cross Border Insolvency

Preface of Insolvency Law Committee's Report on Cross Border Insolvency:

The Insolvency Law Committee constituted by the Ministry of Corporate Affairs submitted its first Report in March 2018 which recommended amendments to the Insolvency and Bankruptcy Code, 2016 based on the experience gained from implementation of the Code. With respect to cross-border insolvency, the Committee noted that the existing provisions in the Code (sections 234 and 235) do not provide a comprehensive framework for cross-border insolvency matters.¹ The Committee decided to attempt to provide a comprehensive framework for this purpose based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 which could be made a part of the Code by inserting a separate part for this purpose. Given the complexity of the subject matter and the requirement of in-depth research to adapt the UNCITRAL Model Law for India, the Committee decided to submit its recommendations on cross-border insolvency separately. Accordingly, this Report provides recommendations of the Committee on adoption of the UNCITRAL Model Law and the modifications necessary in the Indian context.

Globally, the UNCITRAL Model Law has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues and legislation based on the Model Law has been adopted in 44 countries in a total of 46 jurisdictions. The UNCITRAL Model Law ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the enacting country.

Further, as Part III of the Code that deals with insolvency resolution and bankruptcy for individuals and partnership firms has not been notified yet, the Committee recommends application of cross-border insolvency provisions to corporate debtors to start with and based on the experience gained, it could be extended to individual insolvency in due course of time. Similar approach has been followed in Singapore and some other countries.

Also, incorporation of cross-border insolvency provisions as recommended by the Committee, will create an internationally aligned and comprehensive insolvency framework for corporate debtors under the Code, which is most essential in a globalised environment. However, issues such as treatment of insolvency of enterprise groups will still remain a challenge, as the proposed framework is meant for individual companies and not enterprise groups. As the UNCITRAL and other international bodies continue to study these issues and devise internationally workable solutions, the cross-border framework is expected to further evolve.

Lastly, the Insolvency Law Committee is deliberating modifications to the role and powers of IBBI regarding inspection and investigation as provided in Chapter VI of Part IV of the Code, and will submit a supplementary report on the same in due course.

Previous Article-[MCA invites suggestions from Stakeholders on Draft Chapter of Cross Border Insolvency](#).

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