NOTICE

Invitation of comments from public on Cross-Border Insolvency under Insolvency and Bankruptcy Code, 2016

‘Cross-border insolvency’ denotes circumstances in which an insolvent debtor has assets and/or creditors in more than one country. With the rapid increase in globalisation and the advent of sophisticated communications technology, cross-border trade and investment has increased the dependence of national economies on each other. The impact of business failure in such a globalised market economy often spans beyond national boundaries. Consequently, insolvency laws need to account for domestic as well as cross-border scenarios.

Domestic insolvency laws, *inter alia*, deal with establishing rights of various stakeholders during insolvency proceedings and prescribe procedures at various stages of the proceedings, such as locating the debtor’s assets; identifying creditors of the debtor and their claims; establishing the manner of determining the means of repaying creditors and making distributions based on priority rules, etc. In a cross-border insolvency context, the law in a country will need to provide additional rules to deal with complexities such as the extent of access available to foreign insolvency practitioners to assets held in the respective country; rights of foreign creditors in respect of distribution in the respective country; the validity of orders of an adjudicatory forum in a foreign country, etc.

Such additional complexities in dealing with cross-border insolvencies result in uncertainty, risk, and ultimately costs to businesses. To resolve these concerns holistically, the need for having robust institutional arrangements to deal with cross-border insolvency issues has gained momentum in various jurisdictions, particularly under the aegis of UNCITRAL Model Law, during the last few decades. This note discusses the policy deliberations on the enactment of a cross-border insolvency law in India.

I. Background

India reformed its erstwhile insolvency regime by enacting the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") that *inter alia* consolidates the laws relating to insolvency of corporate entities, individuals and partnership firms. The Code has transformed the insolvency landscape in the country by providing reorganization, liquidation and bankruptcy processes that aim at maximizing the value of assets in a time-bound manner, promote entrepreneurship, availability of credit, and balance the interests of all stakeholders.
The initial draft of the Insolvency and Bankruptcy Bill did not contain any provisions to deal with cross-border insolvency. The Bankruptcy Law Reforms Committee ("BLRC"), which recommended the design of the IBC, noted the following in its report in November 2015 –

“The Committee has taken up, and attempted to comprehensively solve, the question of bankruptcy and insolvency insofar as it is a purely domestic question. This is an important first milestone for India.

The next frontier lies in addressing cross-border issues. This includes Indian financial firms having claims upon defaulting firms which are global, or global financial persons having claims upon Indian defaulting firms.

Some important elements of internationalisation – foreign holders of corporate bonds issued in India, or borrowing abroad by an Indian firm – are dealt with by the present report. However, there are many other elements of cross-border insolvency which are not addressed by this report. Examples of these problems include thousands of Indian firms have become multinationals, and Indian financial investors that lend to overseas persons.

The Committee proposes to take up this work in the next stage of its deliberations.”

The draft Bill prepared based on the recommendations of the BLRC was reviewed by a Joint Parliamentary Committee ("JPC") before its enactment. The JPC made several changes to the draft Bill and made the following observations in respect of cross-border insolvency in its report in April 2016 –

“The Committee deliberated the issue and noted that ‘The Code at present does not explicitly deal with issues and text related to cross border insolvency. However given that many corporate transactions and businesses today involve an international and cross border element, the implications of cross border insolvency cannot be ignored for too long if India is to have a comprehensive and long lasting insolvency law as the Code aims to achieve. Not incorporating this will lead to an incomplete Code’"

Thereafter, two provisions were added to the draft Bill to deal with cross-border insolvency issues - Sections 234 and 235 of the IBC. Section 234 empowers the Central Government to enter into bilateral agreements with other countries to resolve situations of cross-border insolvency. Section 235 allows the Adjudicating Authority ("AA") to issue a letter of request to a court in a country with which an agreement under Section 234 has been entered into, to deal with assets situated in that country.

These provisions provide a basic framework for cross-border insolvency. Entering into agreements or treaties with various countries may be time-consuming, costly, and involve multiple negotiations. Further, in scenarios where multiple countries are involved in an insolvency proceeding, balancing competing clauses of such treaties may become difficult to handle. This was also acknowledged by the JPC and is evident from its observation where it noted that “But cross border insolvency has a larger issue. There can be a multinational company having branches elsewhere and they actually go for liquidation somewhere. That may
have a ramification. There are various other issues. Later on, these issues perhaps could be considered.”

In this backdrop, the Insolvency Law Committee (“ILC”), a committee constituted under the Ministry of Corporate Affairs (“MCA”) to review the implementation of the Code, took cognizance of the issues surrounding cross-border insolvency under the Code. In its first report released in March 2018, it discussed the gaps in the law due to the lack of a framework for cross-border insolvency, and noted –

“The Committee deliberated on Cross Border Insolvency and noted that the existing two provisions in the Code (S. 234 & S. 235) do not provide a comprehensive framework for cross border insolvency matters. Accordingly, it was decided to attempt a comprehensive framework for this purpose based on UNCITRAL model law on Cross Border Insolvency, which could be made a part of the Code by inserting a separate chapter for this purpose. Given the complexity of the subject matter and the requirement of in-depth research to adapt the model law in the Indian context, the Committee decided to submit its recommendations on Cross Border Insolvency separately.”

Pursuant to this, the MCA invited comments and views from stakeholders on an introductory note and a draft legal framework for cross-border insolvency in June 2018. The comments received from this consultation were considered by the MCA and the ILC. Thereafter, the ILC released its second report in October 2018, wherein it provided detailed recommendations on a legislative framework for cross-border insolvency in India.

II. Model Law

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 (“Model Law”) has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues. The Model Law provides a legislative framework that can be adopted by countries with modifications to suit the domestic context of the enacting jurisdiction. It has been adopted by 49 States to date. This includes developed as well as developing countries, such as Singapore, the UK, the US, South Africa, the Republic of Korea, etc.

The following gives a brief outline of the procedure envisaged in the Model Law:

(i) **Access:** The Model Law allows foreign insolvency officials and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor.

(ii) **Recognition and relief:** The Model Law allows recognition of foreign proceedings and relief by the domestic court based on such recognition. If domestic courts determine that the debtor has its centre of main interests (“COMI”) in a foreign country, they will consider insolvency proceedings in such foreign country to be the main proceedings. Otherwise, they will be considered as non-main proceedings.
Recognition as the main proceeding will result in automatic relief, such as enforcing a moratorium on domestic proceedings regarding the debtor and providing greater powers to the foreign representative in handling the estate of the debtor. For non-main proceedings, such relief is at the discretion of the domestic court.

(iii) **Cooperation:** The Model Law lays down the basic framework for cooperation between domestic and foreign courts, and domestic and foreign insolvency professionals. It provides for direct cooperation between: (a) domestic courts and foreign insolvency professionals; (b) domestic courts and foreign courts; (c) foreign courts and domestic insolvency professionals; and (d) foreign insolvency professionals and domestic insolvency professionals.

(iv) **Coordination:** The Model Law also provides a framework for commencement of domestic insolvency proceedings when a foreign insolvency proceeding has already commenced or vice versa. It provides for coordination of two or more concurrent insolvency proceedings in different States by encouraging cooperation amongst courts.

(v) **Public policy:** While the Model Law seeks to promote cooperation amongst countries, it also provides flexibility to courts to refuse any action that may be against the public policy of the enacting jurisdiction. Thus, a court in a country can refuse to take any action or provide any relief if it concludes that such action or relief would be manifestly contrary to the public policy of such a country. The determination of what constitutes ‘public policy’ is left to enacting jurisdictions and is not detailed in the Model Law.

A detailed discussion on the shortcomings of the current legal framework on cross-border insolvency in India, the need for reform, and the benefits of adopting the Model Law may be found in the note released for public consultation in June 2018 (may be accessed here: https://www.mca.gov.in/Ministry/pdf/PublicNoiceCrossBorder_20062018.pdf).

**III. ILC Recommendations on Cross-Border Insolvency**

The report of the ILC on cross-border insolvency was submitted to the Government in October 2018 which primarily recommended the adoption of the Model Law in the IBC. It undertook a clause-by-clause analysis of the Model Law and suggested certain modifications to it to make it suitable to the Indian context. On this basis, it recommended draft provisions on cross-border insolvency for insertion in the Code (hereinafter referred to as “Draft Part Z”). The Draft Part Z is provided as Annexure II to the Report of the ILC (may be accessed here: https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf).

**IV. Further Developments**

In January 2020, the MCA constituted a cross-border insolvency rules/ regulations committee
The CBIRC submitted its report to the Government in June 2020 (may be accessed here: https://mca.gov.in/bin/dms/getdocument?mds=rrg9eENnNT9kek31pVicTQ%253D%253D&t ype=open). This report provides recommendations on draft rules, regulations, notifications, guidelines, and capacity building for cross-border insolvency. It also suggests a few modifications to the ILC recommendations in Draft Part Z.

It is felt that enacting legislative provisions on cross-border insolvency is essential to address the emerging issues on cross-border insolvency in recent cases under the Code. The introduction of a cross-border insolvency law in the IBC, that is in line with international best practices and suitable for the Indian context, may be beneficial to all stakeholders. Draft Part Z, as recommended by the ILC, is under consideration for enactment. Certain modifications to the Draft Part Z may be considered based on suggestions of the CBIRC and jurisprudence developed under the Code. Additionally, the scope of this note is limited to cross-border provisions for single entity insolvency and the treatment of corporate groups is not considered herein.

Therefore, it is proposed to enact provisions on cross-border insolvency in line with Draft Part Z along with the following modifications:

1. Applicability

   A. Personal guarantors to corporate debtors

   1.1. The Model Law applies to individuals as well as corporate persons. When the ILC contemplated its report in 2018, the provisions of the Code had only been notified with respect to corporate debtors. Since personal insolvency provisions of the Code had not been operationalised at the time, the ILC recommended that Draft Part Z should apply only to corporate debtors. Part III of the Code has now been notified by the Central Government to the extent it applies to personal guarantors to corporate debtors.

   1.2. It is proposed that the provisions of Draft Part Z should be revised to apply them to debtors under Part III of the Code. The provisions for insolvency resolution and bankruptcy under Part III have been notified in respect of personal guarantors to corporate debtors. Consequently, immediate application of the cross-border law is proposed to be to corporate debtors and personal guarantors to corporate debtors.

   1.3. In this context, the following is further proposed:

   (i) The Adjudicating Authority for Part III debtors may be the Debt Recovery Tribunal ("DRT"). However, where the insolvency proceeding of a personal guarantor is being adjudicated in the National Company Law Tribunal ("NCLT") (per Section 60(2) or (3)), cross-border applications for such guarantor may also be filed in the NCLT instead of the DRT. Any appeals from
DRT decisions may be filed with the Debt Recovery Appellate Tribunal (“DRAT”) and any appeals from NCLT decisions may be filed with the National Company Law Appellate Tribunal (“NCLAT”).

(ii) The COMI for Part III debtors may be presumed to be the ‘habitual place of residence’ of the debtor. This shall be a rebuttable presumption for determining the COMI, as recommended in the Model Law.

(iii) The relief on recognition of a foreign proceeding under the Model Law includes moratorium-related relief. Wherever a moratorium is to be imposed in respect of Part III debtors in Draft Part Z, it may be the same in scope as the moratorium imposed under Section 101 of the Code.

B. Exclusion of pre-packaged insolvency resolution process

1.4. A pre-packaged insolvency resolution process (“pre-pack process”) was recently introduced in the Code for micro, small and medium corporations. Since provisions related to the pre-pack process were enacted this year, they had not been considered by the ILC at the time of designing Draft Part Z. The pre-pack process is a quicker and simpler resolution process for MSME corporate debtors. It is a voluntary process designed for smaller businesses to effectively resolve their financial distress. It is felt that cross-border issues may sparingly arise in the pre-pack process as it applies to small businesses. Further, since it has been introduced recently, jurisprudence and practice under the pre-pack mechanism are at a nascent stage. Given this, applying cross-border insolvency provisions to the pre-pack process may not be suitable at this stage.

1.5. Therefore, it is proposed that cross-border insolvency provisions may not apply to the pre-pack process.

C. Excluded entities

1.6. The Model Law suggests that businesses whose resolution is governed by a special law or whose insolvency significantly affects public interests may be exempt from the applicability of the cross-border insolvency law. In line with this, the ILC recommended that certain debtors may be exempted from the applicability of Draft Part Z. Consequently, Clause 1(3) of Draft Part Z empowers the Central Government to notify a class or classes of corporate debtors or entities to whom the provisions of Draft Part Z shall not apply.

1.7. The CBIRC noted that several jurisdictions have exempted certain kinds of businesses from the purview of the cross-border provisions in their respective insolvency laws. Many countries exempt businesses providing critical financial services, such as banks and insurance companies, from the provisions of cross-
border insolvency frameworks. Given this, it recommended that financial service providers notified under Section 227 of the IBC should be excluded from the purview of Draft Part Z.

1.8. Thus, it is proposed that financial service providers may be excluded from the applicability of cross-border insolvency provisions under Draft Part Z. Such exclusion is in line with the design of the Code as financial service providers are subject to a special insolvency process that has been notified under Section 227. Further, the Central Government may, if required, notify any other entities that should be excluded from the application of cross-border insolvency provisions by utilising its power under Clause 1(3) of Draft Part Z.

2. Adjudicating Authority for cross-border applications

2.1. The ILC recommended that the Central Government may notify the NCLT benches that shall act as the AA under Draft Part Z. In this regard, the CBIRC suggested that all benches of the NCLT may be given the power to adjudicate cross-border insolvency matters. It noted that this would promote certainty and accessibility in the law. This approach would also not disrupt the existing registered office jurisdiction rule under the Code and would avoid over-burdening a few NCLT benches.

2.2. Thus, it is proposed that all benches of the NCLT and DRT may have jurisdiction to adjudicate applications under Draft Part Z. This would mean that cross-border proceedings arising in respect of corporate debtors that have registrations in India will be dealt with at the NCLT bench having jurisdiction over the registered office of the corporate debtor. Cross-border applications regarding any person incorporated with limited liability outside India may be dealt with by the Principal Bench of the NCLT. In respect of Part III debtors, all benches of the DRT may be given jurisdiction to deal with cross-border applications in line with the jurisdiction under Section 179 of the Code.

3. Enforcement of judgments

3.1. Article 21 of the Model Law allows for the granting of certain discretionary relief upon the recognition of a foreign main or non-main proceeding (reflected in Clause 18 of Draft Part Z). Recent interpretation of the Model Law has caused uncertainty regarding its application to the enforcement of judgments - this was highlighted most impactfully in the case of Rubin v. Eurofinance SA [(2012) UKSC 46]. In this case, the UK Supreme Court refused to enforce a foreign judgment despite recognising the foreign proceeding from which the judgment arose. The underlying issue brought out by this case was that Article 21 of the Model Law does not expressly allow a court to enforce a judgment. Such power can only be implied from the scope of ‘any appropriate relief’ that may be provided under Article 21.
3.2. The interpretation adopted in *Rubin* has been criticised by many practitioners since mere recognition of proceedings without enforcement of judgments may render the Model Law toothless. To address this gap in interpretation of the Model Law, the UNCITRAL recommends in Article X of the UNCITRAL Model Law on Insolvency Related Judgments 2018 that jurisdictions enacting the Model Law may clarify that enforcement of a judgment is permitted as a discretionary relief under Article 21.

3.3. It is felt that recognition of a foreign proceeding may be immaterial without the power to enforce a judgment arising out of such proceeding. Enforcement of judgments is recommended as a discretionary relief under the Model law and would only be granted after considering the need for such enforcement. Further, leaving this issue to interpretation may result in a lack of clarity in the law and inconsistent interpretations by different fora. To avoid this, it is proposed that Draft Part Z may include an explanation that clarifies that the AA may order the enforcement of a judgment arising out of a foreign proceeding. To avail such enforcement, the foreign proceeding should have gained recognition under Draft Part Z.

V. Comments Sought

Public comments are hereby invited on Draft Part Z (Annexure II of the ILC Report of October 2018) along with proposed modifications mentioned in para 1.1 – 3.3 above.

Suggestion/comments, if any, along with brief justification may be submitted online therein at the below mentioned weblink latest by 5:30 PM on 15th December 2021:
https://ibbi.gov.in/webfront/cross_border_comments.php

Stakeholders may please note that comments should not be sent separately through e-mail or hard copy and should be sent only through the weblink created for the purpose.

-Sd/-
(Satyajit Roul)
Joint Director, MCA
CHAPTER 1: GENERAL PROVISIONS

1. Purpose and scope of application of this Part

(1) The purpose of this Part is to incorporate the UNCITRAL Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of:

(a) cooperation between

i. Adjudicating Authorities, resolution professionals, liquidators, corporate debtors, other stakeholders and

ii. the courts and other competent authorities of foreign countries involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the corporate debtor;

(d) protection and maximization of the value of the corporate debtor’s assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(2) Save as otherwise provided in sub-clauses (3) and (4), the provisions of this Part shall apply to all corporate debtors to whom this Code applies where:

(a) assistance is sought in India by a foreign court or a foreign representative in connection with a foreign proceeding; or
(b) assistance is sought in a foreign country in connection with a proceeding under this Code; or

(c) a foreign proceeding and a proceeding under this Code in respect of the same corporate debtor are taking place concurrently; or

(d) creditors in a foreign country have an interest in requesting the commencement of, or participation in, a proceeding under this Code:

Provided that “corporate debtor” for the purposes of this Part shall also include any person incorporated with limited liability outside India.

(3) Subject to clause 29 of this Part, the Central Government may notify classes of corporate debtors or entities to whom the provisions of this Part shall not apply.

(4) The provisions of this Part shall apply:

(a) in the first instance to countries, mentioned in Part A of the Schedule, which have adopted the UNCITRAL Model Law on Cross-Border Insolvency.

(b) to any other country, specified in Part B of the Schedule, which the Central Government may notify under sub-clause (5).

(5) Subject to clause 29 of this Part, the Central Government may enter into an agreement with the Government of any country outside India for enforcing provisions of the Code in respect of corporate debtors under this Part and may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of the corporate debtor situated at any place in a country outside India with which such an agreement has been entered into, shall be subject to such conditions as stated in the agreement.

(6) Notwithstanding anything contained in this Part but subject to clause 29 of this Part, the Central Government may by notification-
(a) add or omit any country from the Schedule if such addition or omission is necessary in the interest of security of India or public interest; or

(b) direct that the application of this Part in relation to any country shall be subject to such conditions, exceptions or qualifications as are specified in the said notification if such conditions, exceptions or qualifications are necessary in the interest of security of India or public interest.

2. Definitions

In this Part, unless the context otherwise requires,

(a) “Adjudicating Authority” means benches of the National Company Law Tribunal, as notified by the Central Government in the manner provided in Clause 29 of this Part, to perform functions relating to recognition of foreign proceedings and cooperation with foreign courts and foreign representatives under this Part;

(b) “centre of main interests” shall have the meaning assigned to it in clause 14 of this Part;

(c) “establishment” means any place of operations where the corporate debtor carries out a non-transitory economic activity with human means and assets or services;

(d) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

(e) “foreign main proceeding” means a foreign proceeding taking place in the country where the corporate debtor has the centre of its main interests;

(f) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the corporate debtor has an establishment;

(g) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the corporate debtor are subject to control or supervision by
a foreign court, for the purpose of reorganization or liquidation;

Explanation: For the purposes of this Part, the term “reorganisation” shall have the same meaning as “resolution” under the Code.

(h) “foreign representative” means a person or body authorized in a foreign proceeding to administer the reorganization or the liquidation of the corporate debtor’s assets or affairs or to act as a representative of the foreign proceeding and includes any person or a body appointed on an interim basis.

3. Authorisation of a resolution professional or liquidator to act in a foreign country

Any resolution professional or liquidator recognised or authorised to act as such under this Code is, subject to regulations specified by the Board, authorised to act in a foreign country on behalf of a proceeding under this Code, as permitted by the applicable foreign law.

4. Public policy exception

(1) Notwithstanding anything contained in this Part, the Adjudicating Authority may refuse to take any action authorised by this Part if, in its opinion, the implementation of such action would be manifestly contrary to the public policy of India.

(2) Before passing any orders under sub-clause (1), the Adjudicating Authority shall serve a notice to the Central Government as soon as may be practicable for inviting submissions on the matter.

(3) Without prejudice to the provisions of this clause, the Central Government, if it is of the opinion that the implementation of any action authorised by this Part would be manifestly contrary to the public policy of India, it may itself apply to the Adjudicating Authority for an order under sub-clause (1).
5. Additional assistance under other laws

Without prejudice to the provisions of this Part, the Adjudicating Authority, the resolution professional or the liquidator, as the case may be, may provide additional assistance to a foreign representative under any other laws of India.

6. Interpretation

In the interpretation of this Part, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II
ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE ADJUDICATING AUTHORITY

7. Right of access by foreign representative

(1) A foreign representative is entitled to apply to the Adjudicating Authority and exercise his powers and functions under this Part in the manner as may be prescribed.

(2) A foreign representative shall be subject to a code of conduct as may be specified.

8. Limited jurisdiction

(1) Subject to sub-clause (2), the sole fact that an application pursuant to this Part is made to the Adjudicating Authority by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the corporate debtor to the jurisdiction of courts in India, or the Adjudicating Authority, for any purpose other than the application.

(2) Where a foreign representative has contravened any provision of this Part or
rules or regulations made thereunder, the Board may:

(a) impose a penalty which is three times the amount of loss caused, or is likely to be caused, to persons concerned on account of such contravention; or

(b) impose a penalty which is three times the amount of unlawful gain made on account of such contravention; or

(c) give any other direction that the Board is authorised to give in relation to an insolvency professional under this Code, in the manner as may be specified.

(3) A foreign representative referred to in sub-clause (2), includes a person who purports to be a foreign representative under this Part.

9. Participation by a foreign representative in proceedings under this Code

Subject to clause 7 of this Part, upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the corporate debtor under this Code.

10. Access of foreign creditors to a proceeding under this Code

(1) Subject to sub-clause (2), foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Code as creditors in India.

(2) Sub-clause (1) does not affect the ranking of claims in a proceeding under this Code or the exclusion of foreign tax and social security claims from such a proceeding:

Provided that the claims of foreign creditors, other than those concerning tax and social security obligations, shall not be ranked lower than the general class of claims provided in section 53(1)(f) of this Code, unless an equivalent domestic claim has a lower rank under this Code.
11. Notice to foreign creditors of a proceeding under this Code

(1) Without prejudice to the provisions of this Code, whenever under this Code notice is to be given to creditors in India, such notice shall also be given to the known creditors that do not have addresses in India.

(2) Such notice shall be made to the foreign creditors in a manner as may be specified. No letters rogatory or other, similar formality may be required.

(3) When a notice of commencement of a proceeding is to be given to foreign creditors, the notice shall:

   (a) indicate the time period for filing claims as per the provisions of this Code and specify the place for their filing;

   (b) indicate whether secured creditors need to file their secured claims as provided by this Code; and

   (c) contain any other information required to be included in such a notice to creditors pursuant to the law of India and the orders of the Adjudicating Authority.

CHAPTER III
RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

12. Application for recognition of a foreign proceeding

(1) Subject to clause 7, a foreign representative may apply to the Adjudicating Authority for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition under sub-clause (1) shall be accompanied by-

   (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in sub-clause (a) and (b), any other evidence as may be prescribed, affirming the existence of the foreign proceeding and of the appointment of the foreign representative; and

(d) a statement identifying all foreign proceedings and proceedings under this Code in respect of the corporate debtor that are known to the foreign representative; and

(e) a translation of documents in support of the application for recognition in English, if applicable.

(3) An application for recognition under sub-clause (1) shall be made in such form and manner and be accompanied with such fees as may be prescribed.

13. Presumptions concerning recognition

(1) If the decision or certificate or any other document referred to in clause 12(2)(a), (b) and (c) of this Part indicates that the foreign proceeding is a proceeding within the meaning of clause 2(g) of this Part and that the foreign representative is a person or a body within the meaning of clause 2(h) of this Part, the Adjudicating Authority is entitled to so presume.

(2) Notwithstanding that the documents submitted in support of the application under clause 12(2) of this Part for recognition have not been legalised, the Adjudicating Authority is entitled to presume they are authentic.

14. Centre of main interests

(1) In the absence of proof to the contrary, the corporate debtor’s registered office is presumed to be the corporate debtor’s centre of main interests for the purpose of this Part.
(2) The presumption in sub-clause (1) shall only apply if the registered office of the corporate debtor has not been moved to another country within the three-month period prior to the filing of application for initiation of insolvency proceedings in such country.

(3) While determining the corporate debtor’s centre of main interests, the Adjudicating Authority shall conduct an assessment, of where the corporate debtor’s central administration takes place, and which is readily ascertainable by third parties including creditors of the corporate debtor.

(4) If the corporate debtor’s centre of main interests is not determined by factors stated in sub-clause (3), the Adjudicating Authority may conduct an assessment of factors prescribed by the Central Government for this purpose.

15. Decision to recognise a foreign proceeding

(1) Subject to clause 4 of this Part, the Adjudicating Authority shall recognise the foreign proceeding if it is satisfied that:

(a) the foreign proceeding is a proceeding within the meaning of clause 2(g) of this Part;

(b) the foreign representative applying for recognition is a person or body within the meaning of clause 2(h) of this Part; and

(c) the application meets the requirements of clause 12 of this Part.

(2) The foreign proceeding shall be recognised by the Adjudicating Authority as a:

(a) foreign main proceeding, if it is taking place in the country where the corporate debtor has the centre of its main interests under clause 14 of this Part; or

(b) foreign non-main proceeding, if it is taking place in a country where the corporate debtor has an establishment as defined in clause 2(c) of this Part.
This clause and clauses 12, 13, 14 and 16 of this Part do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Every application for recognition under clause 12 of this Part shall be decided by the Adjudicating Authority within thirty days from the date of the filing of the application:

Provided that the Adjudicating Authority may extend the period specified above by an additional thirty days, if required.

16. **Subsequent information**

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Adjudicating Authority within three days of having known of:

(a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative’s appointment; and

(b) any other foreign proceeding or proceeding under this Code regarding the same corporate debtor.

17. **Effects of recognition of a foreign main proceeding**

(1) Upon recognition of a foreign proceeding as a foreign main proceeding by the Adjudicating Authority, it shall, subject to the provisions of sub-clauses (2), (3) and (4), by an order declare moratorium for prohibiting all of the following:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate
debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The scope of the moratorium under sub-clause (1) shall be subject to provisions of section 14 of the Code, including any exemptions applicable to section 14 of the Code.

(3) Sub-clause (1) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the corporate debtor.

(4) Sub-clause (1) does not affect the right to request commencement of a proceeding under this Code or the right to file claims in such a proceeding.

18. Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the corporate debtor or the interests of the creditors, the Adjudicating Authority may by an order, at the request of a foreign representative, grant any appropriate relief, including:

(a) moratorium on institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration, to the extent they have not been stayed under clause 17(1)(a) of this Part;

(b) moratorium on transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial
interest therein, to the extent they have not been stayed under clause 17(1)(b) of this Part;

(c) moratorium on any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the extent it has not been stayed under clause 17(1)(c) of this Part;

(d) moratorium on recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, to the extent it has not been stayed under clause 17(1)(d) of this Part;

(e) entrusting the administration or realisation of the corporate debtor’s assets located in India to the foreign representative in the manner as may be prescribed;

(f) granting any additional relief that may be available to a resolution professional or liquidator under this Code.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the Adjudicating Authority may, at the request of the foreign representative, entrust the distribution of all or part of the corporate debtor’s assets located in India to the foreign representative or another person designated by the Adjudicating Authority, provided that the Adjudicating Authority is satisfied that the interests of creditors in India are adequately protected.

(3) In granting relief under this clause to a representative of a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the relief relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.
19. Protection of creditors and other interested persons

(1) The Adjudicating Authority shall, while granting or refusing to grant any relief under clause 18 of this Part, or in modifying or terminating relief under sub-clause (3), satisfy itself that the interests of the creditors and other interested persons, including the corporate debtor, are adequately protected.

(2) The Adjudicating Authority may while granting any relief, under clause 18 of this Part, impose such conditions as it considers appropriate.

(3) The Adjudicating Authority may, at the request of the foreign representative or a person affected by relief granted under clause 18 of this Part, or at its own motion, modify or terminate such relief.

20. Action to avoid acts detrimental to creditors

(1) Subject to clause 7 of this Part, upon recognition of a foreign proceeding, the foreign representative shall be entitled to make an application to the Adjudicating Authority for an order in connection with sections 43, 45, 49, 50 and 66 of this Code.

(2) For the purposes of sub-clause (1), the insolvency commencement date of the foreign proceeding shall be determined in accordance with the law of the country in which the foreign proceeding is taking place, including any law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.

(3) When the foreign proceeding is a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the action relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding.
CHAPTER IV
COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

21. Cooperation and communication between the Adjudicating Authority and foreign courts or foreign representatives

(1) For matters referred to in clause 1 of this Part, the Central Government in consultation with the Adjudicating Authority, shall notify guidelines for communication and cooperation between the Adjudicating Authority and foreign courts in the interest of all stakeholders.

(2) The Adjudicating Authority may conduct a joint hearing with another foreign court in a concurrent proceeding, and may communicate directly with, or request information or assistance directly from foreign representatives.

(3) The Central Government shall notify the relevant authority to assist the Adjudicating Authority in facilitating transmission of notices and other communications between the Adjudicating Authority and foreign courts.

(4) Notifications under sub-clauses (1) and (3) shall be issued in the manner provided in clause 29 of this Part.

22. Cooperation and direct communication between the resolution professionals and liquidators and foreign courts or foreign representatives

(1) In matters referred to in clause 1 of this Part, the resolution professional or liquidator shall, as the case may be, in the exercise of its functions and subject to the supervision of the Adjudicating Authority, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The resolution professional or liquidator, as the case may be, shall be entitled, in the exercise of its functions and subject to the supervision of the Adjudicating Authority, to communicate directly with foreign courts or foreign representatives.
23. Forms of cooperation

Subject to clause 21, the cooperation referred to in clauses 21 and 22 of this Part may be implemented by any appropriate means, including:

(a) appointment of a person or body to act at the direction of the Adjudicating Authority;

(b) communication of information by any means considered appropriate by the Adjudicating Authority;

(c) coordination of the administration and supervision of the corporate debtor’s assets and affairs;

(d) approval or implementation by courts of agreements concerning the coordination of proceedings;

(e) coordination of concurrent proceedings regarding the same corporate debtor.

CHAPTER V
CONCURRENT PROCEEDINGS

24. Commencement of a proceeding under this Code after recognition of a foreign main proceeding

After recognition of a foreign main proceeding,

(a) any proceeding under this Code may be commenced only if the corporate debtor has assets in India; and

(b) the effects of the proceeding under clause (a) shall be restricted to:

(i) the assets of the corporate debtor that are located in India; and

(ii) to the extent necessary to implement cooperation and coordination under clauses 21, 22 and 23 of this Part, to other
assets of the corporate debtor that, under the laws of India, should be administered in that proceeding.

25. Coordination of a proceeding under this Code and a foreign proceeding

Where a foreign proceeding and a proceeding under this Code are taking place concurrently regarding the same corporate debtor, the Adjudicating Authority shall seek cooperation and coordination under clauses 21, 22 and 23 of this Part, subject to the following:

(a) When the proceeding under this Code is taking place at the time the application for recognition of the foreign proceeding is filed,
   (i) any relief granted under clauses 18 of this Part on recognition of foreign proceeding must be consistent with the proceeding under this Code; and
   (ii) if the foreign proceeding is recognised in India as a foreign main proceeding, clause 17 of this Part shall not apply;

(b) When the proceeding under this Code commences after recognition of the foreign proceeding,
   (i) any relief in effect under clause 18 of this Part shall be reviewed by the Adjudicating Authority and shall be modified or terminated if inconsistent with the proceeding under this Code;
   (ii) if the foreign proceeding is a foreign main proceeding, the moratorium referred to in clause 17 of this Part shall be modified or terminated if inconsistent with the proceeding under this Code; and
   (iii) any proceedings brought by the foreign representative under clause 20 of this Part before the proceeding under this Code commenced shall be reviewed by the Adjudicating Authority, and the Adjudicating Authority may give such directions as it
thinks fit regarding the continuance of those proceedings.

(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the relief relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

26. Coordination of more than one foreign proceeding

In the matters referred to in clause 1 of this Part, the Adjudicating Authority shall in respect of more than one foreign proceeding regarding the same corporate debtor, seek cooperation and coordination under clauses 21, 22 and 23 of this Part, subject to the following:

(a) any relief granted under clause 18 of this Part to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognised after recognition of a foreign non-main proceeding, any relief in effect under clause 18 of this Part shall be reviewed by the Adjudicating Authority and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Adjudicating Authority shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

27. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Code, proof that the corporate debtor has made a default mentioned in section 4 of this Code:
Provided that for the purposes of this clause, the foreign main proceeding being recognised should be borne out of an inability to pay debts or pursuant to a state of insolvency of the corporate debtor.

28. Rule of payment in concurrent proceedings

(1) In a corporate insolvency resolution process under this Code, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign country, may not receive a payment for the same claim in such corporate insolvency resolution proceeding regarding the same corporate debtor, so long as the payment to the other creditors of the same standing, according to the resolution plan, is proportionately less than the payment the creditor has already received.

(2) In a liquidation proceeding under the Code, without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign country, may not receive a payment for the same claim in such liquidation proceeding regarding the same corporate debtor, so long as the payment to the other creditors of the same class and ranking is proportionately less than the payment the creditor has already received.

CHAPTER VI
MISCELLANEOUS

29. Power of Central Government to issue notifications.

(1) Without prejudice to the provisions of this Code, the Central Government shall issue notifications under clauses 1(3), 1(5), 1(6), 2(a), 21(1) and 21(3) of this Part in the Official Gazette as provided in sub-clause (2).
(2) Every notification issued under sub-clause (1) shall be laid, as soon as may be after its made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be.

(3) Any modification or annulment under sub-clause (2) shall be without prejudice to the validity of anything previously done under that notification.

30. Appeals and Appellate Authority

(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this Part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-clause (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty of days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

31. Appeal to Supreme Court

(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from the filing of an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

THE SCHEDULE

(See clause 1(4) of this Part)

Part A
(Countries that have adopted the UNCITRAL Model Law on Cross-Border Insolvency)

Part B
(Countries with which agreements have been entered under clause 1(5) of this Part)
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