

The Insolvency and Bankruptcy Code, 2016 - Update

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In our June 2016 Legal Spreadsheet titled “A New Regime – The Insolvency and Bankruptcy Code, 2016”, we gave an overview of the new Insolvency and Bankruptcy Code, 2016 (the “**Code**”), which has overhauled the insolvency, liquidation and bankruptcy process for companies, partnerships and individuals in India.

Any new proceedings for the winding up of companies or LLPs for their inability to pay debt are now to be filed before the appropriate state bench of the National Company Law Tribunal.

As on 20 December 2016, several provisions of the Code have been brought into force. The Insolvency and Bankruptcy Board of India has been set up under the Code, with its head office in New Delhi, and a Chairperson appointed. The provisions of the Code with respect to insolvency professionals and insolvency professional agencies have also come into force. Additionally, sections of the Code permitting the government to make rules and regulations have been notified, and the government has issued several such rules and regulations.

Most significantly, the Code provisions regarding corporate insolvency resolution and liquidation proceedings (which are applicable to companies, limited liability partnerships (“**LLPs**”) and other persons incorporated with limited liability) have (with the exception of voluntary liquidation) been notified and the Companies Act, 2013 and Limited Liability Partnership Act, 2008 have been amended correspondingly.

Where should new liquidation and insolvency resolution proceedings be filed?

As a result of the notification of various sections of the Code, any new proceedings for the winding up of companies or LLPs for their inability to pay debt are now to be filed before the appropriate state bench of the National Company Law Tribunal (the “**Tribunal**”), under the provisions of the Code. These proceedings will follow the new process prescribed by the Code – companies and LLPs will first go through a time-bound insolvency resolution process and liquidation proceedings will be commenced only if the insolvency resolution process is unsuccessful.

The provisions of the Code regarding insolvency resolution and bankruptcy proceedings for partnerships (besides LLPs) and individuals and voluntary liquidation proceedings for corporates are yet to come into effect.

What will happen to ongoing winding up proceedings against companies?

Where winding up proceedings are pending against a company in a High Court on the ground of the company's inability to pay its debts, and where the winding up petition has not yet been served on the company, such proceedings will be transferred to the Tribunal with effect from 15 December 2016. The transferred winding up petition is to be treated as an application to the Tribunal for institution of the insolvency resolution process against the company, under the Code. However, where a winding up petition has already been served on a company, or where winding up proceedings are the result of a reference to a High Court by the Board for Industrial and Financial Reconstruction (the "BIFR"), the winding up proceedings will not be transferred and will continue before the High Court.

What will happen to ongoing BIFR and AAIFR proceedings?

The Sick Industrial Companies (Special Provisions) Repeal Act, 2003 has also been notified with effect from 01 December 2016. Therefore, all proceedings pending before the BIFR and the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR") under the Sick Industrial Companies (Special Provisions) Act, 1985 (the "SICA") stand abated from that date. Any company with respect to which such proceedings are pending may make a reference to the appropriate adjudicating authority (the Tribunal or the National Company Law Appellate Tribunal, the "Appellate Tribunal") under the Code within 180 days from 01 December 2016.

Are any provisions of the Code yet to be notified?

The provisions of the Code regarding insolvency resolution and bankruptcy proceedings for partnerships (besides LLPs) and individuals and voluntary liquidation proceedings for corporates are yet to come into effect. For the moment, such proceedings remain before the courts currently hearing them.

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