

# Report Summary

## Insolvency Law Committee on Cross-border Insolvency

- The Insolvency Law Committee (Chair: Mr. Injeti Srinivas) submitted its second report to the Ministry of Corporate Affairs on October 16, 2018 recommending amendments in the Insolvency and Bankruptcy Code, 2016 with respect to cross-border insolvency. The Code provides a time-bound 180-day process to resolve insolvency of companies and individuals. The Committee proposed a draft 'Part Z' in the Code, based on an analysis of the UNCITRAL Model Law on Cross-Border Insolvency, 1997. The Model Law provides a legal framework that states may adopt in their domestic legislation to deal with cross-border insolvency issues. Key recommendations of the Committee include:
  - **Applicability:** The Committee recommended that at present, draft Part Z should be extended to corporate debtors only.
  - **Duplicity of regimes:** The Committee noted that currently the Companies Act, 2013 contains provisions to deal with insolvency of foreign companies. It observed that once Part Z is enacted, it will result in a dual regime to handle insolvency of foreign companies. It recommended that the Ministry of Corporate Affairs undertake a study of such provisions in the 2013 Act to assess whether to retain them.
  - **Reciprocity:** The Committee recommended that the Model Law may be adopted initially on a reciprocity basis. This may be diluted subsequently upon re-examination. Reciprocity indicates that a domestic court will recognise and enforce a foreign court's judgment only if the foreign country has adopted similar legislation to the domestic country.
  - **Access to Foreign Representatives:** The Model Law allows foreign insolvency professionals and foreign creditors access to domestic courts to seek remedies directly. Direct access with regards to foreign creditors is envisaged under the Code even presently. With respect to access by foreign insolvency professionals to Indian courts, the Committee recommended that the Central Government be empowered to devise a mechanism that is practicable in the current Indian legal framework.
  - **Centre of Main Interests (COMI):** The Model Law allows recognition of foreign proceedings
- and provides relief based on this recognition. Relief may be provided if the foreign proceeding is a main proceeding or non-main proceeding. If the domestic courts determine that the debtor has its COMI in a foreign country, such foreign proceedings will be recognised as the main proceedings. This recognition will result in certain automatic relief, such as allowing foreign representatives greater powers in handling the debtor's estate.
  - For non-main proceedings, such relief is at the discretion of the domestic court. The Committee recommended that a list of indicative factors comprising COMI may be inserted through rule-making powers. Such factors may include location of the debtor's books and records, and location of financing.
  - **Cooperation:** The Model Law lays down the basic framework for cooperation between domestic and foreign courts, and domestic and foreign insolvency professionals. Given that the infrastructure of adjudicating authorities under the Code is still evolving, the cooperation between Adjudicating Authorities and foreign courts is proposed to be subject to guidelines to be notified by the Central Government.
  - **Concurrent Proceedings:** The Model Law provides a framework for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or vice versa. It also provides for coordination of two or more concurrent insolvency proceedings in different countries by encouraging cooperation between courts. The Committee recommended adopting provisions in relation to these in draft Part Z.
  - **Public policy considerations:** Part Z provides that the Adjudicating Authority may refuse to take action under the Code if it is contrary to public policy. The Committee recommended that in proceedings where the Authority is of the opinion that a violation of public policy may be involved, a notice must be issued to the central government. If the Authority does not issue notice, the central government may be empowered to apply to it directly.

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