India’s upper house of Parliament has just passed the Insolvency and Bankruptcy Code 2016 (the “Code”) on 11 May 2016. The Code will establish a new regime governing insolvency and bankruptcy in India, and aims to fix the flaws of the current system.

The new Code sets out to create a faster and more efficient system for resolving insolvency, and to improve the debt recovery system. It signifies a major overhaul of insolvency and bankruptcy in India.

This Client Update looks at the key features of the Code, as well as its potential impact and effects.

Current System

There is currently no umbrella legislation governing insolvency and bankruptcy in India. Rather, the legal structure is scattered across numerous separate pieces of legislation. Further, jurisdiction over the insolvency process is divided between numerous judicial forums.

As such, the insolvency process in India has the tendency to be complex and long-drawn. The average insolvency can take over 4 years to resolve, and the success rate of debt recovery is accordingly low.

Key Features of the Code

The Code creates a single piece of legislation which consolidates the insolvency and bankruptcy process for all debtors. This includes individuals, companies, partnerships, and limited liability partnerships.

The Code also introduces certain key concepts and features:

Timelines – The Code sets out strict timelines for the various stages of the insolvency process. This aims to greatly reduce the time it takes to resolve an insolvency.

The insolvency resolution process will, in general, have to be completed in 180 days, with a possible 90 day extension. The general procedure is as follows:

- An insolvency application is filed.
- An Insolvency Resolution Professional is appointed to manage the process.
- A committee of creditors is constituted.
- An insolvency resolution plan is submitted and voted upon.
- The Adjudicating Authority decides on the resolution plan, and whether to commence liquidation or bankruptcy.

Insolvency Resolution Professionals – The introduction of the Insolvency Resolution Professional is a significant addition under the Code.

Insolvency Resolution Professionals are appointed to conduct the insolvency resolution process, and serve as intermediaries between the creditors and the Adjudicating Authority. Once appointed, they will take over the management of the company and assist in the collection of information on the debtor’s assets and financial position. In the event of bankruptcy or liquidation, they may also serve as the bankruptcy nominee or the liquidator.
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Insolvency Resolution Professionals are intended to facilitate a more structured and efficient insolvency resolution process, as well as promote more successful debt recovery.

Adjudicating Authorities – The Code appoints specific Adjudicating Authorities to exercise jurisdiction over insolvency cases, replacing the current scattered jurisdiction of the various courts.

The Debt Recovery Tribunal will be the Adjudicating Authority with jurisdiction over individuals and partnerships, while the National Company Law Tribunal will have jurisdiction over companies and limited liability partnerships.

Information Utilities – The Code provides for the creation of Information Utilities to collect, collate and disseminate all information about debtors. This availability of such information is intended to prevent debtors from misusing the system.

Priority – After insolvency resolution process costs, secured creditors are next in line. This marks a shift from the current regime, where certain government and statutory dues take priority. The new order of priority provides greater incentive for investors and creditors.

Dues owed to workers and employees are next in line, thus offering greater protection of their interests.

Cross-border insolvency – The Code recognises the increasingly transnational nature of insolvency by providing for cross-border insolvency, which the Indian government may effect through bilateral agreements with other countries. Assets located outside of India may also be included for the purpose of insolvency resolution.

Future of Insolvency

The new system under the Code is undoubtedly an improvement over the existing regime.

The Code will become law once the President signs the legislation. After that, there is still the matter of the implementation of a new insolvency framework.

The Code introduces new roles and functions to be taken by professionals and government institutions, and the transition period will demonstrate how effectively these roles are adopted, and whether the existing infrastructure can support the demands of the new insolvency resolution process.

For example, the Adjudicating Authorities already face an existing caseload, and there exists the potential for insolvency disputes to clog up the system. The administration of the Adjudicating Authorities is thus crucial in ensuring compliance with the proposed timelines.

The progress of India’s new insolvency framework will continue to be closely watched by the industry. Parties with any queries may contact our team below.
Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.

© Rajah & Tann Singapore LLP
Our regional presence

Our regional contacts

**RAJAH & TANN | Singapore**

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600  F +65 6225 9630
sg.rajahtannasia.com

R&T Sok & Heng
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113  F +855 963 116
kh.rajahtannasia.com

*in association with Rajah & Tann Singapore LLP*

**RAJAH & TANN REPRESENTATIVE OFFICE | China**

Rajah & Tann Singapore LLP
Shanghai Representative Office
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818   F +86 21 6120 8820
cn.rajahtannasia.com

**RAJAH & TANN NK LEGAL | Myanmar**

Rajah & Tann NK Legal Myanmar Company Limited
Myanmar Centre Tower 1, Floor 07, Unit 08,
192 Kaba Aye Pagoda Road, Bahan Township,
Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com
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