



# Draft Framework for Cross Border Insolvency

## Why in News

Recently, the Ministry of Corporate Affairs (MCA) has published a draft framework for [cross border insolvency](#) proceedings based on the [UNCITRAL \(United Nations Commission on International Trade Law\)](#) model under the [Insolvency and Bankruptcy Code \(IBC\)](#).

- It is proposed **to be made applicable for both corporate debtors as well as personal guarantors** to such debtors.
- A personal guarantor is a person or an entity that promises the payment of another person's debt, in case the latter fails to pay it off.

## Key Points

### ▪ About:

#### ◦ Cross Border Insolvency Proceedings:

- It is relevant for the resolution of distressed companies with assets and liabilities across **multiple jurisdictions**.
- Broadly, the cross-border insolvency process **pertains to those debtors having assets and creditors overseas**.
- A framework for cross border insolvency proceedings allows for the **location of such a company's foreign assets**, the **identification of creditors and their claims** and **establishing payment towards claims** as well as a process for coordination between courts in different countries.
- 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.

#### ◦ Current Status in IBC:

- While foreign creditors can make claims against a domestic company, the IBC currently **does not allow for automatic recognition of any insolvency proceedings in other countries**.

### ▪ Significance:

- The inclusion of a cross-border insolvency chapter in the IBC **would be a major step forward and would bring the law on par with that of matured jurisdictions**.
- It would **enable Indian firms to claim their dues from foreign companies**, while allowing foreign creditors to recover loans from Indian companies.
- It will **help foreign branches of Indian banks to recover their dues in India**.
- It will **also bring overseas assets of a domestic corporate debtor into consideration of insolvency resolution in India** and will avoid delays in resolution of stressed assets.

### ▪ UNCITRAL Model Law:

- The UNCITRAL model is the **most widely accepted legal framework** to deal with cross-

border insolvency issues.

- It has been **adopted by 49 countries**, including the UK, the US, South Africa, South Korea and Singapore.
- The model law deals with **four major principles of cross-border insolvency**:
  - **Direct access to foreign insolvency professionals and foreign creditors** to participate in or commence domestic insolvency proceedings against a defaulting debtor.
  - **Recognition of foreign proceedings** & provision of remedies.
  - **Cooperation between domestic and foreign courts** & domestic and foreign insolvency practitioners.
  - **Coordination between two or more concurrent insolvency proceedings** in different countries. The main proceeding is determined by the concept of **Centre of Main Interest (COMI)**.
    - The COMI for a company is determined based on where the company conducts its business on a regular basis and the location of its registered office.
- It is **designed to assist States in reforming and modernizing their laws on arbitral procedure** so as to take into account the particular features and needs of international commercial arbitration.
- **Difference between Indian framework's and Model Law:**
  - Many countries that adopt the UNCITRAL model law do make certain changes to suit their domestic requirements.
  - Indian cross border insolvency framework **excludes financial service providers from being subjected to cross border insolvency proceedings**, noting that many countries "exempt businesses providing critical financial services, such as banks and insurance companies, from the provisions of cross-border insolvency frameworks."
  - The companies undergoing the **Pre-packaged Insolvency Resolution Process (PIRP)** be exempted from cross border insolvency proceedings as the provisions for PIRP have been introduced recently, and the "jurisprudence and practice under the pre-pack mechanism are at a nascent stage".
    - The PIRP was introduced earlier this year under the IBC to permit speedy resolution of **Micro, Small and Medium Enterprises**.

## UNCITRAL

- It is the **core legal body of the United Nations system** in the **field of international trade law**.
- UNCITRAL was **established in 1966** with a recognition that international trade cooperation among States is an important factor in the promotion of friendly relations and, consequently, in the maintenance of peace and security.
- Through its several model laws, conventions, legislative guides and robust debates in working groups, UNCITRAL **has provided a valuable platform for countries to compare, examine, debate and adopt principles of international commercial and trade law** appropriate to their circumstances.
- Since its inception, **India is only one of eight countries** that has been a member of UNCITRAL.

## Insolvency and Bankruptcy Code

- It is a **reform enacted in 2016**. It amalgamates various laws relating to the insolvency resolution of business firms.
  - **Insolvency**: It is a situation where individuals or companies are unable to repay their outstanding debt.
  - **Bankruptcy**: It is a situation whereby a court of competent jurisdiction has declared a

person or other entity insolvent, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.

- It **lays down clear-cut and faster insolvency proceedings to help creditors**, such as banks, recover dues and prevent bad loans, a key drag on the economy.

**Source: IE**

PDF Referenece URL: <https://www.drishtias.com/printpdf/draft-framework-for-cross-border-insolvency>

