

UNCITRAL Model Law has been adopted in as many as 44 countries

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The Insolvency Law Committee (ILC) constituted by the Ministry of Corporate Affairs to recommend amendments to Insolvency and Bankruptcy Code of India, 2016, has submitted its 2nd Report to the Government, which deals with cross border insolvency. The Report was handed over today to Shri Arun Jaitley, Minister of Finance and Corporate Affairs by Corporate Affairs Secretary, Shri Injeti Srinivas.

The ILC has recommended the adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997, as it provides for a comprehensive framework to deal with cross border insolvency issues. The Committee has also recommended a few carve outs to ensure that there is no inconsistency between the domestic insolvency framework and the proposed Cross Border Insolvency Framework.

The UNCITRAL Model Law has been adopted in as many as 44 countries and, therefore, forms part of international best practices in dealing with cross border insolvency issues. The advantages of the model law are the precedence given to domestic proceedings and protection of public interest. The other advantages include greater confidence generation among foreign investors, adequate flexibility for seamless integration with the domestic Insolvency Law and a robust mechanism for international cooperation.

The model law deals with four major principles of cross-border insolvency, namely 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; and 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 necessity of having Cross Border Insolvency Framework under the Insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global footprint and many foreign companies have presence in multiple countries including India. Although the proposed Framework for Cross Border Insolvency will enable us to deal with Indian companies having foreign assets and vice versa, it still does not provide for a framework for dealing with enterprise groups, which is still work in progress with UNCITRAL and other international bodies. The inclusion of the Cross Border Insolvency Chapter in the Insolvency and Bankruptcy Code of India, 2016, will be a major step forward and will bring Indian Insolvency Law on a par with that of matured jurisdictions.

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