

Cross-border insolvency: Rules to help lenders access foreign assets

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The government on Wednesday put out a draft on cross-border insolvency to further strengthen the Insolvency and Bankruptcy Code (IBC), seeking to help lenders access overseas assets of a stressed company. The draft aims to enable India to seek

cooperation from foreign countries to bring defaulters' assets there under consideration for insolvency proceedings. In this respect, the draft favours adoption of an existing UN model law (United Nations Commission on International Trade Law, or UNCITRAL) on cross-border insolvency that has already been ratified by 44 countries, including Singapore, the UK and the US. The Ministry of Corporate Affairs has sought stakeholders' comments on the draft, after which a final proposal is expected to be placed before the Cabinet for approval.

Any such addition of provisions to the IBC will finally have to be cleared by Parliament. A cross-border insolvency law recognises that one country has to proceed with the main insolvency case while others with supplementary cases, depending on the location of defaulter's assets. Similarly, if a foreign country has already initiated insolvency proceedings against a particular defaulter to recover stressed assets some of which are located here, India, too, will have to cooperate with that nation. The requirement of a cross-border insolvency law was felt more during the insolvency proceedings against Amtek Auto, although the idea of such a law was mooted by analysts and the government earlier as well. The auto parts maker was among the 12 big default accounts recommended by the Reserve Bank of India for insolvency proceedings. Amtek has several assets outside India.

Noted insolvency lawyer Sumant Batra said once enacted, this will offer a level playing field to Indian companies with investment and creditors overseas and multinational companies with interest in India. "It will offer greater certainty and predictability to insolvencies involving multiple jurisdictions. This has been long overdue considering India aspires to be among the top economies in the world. The JPC had set the agenda for it while debating IBC," he said.

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