Linklaters

TT&A
Advocates and Solicitors

July 2016

Understanding the new Insolvency Code – Part I: Debt restructuring for corporate debtors

Understanding the new Insolvency Code – Part I: Debt restructuring for corporate debtors

This is the first of a two-part series on the new Insolvency and Bankruptcy Code, 2016 of India, which was approved by the Indian parliament in May 2016 and received Presidential assent on 28 May 2016. This note deals with the debt restructuring process contemplated under the Code for corporate debtors with a view to re-establishing the debtor as a viable economic entity. The second part will deal with the changes made to the liquidation rules for corporate debtors.

Contents

1 Introduction

The Insolvency and Bankruptcy Code, 2016 (the "**Code**"), India's new insolvency law, is close to coming into effect. The Government has placed a great deal of importance on this law, especially in the context of its ease of doing business in India campaign. The Code assumes great significance in the current credit scenario in India. Non-performing debt and corporate leverage are at unprecedented levels. The Reserve Bank of India ("**RBI**") has emphasised that banks must recognise and deal with this issue, and has sought to provide banks with the impetus and tools to do so. Global banks are subject to difficult conditions in their home jurisdiction and credit growth globally remains muted. Against this background, set out below is a snapshot of current mechanisms available to deal with distressed debt and how the Code fits into, and changes, that framework.

The existing legislative framework is a patchwork of legislation governing personal bankruptcy and different aspects of corporate insolvency[1]. This has permitted stakeholders to approach diverse

[1] Insolvency of individuals is covered under the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Winding up of companies is covered under the Companies Act, 1956 ("**CA 1956**"), with some cross references to individual insolvency law. Certain mechanisms for debt restructuring by banks (joint lender forum ("**JLF**"), corporate debt restructuring ("**CDR**"), strategic debt restructuring ("**SDR**") are covered under RBI notifications, and debt restructuring/rehabilitation of industrial companies is covered under the Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**"). There are various state laws which provide for declaration of industrial enterprises as "**relief undertakings**" in order to protect such enterprises against their creditors (for instance, the Bombay Relief Undertakings (Special Provisions) Act, 1958). Separately, in relation to enforcement of rights by creditors, proceedings for debt recovery in debt recovery tribunals are available to certain specified creditors under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("**RDB Act**") and the right to enforce security privately is available to certain specified creditors under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**"). Other creditors (to the extent they are unable to enforce privately by virtue of

adjudication forums and has encouraged forum shopping which, in turn, has caused severe delays in achieving resolution of the insolvency process. Overall, the fragmentation of laws and multiple adjudication forums has made it very difficult for the insolvency and restructuring process in India to produce efficient outcomes.

The stated object of the Code is to provide for a consolidated time-bound framework for re-organisation and insolvency resolution of companies, partnership firms and individuals. Part II[2] of the Code deals with insolvency resolution (i.e., debt restructuring and rehabilitation) and liquidation of companies and limited liability partnerships; and Part III of the Code deals with bankruptcy of individuals, and insolvency of other entities such as partnerships. The Code does not, however, have any impact on the RBI mandated debt restructuring mechanisms (such as CDR, JLF or SDR) (presumably as the legal basis for these mechanisms is contracts between the creditors and between the creditors and the debtor). Additionally, the "relief undertaking" statutes enacted by various states continue. Separately, the corporate insolvency resolution process under the Code does not apply (unless notified otherwise) to entities in the financial services sector, including banks, non-banking financial companies ("**NBFCs**"), insurance companies and various intermediaries registered with the Securities and Exchange Board of India.

The institutional framework for the implementation of the Code provides for:

(a) the national company law tribunal ("**NCLT**") and the national company law appellate tribunal constituted under the Companies Act, 2013 ("**CA 2013**") to act as the adjudicating authority and the appellate authority respectively for both insolvency resolution and liquidation for companies, and the debts recovery tribunal and the debts recovery appellate tribunal both constituted under the RDB Act to act as the adjudicating authority and the appellate authority respectively for individuals and partnership firms;

(b) insolvency resolution professionals ("**IP**") and insolvency professional agencies to manage the insolvency resolution process;

(c) information utilities, which will supply information relating to the debtor to the IP during the insolvency resolution process (and with whom financial creditors will be required to file information

---

contractual provisions) are required to approach the civil courts (or, depending on the specific dispute, the company courts).

[2] The Code is split into five Parts – Part I sets out, *inter alia*, the general applicability provisions and definitions under the Code. Part IV sets out provisions relating to regulation of insolvency professional, agencies and information utilities and Part V deals with miscellaneous provisions relating to, *inter alia*, repeal of existing laws, constitution of insolvency and bankruptcy fund, delegated legislation provisions and

periodically about debt owed to them and security interests created in their favour); and

(d) the Insolvency and Bankruptcy Board of India (the "**IBBI**"), to regulate insolvency professionals and information utilities.

The Government has already notified the provisions for establishment of the NCLT[3]. The Code contemplates that the Government may by notification designate any financial sector regulator to perform the functions of the IBBI until it is established.

2 Corporate debt today: lay of the land

The financial debt profile of a large Indian corporate group is likely to comprise of some or all of the following elements: (i) Rupee term debt and working capital facilities from Indian banks; (ii) external commercial borrowings ("**ECB**") from foreign banks and bonds issued overseas (following recent changes, these may be denominated in either foreign currency or Indian Rupees); (iii) non-convertible debentures, subscribed to by banks, NBFCs, mutual funds and foreign portfolio investors; (iv) overseas debt at offshore subsidiaries, supported by a corporate guarantee from the Indian corporate or a guarantee from a bank in India, procured by the Indian corporate; and (v) derivatives exposure with authorised dealer banks.

The mix of debt varies depending on the sector involved – for instance, companies which are export-oriented (such as oil refineries) are likely to use ECBs to avoid hedging costs and companies involved in the real estate sector are likely to raise funds by issuing non-convertible debentures, which permits them flexibility in deploying the funds.

In addition, the corporate will be subject to employee debt (i.e. wages and any unpaid dues owed to the employees) and various operating liabilities including taxes and payments to vendors (i.e. trade debts).

3 Financial distress: Current avenues for debt restructuring

The most common method employed to deal with potential distress debt is contractual restructuring or rescheduling of debt, either prior to or after the occurrence of a payment default on principal or interest. In recent years, banks in India have come under particular scrutiny from the RBI for "evergreening", where debt has been refinanced without appropriate provisioning for the likelihood of default. The regulatory/legal avenues currently available for restructuring of debt can be summarised as follows:

[3] Notification no. S.O.1934(E) dated 1 June 2016 issued by the Ministry of Corporate Affairs

(a) Bank lenders and NBFCs – the RBI has mandated that the following JLF mechanism[4] will apply where there are multiple bank and/or NBFC lenders to a company:

(i) mandatory reporting of accounts which are overdue for more than 60 days ("**SMA-2**");

(ii) corrective action in the form of rectification (obtaining specific commitments from the borrower to regularise the account), restructuring or enforcement[5]. The following aspects of the JLF mechanism are worth highlighting

(A) Unlike the CDR mechanism which is applicable only to Indian banks, the JLF mechanism applies to both Indian banks and Indian branches of foreign banks and NBFCs

(B) The legal basis for operation of JLF is contractual, as with CDR. The RBI has asked that the lenders in a JLF should enter into an intercreditor agreement ("**ICA**") between themselves and a debtor creditor agreement ("**DCA**") with the borrower.

(C) Restructuring under the JLF mechanism involves a stand-still on creditor action (by those creditors who are part of the mechanism) while the restructuring is underway.

(D) Decisions agreed in the JLF by at least 75% of creditors by value comprising at least 50% by number will be binding on all JLF lenders under the terms of the ICA. Additionally, the corrective action plan finalised by the JLF is required to be placed before an empowered group which, in addition to the senior executives of the banks having the largest exposure to the borrower, will include representatives of SBI and ICICI Bank as standing members.

(E) Dissenting lenders may exit if they can sell their exposure to another existing or new lender which agrees to be bound. If they cannot do so, they will be bound by the

[4] The JLF mechanism, introduced by the RBI in 2014, is applicable to banks in India, including the Indian branches of foreign banks, and NBFCs (unlike the CDR mechanism which did not extend to NBFCs or the Indian branches of foreign banks except on a voluntary basis); and is not applicable to bondholders and offshore lenders.

[5] The CDR mechanism was first introduced in the early 2000s to restructure accounts of borrowers in financial difficulty. The CDR process has usually been commenced by bank lenders only after an account has become an NPA. The JLF mechanism effectively replicates the CDR mechanism at the stage prior to the account becoming an NPA.

decision of the JLF (including any decision to provide new financing to the borrower).

(F) Under the SDR scheme the RBI has provided for lenders to convert their debt, or part of it, into equity of the borrower company if certain conditions are met .

(G) The JLF mechanism does not extend to lenders outside the country or bondholders (unless they voluntarily join by signing the ICA).

(H) The RBI requires that the JLF must decide which relevant option to select (i.e. rectification, restructuring or recovery) within 45 days of the account being reported as SMA-2 by one or more lenders).

CDR and, more recently, JLF cases have been dominated by Indian banks who, given the debt profile of the companies in question, hold the decision making power. Overseas lenders and bond-holders have no role to play but neither are they bound by the decisions taken by JLF. Indian branches of foreign banks are however now required to participate in the JLF process.

(b) Borrower-led debt restructuring – Because the RBI mandated debt restructuring mechanisms are limited to certain types of creditors, corporates have resorted to other avenues where there is a need to bind a more diverse set of creditors:

(i) SICA

SICA was intended to operate as a separate regime (outside the courts) to provide for rehabilitation of industrial companies in financial difficulties. However, in practice it has it has primarily been used by industrial companies in financial difficulty to seek refuge from their creditors.

SICA requires an industrial company which in a financial year has losses greater than its net worth to make a reference to the Board of Industrial and Financial Reconstruction ("**BIFR**"). The BIFR is empowered to impose rehabilitation schemes involving a wide variety of measures including transfer of assets, haircuts for creditors and corporate restructuring. It provides for an automatic moratorium on legal proceedings against the company and its guarantors and also empowers the BIFR to suspend the contracts of the company temporarily.

The experience of creditors with BIFR has over time been that cases continue on for years, restricting their ability to take recovery and enforcement action. In 2002 a welcome amendment to SICA allowed references to BIFR under SICA to abate where 75% of secured creditors (by value) commenced enforcement proceedings under the SARFAESI.

SICA was to be repealed in 2002, but no notification giving effect to the repeal statue has yet been made. It is expected that such repeal will be notified once the Code is brought into effect[6].

(ii) Companies Act

Sections 391 to 394 of the CA 1956 provide companies with the ability to enter into a scheme of arrangement to restructure debt. These provisions are routinely used for corporate restructurings in the form of mergers, amalgamations and demergers, but less frequently for pure debt restructuring. The CA 1956 provides for a debt restructuring scheme which has been approved by the relevant High Court to be binding on creditors provided that 75% by value of the creditors, or each class of creditors, has agreed to the scheme.

4 Debt restructuring under the Code

The Code provides for restructuring of a company's debt under Chapter II. It contemplates filing of an application with the NCLT for what it refers to as the "corporate insolvency resolution process" by either a creditor (being a financial creditor or an operational creditor[7]) or the company itself upon a "default" (being a failure to pay) on its debt[8]. If the NCLT is satisfied that a default exists, it must admit the application, resulting in the commencement of the resolution process. The following main steps are contemplated in the resolution process:

(i) appointment of an interim insolvency professional (IIP);

[6] The CA 2013 introduced a separate chapter (i.e. Sections 253 to 269) dealing with the revival and rehabilitation of sick companies. The expectation was that the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 would be made effective once the relevant sections under the CA 2013were notified (which has not yet occurred). However the amendments to the CA 2013 contemplated under the Code now provide for this chapter to be omitted from the CA 2013.

[7] A financial creditor is a lender or a bondholder or any other provider of what is generally understood to be "financial indebtedness" (and the Code has incorporated the loan market association standard definition of financial debt). An operational creditor is one who is owed an amount for goods or services, employment, taxes and the like.

[8] A financial creditor can initiate the process on non-payment and is required to file evidence thereof based on the records of "information utilities" with which details of financial debt are required to be filed under section 215 of the Code. The Code also retains some flexibility for the manner in which evidence of default can be submitted, which will need to be clarified in the rules. Details of the type and filing of information with information utilities have also not been clearly specified in the Code and will need to be clarified under the relevant rules. For operational creditors, the Code sets out a process for the creditor to make a demand on the company. The application for resolution can be filed by an operational creditor on non-receipt of payment within 10 days unless the company disputes the claim.

(ii) public announcement of the resolution process requiring claims to be filed against the company by a cut-off date;

(iii) declaration by the NCLT of a moratorium with effect from the date on which the application is admitted on: (a) suits and proceedings against the company[9]; (b) transfer of assets by the company; (c) enforcement of security against the company; (d) recovery of property from the company by an owner or lessor of the property; and (e) termination or suspension by vendors of supply of essential goods and services (this will increase the exposure of these suppliers to the company but is likely to be limited to a narrow category of goods and services, to be specified in the rules). The moratorium remains in effect until the completion of the resolution process unless an order for liquidation is passed, in which case it will cease to have effect from the date of the order of liquidation. The Code provides the Central Government, in consultation with any financial sector regulator, with the power to exempt transactions from being subject to the moratorium;

(iv) formation of a creditors committee, which must consist of all financial creditors of the company. Operational creditors above a certain threshold can attend meetings of the creditors committee but cannot vote. Similarly, directors of the company can attend the meetings as observers, but cannot vote. All decisions of the committee of creditors are by a 75% vote by value of the outstanding financial debt of the company[10]. Related parties of the company cannot participate in or vote in a committee of creditors;

(v) confirmation by the committee of creditors of the IIP as the ongoing resolution professional (RP) for the duration of the resolution process or appointment of a replacement RP;

(vi) the IIP and RP taking control of the assets of the company, exercising the powers of the board of directors and managing the affairs of the company (with prior consent of the committee of creditors being required for certain matters[11]). The board of

[9] The moratorium does not extend to enforcement of guarantee claims, unlike under section 22 of SICA.

[10] The Code provides that where the debt is in the form of securities or syndicated loans, the relevant trustee or agent can be appointed to the represent the bondholders/lenders in the committee of creditors. Whilst this may serve to reduce the numbers required to attend creditors committee meetings, agents and trustees are typically reluctant to act without instructions and there may be problems procuring the active involvement of the agent or trustee, especially where there are differing view among the syndicate or bondholders. Note further that there is no requirement for a minimum number of creditors to be included for creditors' committee decisions unlike for decisions at the JLF for example.

[11] The matters that require prior consent of the creditors' committee include: (a) raising interim finance; (b) creating security interests over the assets of the company; (c) undertaking related party transactions; (d) changing the capital structure of the company; (e) recording any transfer in ownership interest of the company; (f) amending any constitutional documents of the company; (g) permitting any disposal of shareholding of the company; and (h) making any change in the management of the company or its subsidiary.

directors is suspended for the duration of the resolution process[12];

(vii) the presentation of a resolution plan by an applicant, which is required to be voted on by the committee of creditors and approved by 75% by value of the financial creditors. The plan must provide for payment of the insolvency resolution process costs in priority to other debts and must provide for operational creditors to be repaid at least an amount equal to that which they would have received in a liquidation; and

(viii) approval of the resolution plan which has been passed by the committee of creditors by the NCLT. The plan once approved by the NCLT is binding on the company, its employees, shareholders, creditors, guarantors and other stakeholders involved in the resolution plan[13].

The timelines prescribed for the process are as below:

(a) The NCLT is required to verify whether a default has occurred within 14 days of receipt of an application for resolution and accordingly admit or reject the application;

(b) The IP is required to be appointed within 14 days of the insolvency resolution commencement date; and

(c) The resolution process is required to be completed within a 180 day period with a possible one-time extension by 90 days if the committee of creditors agrees to such extension.

It is worth noting that a creditor wishing to commence liquidation proceedings against a company is required to first go through the resolution process under the Code. The amendments to the CA 2013[14] under the Code remove the inability of a company to pay its debts as a ground for winding up. Instead the Code provides that a company must be liquidated if no resolution plan has been passed within the specified time period.

5 Impact on creditors

(i) ECB lenders, overseas bondholders – ECB lenders and overseas bondholders have largely been excluded from

[12] One issue which is likely to be a key concern for IIPs is potential liabilities and litigation they may face in the course of performance of their role in the resolution process. The Code provides for a code of conduct to be followed by IIPs and also provides that no suit, prosecution or legal proceedings will lie against IIPs for acts done in good faith under the Code or the rules under it. It remains to be seen what protection this will provide to IIPs.

[13] The Code does not make specific provision for provision for additional funding by existing lenders but if a resolution plan contemplates additional financing to be provided on a pro rata basis by all existing lenders, it may well be binding if passed as part of the resolution plan by 75% of the financial creditors. This is similar to the position adopted by the RBI under the JLF mechanism. It remains to be seen if the rules issued under the Code provide further clarity on this issue.

[14] The process of amendments is likely to be slightly complicated by the fact that the insolvency related sections of the Companies Act, 2013 have not yet been brought into force and the relevant provisions of the Companies Act, 1956 continue to be applicable. However the Code amends the Companies Act, 2013. It may be that the relevant sections of the Companies Act, 2013 will be notified first and then the amendments set out in the Code will be brought into effect.

restructuring carried out under the mechanisms established by the RBI (other than overseas branches of Indian banks who acted as ECB lenders, who had an option under CDR to join the restructuring). These overseas creditors have in the past generally opted for some form of contractual restructuring. Bondholders have had some success procuring payment by filing winding up petitions against the issuer in India, which led to the issuer and its secured creditors in India reaching a settlement with the bondholders. Under the Code, these creditors will be eligible to initiate a resolution process, but given that decision making is still by a 75% vote (by value) of all financial creditors, they may have limited ability to control the process and outcome.

(ii) Lenders to overseas subsidiaries of the Indian company – A default under a guarantee provided by the Indian company will be a “default” for the purposes of triggering the insolvency resolution process under the Code. The lenders can, if it makes tactical sense, consider the insolvency resolution process under the Code (if there is an unsatisfied guarantee demand) before commencing proceedings to attach the assets of the overseas subsidiary or proceeding against the overseas obligors.

(iii) Debenture holders – While the Rupee bond market in India remains small in comparison with bank debt, in recent years a large number of companies have opted for fund raising through debentures. The strategy adopted by debenture holders is likely to some extent to depend on who they are – for instance banks in India who have invested in debentures are likely to consider these together with their overall exposure to the issuer/borrower. Mutual funds on the other hand, are likely to have a different outlook and will be led by what their investors and SEBI think. NBFCs, since they are now under the JLF mechanism, may consider their investments in debentures as part of the discussions under that mechanism. Large scale defaults on debentures have not been seen at this stage and it will be interesting to see how this segment of the market is affected by the insolvency resolution process under the Code.

(iv) Banks in India – Banks in India have the largest exposures to Indian corporates by far, and are very much expected to lead the discussions on the resolution process in the committee of creditors (and quite often will comprise the 75% value vote themselves). Given that the Code does not do away with the JLF and CDR mechanisms, the question remains as to whether Indian banks will prefer to use these mechanisms or initiate the process contemplated under the Code. The obvious advantage in the latter approach is that the resolution plan passed under the Code will bind other non-JLF creditors, but how important it is to actually bind such creditors will depend on the debt profile of the company, its operational liabilities and other surrounding facts and circumstances.

(v) Asset reconstruction companies (“**ARCs**”) – Given the significant rise in the level of reported NPAs, and increased activity around sales of NPA portfolios to ARCs[15], it is expected that they will actively participate in and shape restructuring discussions in any insolvency resolution process.

(vi) Holdco lenders – Lenders at a holding company of the company in the insolvency resolution process are not eligible to participate in the process. The Code does not envisage any specific role for the shareholders of the company in the resolution process (other than to initiate such process) and it is unlikely that the lenders at the holding company will have a voice through the exercise of their voting rights on any share security over the company. The Code also provides that a related party of the company cannot vote in, or participate in, a resolution process. If lenders have lent to a holding company which has then on-lent its subsidiary, the holding company will not have a vote in the committee of creditors of the subsidiary.

(vii) Share financing – Where lenders have lent against shares of a company which goes into the insolvency resolution process, the Code does not impose restrictions on transfer of such shares, since the moratorium extends only to the assets of the corporate debtor. The possibility of a company going into the resolution process will of course have an impact on the price of its shares and might result in the need for quick action by such lenders in terms of selling the shares. However, where the company which has provided security over shares goes into the resolution process itself, enforcement of such security is subject to the moratorium. This will have a significant impact on assets such as listed shares, which are subject to price volatility and need quick enforcement for the lenders to realise value.

[15] The Government, in recognition of the increased level of interest in ARCs, has permitted 100% foreign direct investment (under the automatic route) in ARCs established under SARFAESI, e. The change was made under press note 4 of 2016 dated 6 May 2016.

(viii) Trade finance – The Code provides that operational creditors cannot vote on the resolution plan. A person providing a trade advance against goods or services (for instance, in a pre-export financing context) could be deemed an operational creditor and therefore may not have a vote[16]. The protection provided to operational creditors is that the resolution plan must provide for payment to an operational creditor of at least such amount as it would have received had the company been liquidated.

6 Experience in other jurisdictions

There has been a global trend towards insolvency reform over the last few years, as jurisdictions seek to ensure that their insolvency legislation is able to address the challenges posed by both increasingly complex financial products and significant numbers of non-performing loans. The United States, the United Kingdom, Spain, The Netherlands and Germany, for example, have all recently undertaken, or are currently undergoing, a process of review and/or amendment of their insolvency legislation.

As legislative changes emerge from this process, certain general trends appear to be emerging, including the introduction of a moratorium while a restructuring plan is developed, the development of quicker “cram-down” procedures which make it easier to override a dissenting class of creditors and measures aimed at giving creditors a greater degree of control over the process, even in those jurisdictions which had previously been seen as debtor friendly.

The new debt restructuring tools made available under the Code are similar in many respects to those which are either available, or are in the course of being made available, elsewhere, with the creation of both a moratorium and a new fast track “cram down” process. There are, however, some significant differences from the mainstream of what is being proposed elsewhere, in that:

> the new procedure is only available once a payment default has occurred (rather than at a stage before this, when the issues facing the debtor might be easier to resolve);

> operational creditors are generally excluded from the process, but may still have their rights altered under a restructuring plan approved by the debtor’s financial creditors;

> the requirement that the creditors committee comprise all financial creditors with others having observer status may well make the process somewhat unwieldy. Typically in other jurisdictions a representative sample of five or so creditors forms

[16] This is not necessarily the case for all types of trade financing, because the definition of “financial debt” under the Code includes items such as discounting of receivables (except on a non-recourse basis) and other arrangements having the commercial effect of a borrowing. Consideration will however need to be given at the stage of structuring the transaction on whether the creditors will indeed be classified as financial creditors for the purposes of the Code.

the committee. It also appears that the creditors committee consent will be required more than in other jurisdictions where such committees tend to be consultative only and do not have a consent role; and

> the proposed voting mechanisms, while having the benefit of simplicity, do not expressly take account of the fact that financial creditors may have different economic interests, depending on their anticipated recoveries should the restructuring plan fail.

Such variations are not necessarily a bad thing – it is important that legislators take account of local issues and sensitivities when developing new insolvency legislation as simply copying a solution that appears to work in another jurisdiction may make a problem worse, rather than resolve it. Innovation does, however, create additional challenges.

Perhaps as importantly, experience from other jurisdictions strongly suggests that the success of any new insolvency legislation, however well drafted, will depend on both the skills, experience and resources of those implementing it and on creditors and debtors alike feeling confident that there is a transparent and well regulated process that is likely to maximise their recoveries.

7 Conclusion

The introduction of the Code is a welcome first step in providing for a framework to efficiently address financial distress in India. It is timely reform, considering the increased stress in the Indian economy and the prior absence of any form of central mechanism to address insolvency and bankruptcy. Matters of detail, to be in the rules notified under the Code, will need to be carefully considered. The Code will also go through judicial challenge and amendments, which is likely to evolve over the course of the next few years.

However, a new law alone cannot be the panacea for all that ails the insolvency framework in India. Ultimately, the success of the Code will depend on the institutional infrastructure proposed in the Code being created in a timely manner and such institutions functioning effectively. This will involve allocating sufficient resources, imparting necessary training to the professionals involved and incorporating international best practices to ensure effective implementation of the Code.

Linklaters

TT&A
Advocates and Solicitors

The approach taken by the High Courts and the Supreme Court to attempts to commence proceedings which are the subject matter of the Code – which bars the jurisdiction of civil courts to pass orders and injunctions on matters to be adjudicated under the Code – will also have a significant bearing on the success of the Code.

17 Section 231 of the Code

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. The contents of this publication do not constitute any opinion or determination on, or certification in respect of, the application of Indian law, by or from Linklaters LLP or its affiliated firms or entities (together "**Linklaters**"). All content relating to Indian law and any comments concerning India are based on legal advice from TT&A taking into account, where applicable, Linklaters' transactional experience and understanding of the rules and regulations and the practice in India. Like all international law firms, Linklaters is not licensed to undertake Indian legal services.

Should you have any questions on issues discussed in this note, please contact one of your regular contacts at Linklaters or TT&A.

This communication is confidential and may be privileged or otherwise protected by work product immunity.

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Contacts

For further information please contact:

Linklaters

David Kidd
Partner, Hong Kong

(+852) 2901 5558
david.kidd@linklaters.com

Narayan Iyer
Partner, London

(+44) 207 456 4837
narayan.iyer@linklaters.com

Jo Windsor
Partner, London

(+44) 207 456 4436
jo.windsor@linklaters.com

Philip Badge
Partner, Singapore

(+65) 6692 5731
philip.badge@linklaters.com

Aditya Shroff
Counsel, Singapore

(+65) 6692 5705
aditya.shroff@linklaters.com

10th Floor, Alexandra House
Chater Road
Hong Kong
Tel: +852 2842 4888
Fax: +852 2810 8133/2810 1695

Linklaters.com

TT&A

Sonali Mahapatra
Partner, Mumbai

(+91) 22 6613 6988
sonali.mahapatra@tta.in

Rituparno Bhattacharya
Partner, Mumbai

(+91) 22 6613 6936
rituparno.bhattacharya@tta.in

3rd Floor, Kalpataru Heritage
127, MG Road
Mumbai, 400 001
Tel: (+91) 22 6613 6900