

INSOLVENCY AND BANKRUPTCY (CROSS-BORDER INSOLVENCY) RULES, 2020 (CBIR)

INSOLVENCY AND BANKRUPTCY CODE, 2016, PART Z

**(Incorporates UNCITRAL Model Law on Cross-Border Insolvency,
1997)**

Compiled by the Centre for Transnational Commercial Law, National Law University Delhi, for the purpose of the International Insolvency and Bankruptcy Moot, 2021-22.

This incorporates the Draft Part Z from the ILC 2018 Report on Cross-Border Insolvency and the 2020 Rules and Regulations on Cross-Border Insolvency. Explanation borrowed from the 24-November 2021 notice, 2020 Report, 2018 Report.

CHAPTER 1: GENERAL PROVISIONS

1. Purpose and scope of application of this Part

(1) The purpose of this Part is to incorporate the UNCITRAL Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of:

(a) cooperation between

- i. Adjudicating Authorities, resolution professionals, liquidators, corporate debtors, other stakeholders and
- ii. the courts and other competent authorities of foreign countries involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the corporate debtor;

(d) protection and maximization of the value of the corporate debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(2) Save as otherwise provided in sub-clauses (3) and (4), the provisions of this Part shall apply to all corporate debtors to whom this Code applies where:

(a) assistance is sought in India by a foreign court or a foreign representative in connection with a foreign proceeding; or

- (b) assistance is sought in a foreign country in connection with a proceeding under this Code; or
- (c) a foreign proceeding and a proceeding under this Code in respect of the same corporate debtor are taking place concurrently; or
- (d) creditors in a foreign country have an interest in requesting the commencement of, or participation in, a proceeding under this Code:
- (1)
- (2) Provided that “corporate debtor” for the purposes of this Part shall also include any person incorporated with limited liability outside India.
- (3) Subject to clause 29 of this Part, the Central Government may notify classes of corporate debtors or entities to whom the provisions of this Part shall not apply.
- (4) The provisions of this Part shall apply:
- (a) in the first instance to countries, mentioned in Part A of the Schedule, which have adopted the UNCITRAL Model Law on Cross-Border Insolvency.
- (b) to any other country, specified in Part B of the Schedule, which the Central Government may notify under sub-clause (5).
- (5) Subject to clause 29 of this Part, the Central Government may enter into an agreement with the Government of any country outside India for enforcing provisions of the Code in respect of corporate debtors under this Part and may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of the corporate debtor situated at any place in a country outside India with which such an agreement has been entered into, shall be subject to such conditions as stated in the agreement.

(6) Notwithstanding anything contained in this Part but subject to clause 29 of this Part, the Central Government may by notification-

- (a) add or omit any country from the Schedule if such addition or omission is necessary in the interest of security of India or public interest; or
- (b) direct that the application of this Part in relation to any country shall be subject to such conditions, exceptions or qualifications as are specified in the said notification if such conditions, exceptions or qualifications are necessary in the interest of security of India or public interest.

2. Definitions

In this Part, unless the context otherwise requires, -

- (a) “Adjudicating Authority” means benches of the National Company Law Tribunal, as notified by the Central Government in the manner provided in Clause 29 of this Part, to perform functions relating to recognition of foreign proceedings and cooperation with foreign courts and foreign representatives under this Part;
- (b) “centre of main interests” shall have the meaning assigned to it in clause 14 of this Part;
- (c) “establishment” means any place of operations where the corporate debtor carries out a non-transitory economic activity with human means and assets or services;
- (d) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (e) “foreign main proceeding” means a foreign proceeding taking place in the country where the corporate debtor has the centre of its main interests;

- (f) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the corporate debtor has an establishment;
- (g) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the corporate debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;
- Explanation: For the purposes of this Part, the term “reorganization” shall have the same meaning as “resolution” under the Code.*
- (h) “foreign representative” means a person or body authorized in a foreign proceeding to administer the reorganization or the liquidation of the corporate debtor’s assets or affairs or to act as a representative of the foreign proceeding and includes any person or a body appointed on an interim basis.

3. Authorization of a resolution professional or liquidator to act in a foreign country

Any resolution professional or liquidator recognized or authorized to act as such under this Code is, subject to regulations specified by the Board, authorized to act in a foreign country on behalf of a proceeding under this Code, as permitted by the applicable foreign law.

4. Public policy exception

- (1) Notwithstanding anything contained in this Part, the Adjudicating Authority may refuse to take any action authorized by this Part if, in its opinion, the implementation of such action would be manifestly contrary to the public policy of India.

- (2) Before passing any orders under sub-clause (1), the Adjudicating Authority shall serve a notice to the Central Government as soon as may be practicable for inviting submissions on the matter.
- (3) Without prejudice to the provisions of this clause, the Central Government, if it is of the opinion that the implementation of any action authorized by this Part would be manifestly contrary to the public policy of India, it may itself apply to the Adjudicating Authority for an order under sub-clause (1).

5. Additional assistance under other laws

Without prejudice to the provisions of this Part, the Adjudicating Authority, the resolution professional or the liquidator, as the case may be, may provide additional assistance to a foreign representative under any other laws of India.

6. Interpretation

In the interpretation of this Part, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE ADJUDICATING AUTHORITY

7. Right of access by foreign representative

- (1) A foreign representative is entitled to apply to the Adjudicating Authority and exercise his powers and functions under this Part in the manner as may be prescribed.
- (2) A foreign representative shall be subject to a code of conduct as may be specified.

8. Limited jurisdiction

- (1) Subject to sub-clause (2), the sole fact that an application pursuant to this Part is made to the Adjudicating Authority by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the corporate debtor to the jurisdiction of courts in India, or the Adjudicating Authority, for any purpose other than the application.
- (2) Where a foreign representative has contravened any provision of this Part or rules or regulations made thereunder, the Board may:
 - (a) impose a penalty which is three times the amount of loss caused, or is likely to be caused, to persons concerned on account of such contravention; or
 - (b) impose a penalty which is three times the amount of unlawful gain made on account of such contravention; or
 - (c) give any other direction that the Board is authorized to give in relation to an insolvency professional under this Code, in the manner as may be specified.
- (3) A foreign representative referred to in sub-clause (2), includes a person who purports to be a foreign representative under this Part.

9. Participation by a foreign representative in proceedings under this Code

Subject to clause 7 of this Part, upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the corporate debtor under this Code.

10. Access of foreign creditors to a proceeding under this Code

- (1) Subject to sub-clause (2), foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Code as creditors in India.
- (2) Sub-clause (1) does not affect the ranking of claims in a proceeding under this Code or the exclusion of foreign tax and social security claims from such a proceeding:

Provided that the claims of foreign creditors, other than those concerning tax and social security obligations, shall not be ranked lower than the general class of claims provided in section 53(1)(f) of this Code, unless an equivalent domestic claim has a lower rank under this Code.

11. Notice to foreign creditors of a proceeding under this Code

- (1) Without prejudice to the provisions of this Code, whenever under this Code notice is to be given to creditors in India, such notice shall also be given to the known creditors that do not have addresses in India.
- (2) Such notice shall be made to the foreign creditors in a manner as may be specified. No letters rogatory or other, similar formality may be required.
- (3) When a notice of commencement of a proceeding is to be given to foreign creditors, the notice shall:
 - (a) indicate the time period for filing claims as per the provisions of this Code and specify the place for their filing;

- (b) indicate whether secured creditors need to file their secured claims as provided by this Code; and
- (c) contain any other information required to be included in such a notice to creditors pursuant to the law of India and the orders of the Adjudicating Authority.

CHAPTER III RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

12. Application for recognition of a foreign proceeding

- (1) Subject to clause 7, a foreign representative may apply to the Adjudicating Authority for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (2) An application for recognition under sub-clause (1) shall be accompanied by-
 - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) in the absence of evidence referred to in sub-clause (a) and (b), any other evidence as may be prescribed, affirming the existence of the foreign proceeding and of the appointment of the foreign representative; and
 - (d) a statement identifying all foreign proceedings and proceedings under this Code in respect of the corporate debtor that are known to the foreign representative; and
 - (e) a translation of documents in support of the application for recognition in English, if applicable.

(3) An application for recognition under sub-clause (1) shall be made in such form and manner and be accompanied with such fees as may be prescribed.

13. Presumptions concerning recognition

(1) If the decision or certificate or any other document referred to in clause 12(2)(a), (b) and (c) of this Part indicates that the foreign proceeding is a proceeding within the meaning of clause 2(g) of this Part and that the foreign representative is a person or a body within the meaning of clause 2(h) of this Part, the Adjudicating Authority is entitled to so presume.

(2) Notwithstanding that the documents submitted in support of the application under clause 12(2) of this Part for recognition have not been legalized, the Adjudicating Authority is entitled to presume they are authentic.

14. Centre of main interests

(1) In the absence of proof to the contrary, the corporate debtor's registered office is presumed to be the corporate debtor's centre of main interests for the purpose of this Part.

(2) The presumption in sub-clause (1) shall only apply if the registered office of the corporate debtor has not been moved to another country within the three-month period prior to the filing of application for initiation of insolvency proceedings in such country.

(3) While determining the corporate debtor's centre of main interests, the Adjudicating Authority shall conduct an assessment, of where the corporate debtor's central administration takes place, and which is readily ascertainable by third parties including creditors of the corporate debtor.

- (4) If the corporate debtor's centre of main interests is not determined by factors stated in sub-clause (3), the Adjudicating Authority may conduct an assessment of factors prescribed by the Central Government for this purpose.

15. Decision to recognize a foreign proceeding

- (1) Subject to clause 4 of this Part, the Adjudicating Authority shall recognize the foreign proceeding if it is satisfied that:
- (a) the foreign proceeding is a proceeding within the meaning of clause 2(g) of this Part;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of clause 2(h) of this Part; and
 - (c) the application meets the requirements of clause 12 of this Part.
- (2) The foreign proceeding shall be recognized by the Adjudicating Authority as a:
- (a) foreign main proceeding, if it is taking place in the country where the corporate debtor has the centre of its main interests under clause 14 of this Part; or
 - (b) foreign non-main proceeding, if it is taking place in a country where the corporate debtor has an establishment as defined in clause 2(c) of this Part.
- (3) This clause and clauses 12, 13, 14 and 16 of this Part do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

(4) Every application for recognition under clause 12 of this Part shall be decided by the Adjudicating Authority within thirty days from the date of the filing of the application:

Provided that the Adjudicating Authority may extend the period specified above by an additional thirty days, if required.

16. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Adjudicating Authority within three days of having known of:

- (a) any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding or proceeding under this Code regarding the same corporate debtor.

17. Effects of recognition of a foreign main proceeding

(1) Upon recognition of a foreign proceeding as a foreign main proceeding by the Adjudicating Authority, it shall, subject to the provisions of sub-clauses (2), (3) and (4), by an order declare moratorium for prohibiting all of the following:

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- (2) The scope of the moratorium under sub-clause (1) shall be subject to provisions of section 14 of the Code, including any exemptions applicable to section 14 of the Code.
- (3) Sub-clause (1) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the corporate debtor.
- (4) Sub-clause (1) does not affect the right to request commencement of a proceeding under this Code or the right to file claims in such a proceeding.

18. Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the corporate debtor or the interests of the creditors, the Adjudicating Authority may by an order, at the request of a foreign representative, grant any appropriate relief, including:

- (a) moratorium on institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration, to the extent they have not been stayed under clause 17(1)(a) of this Part;

- (b) moratorium on transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein, to the extent they have not been stayed under clause 17(1)(b) of this Part;
 - (c) moratorium on any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the extent it has not been stayed under clause 17(1)(c) of this Part;
 - (d) moratorium on recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, to the extent it has not been stayed under clause 17(1)(d) of this Part;
 - (e) entrusting the administration or realization of the corporate debtor's assets located in India to the foreign representative in the manner as may be prescribed;
 - (f) granting any additional relief that may be available to a resolution professional or liquidator under this Code.
- (2) Upon recognition of a foreign proceeding, whether main or non-main, the Adjudicating Authority may, at the request of the foreign representative, entrust the distribution of all or part of the corporate debtor's assets located in India to the foreign representative or another person designated by the Adjudicating Authority, provided that the Adjudicating Authority is satisfied that the interests of creditors in India are adequately protected.
- (3) In granting relief under this clause to a representative of a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the relief relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

19. Protection of creditors and other interested persons

- (1) The Adjudicating Authority shall, while granting or refusing to grant any relief under clause 18 of this Part, or in modifying or terminating relief under subclause (3), satisfy itself that the interests of the creditors and other interested persons, including the corporate debtor, are adequately protected.
- (2) The Adjudicating Authority may while granting any relief, under clause 18 of this Part, impose such conditions as it considers appropriate.
- (3) The Adjudicating Authority may, at the request of the foreign representative or a person affected by relief granted under clause 18 of this Part, or at its own motion, modify or terminate such relief.

20. Action to avoid acts detrimental to creditors

- (1) Subject to clause 7 of this Part, upon recognition of a foreign proceeding, the foreign representative shall be entitled to make an application to the Adjudicating Authority for an order in connection with sections 43, 45, 49, 50 and 66 of this Code.
- (2) For the purposes of sub-clause (1), the insolvency commencement date of the foreign proceeding shall be determined in accordance with the law of the country in which the foreign proceeding is taking place, including any law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.
- (3) When the foreign proceeding is a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the action relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding.

CHAPTER IV

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

21. Cooperation and communication between the Adjudicating Authority and foreign courts or foreign representatives

- (1) For matters referred to in clause 1 of this Part, the Central Government in consultation with the Adjudicating Authority, shall notify guidelines for communication and cooperation between the Adjudicating Authority and foreign courts in the interest of all stakeholders.
- (2) The Adjudicating Authority may conduct a joint hearing with another foreign court in a concurrent proceeding, and may communicate directly with, or request information or assistance directly from foreign representatives.
- (3) The Central Government shall notify the relevant authority to assist the Adjudicating Authority in facilitating transmission of notices and other communications between the Adjudicating Authority and foreign courts.
- (4) Notifications under sub-clauses (1) and (3) shall be issued in the manner provided in clause 29 of this Part.

22. Cooperation and direct communication between the resolution professionals and liquidators and foreign courts or foreign representatives

- (1) In matters referred to in clause 1 of this Part, the resolution professional or liquidator shall, as the case may be, in the exercise of its functions and subject to the supervision of the Adjudicating Authority, cooperate to the maximum extent possible with foreign courts or foreign representatives.
- (2) The resolution professional or liquidator, as the case may be, shall be entitled, in the exercise of its functions and subject to the supervision of the Adjudicating Authority, to communicate

directly with foreign courts or foreign representatives.

23. Forms of cooperation

Subject to clause 21, the cooperation referred to in clauses 21 and 22 of this Part may be implemented by any appropriate means, including:

- (a) appointment of a person or body to act at the direction of the Adjudicating Authority;
- (b) communication of information by any means considered appropriate by the Adjudicating Authority;
- (c) coordination of the administration and supervision of the corporate debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same corporate debtor.

CHAPTER V CONCURRENT PROCEEDINGS

24. Commencement of a proceeding under this Code after recognition of a foreign main proceeding

After recognition of a foreign main proceeding,

- (a) any proceeding under this Code may be commenced only if the corporate debtor has assets in India; and

- (b) the effects of the proceeding under clause (a) shall be restricted to:
- (i) the assets of the corporate debtor that are located in India; and
 - (ii) to the extent necessary to implement cooperation and coordination under clauses 21, 22 and 23 of this Part, to other assets of the corporate debtor that, under the laws of India, should be administered in that proceeding.

25. Coordination of a proceeding under this Code and a foreign proceeding

Where a foreign proceeding and a proceeding under this Code are taking place concurrently regarding the same corporate debtor, the Adjudicating Authority shall seek cooperation and coordination under clauses 21, 22 and 23 of this Part, subject to the following:

- (a) When the proceeding under this Code is taking place at the time the application for recognition of the foreign proceeding is filed,
 - (i) any relief granted under clauses 18 of this Part on recognition of foreign proceeding must be consistent with the proceeding under this Code; and
 - (ii) if the foreign proceeding is recognized in India as a foreign main proceeding, clause 17 of this Part shall not apply;
- (b) When the proceeding under this Code commences after recognition of the foreign proceeding,
 - (i) any relief in effect under clause 18 of this Part shall be reviewed by the Adjudicating Authority

- and shall be modified or terminated if inconsistent with the proceeding under this Code;
- (ii) if the foreign proceeding is a foreign main proceeding, the moratorium referred to in clause 17 of this Part shall be modified or terminated if inconsistent with the proceeding under this Code; and
- (iii) any proceedings brought by the foreign representative under clause 20 of this Part before the proceeding under this Code commenced shall be reviewed by the Adjudicating Authority, and the Adjudicating Authority may give such directions as it thinks fit regarding the continuance of those proceedings.
- (c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Adjudicating Authority shall be satisfied that the relief relates to assets that, under the laws of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

26. Coordination of more than one foreign proceeding

In the matters referred to in clause 1 of this Part, the Adjudicating Authority shall in respect of more than one foreign proceeding regarding the same corporate debtor, seek cooperation and coordination under clauses 21, 22 and 23 of this Part, subject to the following:

- (a) any relief granted under clause 18 of this Part to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

- (b) if a foreign main proceeding is recognized after recognition of a foreign non-main proceeding, any relief in effect under clause 18 of this Part shall be reviewed by the Adjudicating Authority and shall be modified or terminated if inconsistent with the foreign main proceeding;
- (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the Adjudicating Authority shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

27. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Code, proof that the corporate debtor has made a default mentioned in section 4 of this Code:

Provided that for the purposes of this clause, the foreign main proceeding being recognized should be borne out of an inability to pay debts or pursuant to a state of insolvency of the corporate debtor.

28. Rule of payment in concurrent proceedings

- (1) In a corporate insolvency resolution process under this Code, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign country, may not receive a payment for the same claim in such corporate insolvency resolution proceeding regarding the same corporate debtor, so long as the payment to the other creditors of the same standing, according to the resolution plan, is

proportionately less than the payment the creditor has already received.

- (2) In a liquidation proceeding under the Code, without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign country, may not receive a payment for the same claim in such liquidation proceeding regarding the same corporate debtor, so long as the payment to the other creditors of the same class and ranking is proportionately less than the payment the creditor has already received.

CHAPTER VI MISCELLANEOUS

29. Power of Central Government to issue notifications.

- (1) Without prejudice to the provisions of this Code, the Central Government shall issue notifications under clauses 1(3), 1(5), 1(6), 2(a), 21(1) and 21(3) of this Part in the Official Gazette as provided in sub-clause (2).
- (2) Every notification issued under sub-clause (1) shall be laid, as soon as may be after its made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be.

- (3) Any modification or annulment under sub-clause (2) shall be without prejudice to the validity of anything previously done under that notification.

30. Appeals and Appellate Authority

- (1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this Part may prefer an appeal to the National Company Law Appellate Tribunal.
- (2) Every appeal under sub-clause (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty of days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

31. Appeal to Supreme Court

- (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
- (2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from the filing of an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

THE SCHEDULE

(See clause 1(4) of this Part)

Part A

(Countries that have adopted the UNCITRAL Model Law on Cross-Border Insolvency)

Part B

(Countries with which agreements have been entered under clause 1(5) of this Part)

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32. List of Defined Terms

2013 Act	Companies Act, 2013
CIRP	Corporate Insolvency Resolution Process
Code	Insolvency and Bankruptcy Code, 2016
Committee	Insolvency Law Committee
EU	European Union
IBBI	Insolvency and Bankruptcy Board of India
Model Law	UNCITRAL Model Law on Cross-Border Insolvency
MLREIJ	UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments
NCLT	National Company Law Tribunal
UK	United Kingdom
UNCITRAL Guide to Enactment	Guide to Enactment and Interpretation of UNCITRAL Model Law on Cross-Border Insolvency
UNCITRAL Judicial Perspective	UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective
US	United States of America

MINISTRY OF CORPORATE AFFAIRS NOTIFICATION

G.S.R...- In exercise of the powers conferred by [*suitable references inserted in section 239 read with sections 7, 8, 11, 12 and 14 of Part IV*] of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.

- (1) These rules may be called the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020.
- (2) They shall come into force from the date of the publication of these Rules in the Official Gazette.

2. Application.

These Rules shall apply to matters relating to the cases of cross-border insolvency provided in Part Z of the Code.

3. Definitions.

- (1) In these Rules, unless the context otherwise requires:
 - (a) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (b) “electronic form” shall have the meaning assigned to it in clause (r) of section 2 of the Information Technology Act, 2000 (21 of 2000);
 - (c) “electronic means” means an authorized and secured computer programme which is capable of producing confirmation of sending communication to the participant entitled to receive such communication at the last electronic mail address provided by such participant and keeping record of such communication;
 - (d) “form” means a Form appended to these rules;
 - (e) “identification number” means the limited liability partnership identification number or the corporate

identity number, as the case may be, of the corporate debtor;

- (f) “protocol” includes an agreement intended to facilitate the coordination of cross-border insolvency proceedings and cooperation which may be between-
- (i) the Adjudicating Authority and foreign courts,
 - (ii) the Adjudicating Authority, foreign courts, and domestic and foreign representatives, and
 - (iii) domestic and foreign representatives, and which may sometimes also involve other parties in interest.
- (g) “recognition application” means an application made to the Adjudicating Authority by a foreign representative in accordance with Section 12 of Part Z;
- (h) “recognition order” means an order made by the Adjudicating Authority in accordance with section 15 of Part Z;
- (i) “regulations” means any regulations made by the Board under the Code;
- (j) “schedule” means a schedule appended to these rules;
- (k) “section” means a section of the Code;
- (l) “serve” means sending any communication by any means, including registered post, speed post, courier or electronic means, which is capable of producing or generating an acknowledgement of receipt of such communication:

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain.

- (2) All the words and expressions used herein and not defined shall have the meanings respectively assigned to them under Part Z and the Code.

4. Access to foreign representatives.

Notwithstanding anything contained in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, a foreign representative may apply to the Adjudicating Authority under the provisions of Part Z seeking:

- (a) recognition of a foreign proceeding under rule 6; or
- (b) cooperation in respect of a foreign proceeding under rule 12; or (c) both (a) and (b).

5. Authorization of a foreign representative.

- (1) A foreign representative seeking to act, in connection with an application made under Part Z, shall seek authorization from the Board in respect of each foreign proceeding, by submitting Form A to the Board along with a non-refundable authorization fee of INR 10,000.
- (2) A foreign representative shall submit Form A to the Board under sub- rule (1) at the time of or within 3 days from the date of submission of an application under Part Z in respect of a foreign proceeding for the first time before the Adjudicating Authority.
- (3) If any disciplinary proceedings are pending or if any disciplinary actions have been taken against the foreign representative by the Board under the Code or the rules or regulations thereunder, in relation to any previous assignments, the Board may reject an application for authorization and inform the Adjudicating Authority regarding the same, within 10 days of receipt of Form A.
- (4) In the absence of any intimation by the Board under sub-rule (3), the foreign representative shall be deemed to have been authorized by the Board for acting as a foreign representative under the Code.
- (5) An authorization under this rule in respect of a foreign proceeding in relation to a corporate debtor shall not confer upon the foreign representative any rights under the Code to act in relation to any other foreign proceeding in India.

- (6) Where a foreign representative is authorized under the provisions of this rule, such authorization will be effective from the date on which he applies to the Adjudicating Authority, in respect of a foreign proceeding for the first time, under rule 4.
- (7) The authorization granted or deemed to be granted under this rule shall be valid until:
- (a) the date on which the order of the Adjudicating Authority recognizing the foreign proceeding is in force; or
 - (b) the date of disposal of an appeal against an order of the Adjudicating Authority that dismisses an application under Part Z, whichever is later.

6. Application for recognition of foreign proceedings.

- (1) A foreign representative may make an application for the recognition of a foreign proceeding under section 12 of Part Z in Form B.
- (2) The applicant shall serve a copy of the application referred to in sub- rule (1) forthwith after filing such application with the Adjudicating Authority, on-
- (a) the registered office of the corporate debtor; or
 - (b) if the corporate debtor is undergoing insolvency resolution or liquidation proceeding under the Code, the interim resolution professional or the resolution professional or the liquidator, as the case may be, appointed in that proceeding.

7. Centre of main interests.

- (1) While determining the centre of main interests under subsection (3) of section 14 of Part Z, the Adjudicating Authority shall assess the place where the corporate debtor's central administration takes place which is readily ascertainable by third parties including creditors of the corporate debtor.

- (2) In making the assessment under sub-rule (1), the Adjudicating

Authority shall have regard to other relevant factors, including the-

- (a) location of assets of the corporate debtor;
 - (b) location of book of accounts of the corporate debtor;
 - (c) location of directors and senior management of the corporate debtor;
 - (d) location of creditors of the corporate debtor;
 - (e) location of execution of contracts and applicable law to key contracts and disputes;
 - (f) location where financing was organized or authorized, or from where the cash management system was run;
 - (g) location of corporate debtor's primary bank account; and
 - (h) location from which purchasing and sales policy, staff, accounts payable and computer systems were managed.
- (3) The relevant date for determining the centre of main interests of the corporate debtor shall be the date of commencement of the foreign proceedings as per the laws of the respective foreign country.

8. Application for relief on recognition.

- (1) An application seeking relief under section 18 of Part Z, including any relief under rule 9 or 10, may be filed along with the application for recognition under sub-rule (1) of rule 6, or any time thereafter.
- (2) An application under sub-rule (1) shall contain the following particulars-
 - (a) the grounds for the relief sought;
 - (b) the facts to establish that the relief is necessary to protect the assets of the corporate debtor or the interests of the creditors; and
 - (c) all other facts as may be necessary to assist the Adjudicating Authority in deciding appropriateness to grant the relief sought by the applicant.

- (3) The foreign representative shall, at the time of making an application under subrule (1), serve a copy of such application, on-
- (a) the registered office of the corporate debtor; or
 - (b) if the corporate debtor is undergoing insolvency resolution or liquidation proceeding under the Code, the interim resolution professional or the resolution professional or the liquidator, as the case may be, appointed in that proceeding.

9.Manner of entrustment of assets.

- (1) The Adjudicating Authority may, while exercising its powers under clause (e) of sub-section (1) of section 18 of Part Z, pass an order allowing the foreign representative to take any one or more of the following actions, for the purposes of administration or realization of assets of the corporate debtor, -
- (a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;
 - (b) make a public announcement for collection of claims of the corporate debtor or collect them in any other manner directed by the Adjudicating Authority, if there are no insolvency resolution or liquidation proceedings ongoing against the corporate debtor under the Code;
 - (c) prepare a consolidated list of claims with a resolution professional or liquidator appointed in any insolvency resolution or liquidation proceedings ongoing against the corporate debtor under the Code or with any other foreign representative in another foreign proceeding in respect of the corporate debtor;
 - (d) advertise the assets of the corporate debtor for sale in the manner as agreed in a protocol between the parties, if any, or by means of auction or private placement, upon such terms as directed by the Adjudicating Authority;
 - (e) negotiate the sale price of the assets of the corporate

debtor;

- (f) undertake identification of priority payouts for distribution and costs of the processes; or
- (g) take of any other actions that may be necessary for the purpose of administration or realization of the assets of the corporate debtor.

(2) While passing an order under sub-rule (1), the Adjudicating Authority may, where considered necessary to protect the assets of the corporate debtor or the interests of the creditors, impose any limitations or restrictions to the administration and realisation of the corporate debtor's assets located in India by the foreign representative.

(3) While passing an order under sub-rule (1), the Adjudicating Authority may require the foreign representative to report any material development in relation to the assets of the corporate debtor, as soon as reasonably practicable or in the manner as directed.

(4) The Adjudicating Authority shall consider the relevant terms of protocol, if any, in respect of the foreign proceeding while providing any relief under this rule.

10. Additional relief on recognition.

While exercising powers under clause (f) of sub-section (1) of section 18 of Part Z, the Adjudicating Authority may grant any relief that may be available to a resolution professional or liquidator under the Code, including permitting the foreign representative to-

- (a) access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
- (b) access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and other relevant persons;

- (c) conduct a valuation of the corporate debtor's assets or seek valuation reports; or
- (d) seek directions from the Adjudicating Authority to compel co- operation from any person whose assistance or cooperation may be required by the foreign representative.

11. Subsequent information.

- (1) The foreign representative shall provide any subsequent information under section 16 of Part Z to the Adjudicating Authority by filing Form C.
- (2) The foreign representative shall serve a copy of Form C filed under sub- rule (1), forthwith after the date of filing such form with the Adjudicating Authority, on-
 - (a) the registered office of the corporate debtor; or
 - (b) if the corporate debtor is undergoing insolvency resolution or liquidation proceeding under the Code, the interim resolution professional or the resolution professional or the liquidator, as the case may be, appointed in that proceeding.

12. Request for facilitating co-operation.

- (1) A foreign representative may apply to the Adjudicating Authority to request for co-operation under Chapter IV of Part Z and shall submit the following information to the Adjudicating Authority, unless already submitted to the Adjudicating Authority in respect of the same foreign proceeding, -
 - (a) a certified copy of the decision of the commencement of the foreign proceeding and appointment of the foreign representative in such proceedings;
 - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative;
 - (c) in the absence of documents under clause (a) and (b), any other evidence affirming the existence of the foreign

proceeding and of the appointment of the foreign representative;

- (d) a statement identifying all foreign proceedings and proceedings under this Code in respect of the corporate debtor that are known to the foreign representative;
 - (e) proof that the requisite fee for this application has been paid;
 - (f) a statement indicating the status of authorization of the foreign representative by the Board, according to section 7 of Part Z of the Insolvency and Bankruptcy Code, 2016 read with rule 5 of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020;
 - (g) the nature of cooperation sought by the foreign representatives; and
 - (h) any order or letter of request from the court/Adjudicating Authority in foreign proceedings seeking cooperation or assistance from the Adjudicating Authority in India, if any.
- (2) The foreign representative shall forthwith serve a copy of the application filed under sub-rule (1) on-
- (a) the registered office of the corporate debtor; or
 - (b) if the corporate debtor is undergoing insolvency resolution or liquidation proceeding under the Code, the interim resolution professional or the resolution professional or the liquidator, as the case may be, appointed in that proceeding.

13. Application by a replaced foreign representative.

At any time after filing an application with the Adjudicating Authority under Part Z, if a foreign representative ceases to be the foreign representative in relation to the foreign proceeding for the corporate debtor and is replaced by another person, such person shall-

- (i) file an application before the Adjudicating Authority to inform it about such replacement and confirm his status as

the new foreign representative in Form D; and

- (ii) apply for authorization to the Board, under rule 5, at the time of or within 3 days of the date on which the application under clause (i) is filed.

14. Procedure of filing and application fee.

- (1) Till such time, rules of procedure for the conduct of proceedings under the Code are notified, the applications under these rules shall be filed and dealt with by the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013).
- (2) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority:

Provided that till such facility is made available, the applicant may submit accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.

- (3) Any application under these rules shall be submitted to the Adjudicating Authority with a fee, in accordance with Schedule I.
- (4) Any application and documents filed under these rules shall be translated to English, and may be accompanied by a certificate or affidavit from a translator approving accuracy of the translation.

**Form A (Under sub-rule (1) of rule 5) APPLICATION FOR
AUTHORIZATION OF FOREIGN REPRESENTATIVE**

*(Under section 7 of Part Z read with rule 5 of the Insolvency and
Bankruptcy (Cross Border Insolvency) Rules, 2020)*

To
The Executive Director (IP Division)
Insolvency and Bankruptcy Board of India

33. Subject: Application for authorization as a Foreign Representative

Sir / Madam,

I, having been appointed as a foreign representative in insolvency proceedings commenced in respect of [Name of the corporated debtor] in [Name of the Country] on [date of appointment], hereby apply for authorization as a Foreign Representative under section 7 of Part Z read with rules 4 and 5 of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020. My details are as under:

Sr. No	Particulars	Details
1.	TITLE (MR. / MRS. / MS. / OTHER):	
2.	FULL NAME	
3.	ADDRESS FOR SERVICE OF NOTICE IN INDIA IN CONNECTION WITH THE PROCEEDINGS INITIATED BY THE FOREIGN REPRESENTATIVE (IF ANY)	
4.	E-MAIL ADDRESS	
5.	CONTACT NO. (DOMESTIC AND FOREIGN)	

6.	DATE OF BIRTH	
7.	PROFESSION/ VOCATION	
8.	REGISTRATION DETAILS WITH ANY PROFESSIONAL BODY (IF APPLICABLE)	
9.	DETAILS OF OTHER ASSIGNMENTS IN INDIA, IF ANY	
10.	DETAILS OF ANY DISCIPLINARY PROCEEDINGS PENDING OR CONDUCTED AGAINST THE FOREIGN REPRESENTATIVE BY THE	
	INSOLVENCY AND BANKRUPTCY BOARD AND CURRENT STATUS OF SUCH PROCEEDING(S)	
11.	DETAILS OF THE CORPORATE DEBTOR (I) NAME (II) PLACE OF INCORPORATION (III) REGISTRATION DETAILS IN INDIA (IF REGISTERED IN INDIA)	
12.	DETAILS OF THE FOREIGN PROCEEDING IN RESPECT OF THE CORPORATE DEBTOR (I) DATE OF INITIATION OF FOREIGN PROCEEDING AND COURT IN WHICH THEY ARE ONGOING (II) PRESENT STATUS OF FOREIGN PROCEEDING (III) DATE OF AUTHORISATION OF APPLICANT TO ACT AS A FOREIGN REPRESENTATIVE FOR SUCH FOREIGN PROCEEDING	

I, [Name of the foreign representative], have paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of Foreign Representative
Name in block letters
Address

34. Instructions

2021-22 International Insolvency and Bankruptcy Moot Proposition. web: <https://nludelhi.ac.in/home.aspx>
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Please attach the following to this application:

- Annex I A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative in the foreign proceedings.
- Annex II A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative.
- Annex III A copy of the application(s) filed with the Adjudicating Authority under Part Z of the Insolvency and Bankruptcy Code, 2016.
- Annex IV Copies of all documents referred to in this application.

DECLARATION

1. I affirm that I am eligible to be authorized as a Foreign Representative under the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020 read with section 7 of Part Z of the Insolvency and Bankruptcy Code, 2016.
2. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and nothing material facts have been concealed therefrom.
3. I undertake to comply with the requirements of the Insolvency and Bankruptcy Code, 2016, rules, regulations, guidelines and circulars issued thereunder, and any directions given by the Board from time to time.

Place:

Date:

(Name and signature of applicant)

VERIFICATION

I, [*name of applicant*], do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and no material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201_____

(Signature of the Applicant)

Form B (Under sub-rule (1) of rule 6) APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDING

(Under section 12 of Part Z of the Insolvency and Bankruptcy Code, 2016 read
with rule 6 of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules,
2020)

[Date]

To,

The National Company Law Tribunal [Address]

From,

[Names and addresses of the foreign representative]

In the matter of [name of the corporate debtor]

Subject: Recognition application for foreign proceedings in [name of the country] in respect of [name of the corporate debtor] as a [state whether recognition is sought as a foreign main or as a foreign non-main proceeding] under Part Z of the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

I, [Name of the foreign representative], hereby submit this application for recognition of the foreign proceedings in [name of the country] in the matter of [name of corporate debtor] as [foreign main proceedings/ foreign non-main proceedings]. The details for the purposes of this application are set out below:

Part-I

PARTICULARS OF THE APPLICANT		
1.	NAME OF FOREIGN REPRESENTATIVE	
2.	IDENTIFICATION NUMBER OF FOREIGN REPRESENTATIVE, IF ANY	
3.	ADDRESS OF FOREIGN REPRESENTATIVE (FOREIGN AND DOMESTIC, IF ANY)	
4.	EMAIL ADDRESS AND TELEPHONE NUMBER OF FOREIGN REPRESENTATIVE	

5.	ADDRESS FOR SERVICE OF NOTICE IN INDIA IN CONNECTION WITH THE PROCEEDINGS INITIATED BY THE FOREIGN REPRESENTATIVE (IF ANY)	
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Part-II

PARTICULARS OF THE CORPORATE DEBTOR		
1.	NAME OF THE CORPORATE DEBTOR	
2.	PLACE OF INCORPORATION OF THE CORPORATE DEBTOR	
3.	IDENTIFICATION NUMBER OF CORPORATE DEBTOR, IF APPLICABLE (INCLUDING REGISTRATION DETAILS IN INDIA, IF IT IS REGISTERED IN INDIA)	
4.	DATE OF INCORPORATION OF CORPORATE DEBTOR	
5.	NATURE OF BUSINESS CARRIED ON BY THE CORPORATE DEBTOR IN INDIA AND IN THE RESPECTIVE FOREIGN COUNTRY	
6.	NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (IF APPLICABLE)	
7.	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR <i>Please indicate if there has been a shift in the registered office of the corporate debtor. If so, then when was it shifted?</i>	
8.	ADDRESS OF THE BRANCH OR ESTABLISHMENT OF THE CORPORATE DEBTOR IN THE RESPECTIVE FOREIGN COUNTRY AND IN INDIA, IF ANY	
9.	NAME IN WHICH THE CORPORATE DEBTOR CARRIES ON BUSINESS IN THE FOREIGN COUNTRY AND IN INDIA	

10.	LIST OF ASSETS OF THE CORPORATE DEBTOR IN THE FOREIGN COUNTRY AND IN INDIA, BOTH SECURED AND UNSECURED (OPTIONAL)	
11.	DETAILS OF ANY INSOLVENCY RESOLUTION OR LIQUIDATION PROCEEDINGS PENDING UNDER THE CODE IN RESPECT OF THE CORPORATE DEBTOR, IF ANY	

Part-III

PARTICULARS OF THE FOREIGN PROCEEDING		
1.	<p>NAME OF THE FOREIGN COUNTRY AND DETAILS OF THE COURT BEFORE WHICH FOREIGN PROCEEDINGS (IN RESPECT OF WHICH THE FOREIGN REPRESENTATIVE HAS BEEN APPOINTED) ARE PENDING</p> <p><i>Please also indicate if the respective foreign country has-</i></p> <p><i>(i) adopted the UNCITRAL Model Law on Cross Border Insolvency, and</i></p> <p><i>(ii) entered into an agreement with the Government of India in relation to cross border insolvency.</i></p>	
2.	DATE OF DECISION OF FOREIGN COURT COMMENCING THE FOREIGN PROCEEDING AND APPOINTING THE FOREIGN REPRESENTATIVE (ATTACH CERTIFIED COPY)	
3.	DATE OF CERTIFICATE OF FOREIGN COURT AFFIRMING THE EXISTENCE OF THE FOREIGN PROCEEDING AND APPOINTMENT OF THE FOREIGN REPRESENTATIVE (ATTACH COPY)	

4.	STATUS OF FOREIGN PROCEEDING	
5.	DETAILS OF ANY OTHER FOREIGN PROCEEDINGS ONGOING IN RESPECT OF THE CORPORATE DEBTOR (IF KNOWN, PLEASE SPECIFY THE COUNTRY IN WHICH SUCH PROCEEDINGS ARE TAKING PLACE, THE	
	DATE OF INITIATION OF SUCH PROCEEDINGS AND THE COURT INVOLVED)	

Part-IV

NATURE OF RECOGNITION OF FOREIGN PROCEEDING		
1.	WHETHER THE RECOGNITION APPLICATION IS FILED FOR RECOGNITION OF THE FOREIGN PROCEEDING AS A FOREIGN MAIN PROCEEDING OR A FOREIGN NON-MAIN PROCEEDING (WITH REASONS AND PROOF THEREOF)	

Part-V

PARTICULARS OF DEBT AND CREDITORS [OPTIONAL]		
1.	WHETHER FOREIGN PROCEEDINGS WERE INITIATED DUE TO DEFAULT ON PAYMENT OF DEBT (IF SO, PLEASE SPECIFY DETAILS OF SUCH DEFAULT INCLUDING THE DATE OF DEFAULT, AMOUNT OF DEFAULT, AND RESPECTIVE CREDITOR)	
2.	LIST OF CREDITORS, DOMESTIC AND FOREIGN, OF THE CORPORATE DEBTOR, AND DETAILS OF CLAIMS, KNOWN TO THE FOREIGN REPRESENTATIVE	

I, [Name of the foreign representative] have paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of Foreign Representative
Name in block letters
Address

35. Instructions

Please attach the following to this application:

- Annex I A certified copy of the decision of the commencement of the foreign proceeding and appointment of the foreign representative in such proceedings.
- Annex II A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative.
- Annex III In the absence of annexures I and II, any other evidence affirming the existence of the foreign proceeding and of the appointment of the foreign representative.
- Annex IV A statement identifying all foreign proceedings and proceedings under this Code in respect of the corporate debtor that are known to the foreign representative.
- Annex V A copy of any previous application filed by the foreign representative with the Adjudicating Authority in respect of the same foreign proceeding under Part Z of the Insolvency and Bankruptcy Code, 2016.
- Annexure VI Any document establishing evidence that the corporate debtor has its centre of main interests or an establishment, as the case may be, within the country where the foreign proceeding is taking place.
- Annex VII Proof that the requisite fee for this application has been paid.
- Annex VIII A statement indicating the status of authorisation of the foreign representative by the Board, according to section 7 of Part Z of the Insolvency and Bankruptcy Code, 2016 read with rule 5 of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020.
- Annex IX Copies of any other documents referred to in this application.

AFFIDAVIT

I, [*insert name of deponent*], currently residing at [*address of deponent*], do solemnly affirm and state as follows:

1. I represent foreign proceedings, in the nature of [*insert name of relevant foreign proceeding under the relevant law in the foreign country*], in [*insert name of the country*] in respect of [*insert name of the corporate debtor*]. I have filed the present application for recognition of these foreign proceedings as [*foreign main proceedings/foreign non-main proceedings*] under Part Z of the Insolvency and Bankruptcy Code, 2016.
2. I affirm that I am eligible to act as a foreign representative under Part Z of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder.
3. To the best of my knowledge, this application is not in breach of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder.
4. In respect of the present application for recognition of the foreign proceedings as a [*foreign main proceedings/foreign non-main proceedings*], I have relied on the documents below-

[Please provide a list of all documents annexed to the application for recognition of the foreign proceeding]

5. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

Solemnly, affirmed at _____ on _____ day, the
_____ day of _____ 20_____

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para____to_of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201_____

Deponent's signature

International Insolvency and Bankruptcy Moot 2021-22

Form C (Under sub-rule (1) of rule 11) APPLICATION FOR SUBSEQUENT INFORMATION

15. (Under section 16 of Part Z of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020)

[Date]

To,
The National Company Law Tribunal [Address]

From,
[Names and addresses of the foreign representative] In
the matter of [name of corporate debtor]

Subject: Application for filing subsequent information

Madam/Sir,

I, [name of the foreign representative], am submitting this application for filing subsequent information that has come to my knowledge pursuant to the application for recognition of foreign proceeding in [name of the country] in respect of [name of the corporate debtor]. The details for the purposes of this application are set out below:

Sr. No	Particulars	Details
1.	DATE OF FILING OF APPLICATION FOR RECOGNITION WITH THE ADJUDICATING AUTHORITY IN RESPECT OF THE FOREIGN PROCEEDING	
2.	DETAILS OF ORDERS, IF ANY, PASSED BY THE ADJUDICATING AUTHORITY IN RESPECT OF THE APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDING	

3.	PLEASE TICK THE APPLICABLE INFORMATION BEING SUBMITTED	Change in status of recognized foreign proceeding Change in status of appointment of foreign representative
		Change in status of any other foreign proceeding Change in status of proceedings under this Code.
4.	BRIEF DESCRIPTION OF SUBSEQUENT INFORMATION THAT IS BEING FILED BY THE FOREIGN REPRESENTATIVE (PLEASE ATTACHED A DETAILED STATEMENT INCLUDING DETAILS OF THE TIME AND MANNER IN WHICH THE FOREIGN REPRESENTATIVE CAME TO KNOW OF SUCH INFORMATION)	

I, [*Name of the foreign representative*], have paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

Signature of Foreign Representative

Name in block letters

Address

Instructions

Please attach the copies of any documents referred to in this application and proof that the requisite fee for this application has been paid.

DECLARATION

I, [*Name of foreign representative*], currently residing at [*insert address*], hereby

declare and state as follows: -

1. In respect of this application for subsequent information, I have relied on-

[Insert list of documents annexed to this application]

2. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and nothing material facts have been concealed therefrom.

Date:

Place:

(Name and Signature of the applicant)

VERIFICATION

I, *[name of applicant]*, do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and no material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201_____

(Signature of the Applicant)

Form D (Under rule 13)

APPLICATION TO GIVE INFORMATION REGARDING REPLACEMENT OF FOREIGN REPRESENTATIVE

(Under rule 13 of the Insolvency and Bankruptcy (Cross Border) Rules,
2020)

[Date]

To,
The National Company Law Tribunal [Address]

From,
[Names and addresses of the foreign representative] In the
matter of [name of corporate debtor]

Subject: Application to give information regarding replacement of foreign representative and confirm status of new foreign representative.

Sir / Madam,

I, [name of the applicant], hereby submit this application to provide information regarding replacement of a foreign representative. [name of previous foreign representative], who was acting as the foreign representative under Part Z of the Insolvency and Bankruptcy Code, 2016 in respect of [name of the corporate debtor] in the following matters-

[insert details of cases in respect of which the foreign representative has been acting as such under the Insolvency and Bankruptcy Code, 2016].

I have replaced the previous foreign representative, and hereby apply to confirm my status as the new foreign representative in the matter of [name of corporate debtor]. The details for the purposes of this application are set out below:

Part I

PARTICULARS OF PREVIOUS FOREIGN REPRESENTATIVE		
1.	NAME OF PREVIOUS FOREIGN REPRESENTATIVE	
2.	IDENTIFICATION NUMBER OF PREVIOUS FOREIGN REPRESENTATIVE, IF ANY	
3.	ADDRESS OF PREVIOUS FOREIGN REPRESENTATIVE (AS PREVIOUSLY	

	FILED WITH THE ADJUDICATING AUTHORITY)	
4.	DATE OF TERMINATION OF SERVICES OF THE PREVIOUS FOREIGN REPRESENTATIVE IN RESPECT OF THE FOREIGN PROCEEDING	
5.	REASONS FOR TERMINATION OF SERVICE, IF KNOWN TO THE APPLICANT	

Part II

PARTICULARS OF APPLICANT		
1.	NAME OF PERSON PURPORTING TO BE FOREIGN REPRESENTATIVE	
2.	IDENTIFICATION NUMBER OF PERSON PURPORTING TO BE FOREIGN REPRESENTATIVE, IF ANY	
3.	ADDRESS OF PERSON PURPORTING TO BE FOREIGN REPRESENTATIVE (FOREIGN AND DOMESTIC, IF ANY)	
4.	EMAIL ADDRESS AND TELEPHONE NUMBER OF PERSON PURPORTING TO BE FOREIGN REPRESENTATIVE	
5.	NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON BEHALF OF THE PERSON PURPORTING TO BE FOREIGN REPRESENTATIVE (ENCLOSE AUTHORISATION)	
6.	DATE OF APPOINTMENT IN RESPECT OF THE FOREIGN PROCEEDING OR DATE OF AUTHORISATION TO ACT AS FOREIGN REPRESENTATIVE OF THE FOREIGN PROCEEDING, AS APPLICABLE	

I, *[Name of the foreign representative]*, have paid the requisite fee for this application through *[state means of payment]* on *[date]*.

Yours sincerely,

Signature of Foreign Representative

Name in block letters

Address

Instructions

Please attach the following to this application:

Annex I A certified copy of the decision appointing the foreign representative in the foreign proceedings, or in the absence of such a certified copy, any other evidence affirming the appointment of the foreign representative.

Annex II Proof that the requisite fee for this application has been paid.

Annex III Copies of any other documents referred to in this application.

DECLARATION

I, [*Name of foreign representative*], currently residing at [*address*], hereby declare and state as follows: -

1. I have filed the present application for giving information regarding replacement of foreign representative and confirming my status as a new foreign representative.
2. In respect of the said application, I have relied on- [*Insert list of documents annexed to this application*]
3. The contents of the said application along with the said documents are true, valid and genuine to the best of my knowledge, information and belief and nothing material facts have been concealed therefrom.

Place:

Date:

(Name and signature of applicant)

VERIFICATION

I, [*name of applicant*], do hereby verify that the contents of this application are true and correct to my knowledge and belief. Nothing is false and no material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201____

(Signature of the Applicant)

Schedule I Fee for Applications (Under sub-rule (3) of rule 14)

Sr. No.	Kind of Application	Requisite fee
1.	Application to the Adjudicating Authority for recognition of foreign proceedings	<i>May be provided at the time of notification of these rules as decided by the Central Government</i>
2.	Application to the Adjudicating Authority for requesting cooperation	<i>May be provided at the time of notification of these rules as decided by the Central Government</i>
3.	Any other application made to the Adjudicating Authority	<i>May be provided at the time of notification of these rules as decided by the Central Government</i>

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA NOTIFICATION

The Insolvency and Bankruptcy Board of India (Cross-Border Insolvency) Regulations, 2020

New Delhi, the _____, 2020

IBBI/2020-21/GN/REG____– In exercise of powers conferred by [sections 3, 7, 8 and 11 of the Part Z of the Code read with suitable provisions of section 240 of the Code]¹, the Board hereby makes the following regulations, namely-

CHAPTER I

PRELIMINARY

1. Short title and commencement.

- (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Cross Border Insolvency) Regulations, 2020.
- (2) These Regulations shall come into force on the date of their publication in the Official Gazette.
- (3) These Regulations shall apply to matters relating to the cross-border insolvency provided in Part Z of the Code.

2. Definitions.

- (1) In these Regulations, unless the context otherwise requires:

¹ Please note that references to provisions related to cross border insolvency in these regulations are based on Draft Part Z as provided in the report of the Insolvency Law Committee. These references will need to be altered based on the manner of incorporation of Draft Part Z in the Code.

- (a) “Code” means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (b) “Disciplinary Committee” means Disciplinary Committee as defined in clause (a) of sub-regulation (1) of Regulation 2 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulation, 2017;
 - (c) “form” means a Form appended to these regulations;
 - (d) “known foreign creditor” means any foreign creditor of the corporate debtor that does not have an address in India and is known to the insolvency professional at the relevant time;
 - (e) “authorization of a foreign representative” means the authorization of a foreign representative under Rule 5;
 - (f) “Rule” means a rule of the Insolvency and Bankruptcy (Cross Border Insolvency) Rules, 2020;
 - (g) “schedule” means the Schedule appended to these regulations;
 - (h) “section” means a section of the Code.
- (2) All the words and expressions used herein and not defined shall have the meanings respectively assigned to them under the Part Z and the Code.

CHAPTER II

RESOLUTION PROFESSIONAL OR LIQUIDATOR

3. Resolution professional or liquidator authorised to act in a foreign country.

Without prejudice to any requirements for reporting under the Code or the rules and regulations thereunder, where a resolution professional or liquidator acts in a foreign country in relation to a proceeding under this Code, as authorised by section 3 of Part Z, he shall intimate the Board by submitting Form A prior to undertaking any such acts.

4. Insolvency resolution or liquidation process costs.

Any costs incurred by the resolution professional or liquidator while

acting in a foreign country on behalf of a proceeding under the Code shall form a part of the insolvency resolution process costs under clause (e) of sub-section (13) of section 5 or the liquidation costs under sub-section (16) of section 5, as the case may be.

CHAPTER III

FOREIGN REPRESENTATIVES

5. Conduct of foreign representatives.

- (1) A foreign representative authorised under Rule 5 shall abide by the code of conduct in the First Schedule while acting in respect of a foreign proceeding under Part Z.
- (2) A foreign representative acting in India in respect of a foreign proceeding shall forward all records relating to the conduct of the foreign proceeding in India to the Board to be recorded on its database, through an electronic platform of the Board, in such manner as may be communicated by the Board.

6. Preservation of records.

A foreign representative shall preserve an electronic copy of the records relating to

the proceedings in India in respect of the foreign proceeding as per the record retention schedule as may be communicated by the Board.

7. Disciplinary proceedings against foreign representatives.

- (1) The provisions of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 shall apply *mutatis mutandis* to foreign representatives as they apply to the insolvency professionals.
- (2) Where, upon the conclusion of the disciplinary proceedings undertaken against a foreign representative, the Disciplinary Committee finds that the foreign representative has contravened any of the provisions of the Code or the rules and regulations framed thereunder, the Disciplinary Committee shall pass a

reasoned order, which may provide for:

- (a) closure of the show-cause notice issued in respect of the foreign representative without any direction;
 - (b) issuance of a warning;
 - (c) cancelation of the authorisation of a foreign representative;
 - (d) any actions specified in clauses (a), (b) or (c) of sub-section (2) of section 8 of Part Z; or
 - (e) making a reference to the Board to take any action under sub-sections (4) or (5) of section 220.
- (3) The Board shall send a copy of the order passed under sub-regulation (2) to the concerned bench of the Adjudicating Authority.

CHAPTER IV

NOTICES

8. Notice to creditors having addresses outside India.

- (1) Whenever notice is to be given to the creditors of a corporate debtor during insolvency resolution, liquidation or any other proceedings in respect of a corporate debtor under the Code, such notice must be given to known foreign creditors in accordance with the Code or the rules and regulations framed thereunder.
- (2) Subject to sub-regulation (1), where it is not possible to give notice to a known foreign creditor in accordance with the Code or the rules and regulations framed thereunder, the following shall be deemed to be notice to such known foreign creditors for the purposes of section 11 of Part Z-
 - (i) publication of the notice forthwith on the website of the corporate debtor, if any, and
 - (ii) publication of the notice forthwith on the website designated by the Board for this purpose.

FORM A (Under sub-regulation (2) of Regulation 3)

INTIMATION OF ACTS TO BE UNDERTAKEN IN A FOREIGN COUNTRY

(Under section 3 of Part Z of the Code read with regulation 3 of the Insolvency and Bankruptcy Board of India (Cross Border Insolvency) Regulation, 2020)

To,
The Executive Director (IP Division)
Insolvency and Bankruptcy Board of India

Subject: Intimation of acts to be undertaken in a foreign country on behalf of a proceedings under the Insolvency and Bankruptcy Code, 2016 under section 3 of the Part Z

Madam/Sir,

I, [name of the resolution professional/liquidator], hereby intimate acts to be undertaken by myself in [name of the foreign country] on behalf of the [proceedings under the Insolvency and Bankruptcy Code, 2016] of [name of the corporate debtor] under section 3 of Part Z. The details for the said purpose are set out below:

S. No.	Particulars	Details
1.	DETAILS OF THE CORPORATE DEBTOR (I) NAME (II) PLACE OF INCORPORATION (III) REGISTRATION DETAILS IN INDIA	
2.	DETAILS OF THE APPOINTMENT OF RESOLUTION PROFESSIONAL OR LIQUIDATOR (I) DATE OF ORDER OF THE ADJUDICATING AUTHORITY APPOINTING THE RESOLUTION PROFESSIONAL OR THE LIQUIDATOR (II) CASE DETAILS OF THE PROCEEDINGS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 PENDING BEFORE THE ADJUDICATING AUTHORITY	

3.	STATUS OF PROCEEDINGS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 PENDING UNDER THE CODE IN RESPECT OF THE CORPORATE DEBTOR	
4.	DETAILS OF THE ACTS TO BE UNDERTAKEN IN A FOREIGN COUNTRY (MAY BE AN ESTIMATION) AND THE NAME OF THE FOREIGN COUNTRY	
5.	DETAILS OF THE FOREIGN PROCEEDINGS OF THE CORPORATE DEBTOR (IF APPLICABLE) (I) NAME OF THE FOREIGN COURT (II) CASE DETAILS OF THE FOREIGN PROCEEDINGS PENDING BEFORE THE FOREIGN COURT (III) STATUS OF FOREIGN PROCEEDINGS	
6.	LIST OF DOCUMENTS ATTACHED TO THIS FORM	

AFFIRMATION

I, hereby affirm that -

- (i) I am intimating prior to undertaking the acts in [name of the foreign country] on behalf of a [proceedings under the Insolvency and Bankruptcy Code, 2016] of the [name of the corporate debtor] under the Code,
- (ii) all information contained in this form is complete and correct in all material respects, and (ii) no material information relevant for the purposes of this form has been suppressed.

Yours sincerely,

Signature of the Resolution Professional/Liquidator:

Name in block letters

FIRST SCHEDULE (Under sub-regulation (1) of Regulation 5)

CODE OF CONDUCT FOR FOREIGN REPRESENTATIVES

Integrity and objectivity.

1. A foreign representative must maintain integrity by being honest, straightforward, and forthright in all professional relationships.
2. A foreign representative must not misrepresent any facts or situations and must make full and fair disclosure of any information required by the Adjudicating Authority.
3. A foreign representative must not knowingly disobey any orders or directions of the Adjudicating Authority.
4. A foreign representative must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.
5. A foreign representative must disclose the details of any conflict of interests to the stakeholders or to the Adjudicating Authority, whenever he comes across such conflict of interest while exercising powers and functions under Part Z of the Code.

Independence and impartiality.

6. A foreign representative must maintain complete independence and impartiality in his professional relationships and should conduct his duties independent of external influences.
7. A foreign representative while acting in respect of the foreign proceeding in India, must act in a fiduciary capacity and undertake actions that are in the best interest of the creditors of the corporate debtor.
8. In cases where the foreign representative is dealing with assets of a corporate debtor under the Code, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality and the same is permitted by the applicable

law or the Adjudicating Authority.

9. A foreign representative shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under the Code, and the concerned corporate debtor as soon as he becomes aware of it, by making a declaration of the same to the Adjudicating Authority.
10. A foreign representative shall not influence the decision or the work of the creditors, the corporate debtor, any insolvency professional appointed in the proceedings under the Code in relation to the concerned corporate debtor, or any other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties,
or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.

Representation of correct facts and correcting misapprehensions.

11. A foreign representative must inform the Adjudicating Authority under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.
12. A foreign representative must not conceal any material information or knowingly make a misleading statement to an insolvency professional appointed in the proceedings under the Code in relation to the concerned corporate debtor, to the Board, the Adjudicating Authority or any stakeholder, as applicable.

Information management.

13. A foreign representative must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
14. A foreign representative must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.

15. A foreign representative must not make any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines thereunder, or orders of the Adjudicating Authority.
16. A foreign representative must appear, co-operate and be available for inspections and investigations carried out by the Board or any person authorized by the Board.
17. A foreign representative must provide all information and records as may be required by the Board for the purposes of disciplinary proceedings.

Confidentiality.

18. A foreign representative must ensure that confidentiality of the information relating to the proceedings under the Code, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the _____ June, 2020

S.O._____.— (1) In exercise of the powers conferred by [sub-section (1) of section 21 read with section 29 of the Part Z]² of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (the “Code”), the Central Government³ hereby notifies the guidelines for communication and cooperation between the Adjudicating Authority and foreign courts in the interest of all stakeholders (the “Guidelines”) in the manner specified in the First Schedule.

(2) These Guidelines shall be subject to the provisions of Part Z of the Code and rules and regulations framed thereunder.

(3) As per [sub-section (d) of section 23 read with sections 21 and 22 of the Part Z] of the Code, cooperation may be implemented by approval or implementation of agreements concerning coordination of proceedings or protocol, between the Adjudicating Authority and foreign courts or foreign representatives, or between the resolution professionals or liquidators and foreign courts or foreign representatives. These Guidelines are limited to the agreements

concerning coordination of proceedings or protocol for cooperation and communication between the Adjudicating Authority and foreign courts. Unless otherwise specified in the Guidelines, the obligations of foreign courts under these Guidelines shall be based on agreement through protocol or through communication with the Adjudicating Authority.

- (4) The Guidelines enclosed in First Schedule may be implemented in a particular case, whether in whole or in part and with or without modification, after approval of the Adjudicating Authority as per Guideline 2 of the Guidelines.
- (5) This notification shall come into force with effect from the ____, 2020.

² Please note that references to provisions related to cross border insolvency in these Guidelines are based on Draft Part Z as provided in the report of the Insolvency Law Committee. These references will need to be altered based on the manner of incorporation of Draft Part Z in the Code.

³ Please note that Clause 21 states that the Central Government consult with the Adjudicating Authority before notifying the guidelines. Under clause 2(a) of the Draft Part Z, the phrase “Adjudicating Authority” means benches of the National Company Law Tribunal (“NCLT”), as notified by the Central Government. Therefore, before notifying these rules consultation will be required with the presiding officers of the NCLTs.

FIRST SCHEDULE

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN THE ADJUDICATING AUTHORITY AND FOREIGN COURTS IN CROSS- BORDER

INSOLVENCY MATTERS

INTRODUCTION

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst the Adjudicating Authority and foreign courts under whose supervision such proceedings are being conducted.
- B. In all Parallel Proceedings, these Guidelines shall be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
- (i) the efficient and timely coordination and administration of Parallel Proceedings;
 - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
 - (iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;
 - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;

- (v) the sharing of information in order to reduce costs; and
- (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties in Parallel Proceedings.

D. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

E. The Adjudicating Authority shall consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. The Adjudicating Authority shall encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the Adjudicating Authority or foreign courts to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

F. For the purposes of these guidelines, the term “authority” shall mean the Adjudicating Authority and the foreign courts that have signified their assent to the adoption of these guidelines in whole or in part and with or without modification.

G. Unless the context otherwise requires, words and expressions used and not defined in these Guidelines but defined in Part Z of the Insolvency and —Bankruptcy Code, 2016 (31 of 2016), shall have the meanings respectively assigned therein.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph E above, the Adjudicating Authority shall encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the Adjudicating Authority or foreign courts involved at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and 2021-22 International Insolvency and Bankruptcy Moot Proposition. web: <https://nludelhi.ac.in/home.aspx>
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coordination between the Adjudicating Authority and foreign courts. For the purpose of these Guidelines, “administrator” includes a foreign representative, interim resolution professional, resolution professional, or liquidator.

Guideline 2: Where the Adjudicating Authority intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order, following an application by the parties or on its own motion.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for approvals from the Adjudicating Authority and foreign courts of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly judicial hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by the Adjudicating Authority or foreign courts in any proceedings including their authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent the Adjudicating Authority or foreign courts from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with _____ any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the Adjudicating Authority or foreign courts of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before them or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under

these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN THE ADJUDICATING AUTHORITY AND FOREIGN COURTS

Guideline 7: The Adjudicating Authority may receive communications from foreign courts and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the Adjudicating Authority, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the Adjudicating Authority and the foreign courts in a specific case:

- (i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the foreign courts and providing advance notice to counsel for affected parties in such manner as considered appropriate by the Adjudicating Authority.
- (ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the Adjudicating Authority to the foreign courts in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as considered appropriate by the Adjudicating Authority.
- (iii) Participating in two-way communications with the other foreign courts, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications with foreign courts, other than on administrative or procedural matters, unless otherwise directed by the Adjudicating Authority or any foreign courts involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each

of the authorities involved in the communication.

- (iii) The communications between the Adjudicating Authority and foreign courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of the Adjudicating Authority and each foreign court involved in the communications, may be treated as the official transcript of the communications.
- (iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of the Adjudicating Authority or any foreign courts involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as the Adjudicating Authority and foreign courts may consider appropriate.
- (v) The time and place for communications between the Adjudicating Authority and foreign courts shall be as directed by them. Personnel other than judges may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties, taking care to address fairness and transparency in their actions.

Guideline 9: The Adjudicating Authority may direct that notice of their proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before it may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Adjudicating Authority in accordance with the procedures applicable.

APPEARANCE BEFORE THE ADJUDICATING AUTHORITY

Guideline 10: The Adjudicating Authority may authorize a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, the Adjudicating Authority may authorize a party to a foreign proceeding, or an appropriate person, to appear and be heard on a specific matter by it without thereby becoming subject to its jurisdiction for any purpose other than the specific matter on which the party is appearing.

CONSEQUENTIAL PROVISIONS

Guideline 12: The Adjudicating Authority shall, except on proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of the foreign courts of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: The Adjudicating Authority shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the Adjudicating Authority are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the Adjudicating Authority, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by the Adjudicating Authority under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the Adjudicating Authority, and to reflect the changes and developments from time to time in any Parallel Proceedings. Such amendments, modifications and extensions should become effective upon being accepted by all the foreign courts involved. If the Adjudicating Authority intends to supplement, change, or abrogate any protocol, order or directions issued under these Guidelines in the absence of joint approval by foreign courts involved, the Adjudicating Authority shall give the other foreign courts involved reasonable notice of its intention to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings.
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Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to the Adjudicating Authority and foreign courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

The Adjudicating Authority and foreign courts may conduct a joint hearing with each other. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish the respective independent jurisdiction of any of the authorities over the subject matter of proceedings. By implementing this Annex, neither the Adjudicating Authority nor foreign courts nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of another jurisdiction.
- (ii) Each authority shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each authority should be able simultaneously to hear the proceedings in the other authority. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in the respective authority.
- (v) If permitted by its law, the authorities may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant authority and/or its professional regulations.
- (vi) The authorities should be entitled to communicate with each other in

advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the respective authorities, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

- (vii) The authorities, subsequent to the joint hearing, should be entitled to communicate with each other with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the _____ June, 2020

S.O. .— (1) In exercise of the powers conferred by [clause (a) of section 2 read with section 29 of the Part Z]⁴ of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies the following Benches of the National Companies Law Tribunal constituted under sub-section (1) of Section 419 of the Companies Act, 2013 (18 of 2013) as the Adjudicating Authority to perform the functions under Part Z as mentioned below—

Serial Number	Benches of National Companies Law Tribunal	Adjudicating Authority in relation to
---------------	--	---------------------------------------

⁴ Please note that references to provisions related to cross border insolvency in these Guidelines are based on Draft Part Z as provided in the report of the Insolvency Law Committee. These references will need to be altered based on the manner of incorporation of Draft Part Z in the Code.

1.	The respective benches of the National Company Law Tribunal constituted under subsection (1) of section 419 of the Companies Act, 2013 (18 of 2013) and notified vide notification number S.O. 1935 (E), dated 1st day of July 2016 under the Companies Act, 2013 (18 of 2013)	A corporate debtor whose registered office is located within the territorial jurisdiction of the respective bench.
2.	National Company Law Tribunal, Principal Bench constituted under subsection (1) of section 419 of the Companies Act, 2013 (18 of 2013) and notified vide notification number S.O. 1935 (E), dated 1st day of July 2016 under the Companies Act, 2013 (18 of 2013)	Any body corporate incorporated with limited liability outside India

(2) This notification shall come into force with effect from ____ June, 2020.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the _____ June, 2020

S.O. _____.— (1) In exercise of the powers conferred by [sub-section (3) of section 1 read with section 29 of the Part Z]⁵ of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of the [Part Z] of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) shall not apply to categories of Financial Service Providers notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(2) This notification shall come into force with effect from _____ June, 2020.

Statement of Objects and Reasons

‘Cross-border insolvency’ denotes circumstances in which an insolvent debtor has assets and/or creditors in more than one country. With the rapid increase in globalisation and the advent of sophisticated communications technology, cross-border trade and investment has increased the dependence of national economies on each other. The impact of business failure in such a globalised market economy often spans beyond national boundaries. Consequently, insolvency laws need to account for domestic as well as cross-border scenarios.

Domestic insolvency laws, *inter alia*, deal with establishing rights of various stakeholders during insolvency proceedings and prescribe procedures at various stages of the proceedings, such as locating the debtor’s assets; identifying creditors of the debtor and their claims; establishing the manner of determining the means of repaying creditors and making distributions based on priority rules, etc. In a cross-border insolvency context, the law in a country will need to provide additional rules to deal with complexities such as the extent of access available to foreign insolvency practitioners to assets held in the respective country; rights of foreign creditors in respect of distribution in the respective country; the validity of orders of an adjudicatory forum in a foreign country, etc.

Such additional complexities in dealing with cross-border insolvencies result in uncertainty, risk, and ultimately costs to businesses. To resolve these concerns holistically, 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.

⁵ Please note that references to provisions related to cross border insolvency in these Guidelines are based on Draft Part Z as provided in the report of the Insolvency Law Committee. These references will need to be altered based on the manner of incorporation of Draft Part Z in the Code.

This note discusses the policy deliberations on the enactment of a cross-border insolvency law in India.

I. Background

India reformed its erstwhile insolvency regime by enacting the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) that *inter alia* consolidates the laws relating to insolvency of corporate entities, individuals and partnership firms. The Code has transformed the insolvency landscape in the country by providing reorganization, liquidation and bankruptcy processes that aim at maximizing the value of assets in a time-bound manner, promote entrepreneurship, availability of credit, and balance the interests of all stakeholders.

The initial draft of the Insolvency and Bankruptcy Bill did not contain any provisions to deal with cross-border insolvency. The Bankruptcy Law Reforms Committee (“**BLRC**”), which recommended the design of the IBC, noted the following in its report in November 2015 –

“The Committee has taken up, and attempted to comprehensively solve, the question of bankruptcy and insolvency insofar as it is a purely domestic question. This is an important first milestone for India.

The next frontier lies in addressing cross-border issues. This includes Indian financial firms having claims upon defaulting firms which are global, or global financial persons having claims upon Indian defaulting firms.

Some important elements of internationalisation – foreign holders of corporate bonds issued in India, or borrowing abroad by an Indian firm – are dealt with by the present report. However, there are many other elements of cross-border insolvency which are not addressed by this report. Examples of these problems include thousands of Indian firms have become multinationals, and Indian financial investors that lend to overseas persons.

The Committee proposes to take up this work in the next stage of its deliberations.”

The draft Bill prepared based on the recommendations of the BLRC was reviewed by a Joint Parliamentary Committee (“**JPC**”) before its enactment. The JPC made several changes to the draft Bill and made the following observations in respect of cross-border insolvency in its report in April 2016 –

“The Committee deliberated the issue and noted that “The Code at present does not explicitly deal with issues and text related to cross border insolvency. However, given that many corporate transactions and businesses today involve an international and cross border element, the implications of cross border insolvency cannot be ignored for too long if India is to have a comprehensive and long-lasting insolvency law as the Code aims to achieve. Not incorporating this will lead to an incomplete Code”

Thereafter, two provisions were added to the draft Bill to deal with cross-border insolvency issues - Sections 234 and 235 of the IBC. Section 234 empowers the Central Government to enter into bilateral agreements with other countries to resolve situations of cross-border insolvency. Section 235 allows the Adjudicating Authority (“AA”) to issue a letter of request to a court in a country with which an agreement under Section 234 has been entered into, to deal with assets situated in that country.

These provisions provide a basic framework for cross-border insolvency. Entering into agreements or treaties with various countries may be time-consuming, costly, and involve multiple negotiations. Further, in scenarios where multiple countries are involved in an insolvency proceeding, balancing competing clauses of such treaties may become difficult to handle. This was also acknowledged by the JPC and is evident from its observation where it noted that “*But cross border insolvency has a larger issue. There can be a multinational company having branches elsewhere and they actually go for liquidation somewhere. That may have a ramification. There are various other issues. Later on, these issues perhaps could be considered.*”

In this backdrop, the Insolvency Law Committee (“ILC”), a committee constituted under the Ministry of Corporate Affairs (“MCA”) to review the implementation of the Code, took cognizance of the issues surrounding cross-border insolvency under the Code. In its first report released in March 2018, it discussed the gaps in the law due to the lack of a framework for cross-border insolvency, and noted –

“The Committee deliberated on Cross Border Insolvency and noted that the existing two provisions in the Code (S. 234 & S. 235) do not provide a comprehensive framework for cross border insolvency matters. Accordingly, it was decided to attempt a comprehensive framework for this purpose based on UNCITRAL model law on Cross Border Insolvency, which could be made a part of the Code by inserting a separate chapter for this purpose. Given the complexity of the subject matter and the requirement of in-depth research to adapt the model law in the Indian context, the Committee decided to submit its recommendations on Cross Border Insolvency separately.”

Pursuant to this, the MCA invited comments and views from stakeholders on an introductory note and a draft legal framework for cross-border insolvency in June 2018. The comments received from this consultation were considered by the MCA and the ILC. Thereafter, the ILC released its second report in October 2018, wherein it provided detailed recommendations on a legislative framework for cross-border insolvency in India.

II. Model Law

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 (“**Model Law**”) has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues. The Model Law provides a legislative framework that can be adopted by countries with modifications to suit the domestic context of the enacting

jurisdiction. It has been adopted by 49 States to date. This includes developed as well as developing countries, such as Singapore, the UK, the US, South Africa, the Republic of Korea, etc.

The following gives a brief outline of the procedure envisaged in the Model Law:

(i) *Access:* The Model Law allows foreign insolvency officials and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor.

(ii) *Recognition and relief:* The Model Law allows recognition of foreign proceedings and relief by the domestic court based on such recognition. If domestic courts determine that the debtor has its centre of main interests (“COMI”) in a foreign country, they will consider insolvency proceedings in such foreign country to be the main proceedings. Otherwise, they will be considered as non-main proceedings.

Recognition as the main proceeding will result in automatic relief, such as enforcing a moratorium on domestic proceedings regarding the debtor and providing greater powers to the foreign representative in handling the estate of the debtor. For nonmain proceedings, such relief is at the discretion of the domestic court.

(iii) *Cooperation:* The Model Law lays down the basic framework for cooperation between domestic and foreign courts, and domestic and foreign insolvency professionals. It provides for direct cooperation between: (a) domestic courts and foreign insolvency professionals; (b) domestic courts and foreign courts; (c) foreign courts and domestic insolvency professionals; and (d) foreign insolvency professionals and domestic insolvency professionals.

(iv) *Coordination:* The Model Law also provides a framework for commencement of domestic insolvency proceedings when a foreign insolvency proceeding has already commenced or vice versa. It provides for coordination of two or more concurrent insolvency proceedings in different States by encouraging cooperation amongst courts.

- (v) *Public policy*: While the Model Law seeks to promote cooperation amongst countries, it also provides flexibility to courts to refuse any action that may be against the public policy of the enacting jurisdiction. Thus, a court in a country can refuse to take any action or provide any relief if it concludes that such action or relief would be manifestly contrary to the public policy of such a country. The determination of what constitutes ‘public policy’ is left to enacting jurisdictions and is not detailed in the Model Law.

A detailed discussion on the shortcomings of the current legal framework on cross-border insolvency in India, the need for reform, and the benefits of adopting the Model Law may be found in the note released for public consultation in June 2018 (*may be accessed here*:

https://www.mca.gov.in/Ministry/pdf/PublicNoticeCrossBorder_20062018.pdf).

III. ILC Recommendations on Cross-Border Insolvency

The report of the ILC on cross-border insolvency was submitted to the Government in October 2018 which primarily recommended the adoption of the Model Law in the IBC. It undertook a clause-by-clause analysis of the Model Law and suggested certain modifications to it to make it suitable to the Indian context. On this basis, it recommended draft provisions on cross-border insolvency for insertion in the Code (hereinafter referred to as “**Draft Part Z**”). The Draft Part Z is provided as Annexure II to the Report of the ILC (*may be accessed here*: https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf).

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IV. Further Developments

In January 2020, the MCA constituted a cross-border insolvency rules/ regulations committee (“**CBIRC**”) to recommend subordinate legislation for Draft Part Z. The CBIRC submitted its report to the Government in June 2020 (*may be accessed here*:

https://mca.gov.in/bin/dms/getdocument?mcs=rrg9eENnNT9kek31pVicTQ%253D%253D&t_ype=open). This report provides recommendations on draft rules, regulations, notifications, guidelines, and capacity building for cross-border insolvency. It also suggests a few modifications to the ILC recommendations in Draft Part Z.

It is felt that enacting legislative provisions on cross-border insolvency is essential to address the emerging issues on cross-border insolvency in recent cases under the Code. The introduction of a cross-border insolvency law in the IBC, that is in line with international best practices and suitable for the Indian context, may be

beneficial to all stakeholders. Draft Part Z, as recommended by the ILC, is under consideration for enactment. Certain modifications to the Draft Part Z may be considered based on suggestions of the CBIRC and jurisprudence developed under the Code. Additionally, the scope of this note is limited to cross-border provisions for single entity insolvency and the treatment of corporate groups is not considered herein.

Therefore, it is proposed to enact provisions on cross-border insolvency in line with Draft Part Z along with the following modifications:

1. Applicability

A. Personal guarantors to corporate debtors

1.1. The Model Law applies to individuals as well as corporate persons.

When the ILC contemplated its report in 2018, the provisions of the Code had only been notified with respect to corporate debtors. Since personal insolvency provisions of the Code had not been operationalised at the time, the ILC recommended that Draft Part Z should apply only to corporate debtors. Part III of the Code has now been notified by the Central Government to the extent it applies to personal guarantors to corporate debtors.

1.2. It is proposed that the provisions of Draft Part Z should be revised to apply them to debtors under Part III of the Code. The provisions for insolvency resolution and bankruptcy under Part III have been notified in respect of personal guarantors to corporate debtors. Consequently, immediate application of the cross-border law is proposed to be to corporate debtors and personal guarantors to corporate debtors.

1.3. In this context, the following is further proposed:

- (i) The Adjudicating Authority for Part III debtors may be the Debt Recovery Tribunal (“DRT”). However, where the insolvency proceeding of a personal guarantor is being adjudicated in the National Company Law Tribunal (“NCLT”) (per Section 60(2) or (3)), cross-border applications for such guarantor may also be filed in the NCLT instead of the DRT. Any appeals from

DRT decisions may be filed with the Debt Recovery Appellate Tribunal

(“DRAT”) and any appeals from NCLT decisions may be filed with the National Company Law Appellate Tribunal (“NCLAT”).

- (ii) The COMI for Part III debtors may be presumed to be the ‘habitual place of residence’ of the debtor. This shall be a rebuttable presumption for determining the COMI, as recommended in the Model Law.
- (iii) The relief on recognition of a foreign proceeding under the Model Law includes moratorium-related relief. Wherever a moratorium is to be imposed in respect of Part III debtors in Draft Part Z, it may be the same in scope as the moratorium imposed under Section 101 of the Code.

B. Exclusion of pre-packaged insolvency resolution process

1.4. A pre-packaged insolvency resolution process (“**pre-pack process**”) was recently introduced in the Code for micro, small and medium corporations. Since provisions related to the pre-pack process were enacted this year, they had not been considered by the ILC at the time of designing Draft Part Z. The pre-pack process is a quicker and simpler resolution process for MSME corporate debtors. It is a voluntary process designed for smaller businesses to effectively resolve their financial distress. It is felt that cross-border issues may sparingly arise in the pre-pack process as it applies to small businesses. Further, since it has been introduced recently, jurisprudence and practice under the pre-pack mechanism are at a nascent stage. Given this, applying cross-border insolvency provisions to the pre-pack process may not be suitable at this stage.

1.5. Therefore, it is proposed that cross-border insolvency provisions may not apply to the pre-pack process.

C. Excluded entities

1.6. The Model Law suggests that businesses whose resolution is governed by a special law or whose insolvency significantly affects public

interests may be exempt from the applicability of the cross-border insolvency law. In line with this, the ILC recommended that certain debtors may be exempted from the applicability of Draft Part Z. Consequently, Clause 1(3) of Draft Part Z empowers the Central Government to notify a class or classes of corporate debtors or entities to whom the provisions of Draft Part Z shall not apply.

1.7. The CBIRC noted that several jurisdictions have exempted certain kinds of businesses from the purview of the cross-border provisions in their respective insolvency laws. Many countries exempt businesses providing critical financial services, such as banks and insurance companies, from the provisions of cross border insolvency frameworks. Given this, it recommended that financial service providers notified under Section 227 of the IBC should be excluded from the purview of Draft Part Z.

1.8. Thus, it is proposed that financial service providers may be excluded from the applicability of cross-border insolvency provisions under Draft Part Z. Such exclusion is in line with the design of the Code as financial service providers are subject to a special insolvency process that has been notified under Section 227. Further, the Central Government may, if required, notify any other entities that should be excluded from the application of cross-border insolvency provisions by utilising its power under Clause 1(3) of Draft Part Z.

2. Adjudicating Authority for cross-border applications

2.1. The ILC recommended that the Central Government may notify the NCLT benches that shall act as the AA under Draft Part Z. In this regard, the CBIRC suggested that all benches of the NCLT may be given the power to adjudicate cross-border insolvency matters. It noted that this would promote certainty and accessibility in the law. This approach would also not disrupt the existing registered office jurisdiction rule under the Code and would avoid over-burdening a few NCLT benches.

2.2. Thus, it is proposed that all benches of the NCLT and DRT may have jurisdiction to adjudicate applications under Draft Part Z. This would mean that cross-border proceedings arising in respect of corporate debtors that have registrations in India will be dealt with at the NCLT bench having jurisdiction over the registered office of the corporate debtor. Cross-border applications regarding any person incorporated with limited liability outside India may be dealt with by the Principal Bench of the NCLT. In respect of Part III debtors, all benches of the DRT may be given jurisdiction to deal with cross-border applications in line with the jurisdiction under Section 179 of the Code.

3. Enforcement of judgments

3.1. Article 21 of the Model Law allows for the granting of certain discretionary relief upon the recognition of a foreign main or non-main proceeding (reflected in Clause 18 of Draft Part Z). Recent interpretation of the Model Law has caused uncertainty regarding its application to the enforcement of judgments - this was highlighted most impactfully in the case of *Rubin v. Eurofinance SA* [(2012) UKSC 46]. In this case, the UK Supreme Court refused to enforce a foreign judgment despite recognising the foreign proceeding from which the judgment arose. The underlying issue brought out by this case was that Article 21 of the Model Law does not expressly allow a court to enforce a judgment. Such power can only be implied from the scope of ‘any appropriate relief’ that may be provided under Article 21.

3.2. The interpretation adopted in *Rubin* has been criticised by many practitioners since mere recognition of proceedings without enforcement of judgments may render the Model Law toothless. To address this gap in interpretation of the Model Law, the UNCITRAL recommends in Article X of the UNCITRAL Model Law on Insolvency Related Judgments 2018 jurisdictions enacting the Model Law may clarify that enforcement of a judgment is permitted as a discretionary relief under Article 21.

3.3. It is felt that recognition of a foreign proceeding may be immaterial without the power to enforce a judgment arising out of such proceeding. Enforcement of judgments is recommended as a discretionary relief under the Model law and would only be granted after considering the need for such enforcement. Further, leaving this issue to interpretation may result in a lack of clarity in the law and inconsistent interpretations by different fora. To avoid this, it is proposed that Draft Part Z may include an explanation that clarifies that the AA may order the enforcement of a judgment arising out of a foreign proceeding. To avail such enforcement, the foreign proceeding should have gained recognition under Draft Part Z.