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Subject: INDIA - INSOLVENCY LAW UPDATE

Attachments: India - Insolvency Code Critique [Majmudar & Partners] June 10, 2016.pdf

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INDIA'S NEW INSOLVENCY CODE – IS IT A GAME CHANGER OR A RUN-OF-THE-MILL REFORM?

The Indian legal framework for insolvency resolution, debt recovery and restructuring of stressed assets was ineffective in ensuring satisfactory repair of credit default mainly due to the fact that insolvency and debt recovery were governed by different overlapping statutes having conflicting objectives. Each statute aided its own target group. In many cases, the same debtor was subjected to parallel proceedings under different statutes by different creditors. Moreover, the availability of parallel options resulted in a lack of synchronization among creditors.

A new legislation, christened “The Insolvency and Bankruptcy Code, 2016” (the “Code”), was introduced in the Indian Parliament on December 21, 2015. Following its passage in Parliament on May 11, 2016, the Code received the assent of the President of India on May 28, 2016, and awaits notification in the Indian gazette.

The Code, as a whole, seems to be a sincere attempt at remedying the appalling credit default situation in India. It seeks to locate financial failure at the earliest stage and enables a creditor to take corrective action by triggering the insolvency resolution process on the commission of a default. Moreover, it attempts to provide a time-bound mechanism for recovering debts. However, notwithstanding an iron-clad Code, its effectiveness will be visible only when it is put into active practice. The real test will lie in implementation, and only time will tell whether the Code is a game changer or just a run-of-the-mill reform.

Attached, please find our detailed critique. As always, please let us know if you have any questions or need more formal advice.

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