



***India's new law on insolvency and bankruptcy : By Kirit S. Javali,  
Partner, Jafa & Javali***

The Insolvency and Bankruptcy Code 2016, recently passed by both the Houses of the Indian Parliament is a vital reform that will make it much easier to do business in India.

Over the years, many concerns have been raised by international investors while providing financing and or investing in India. The Code hopes to provide a major boost to the Indian economy, especially on account of timely resolution and certainty in recovery. It would be of specific interest to international creditors and investors, who are generally looking at Indian opportunities.

The new code will cover individuals, companies, limited liability partnerships and partnership firms. It will also amend laws including the Companies Act to become the overarching legislation to deal with corporate insolvency. It will also help creditors recover loans faster.

The Code proposes the creation of a new class of insolvency professionals that will specialize in helping sick companies. It also provides for creation of information utilities that will collate all information about debtors to prevent serial defaulters from misusing the system.

The bankruptcy code has provisions to address cross-border insolvency through bilateral agreements with other countries. It also proposes shorter, aggressive time frames for every step in the insolvency process—right from filing a bankruptcy

application to the time available for filing claims and appeals in the debt recovery tribunals, National Company Law Tribunals and courts.

To protect workers' interests, the code has made provisions to ensure that the money due to workers and employees from the provident fund, the pension fund and gratuity fund shouldn't be included in the estate of the bankrupt company or individual. Further, workers' salaries for up to 24 months will get first priority in case of liquidation of assets of a company, ahead of secured creditors.

There are also provisions that disqualify anyone declared bankrupt from holding public office, thereby ensuring that politicians and government officials cannot hold any public office if declared bankrupt.

The Code proposes the setting up of a new entity, the Insolvency and Bankruptcy Board of India, which will regulate insolvency professionals and information companies — those which will store all the credit information of corporates.

Bankruptcy applications will now have to be filed within three months; earlier, it was six months.

Specific attention is to be drawn to the rights of unsecured and secured creditors in the priority of their claims and therefore the level playing field for their access to an effective insolvency resolution.