



ABLI-III Asian Principles of Business Restructuring Project

Short Questionnaire on Covid-19 Measures - India

Dear respondent,

Thank you for taking time to respond to five questions relating to the measures prompted by Covid-19 in the restructuring and insolvency field in your jurisdiction.

We are fully conscious of your heavy workload. To make it more efficient, if you answer "yes" to any of the questions below, please provide the titles of or links to the official instruments (laws, regulations, government notices, etc.) by which such measures are introduced if those instruments are available in English. If those instruments are not in English, please provide the key aspects of the measures introduced in bullet points (or provide links to any client updates/news alerts that have previously been written in the English language in those aspects).

Please specify the types of debtors to which the measures apply and also give relevant dates from and to which legislation is effective (including any proposals for extension of relevant periods).

● QUESTION 1

Have any measures been introduced to target enforcement and execution of process, such as judgment debts, enforcement of security over assets, etc.? (please select all that apply.)

- Yes, measures have been introduced to suspend or freeze existing process, including interim and preservation orders and judgments.
- Yes, measures have been introduced to suspend or freeze the ability to file process and obtain judgments.
- Yes, other measures have been introduced to target the enforcement and execution of process.
- No, no such measures have been introduced.

Links to relevant official instruments or client updates/news alerts:

Alternatively, please provide the key aspects of such measures in bullet points below.

● QUESTION 2

Have any measures been introduced to restrict the ability to petition for the insolvency of a debtor (whether creditor or debtor initiated)? (please select all that apply.)

- Yes, measures have been introduced to suspend or freeze any obligation on the debtor (or its managers) to file for insolvency although a purpose/reason/ground under the law has been factually demonstrated.
- Yes, measures have been introduced to raise the threshold for a creditor to petition for the insolvency of a debtor.

- Yes, other measures have been introduced to restrict the ability to petition for the insolvency of a debtor.
- No, no such measures have been introduced.

Links to relevant official instruments or client updates/news alerts:

- <https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>
- http://www.mca.gov.in/Ministry/pdf/Notification_28032020.pdf
- <https://realty.economictimes.indiatimes.com/news/regulatory/government-raises-default-threshold-to-rs-1-crore-for-invoking-ibc-proceedings/74799381>

Alternatively, please provide the key aspects of such measures in bullet points below.

- Vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020, no application for initiating the corporate insolvency resolution process (CIRP) (either by debtor or creditor) can be filed for any default arising on or after March 25, 2020 for a period of 6 months;
- The aforesaid does not apply to defaults committed prior to March 25, 2020;
- The Central Government has increased the minimum threshold for the initiation of the corporate insolvency resolution process from INR 1 Lakh to INR 1 Crores.

●QUESTION 3

Have any measures been introduced to address managerial liability for failure to petition for insolvency or for continuing business in the event a petition cannot be filed? (please select all that apply.)

- Yes, measures have been introduced to suspend or waive any liability of a manager for failure to file for insolvency or for continuing to operate a business (such as would exist under wrongful/insolvent trading rules).
- Yes, other measures have been introduced to address managerial liability for failure to petition for insolvency or for continuing business in the event a petition cannot be filed.
- No, no such measures have been introduced.

Links to relevant official instruments or client updates/news alerts:

- <https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>

Alternatively, please provide the key aspects of such measures in bullet points below.

- Section 66 (2)(a) of the Insolvency and Bankruptcy Code stipulates that a director shall be liable to make such contribution to the assets of the company if before the insolvency commencement date, such director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process.
In this regard, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 has suspended the filing of such an application under 66(2) in respect of defaults against which initiation of the corporate insolvency resolution process is suspended.

●QUESTION 4

In respect of ongoing procedures, have any measures (apart from those generally affecting the functioning of the courts/procedural periods) been introduced to address specific elements of the procedure? (please select all that apply.)

- Yes, measures have been introduced to suspend or extend the operation of a rescue or restructuring plan and any associated deadlines.
- Yes, measures have been introduced to change the way in which a rescue or restructuring plan is adopted, such as the summoning of meetings, voting procedures or majority, the way in which court approval is given.
- Yes, measures have been introduced in relation to the consequences of a failure (in whole or in part) to perform the terms of a rescue or restructuring plan.
- Yes, measures targeting contracting parties have been introduced, such as those protecting essential suppliers or small suppliers of goods or services.
- Yes, other measures have been introduced to address specific elements of insolvency procedures.
- No, no such measures have been introduced.

Links to relevant official instruments or client updates/news alerts:

- <https://ibbi.gov.in/uploads/legalframwork/3d8c8efd906d320e296833445c91a0a4.pdf>
- <https://ibbi.gov.in/uploads/order/0fd02d6fd104fcdd63936eb4cb23021b.pdf>

Alternatively, please provide the key aspects of such measures in bullet points below.

- The period of lockdown as imposed by the Central Government due to the Covid-19 pandemic cannot be counted for the purpose of the timeline for any activity that could not be completed due to the lockdown;
- The Order of the National Company Law Appellate Tribunal has vide order dated March 30, 2020 (refer above link) has also excluded the lockdown period for purposes of the CIRP timeline.

QUESTION 5

In addition to the above, have any measures been introduced to target the financing needs of a business? (please select all that apply)

- Yes, measures have been introduced to give protection to borrowers or lenders in respect of new and interim financing.
- Yes, measures have been introduced to change the priority given to new and interim financing.
- Yes, measures have been introduced to give protection from the consequences of new and interim financing in subsequent proceedings, such as clawback actions, managerial liability, prohibition on onerous lending/taking security etc.
- Yes, other measures have been introduced targeting the financing needs of a business.
- No, no such measures have been introduced.

Links to relevant official instruments or client updates/news alerts:

- https://m.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11835

Alternatively, please provide the key aspects of such measures in bullet points.

- The Reserve Bank of India (RBI) announced a Covid-19–Regulatory Package on 27th March 2020, whereby lenders across India were, *inter alia*, permitted to grant a moratorium of three months upon payment of all instalments that were due to fall between 1 March and 31 May, 2020 (“Moratorium Period”).
- Some of the measures under the Regulatory Package were:
 - Rescheduling of Payments – Term Loans and Working Capital Facilities: The RBI allowed lending institutions to defer the recovery of any applicable interest in respect of working capital facilities sanctioned during the Moratorium Period in respect of working capital facilities sanctioned by way of cash credit/overdraft limits (“CC/OD”). The accumulated accrued interest is to be recovered immediately after the completion of this period.

- Classification as Special Mention Account (SMA) and Non-Performing Asset (NPA): In respect of term loans which are granted relief as their asset classification would be derived based on any revision in due dates and any revision of their respective repayment schedule. Similarly, the SMA and the out of order status would be evaluated based on the application of accrued interest immediately post the completion of the deferment period as well as the revised terms.
- Other Conditions
 - i. Boards of all lending institutions have been requested to frame approved policies for providing the aforementioned reliefs to all eligible borrowers, including the criteria for considering reliefs for that information to be disclosed in the public domain.
 - ii. Banks are required to develop an MIS on the reliefs provided to their borrowers in all such cases where the exposure of a lending institution to a borrower is ₹ 5 crore or above as on March 1, 2020.