

Annexure II

Draft Part Z

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:

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 “reorganisation” 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. Authorisation of a resolution professional or liquidator to act in a foreign country

Any resolution professional or liquidator recognised or authorised to act as such under this Code is, subject to regulations specified by the Board, authorised 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 authorised 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 authorised 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 authorised 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 legalised, 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 recognise a foreign proceeding

- (1) Subject to clause 4 of this Part, the Adjudicating Authority shall recognise 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 recognised 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 recognised 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 Securitisation 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 realisation 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 sub- clause (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 recognised 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 recognised 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 recognised, 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 recognised 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.