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# IBC AND BANK REGULATIONS IN CORPORATE INSOLVENCY RESOLUTION -THE PATH TO CONSENSUS-

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## Resolution and Restructuring under the Existing Legal and Regulatory Framework

## Existing Statutory Frameworks

- Section 391 to Section 394 of the Companies Act, 1956 – Compromises and Arrangements with Creditors
  - Binding on all creditors, but-
  - Court driven process- inherent delays, potential for multiple proceedings
  - No moratorium/ no regulatory forbearance
- Chapter XIX- Companies Act, 2013 (not notified)
  - Time bound process and binding on all creditors, but-
  - Secured creditor driven process– moratorium discretionary
  - No regulatory forbearance
  - Reference abates if secured creditors proceed under SARFAESI
- Sick Industrial Companies Act, 1985
  - Only for certain classes of companies;
  - Well known history of abuse

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# RBI Recognised Resolution/ Restructuring Frameworks

- CDR Framework
  - Guidelines formulated in 2001
  - Voluntary framework –stems out of contract between creditors
  - Primarily for banks– though some types of creditors allowed to join on transaction by transaction basis– foreign creditors/ trade creditors outside purview of CDR
  - Limited Flexibility in terms of outcome
  - Regulatory Forbearance withdrawn from April 1, 2015

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# RBI Recognised Resolution/ Restructuring Frameworks

- Joint Lender Forum
  - Guidelines formulated in 2014
  - Compulsory framework for Banks/FIs
  - Primarily for banks and NBFCs– foreign creditors/ trade creditors outside purview of JLF
  - Limited Flexibility in terms of outcome
  - Regulatory Forbearance withdrawn w.e.f. April 1, 2015
- Strategic Debt Restructuring
  - Extension of JLF can be invoked only in cases of “non-achievement of viability milestones and /or non-adherence to ‘critical conditions’ linked to the option of invoking SDR”
  - Lenders rights to acquire/ divest majority stake in borrower companies
  - Regulatory forbearance when stake divested to ‘new’ promoters within 180 days

# RBI Provisioning and Asset Classification Norms

Mode of Resolution	Asset Classification	Provisioning
<b>Re-structuring of Advances</b>	<ul style="list-style-type: none"> <li>• Upon restructuring, account classification to be brought down one-notch.</li> <li>• Upgradation only upon satisfactorily repayment servicing during the 'specified period'</li> <li>• Special asset classification benefits withdrawn from April 1, 2015 except extension of DCCO in respect of project loans in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Standard provisioning norms to apply to restructured advances</li> <li>• Higher provisioning for restructured accounts 'standard' for two years from date of restructuring + moratorium period.</li> <li>• Higher provisioning also for NPAs upgraded to 'standard'; erosion in fair value of the advance due to any hair-cut.</li> </ul>
<b>Joint Lenders Forum</b>	<ul style="list-style-type: none"> <li>• Standard asset classification Norms applicable</li> <li>• Special asset classification benefits for timely implementation of JLF schemes withdrawn from April 1, 2015 except extension of DCCO in respect of project loans in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Standard provisioning norms apply</li> <li>• However, accelerated provisioning in certain cases in relation to failure to adhere to JLF norms including failure to report SMA, convene JLF, agree on CAP etc</li> </ul>

# RBI Provisioning and Asset Classification Norms

Mode of Resolution	Asset Classification	Provisioning
<b>Change of Ownership– Through SDR</b>	<ul style="list-style-type: none"> <li>The invocation of SDR not treated as restructuring</li> <li>On completion of SDR invocation, existing classification to continue for a period of 18 months</li> <li>However, when banks' holding are divested to a new promoter, the asset classification of the account may be upgraded to 'Standard'</li> </ul>	<ul style="list-style-type: none"> <li>Provision held by the bank against the said account as on the date of divestment, not to be reversed.</li> <li>Provisions may be reversed only on satisfactory servicing of loans.</li> </ul>
<b>Change of Ownership– outside SDR</b>	<ul style="list-style-type: none"> <li>Subject to guidelines, upon divestment, the account to be treated as 'Standard'</li> </ul>	<ul style="list-style-type: none"> <li>Same as above</li> </ul>
<b>Refinancing of Project Loans</b>	<ul style="list-style-type: none"> <li>Banks allowed to refinance existing infrastructure and other project loans and fix a longer repayment period. Not considered re-financing if certain conditions satisfied.</li> </ul>	<ul style="list-style-type: none"> <li>Standard provisioning norms to apply</li> </ul>
<b>5:25 Scheme</b>	<ul style="list-style-type: none"> <li>Fresh Loan Amortisation Schedule for the existing project loans once during the life time of the project, after DCCO, based on the reassessment of the project cash flows, without this being treated as 'restructuring'.</li> </ul>	<ul style="list-style-type: none"> <li>Standard provisioning norms to apply</li> </ul>

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# Implementation of the IBC- Towards a common regulatory framework



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# Bringing the IBC and Banking Regulations on a Common Footing

- Chapter 7 of the BRLC Report recognises that RBI/ SEBI norms may impact the effective implementation of the IBC.
- The RBI/ SEBI guidelines identified include:
  - RBI norms on corporate debt restructuring (CDR) and strategic debt restructuring (SDR)
  - SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
  - SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009.
- In addition, CCI regulations could also impact implementation of the IBC

## Some Potential Issues

- Multiple over-lapping resolution processes
  - RBI norms only for RBI regulated entities and will only bind parties who are part of such arrangement while IBC relates to all stakeholders
  - Scope for creditors outside the purview of RBI norms making simultaneous reference under IBC which may frustrate both processes
- Involuntary extension of resolution process
  - CDR/ JLF contemplate a voluntary stand-still period while IBC has a compulsory moratorium
  - Given the lender mix, there is also scope for non-RBI regulated lenders or the borrower to make a reference under IBC after a CDR/ JLF/ SDR resolution has been put into effect
  - Could potentially prolong the resolution process/ increase moratorium period

## Exploring solutions

- Abatement of CDR/ SDR restructuring on IBC reference?
- RBI regulations requiring compulsory reference to IBC?
- Special procedures for bank/ NBFC references e.g. pre-arranged restructuring schemes between banks/NBFC and borrowers which the NCLT will recognise subject to meeting the IBC tests under proposed Section 30?
- Given the policy intent behind the RBI resolution procedures, is there ultimately a need for continuing with multiple resolution frameworks? Can the RBI Regulations subsumed in the IBC?

# Regulatory Desirables

- RBI
  - Recognising and incentivising IBC resolution processes such as:
    - Compulsory reference for certain types of loan accounts;
    - special dispensations/ provisioning/ asset classification exemptions while the IBC resolution process is ongoing
    - Amendment of FEMA to facilitate foreign investor participation
- SEBI
  - Exemptions to be provided under the ICDR/ SAST/ Insider Trading Regulations for any restructuring pursuant to approved resolution plans
- CCI
  - Exemption from combination regulations for approved resolution plans

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QUESTIONS/ COMMENTS ?



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AND CONTINUES TO LIVE AND THRIVE THROUGH  
CYRIL AMARCHAND MANGALDAS

THANK YOU