A new corporate bankruptcy law for India

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  - Failure of business is a normal thing.
  - In failure, limited liability should be respected.
  - Speed of resolution is important so that capital and labour can be put back to work quickly.
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- In India:
  - Weak capacity to separate theft from business and genuine business failure.
  - Catchphrase “poor companies, but no poor promoters” gaining popularity to apply to all business failure.
  - Dangerous: used to expropriate shareholder assets disincentivise equity participation.
I’m not in distress; why should I care?

Better resolution

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5. Trust that limited liability will be enforced.
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2. Ensure speed of resolution.
3. Worry about implementation: new institutions in the law
   ▶ Regulated information utilities to record credit contracts as indisputable evidence.
   ▶ Regulated professionals to mediate a rational and honest negotiation between creditors and debtors in distress.
   ▶ A regulator who monitors three outcomes expected from better bankruptcy laws:
     3.1 Shorter time to resolve insolvency and bankruptcy
     3.2 Higher recovery rates
     3.3 Deeper and liquid credit markets, both secured and unsecured, from private and public markets.
4. Principle features:
   The business decisions decided by creditors.
   Promoters / management lose their rights at default.
5. Courts are involved only in ensuring procedural correctness.
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What happens under the IBC at default?

- Anyone with a defaulted undisputed claim can trigger. Benefit? Difficult to create a carefully coordinated effort to hide distress.

  - Triggers an insolvency resolution process (IRP) where
    1. An automatic moratorium on any fresh claims/liability on the firm AND
    2. A regulated professional – Resolution Professional – takes over the firm.

  - The moratorium is the 'calm period' where the firm runs as a going concern, while insolvency is assessed.

  - RP is additionally responsible for collection of claims, collection of information to assess the health of the firm, make calls for finance, negotiate a resolution plan with the creditors to keep the firm going – all within 180 days.

  - If no plan can be found, then the court puts the firm into liquidation automatically.

  - Litigation against the outcome (of resolution or liquidation) has to be on failure of procedure, and not the business decision.
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Present status of the bill


- Open for public comments for two weeks.
- Joint Parliamentary Committee set up to assess the bill.
  The report to be submitted to the Parliament before the end of this month.
- Bill will be passed....?
- Better outcomes when...?
  1. Draft law needs to be fine-tuned.
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  Volume 2: Draft bill – IBC.
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Next steps

- It’s a long haul after changes in legislation to get the outcomes that we want: quicker resolution, lower cost of credit, better financing choices.

- Research team at Finance Research Group, IGIDR, working on researching changes in laws and systems for bankruptcy. 
  **URL: [http://www.ifrogs.org/POLICY/blrc.html](http://www.ifrogs.org/POLICY/blrc.html)**

- Would love to talk to all of you to get a clearer understanding on how these changes impact firms and firms financing.
Thank you

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