

The Indian Insolvency and Bankruptcy Code, 2016 (IBC)

The Indian Insolvency and Bankruptcy Code, 2016 (the **IBC**) represents a radical rewriting of India's corporate insolvency procedures, enabling creditors to restructure bad debts and rehabilitate corporate debtors within specified timelines.

The IBC process, like the Australian and UK administration procedures, is not a debtor in possession procedure. Instead, a third-party insolvency practitioner (the **Resolution Professional**) takes control of the corporate debtor and, within strict statutory time frames, formulates a restructuring plan that creditors need to approve. The IBC process gives substantial power to financial creditors, both domestic and foreign.

The introduction of the IBC has been followed by the passing of The Banking Regulation (Amendment) Ordinance, 2017, which empowers the Reserve Bank of India (the **RBI**) to issue directions to regulated Indian banks (the **Banks**) to initiate an insolvency resolution process under the IBC in respect of a defaulting borrower.

In June 2017, the RBI mandated that the non-performing loans of 12 specified India corporates qualified for immediate reference under the IBC, and the RBI has subsequently issued further lists of defaulting corporate borrowers. The Banks were required to finalise a resolution plan with the affected debtors within a specified time, failing which they were required to file for insolvency proceedings under the IBC in respect of those debtors. The Banks have adhered to the timelines prescribed by the RBI, and a number of such IBC insolvency proceedings have been commenced.

What others say:

Feedback emphasises the team's skills in handling complex restructuring of Indian debt, with one commentator saying: *"In some areas, such as international debt restructuring of Indian corporates, they are now market leaders."*

- Chambers Asia-Pacific 2018

Clients emphasise the team's solutions-oriented approach, one saying: *"They explain to us in an easy way to understand and try to get the deal done, finding solutions for us."*

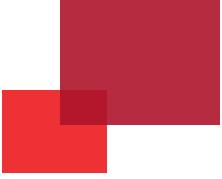
- Banking & Finance, Chambers Asia-Pacific 2017

Clients praise the team for its efficiency, one noting: *"They're absolutely fantastic, I like the speed of their turnaround and the way they can distil very complex legal issues into short and focused advice around the one or two specific issues."*

- Chambers Asia Pacific 2018, Australia

Frequently advising debtors, creditors and insolvency practitioners on high-profile matters, Baker McKenzie's department is led by Maria O'Brien. Along with Bryan Paisley, O'Brien assisted Emeco Holdings with implementing a restructuring support agreement with its creditors and those of Orionstone and Andy's Earthmovers.

- Legal 500 Asia Pacific 2018, Australia



A year after its introduction, the IBC is largely regarded as a success in India, including with respect to adherence to the statutory timelines. The Indian government has acted quickly to modify the IBC from time to time to ensure its effective operation.

The IBC is giving rise to a wave of distressed asset sales, the quantum of which is only expected to rise in 2018.

Those likely to be affected, or be in a position to benefit from the opportunities presented, by the IBC include the following:

- Distressed Indian corporates, their stakeholders and creditors in relation to both domestic and offshore assets and subsidiaries
- Indian banks, including with regard to the offshore assets and subsidiaries of their domestic borrowers
- Foreign creditors of Indian borrowers and guarantors
- Potential buyers of assets sold pursuant to an IBC process
- Lenders and funds interested in providing super-priority funding, pursuant to any IBC restructuring plan

Baker McKenzie and the IBC

While Baker McKenzie is not permitted to practice in India, we do have experienced partners practicing in restructuring and insolvency (**R&I**) who have worked on a range of Indian R&I assignments.

Critically, we have market-leading R&I experience, in both formal and informal processes, and with seamless cross-border capability.

We enjoy excellent working relationships with the leading Indian R&I law and advisory firms, as well as with the large accounting firms, from whose ranks the vast majority of IBC Resolution Professionals are being appointed.

Baker McKenzie is uniquely placed to act for lenders and funds on exposures to Indian debtors and on the provision of potential super-priority financing, as well as for bidders for Indian assets pursuant to the IBC process.

We are also well-qualified to act for distressed Indian corporates and their financiers, as well as on the instructions of Resolution Professionals in the IBC process, on cross-border issues, such as in relation to offshore subsidiaries or assets and foreign law governed documents.

Market-leading experience

Baker McKenzie's global R&I team offers clients unparalleled insight and expertise in restructuring and insolvency and distressed asset sales with a cross-border focus. Key group highlights that can be identified include:

Jaiprakash Associates Limited - We advised Jaiprakash Associates on an exchange offer and consent solicitation in relation to its US\$150 million 5.75 per cent convertible bonds due 2017.

Jaiprakash Power Ventures Limited - We advised Jaiprakash Power Ventures as English legal counsel on entering into standstill arrangements with bondholders holding in excess of 75% of its outstanding US\$200 million 5.0 per cent convertible bonds due 2015.

Videocon Industries Limited - We advised Videocon on an exchange offer and consent solicitation in relation to its US\$200 million 6.75% convertible bonds (the Existing Bonds) due 2015. This was followed by advising them on two further consent processes.

Edelweiss - We advised certain funds managed by the Edelweiss Group in restructuring debt exposures and providing additional priority debt to a defaulting group that has operations in Malaysia, the Netherlands and India. This involved structuring solutions to deal with complex regulatory and credit concerns, including priority of existing creditors and consents from shareholders and regulators.

Essar Steel Minnesota - We advised ICICI Bank, as agent for a group of India-based lenders, in connection with the restructuring of approximately US\$550 million in secured loans in the U.S. Chapter 11 case of Essar Steel Manufacturing and enforcement of guarantees issued by certain affiliated entities.

ICICI Bank - We advised ICICI Bank on all aspects of its enforcement strategy to recover mezzanine loans provided to Gujarat NRE Coal. The company — Australian-listed, but majority Indian-owned, with a distressed Indian parent — owns and operates a substantial coal mine on Australia's east coast. We assisted ICICI Bank in developing and implementing a strategy for navigating the company's complex ownership and debt structure, which involved consideration of a wide range of insolvency, M&A, banking, capital markets and foreign investment regulatory issues.

Takata Corporation - We advised the Takata group in connection with Takata's restructuring and possible insolvency proceedings in Japan. We also advised Takata with respect to its global restructuring of Takata group companies located in over 20 jurisdictions (including India).

Alinta Energy - We advised TPG as the leader of the consortium of debtholders that drove the AUD 3 billion debt for equity swap by schemes of arrangement and privatisation of subsidiaries of (then) Australian-listed Alinta Energy.

Metinvest B.V. - We advised Metinvest, a Dutch holding company of a leading Ukrainian and international steel producer and exporter, in connection with the restructuring of US\$2.3 billion of debt under its notes and pre-export finance loan facilities. The restructuring involved an innovative series of consensual exchange offers and "standstill" schemes of arrangement in the English courts, and culminated in an English scheme that effectuated the restructuring. This restructuring won **Global Restructuring Review's** inaugural "Innovation in cross-border insolvency and restructuring" award in 2017.

JSC BTA Bank - We advised the Steering Committee of creditors (comprising bondholders, commercial banks, trade finance creditors and official government sector creditors) in relation to both the first and second restructuring of JSC BTA Bank, the leading Kazakh bank (with approximately US\$16.7 billion and US\$11.2 billion of financial indebtedness). The deal won Financial Services Turnaround of the Year, Euromoney's Central and Eastern European Deal of the Year awards and was nominated for **IFLR's** "Restructuring Deal of the Year."

Emeco Holdings - We advised Emeco, a global mining equipment supplier listed on the Australian Stock Exchange, on its successful restructuring, recapitalisation and merger with competitor mining equipment businesses Orionstone and Andy's. This involved an Australian scheme of arrangement of NY law-governed note debt with US Chapter 15 recognition, the issuance of new notes, the entry into new revolving credit and hedging facilities, restructuring of existing security arrangements, and an underwritten rights offering.

Our team



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Ashok K. Lalwani heads Baker McKenzie's Global India Practice and Asia Pacific US Capital Markets Group. He has more than 20 years of experience handling Indian transactions — both inbound and outbound — for a wide variety of Indian and global companies. Current clients include: ABG, Essel Group, Axis Bank, Essar Group, Tata Group, GMR, ICICI Bank, IL&FS, Kalyani Group and State Bank of India. Ashok is recognized by leading legal directories for his capital markets and India expertise - Legal 500 Asia Pacific, Chambers and IFLR1000.

Representative Legal Matters:

- Represented Jain Irrigation Systems Ltd. in connection with its debut US\$200 million global green high-yield bond offering managed by Deutsche Bank and JP Morgan Barclays, Nomura and Rabobank as bookrunners.
- Advised Citigroup, Morgan Stanley, Kotak Mahindra, Axis Capital, Edelweiss Financial and Yes Bank in connection with initial public offering of Coffee Day Enterprises Limited (US\$170 million).
- Representing Videocon d2h, an Indian company listed on NASDAQ, on its ongoing compliance with SEC filing requirements and NASDAQ rules.
- Advised Dish TV India Ltd. on its sale of an 11% stake to US-based asset management company Apollo Management through the issuance of US\$100 million global depository receipts.
- Advised ICICI Securities as lead manager on the IPO of Manaksia Ltd., which was listed on the National Stock Exchange and the Mumbai Stock Exchange.
- Advised Zee Telefilms Ltd., one of the largest integrated media and entertainment groups in India, in connection with the US\$100 million offering of convertible bonds pursuant to Regulation S, which were listed on the Singapore Stock Exchange.



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Prashanth Venkatesh has advised banks and financial institutions in financing and refinancing borrowers, with the facilities being used for acquisitions, projects, capital expenditure and working capital. Qualified both in India and England & Wales, Prashanth has significant experience in Indian financing transactions, assisting sponsors negotiate leveraged exposure, acting for lenders on debt restructurings of Indian companies and with alternate capital providers in rescue financing transactions. His extensive on-the-ground experience (having previously been a partner in a tier 1 Indian law firm) is valued by clients focusing on India.

Prashanth has been ranked as a leading individual by the India Business Law Journal, Legal 500 and Chambers Asia-Pacific for his expertise on India-related financing matters.

Representative Legal Matters

- Advised the consortium of lenders in the US\$1.5 billion bridge financing extended to ONGC Videsh Vankorneft for its acquisition of a 15% equity stake in the Rosneft vehicle controlling the Vankorneft oil field.
- Advised the Edelweiss group in restructuring debt exposures and providing additional priority debt to a defaulting group that has operations in Malaysia, the Netherlands and India.
- Advised Mu Sigma Inc. in a US\$394 million credit facility that funded its share-buy-back plan from shareholders, including certain General Atlantic and Sequoia funds.



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Pallavi Gopinath Aney, a partner focusing on debt capital markets, has worked in Singapore for over 11 years after working in a top-tier law firm in India. Pallavi acts for issuers, underwriters and sponsors in a wide range of capital markets transactions across the Asia Pacific region. She is experienced in Rule 144A and Regulation S international debt offerings and liability management transactions, including consent solicitations, exchange offers, tender offers and enhanced conversions.

Pallavi has been ranked as a leading individual by several publications, including Legal 500 and Chambers Asia-Pacific for her expertise on India-related debt capital market, bond restructuring and liability management matters.

Representative Legal Matters

- Advised Singha Estate Public Company Limited on its dual-track offering of US\$180 million of convertible bonds and US\$50 million of shares.
- Advised Samvardhana Motherson Automotive Systems Group on its EUR 300 million high-yield notes offering.
- Advised Jaiprakash Associates on an exchange offer and consent solicitation process.
- Advised Videocon Industries Limited on an exchange offer and consent solicitation process.
- Advised the underwriters on the debut offering of "masala bonds" by the Edelweiss group.



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James Huang heads our Finance and Projects team in Singapore and eight other offices in Asia Pacific. He has extensive experience practicing in London, Hong Kong as well as Singapore and has handled a multitude of restructuring transactions in the Asia Pacific, including India. Chambers Global 2017 Guide describes James as "vastly experienced in a wide range of banking transactions across the region" and points out that "he combines technical expertise with commercial acumen."

Representative Legal Matters

- Videocon Industries Limited, a global conglomerate and the flagship company of the Videocon Group in India, on an exchange offer and consent solicitation in relation to its USD 200 million 6.75% convertible bonds.
- Aircel Limited in the restructuring of the USD 2 billion project financing of the expansion and upgrade of existing telecommunication circles and the greenfield rollout of eight telecommunications circles in India, which combined Indian rupee facilities with offshore U.S. dollar and export credit facilities.
- Presently advising lender consortia on the offshore strategies to be adopted in respect of their indebtedness extended to Indian corporates going through the IBC process.
- Jaya Holdings Ltd, a public company listed on the Singapore Stock Exchange and one of the largest shipping and shipbuilding companies in Asia focused on supporting oil and gas projects, on the multi-jurisdictional restructuring of its bank and trade debts amounting to around SGD 1 billion. This was the only debt restructuring of a Singapore-listed corporation during the Financial Crisis.



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Emmanuel Hadjidakis has significant experience advising on a wide range of finance transactions, including acquisition finance, structured lending, and restructurings including in India and generally across South-East Asia. Emmanuel is the Global Chair of the Firm's Acquisition Finance Practice. Chambers Asia Pacific 2018 describes Emmanuel as "very innovative in providing solutions to any issues we have" and "really efficient."

Representative Legal Matters:

- Acted for Indian lenders including Axis Bank, ICICI Bank and Standard Chartered Bank in restructuring debt exposures of various Indian sponsors in the shipping industry.
- Acted for Mu Sigma Inc. in a USD 394 million credit facility that funded its share buy back plan from shareholders including certain General Atlantic and Sequoia funds.
- Acted for Axis Bank in the CAD 42 million financing for Emcure Pharmaceuticals' acquisition of IPG Limited and Marcan Pharmaceuticals.

Sean Rush is a seasoned practitioner with more than 25 years of international experience in banking and finance, major projects, M&A and private equity in emerging and developed markets. He has practiced out of the London, Santiago de Chile and Sydney offices of Baker McKenzie. Sean has advised on most of the recent transactions in Australia involving Indian financiers, corporates or promoters. He is widely recognised as a leading Australian lawyer advising Indian companies on their Australian financing transactions. Sean has advised on significant financing transactions in Australia and internationally for entities such as ICICI Bank, Adani, Exim Bank of India, Lanco, Essar and Jindal.

Representative Legal Matters

- Advising ICICI Bank on US\$1 billion syndicated financing of Lanco Resources and The Griffin Coal Mining Company, the ongoing development of the project, the complex intercreditor arrangements with the Bluewaters power stations, defence of various creditor claims and a number of restructurings of the financing. This transaction was originally awarded the Infrastructure Deal of the Year.

Maria O'Brien is the head of the Restructuring & Insolvency practice at Baker McKenzie's Australian offices. She leads the Firm's Asia Pacific Restructuring & Insolvency Working Group and is a member of the Global Restructuring & Insolvency Steering Committee.

She is a Fellow of the International Association of Restructuring, Insolvency & Bankruptcy Professionals (INSOL International), and has been ranked a Leading Individual in Restructuring/Insolvency by Chambers Asia-Pacific every year since 2011 (and currently in Band 1). Maria has also been ranked in the peer-assessed Best Lawyers for Insolvency and Reorganisations every year since 2009.

Representative Legal Matters

- Advised Mark Korda, Jennifer Nettleton and Jarrod Villani as administrators of Ten Network, one of Australia's three major commercial free-to-air television channels. The administration resulted in CBS Corporation obtaining control of Ten by court orders pursuant to deed of company arrangement.
- Advised Australian-listed mining services company Emeco Holdings in restructuring its NY law-governed bond debt by creditors' scheme of arrangement, which was approved the Federal Court of Australia with recognition in the US pursuant to Chapter 15.



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Debra A. Dandeneau is co-chair of Baker McKenzie's Global Restructuring and Insolvency Group and chair of its North America Restructuring and Insolvency Group. Her practice focuses on business reorganizations and debtor and creditors' rights. Debra has been ranked by The Best Lawyers in America 2011-2016 in the practice areas of Bankruptcy and Creditor-Debtor Rights / Insolvency and Reorganization Law, and Litigation-Bankruptcy. She has also been recognized by Legal 500 US for Municipal Bankruptcy and Super Lawyers 2006-2015 for Bankruptcy. Super Lawyers has also named Debra among the 20 Super Lawyers and the 2015 Top Women for Bankruptcy Business in New York.

Representative Legal Matters

- Advised debtors, which included Aleris International, Armstrong World Industries, Brothers Gourmet Coffee, Daffy's, Eagle-Picher Industries, Formica Corporation, LandSource Communities Development (Newhall Land & Farming), Magellan Health Services, Maidenform Corporation, Okeelanta Power Corporation, Petite Concepts and Sun Healthcare Group.



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Adam Farlow leads Baker McKenzie's Capital Markets Group in Europe, Middle East & Africa, and is a partner in its London Corporate Finance Group.

Adam is dual-qualified in New York and England and regularly advises creditors, issuers, dealer managers and trustees in cross-jurisdictional liability management and restructurings. Adam has been named a "Notable Practitioner" in debt by Chambers UK; by Legal 500 as a "Leading Practitioner"; and as "Highly Regarded" in the IFLR1000.

Representative Legal Matters

- Advised the Steering Committee of Creditors on the US\$11.1 billion restructuring of BTA Bank (Kazakhstan), winner of Financial Services Turnaround of the Year, Euromoney's Central and Eastern European Deal of the Year and was nominated for IFLR's Restructuring Deal of the Year.



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Ian Jack is co-head of the Firm's Global Restructuring and Insolvency Group since 2009. Ian has over 25 years experience in the London debt finance markets. He acts for debtors, bank lenders, bondholders, committees of creditors, swap providers and boards of directors (amongst others) in complex and often multijurisdictional financial restructurings and insolvencies.

Representative Legal Matters

- Advised Metinvest B.V. in relation to the restructuring of its EUR 2 billion bond and bank debt. The restructuring won an award for "Innovation in Cross-border Restructuring & Insolvency" at the inaugural Global Restructuring Review awards.



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