

## LEGAL UPDATES

### **MCA CALLED COMMENTS FROM THE PUBLIC BY DECEMBER 15 ON THE DRAFT CROSS-BORDER INSOLVENCY FRAMEWORK UNDER IBC**

The MCA invited public comments on the CBIRC draft and suggested modifications by December 15, 2021. Following the recommendations made in the report submitted by the Cross-Border Insolvency Rules/ Regulations Committee (the "CBIRC") on draft rules, regulations, notifications, guidelines, and capacity building for cross-border insolvency, the MCA proposed to enact provisions on cross-border insolvency and said *"...enacting legislative provisions on cross-border insolvency is essential to address the emerging issues on cross-border insolvency in recent cases under the Code. The introduction of cross-border insolvency law in the IBC that is in line with international best practices and suitable for the Indian context may be beneficial to all stakeholders."*

It further noted that the pre-packaged insolvency resolution process for MSMEs was just introduced, the law and practice governing the said mechanism are still in their early days, it is noted that applying cross-border insolvency provisions to the pre-pack process may not be appropriate at this time, and as a result, it is suggested that the pre-pack process be ignored.

Additionally, it suggested that financial service providers be excluded from the draft's application of cross-border insolvency provisions while pointing out that this exclusion is consistent with the design of the Code because financial service providers are subject to a special insolvency process. It also stated that the Central Government may, if necessary, notify any other entities that should be excluded from the application of cross-border insolvency provisions.

Lastly, MCA suggested that all NCLT and DRT benches may have jurisdiction to decide applications under the proposal. This meant that cross-border proceedings arising about corporate debtors with registrations in India would be handled at the NCLT bench having jurisdiction over the registered office of the corporate debtor. Still, cross-border applications

regarding any person incorporated with limited liability outside of India could be handled by the principal Bench of NCLT.