

Insurance regulatory bodies object to new bankruptcy bill

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Introduction

The Financial Resolution and Deposit Insurance Bill 2017 – which was referred to a joint committee of both houses of Parliament in early October 2017 – has recently attracted significant attention. This is mainly due to the objections raised by the Insurance Regulatory and Development Authority of India (IRDAI), among other parties.

The bill aims to create a special framework for resolving bankruptcy in financial institutions, including insurers, by pre-empting any risks to their financial position and resolving or liquidating them in case of such failure. Among other things, the bill provides for the establishment of the Resolution Corporation, which will primarily comprise:

- representatives from:
 - the Finance Ministry;
 - the Reserve Bank of India;
 - the IRDAI;
 - the Securities and Exchange Board of India; and
- five members appointed by the central government.

The bill proposes that the Resolution Corporation be empowered to classify financial institutions as critical in certain scenarios and assume management of such institutions. The corporation will work towards ensuring the continuity of a failing institution by:

- transferring its assets and liabilities;
- merging it with another institution; or
- reducing its debt.

Key provisions

The bill will apply to financial institutions, including insurers, and all other institutions designated as systemically important financial institutions by the central government.

Since a failure of these financial institutions may have an adverse effect on the country's financial stability, the bill provides a specific framework for dealing with their bankruptcy.

Some of the Resolution Corporation's proposed functions are:

- categorising financial institutions into five categories based on their risk criteria;
- undertaking the resolution of financial institutions in case of failure within a one-year period, during which time the institution will be immune against all legal actions; and

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- investigating the activities of financial institutions and undertaking search and seizure operations if the bill is being contravened.

The bill is similar to the Insolvency and Bankruptcy Code 2016, except that it covers only financial institutions. The bill will repeal the Deposit Insurance and Credit Guarantee Corporation Act 1962 and amend 12 other laws.

Industry views

By way of a September 8 2017 press release, the joint committee invited stakeholders to provide their views on the bill.

Although the exact details are not yet available, various publicly available sources indicate that the IRDAI has objected to the bill, citing multiple instances when companies were restructured "without any loss to the customers" and emphasising its ability to resolve bankruptcy among insurers.

Although the exact nature of the IRDAI's concerns are unknown, it appears that they primarily concern the bill's proposal to grant certain overarching powers to the Resolution Corporation in relation to handling bankruptcy matters involving financial institutions. For instance, in the case of Indian insurers, the bill proposes various amendments to the Insurance Act 1938, adding that where an insurer is classified in the category of imminent or critical risk, the powers exercisable by the IRDAI under those provisions will be exercised by the Resolution Corporation. Further, the bill empowers the Resolution Corporation to prevent critical insurers from writing any new business and sell or transfer the portfolios of one insurer to another, as may be specified by regulations issued by the corporation.

Comment

Although the exact nature of the IRDAI's objections to the bill are unclear, a balance may need to be struck between the powers of the existing sectoral regulators – such as the IRDAI – and the proposed Resolution Corporation. This must also be considered in view of the IRDAI's specific experience and industry knowledge that enables it to handle matters involving the insurance industry. Hence, it could be argued that the government should strike a harmonious balance between the existing regulators and the new regulatory body instead of providing overarching powers to a new regulator. As the bill is still in the draft stage and being considered by the joint committee, these concerns may be factored in going forward.

For further information on this topic please contact [Shubhangi Pathak](mailto:shubhangi.pathak@tuli.co.in) or [Anuj Bahukhandi](mailto:anuj.bahukhandi@tuli.co.in) at Tuli & Co by telephone (+91 11 4593 4000) or email (shubhangi.pathak@tuli.co.in or anuj.bahukhandi@tuli.co.in). The Tuli & Co website can be accessed at www.tuli.co.in.

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