



Ease of Doing Business & Economic Impact of Judicial Decisions

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3 Points

- Enforcing contract & resolving insolvency
- Example of court approach and decision making
- Economic and social impact of court decisions

Enforcing contract

- The enforcing contracts indicator measures the time and cost for resolving a commercial dispute through a local first-instance court.
- In addition, the quality of judicial processes to evaluate whether each economy has adopted a series of good practices that promote quality and efficiency in the commercial court system is also measured.
- The data are collected through study of the codes of civil procedure and other court regulations as well as questionnaires completed by local litigation lawyers and judges.

Resolving insolvency

- This topic identifies weaknesses in existing insolvency law and the main procedural and administrative bottlenecks in the insolvency process.
- The data for the resolving insolvency indicators are derived from questionnaire responses by local insolvency practitioners and verified through a study of laws and regulations as well as public information on insolvency systems.

Court elements

Efficient enforcing of contract and resolving of insolvency depends on many factors - efficient commercial laws, sound legal architecture and eco-system, and courts (i) that keep pace with market developments; (ii) act with speed; (iii) whose decisions are certain and based on established principles; and whose capacities are updated regularly.

Capacity building: knowledge development

Speed: Establishing NCLT signifies government's efforts to reduce the burden of courts and streamline efforts for a faster resolution of corporate disputes. Time bound decisions.

Decisions are certain and follow established principles: Let us look at following as an illustration.

Example of court approach and decision making (in insolvency cases)

- Non-intrusive supervisory approach
- Reliance on expert advise
- Speed is of essence
- Treatment of parties
- Addressing fraud and favoritism
- Staying ahead of market developments

Non-intrusive supervisory approach

- The courts are expected to perform non-intrusive supervisory role.
- The limited approach is balanced by the role of other participants, such as the creditors and the insolvency professionals.
- The role of insolvency professionals is central to insolvency system.

Reliance on expert advise

Insolvency law requires to deal quickly with difficult issues, which are often commercial and business in nature than legal.

- Decisions of court should be based on the recommendations of the creditors committee and insolvency professionals.
- For example, it is not desirable for a court to undertake complex economic assessments of the feasibility or desirability of the resolution plan. It should rather limit its consideration to the conduct of the approval process and rely upon creditors having sufficient commercial acumen to make an informed decision on approval of the plan.

Speed is of essence

- If insolvency is not addressed and resolved in an orderly, quick and efficient manner, it runs the risk of causing undue disruption to the business activities of the debtor, reduce value of estate and increase the cost of the proceedings.

Treatment of parties

- Not identical but equitable treatment, in a manner that reflects the different bargains parties have struck with the debtor. In collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests.
- State and public sector should not get preferential treatment. Otherwise unlevelled playing field is created which is unhealthy for a competitive market.

Addressing fraud and favoritism


- Courts should come down heavily on fraud and favouritism that may arise in cases of financial distress..
- It is essential that that infrastructure (for example, forensic investigation, etc.) be sufficiently developed to enable the required decisions to be made.

Staying ahead of market developments

- The insolvency system will only be effective if the courts and officials responsible for its implementation have the necessary capacity to provide the most efficient, timely and fair outcome to those for whose benefit an insolvency regime exists.
- The court's capacity to handle complex commercial issues is often not only a question of knowledge and experience of law and business practices, but also a question of that knowledge and experience being current and regularly updated.
- There should be a special focus on the education and ongoing training of court personnel, not only of judges but also of clerks and other court administrators, to enable them to assist in supporting an insolvency regime that has the ability to respond effectively and efficiently to its insolvency caseload.

Economic and social impact of court decisions

- Enable market participants to more accurately manage and control default risks and corporate failure.
- Reduces cost of credit and encourages enterprise which leads to economic growth and wealth creation.
- Helps in creating a sound climate for investment.

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- Effective enforcement of law promotes responsible corporate behavior and financial discipline.
 - Preserves employment through an effective system for rehabilitating financially distressed but viable enterprises while assuring maximum play in a fair reallocation of assets to more efficient market users through efficient liquidation system.