

Doing Business Reforms - India

26.04.2017

Starting a Business

Reforms undertaken - 1

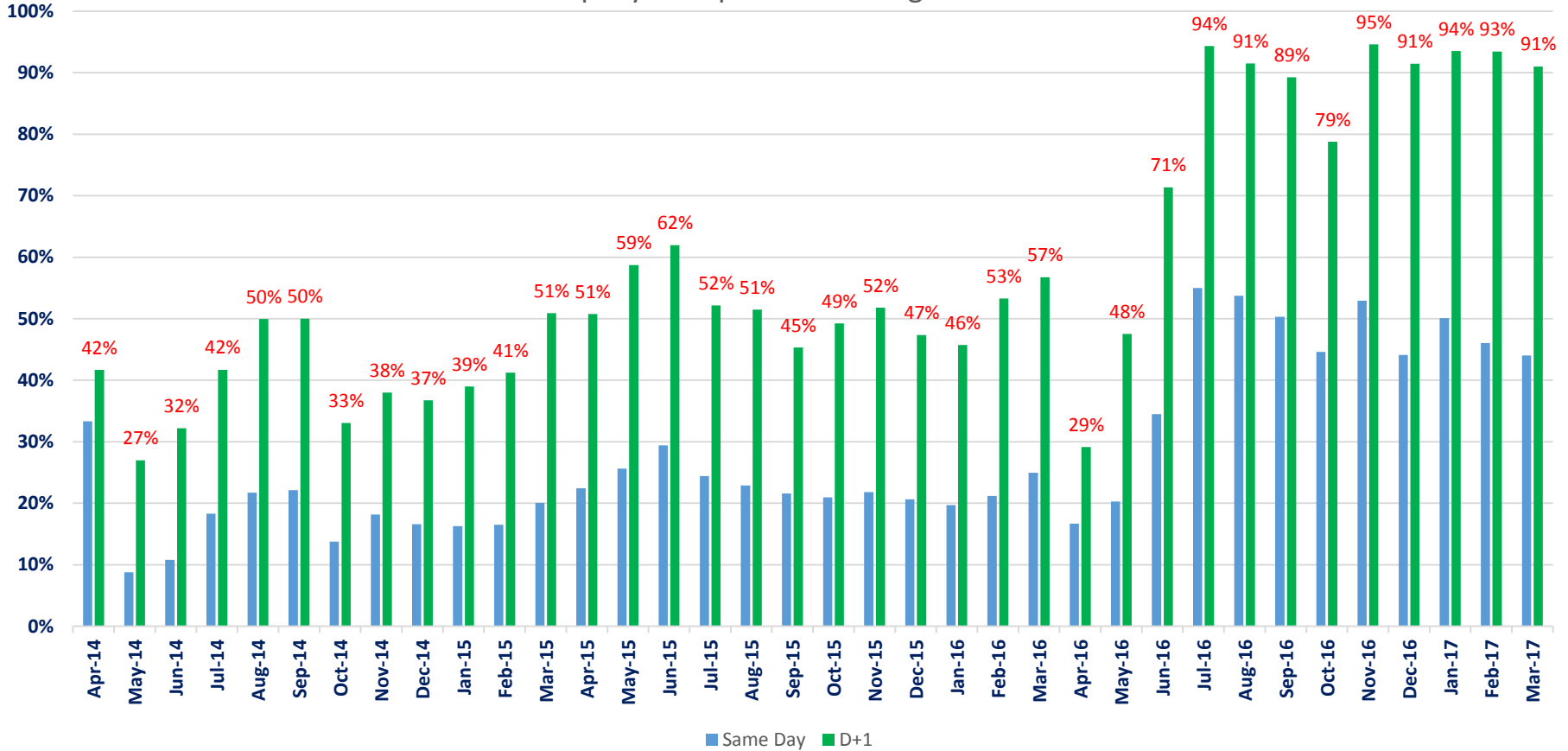
- Integrated E-Form (SPICe/INC 32) merges the following procedures:
 - Incorporation of company
 - Obtaining director identification number (DIN)
 - Reservation of company name
 - Application for Income Tax PAN
 - Application for first TAN
- Central Processing Centre for Incorporation forms and re-engineering of processes - reduction in time for completion of above processes to approx. 1 day.
- Reduction in application fee for incorporation from Rs. 2000/- to Rs. 500/-.

Reforms undertaken - 2

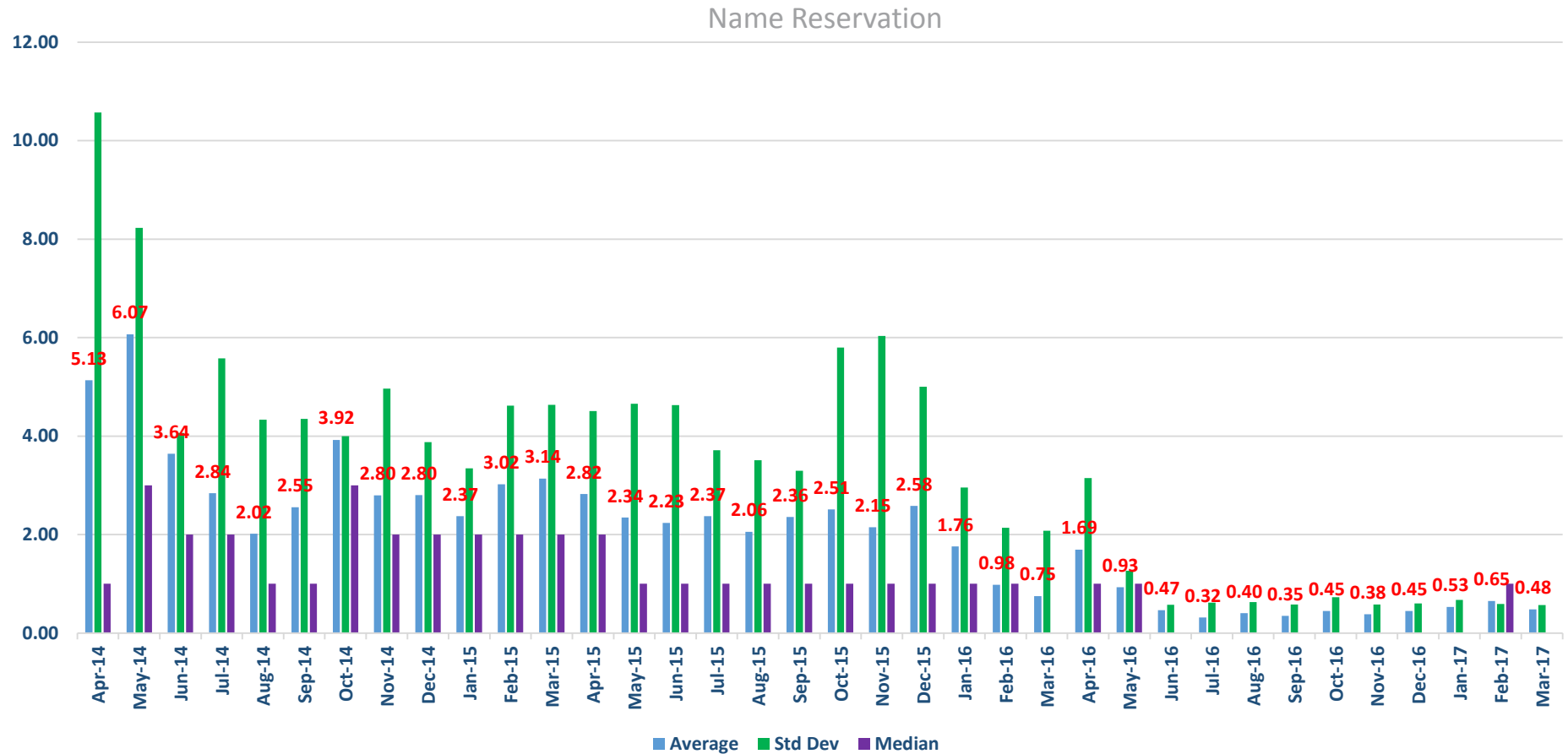
- Online, real-time processes for the following:
 - Applications for registration for Employee State Insurance Corporation (ESIC) and Employee Provident Fund Organization (EPFO) – Inspections dispensed with.
 - Registration under Shops & Establishment Act in Mumbai – Inspections dispensed with
 - Registration for Delhi Value Added Tax (VAT), processed within 24 hour using a mobile application.
- The Maharashtra Sales Tax Department has integrated the online registration for Value Added Tax (VAT) and Professional Tax (PT) with no requirement of inspections or physical touch points.
- Opening a Bank Account not a regulatory requirement
- Common seal requirement, already dispensed with earlier, enforced.
- Validated through an external assessment agency.

CRC CIN Generation – Disposal Trends

Company Incorporation - CIN generation

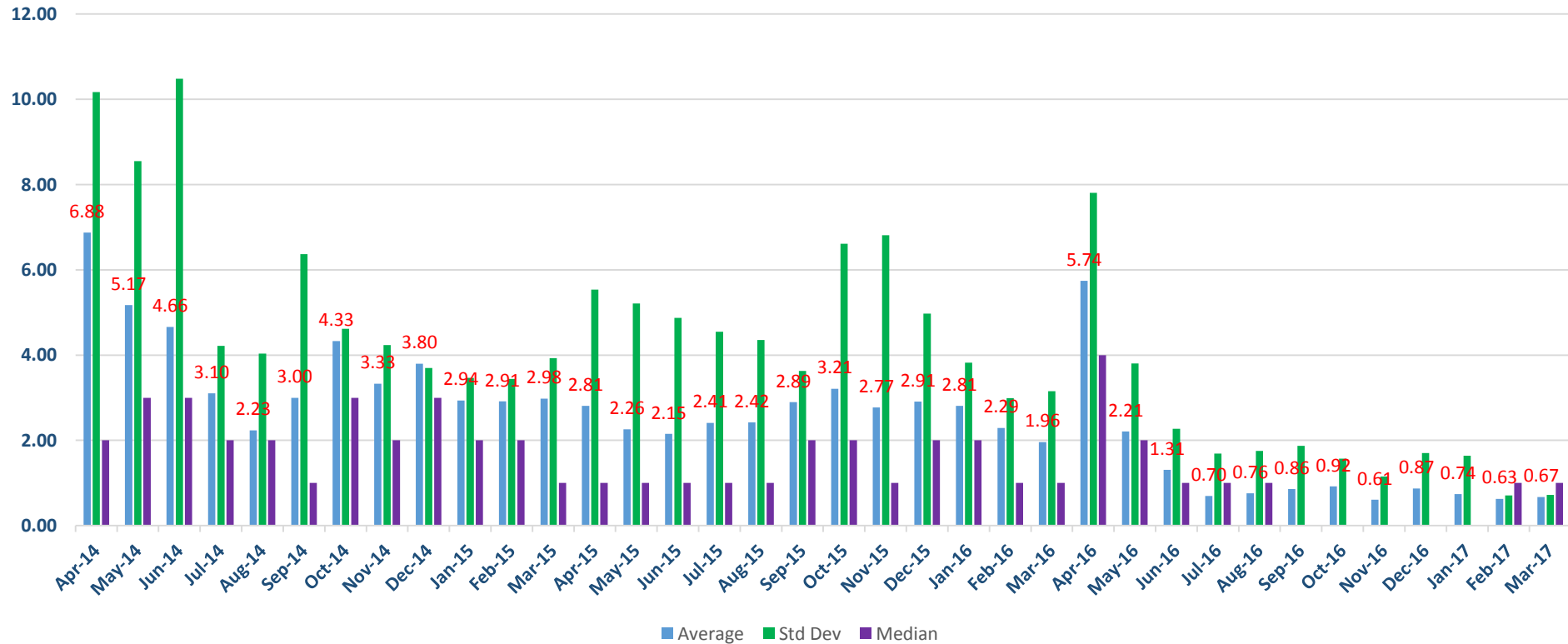


Average Days – Name Reservation

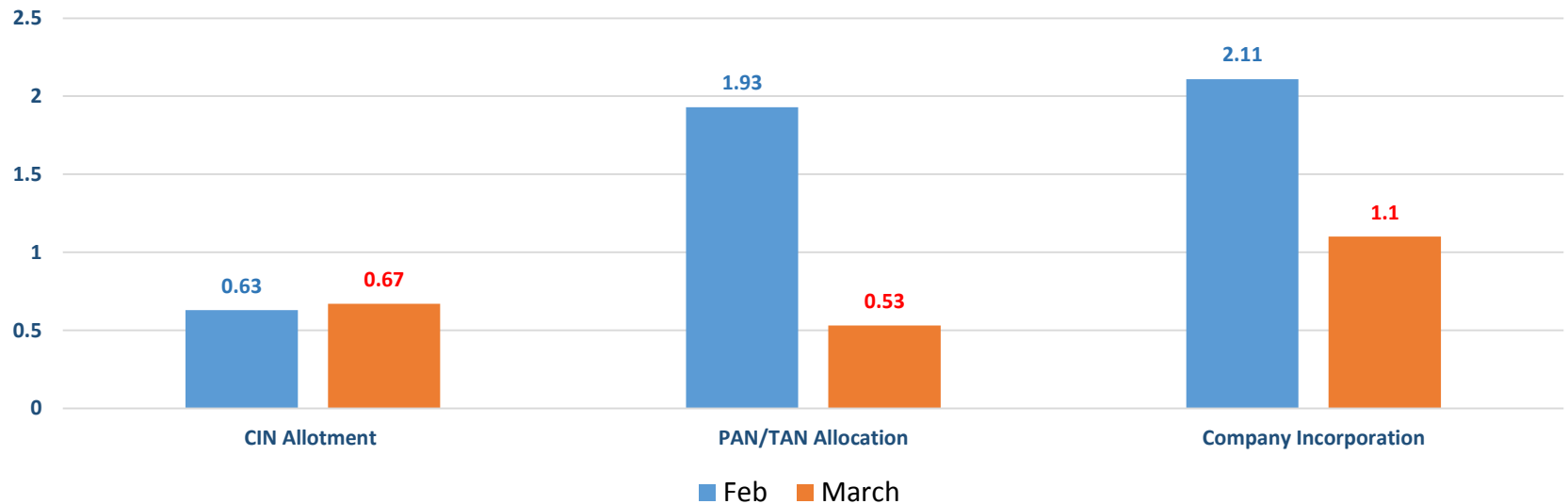


Average Days – CRC CIN Generation

Company Incorporation



Average Days- Company Incorporation (CIN & PAN/TAN)



CIN Allotment

Includes both Approved & Rejected incorporation SRNs (INC-7, INC-32)

PAN/TAN Allocation

Includes only Approved SPICe SRNs for which PAN/TAN is requested

Company Incorporation

Includes all above transactions

VAT Registrations in Mumbai

Month	Total	1 day approval	%age registered in 1 day
Dec '16	14,198	10,991	77.4%
Jan '17	14,929	11,729	78.5%

Registrations under Shops & Estt Act in Mumbai

Month	Total	1 day approval	%age registered in 1 day
Dec '16	10,520	5,626	53.47%
Jan '17	1,673	1,538	91.9%

Procedures, Time & Cost - 1

S. No.	Procedure	Time (Days)		Cost (in Rs.)	
		DBR 2017	DBR 2018	DBR 2017	DBR 2018
	Obtain Digital Signature Certificate (DSC)	1-3	1-2	700 – 2500	700
1.	Incorporation online for a company (using SPICe) and following related processes:				
	1. Obtain Director Identification Number (DIN)	1		500	
	2. Reserve the company Name with RoC (online)	2-7 5	0.5	1000 6300	3330/ 4270
	3. Incorporation, including stamp duty (Delhi/Mumbai)				
	4. Obtain Permanent Account Number	7-10		107	
	5. Obtain first Tax Deduction Account Number	7		63	
	Make a company stamp	1	-	350 – 500	-

Procedures, Time & Cost - 2

S. No.	Procedure	Time (Days)		Cost (in Rs.)	
		DBR 2017	DBR 2018	DBR 2017	DBR 2018
	Open a Bank Account	2	-	0	-
2	Register with Employees Provident Fund Organisation (online)	7	0.5	0	0
3	Register for medical insurance (ESIC) (online)	9/10	0.5	0	0
4	Register for VAT online (Delhi/Mumbai)	9/10	0.5	525	525
	Register for Professions Tax (Mumbai)	2	-	0	0
5.	Register under the Shops and Establishment Act (Delhi/Mumbai)	<1/2	0.5	0/ 4800	0/ 4800
	Receive Inspection and obtain the Shops and Establishments registration certificate (Mumbai)	2-6	-	0	-

Resolving Insolvency

Reforms undertaken

- The Insolvency and Bankruptcy Code, 2016 enacted as a law on 28th May, 2016 after extensive consultations with stakeholders. WB's inputs also guided the framing of law.
- The Code provides for a new legal framework for dealing with insolvency matters.
- All the elements of the corporate insolvency eco-system, namely,
 - the National Company Law Tribunal (NCLT),
 - the National Company Law Appellate Tribunal (NCLAT),
 - the Insolvency Professionals (IP),
 - the Insolvency Professional Agency (IPA),
 - the Insolvency Professional Entity (IPE), and
 - the Insolvency and Bankruptcy Board of Indiahave been made operational.
- Eleven benches of the NCLT, approximately 1000 Insolvency Professionals, 3 IPAs and 2 IPEs are in operation.
- The corporate insolvency provisions of the Code have been commenced w.e.f. 01/12/2016 and liquidation provisions w.e.f. 15/12/2016.

Commencement of Proceedings

Insolvency procedures available to Debtor when commencing insolvency proceedings

Debtor can file for both liquidation and reorganization. [Section 6 and 10 of the Code, Section 59 of the Code, Section 271 of the Companies Act, 2013]
(Last Year : No)

Insolvency procedures available to a creditor

Creditor can file for reorganization proceedings under sections 7, 8 and 9 of the Code read with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The proceedings can result in liquidation under conditions laid down under section 33 of the Code. Sub-section 3 of section 33 read with the Liquidation Regulations, 2016 lays down that the Tribunal can pass a liquidation order on decision of Committee of Creditors to liquidate the corporate debtor, anytime during the corporate insolvency resolution process or in the event that the resolution proceedings fail [which can be as early as the first meeting of the Committee].

Secured creditor can also invoke provisions of the SARFAESI Act.

Basis for commencement of insolvency proceedings

Inability to pay debts or default occurring [Section 4(1) of the Code; Section 3(12) defines default].

Management of Debtor's Assets - 1

Continuation of existing contracts supplying essential goods and services to the debtor.

Section 14(2) of the Code read with Regulation 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lists the essential goods and services that can not be terminated or suspended or interrupted during the moratorium period. Section 20, 25 of the Code w.r.t. preserving the value of a company as a going concern by the resolution professional are also relevant.

(Last Year : No)

Rejection of overly burdensome contracts by the debtor (or by the insolvency representative)

The resolution professional has the powers of the management, including the power to enforce or terminate contracts (Sections 17, 20 read with Section 23 (2)). Regulation 10 of the Liquidation Regulations notified by the IBBI specifically provide for disclaimer of onerous property and contracts. Avoidance of extortionate credit transactions also provided for (Section 50(1) of the Code)

(Last Year : Yes)

Avoidance of preferential transactions to creditors

Section 43-44 of the Code provides for the avoidance of preferences given by the corporate debtor to creditors

(Last Year : Yes)

Management of Debtor's Assets - 2

Invalidation of undervalued transactions which occurred when the debtor was insolvent or resulting in the debtor becoming insolvent

Section 45-49 of the Code provide for the avoidance of undervalued transactions such as gifts and transactions where the value of the consideration received by the corporate debtor is significantly less than the value provided by such corporate debtor. They also define the relevant period for such transactions to be considered for this purpose.
(Last Year : Yes)

Possibility of debtor obtaining credit after commencement of insolvency proceedings

The Code (Section 20(2)(c), 25(2)(c) and 28(1)(a)) provides that a resolution professional can raise interim finance to function during the insolvency proceedings, subject to prior approval from the Committee of Creditors.
(Last Year : No)

Is priority assigned to such post-commencement creditors?

Section 30(2)(a), 53(1)(a) read with Section 5(13) and Section 5(15) of the Code prioritises post commencement credit.
(Last Year : No)

Reorganization proceedings - 1

Which creditors vote on the proposed reorganization plan?

The Code requires (Section 21) that a Committee of Creditors be constituted of all financial creditors (in certain circumstances, of operational creditors). The resolution plan has to be approved by creditors representing 75% voting power, where a creditor has voting power in proportion to the value of debt.

(Last Year : No)

Are creditors entitled to vote on the reorganization plan divided into classes according to their respective rights?

Section 21 of the Code requires a Committee of Creditors be constituted of all financial creditors (in certain circumstances, of operational creditors). The resolution plan has to be approved by creditors representing 75% voting power, where a creditor has voting power in proportion to the value of debt. The Code provides for at least the liquidation value to be given to dissenting creditors. These are sufficient safeguards to ensure that large creditors do not discriminate against smaller creditors while the debtor get the best resolution plan.

Does each class of creditors vote separately?

Does creditors of the same class receive same treatment?

Yes, the Code divides creditors into financial and operational creditors. Within their respective classes, there is no discrimination.

Reorganization proceedings - 2

Is the reorganization plan required to specify that the dissenting creditors get at least the liquidation value?

Section 30(2)(b) of the Code read with Regulation 38(1)(c) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 makes it mandatory requirement of the resolution plan to provide for liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan. Regulation 35(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 defines liquidation value as the estimated realisable value of the assets of the corporate debtor, if it were to be liquidated on the insolvency commencement date.

(Last Year : N/A)

Creditor Participation - 1

Whether creditors participate in the selection of an insolvency representative?

The applicant under section 7,9 or 10, as the case may be, propose the name of the Interim Resolution Professional. The appointment is made by the Tribunal, which can disallow the creditor's choice only on the limited ground of disciplinary proceedings pending against the IP in question. The Resolution Professional shall be appointed by Tribunal as per the resolution of the Committee of Creditors [section 22 of the Code].

(Last Year : No)

Whether creditors are required to approve sale of substantial assets of the debtor during insolvency proceedings?

Section 28(1)(k) of the Code provides that resolution professional shall not transfer rights or financial debts or occasional debts under material contracts otherwise than in the ordinary course of business without the prior approval of the Committee of Creditors.

(Last Year : No)

Creditor Participation - 2

Whether an individual creditor has the right to access information about the debtor's business / fin affairs?

Section 29 of the Code read with Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 require the resolution professional to, suo motu, submit an information memorandum to each member of the Committee of Creditors and any potential resolution applicant containing financial information and other important information of the corporate debtor. Further information can also be asked by a member of the Committee. Regulation 36 may also be relevant.

(Last Year : Yes)

Whether an individual creditor can object to a decision to approve or reject claims against the debtor brought by the creditor itself and by other creditors.

Section 42 of the Code provides that a creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision. Further, section 60(5) of the Code also provides for National Company Law Tribunal to have jurisdiction in this regard.

(Last Year : No)

Protecting Minority Investors

Reforms undertaken

- Limits for certain related party transactions revised. The existing limit of obtaining shareholder approval if the value of property to be purchased exceeds 10% or INR 1 billion, whichever is less has been amended and now, approval of shareholder would be required if the value of property is 10% or more of the net worth of the company or INR 1 billion, whichever is less.
- National Company law Tribunal made functional with effect from 1st June 2016. NCLT adjudicates on all corporate law matters in a time bound manner.

Private Limited companies

Do all members have the right to inspect and copy any record maintained by the company regarding the company's activities, financial condition, and other circumstances that are relevant to their rights and duties?

(New Question)

Yes

Section 94, 136, 171 of the Companies Act, 2013 provide for inspection, and taking extracts, of registers and returns required to be maintained by the Company without payment of any fees, etc. A copy of the financial statements, including consolidated financial statements, auditor's report and every other document annexed or attached to the financial statements are required to be sent to every member of the company

Must members of Buyer meet once a year?

(Last year: No)

Yes

As per section 96(1), every company shall in each year hold an annual general meeting where all the shareholders would meet.

Listed companies

Must the CEO and the chair of the board of directors be different individuals?

(Last year: No)

Yes

Proviso to Section 203(1) of the Companies Act, 2013 requires that an individual shall not be appointed as the chairperson of the company as well as the managing director or CEO of the Company unless the articles of the Company provides such appointment. In the instant case, as the Company has adopted the articles as provided under the Companies Act under Schedule I, Table F, the CEO and the chairperson are required to be different individuals.

III. Conflict of interest case study

Which information about the Buyer-Seller transaction must be disclosed by the Buyer to the public, the regulator or the stock exchange immediately (within 32 hours of closing the transaction)?

- **A description of the assets purchased by Buyer**
- **The nature and amount of consideration paid by Buyer to Seller**
- **Mr. James' ownership interest and/or director position in Buyer**
- **The fact that Mr. James owns 90% of Seller**

(Last Year: all Nos)

Section 21 of the Securities Contract (Regulation Act), 1956; Regulation 30 of the SEBI (LODR) Regulations, 2015

Yes

Yes

Yes

Yes

Important Websites

Starting a Business

<http://www.mca.gov.in/MinistryV2/companiesact2013.html> [MCA]

<http://www.sebi.gov.in/> [SEBI]

<http://autho.dvat.gov.in/frmDvatRegistration.aspx> [Delhi VAT]

<http://www.mahavat.gov.in/Mahavat/index.jsp> [Maharashtra Sales Tax - VAT/Professions Tax]

http://www.epfindia.com/site_en/OLRE.php [EPFO]

http://esic.nic.in/launch_esic.php [ESIC]

Resolving Insolvency

<http://www.ibbi.gov.in/> [IBBI]

<http://www.mca.gov.in/MinistryV2/insolvency+and+bankruptcy+code.html> [MCA]

Thank You

Name Reservation - Disposal Trends

