

Sick Industrial Companies (Special Provisions) Act, 1985 repealed and BIFR/ AIFR dissolved

December 1, 2016

In brief

The Ministry of Finance (MoF), *vide* notification nos. S.O. 3568(E) and 3569(E), has notified 1 December, 2016 (appointed date) as the date on which the provisions of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (Repeal Act) shall come into force. The Repeal Act provides for repeal of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and related matters. Therefore, the SICA is repealed with effect from 1 December, 2016. The BIFR and AIFR stand dissolved with effect from that date, and all proceedings before them stand abated.

In detail

The SICA received presidential assent on 8 January, 1986 and had been in operation since then. The prime objective of the SICA was the timely detection of sick or potentially sick companies owning industrial undertakings, and their speedy revival, wherever possible, or closure thereof.

The Companies (Second Amendment) Act, 2002 inserted sections 424-A to 424-L that deal with sick companies to be administered by the Tribunal, in the Companies Act, 1956. The Repeal Act also was passed in 2004. However, neither of the amendments were notified or became operative.

The Companies Act, 2013 also included section 253 to 269 dealing with sick companies, but were not notified or made operative.

The Insolvency and Bankruptcy Code, 2016 (Insolvency Act) received the President's assent on 28 May, 2016, and is to become operative from the notified date. The administrative provisions under the Insolvency Act were notified on different dates from August to November. Relevant operative provisions were notified on 30 November, 2016. The Insolvency Act amended the Companies Act, 2013 to delete the provisions relating to sick companies. It also amended the Repeal Act to allow companies having pending proceedings under the SICA to approach the National Company Law Tribunal (NCLT) under the provisions of the Insolvency Act (pre-amendment applicable provisions were under the Companies Act, 1956) within the specified time without payment of fees.

Now, the MoF, *vide* notification nos. S.O. 3568(E) and 3569(E), has notified 1 December, 2016, and made provisions of the Repeal Act operative from that date.

The Repeal Act (as amended by the Insolvency Act) *inter alia* provides for the following:

- Repeal of the SICA and providing that such repeal shall not affect the order-sanctioning scheme under the SICA.
- Dissolution of the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AIFR).
- Abatement of references/ inquiries/ appeals and all other proceedings that were pending before the BIFR/ AIFR immediately before the appointed date.

- Such terminated appeals or references may be referred to the NCLT, constituted under the Companies Act, 2013, under the provisions of the Insolvency Act within 180 days from the commencement of the Insolvency Act. No fees would be charged on abated appeals/ references referred to the NCLT within the prescribed time.
- Provides power to the central government to make rules for the implementation of the Repeal Act.

The takeaways

These notifications settle the long-term uncertainties prevailing around existence of the SICA, and provisions regulating sick companies. The Insolvency Act is expected to provide faster resolution, and is in line with efforts to promote the ease of doing business in India.

The following areas may need further clarification/ amendment:

- There is no clarity in relation to the timelines prescribed for

fresh application for abated matters without payment of fees to the NCLT.

- There is no clarity about implementation and/ or monitoring of the schemes sanctioned under the SICA, but not fully implemented until the appointed date.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

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