

The framework for insolvency and bankruptcy

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The economic problem

- ▶ Despite several policy interventions, a debt market in India remain largely under-developed.

	Three-year averages around	
	1991-92	2009-10
Equity	22.60	34.87
Retained earnings	10.56	21.05
Fresh issuance	12.04	13.82
Depreciation	17.64	9.69
Borrowing	35.32	29.48
Banks	17.14	17.83
Bonds	7.87	3.94
Inter-corporate	1.28	2.28
Foreign	5.51	3.22
Current liabilities	24.42	24.19
Structure of borrowing		
Secured	25.40	19.31
Unsecured	19.50	12.69

Source: CMIE Prowess

The economic problem

- ▶ **Rajan 2008**, Planning Commission Report of the High level committee on financial sector reforms points out the importance of protecting creditor's rights:
 - ▶ legal framework for creditor's rights: swift and efficient methods of recovering debt, including seizure of assets.
 - ▶ legal framework for corporate insolvency: an unviable firm should be swiftly and efficiently liquidated to maximise recoveries.
 - ▶ legal framework for informal workouts: courts are expensive in costs and delays, and should be used as (a) a threat to facilitate informal bargaining and (b) give legal status to informal agreements.
 - ▶ requisite supporting institutional capacity to support the above.
- ▶ The Indian legal landscape today for a distressed firm:
 - ▶ Informal negotiations: CDR
 - ▶ Formal (legal) process:
 - ▶ Companies Act: Voluntary restructuring or liquidation
 - ▶ BIFR: Recommendation of liquidation or restructuring.
 - ▶ DRT for banks: Asset sales or liquidation

Goals for today

- ▶ DRT
- ▶ SARFAESI/ARC
- ▶ CDR