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# Development of Corporate Insolvency Law in South Asia- Special Reference to Nepal

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# South Asian Region



# World Bank Doing Business 2006

## Closing a Business

Region	Time (years)	Cost (% of estate)	Recovery Rate (cents on the \$)
East Asia & Pacific	2.4	23.2	27.5
Europe & Central Asia	3.5	14.3	29.5
Latin America & Caribbean	2.6	13.6	25.7
Middle East & North Africa	3.1	12.1	25.7
OECD	1.4	7.1	74
South Asia	3.6	6.3	19.5
Sub-Saharan Africa	2.6	16.0	17.7

# World Bank Doing Business 2006

## Closing a business

Country	Time (Years)	Cost (% of estate)	Recovery rate (cents on the \$)
Bangladesh	4.0	8.0	24.9
India	10.0	9.0	13.0
Maldives	6.7	4.0	18.2
Nepal	5.0	9.0	24.5
Pakistan	2.8	4.0	39.9
Sri Lanka	2.2	18.0	35.6

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# Legislative Framework

- With exception to Nepal, no countries in South Asia have legislation specifically dealing with corporate insolvency.
  - The provision dealing with liquidation forms part of the Company Law legislation.
  - The existing legislation does not incorporate the policy of restructure of entities under financial difficulty.
  - Liquidation is the only exist route.
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# Common Problems

- Liquidation oriented (No provision for restructure)
  - The insolvency proceedings are time and cost consuming
  - No system for informal workouts
  - No law for cross border insolvency
  - Government officers act as liquidators (no involvement of private sectors)
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# Reform Initiatives

- India is undertaking reform initiatives in line with the recommendation made by Dr. J.J Irani Committee Report to provide, among others, for easy access, automatic stay, involvement of private practitioners, time-bound insolvency proceedings.
  - Pakistan is also undertaking exercise to introduce separate legislation which provides for restructure and liquidation.
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# Nepal

- Nepal has enacted Insolvency Act 2006 (2063)
  - Insolvency Act leads the way in respect of legislative reform in South Asian region.
  - Incorporates modern insolvency principles
  - Provides for restructure of viable and liquidation of unviable business
  - Involvement of private sector professionals as insolvency investigation officer, restructure manager and liquidators.
  - Court supervised insolvency proceedings
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# Salient Features the Insolvency Act 2006 (IA)

## 1. Easy Access

The IA provides easy access to insolvency proceedings. Petition for initiating insolvency proceedings can be made by 10% of the creditor(s), 5% of the shareholder(s) or debenture holder(s)

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## 2. Role of Courts

The IA has given various role to the courts. The insolvency proceedings can not be initiated without the approval of the court. Also, the role of the courts exit up to the completion of insolvency proceedings.

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# Role of courts

- (i) Decision Maker: decides whether or not to allow initiation of insolvency proceedings
  - (ii) Supervisor: Supervises the whole process
  - (iii) Adjudicator: settles the disputes related to insolvency proceedings
  - (iv) Appointing authority: appoints restructure managers, liquidators, investigation officer
  - (v) Facilitator-facilitates the insolvency proceedings
  - (vi) Removing authority-has power to remove insolvency professional not functioning as required under the IA.
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## 3. Protection of insolvency estate

- (a) stay orders (during the court is deciding whether or not to permit insolvency proceedings to commence)
  - (b) Automatic stay (till the restructure plan is adopted or liquidation is ordered).
  - (c) Avoidance of transaction: various anti creditors transactions are voidable.
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## 4. Restructure Plan

- Allows restructure of viable entities.
  - Once law two systems (convertible proceedings) Liquidation process can convert into restructure process and restructure process can convert into liquidation.
  - Restructuring process is time-bound and is required to be completed within the time fixed by the court.
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## 5. Involvement of Private Sector Professionals

- The IA provides for licensing of insolvency professionals.
  - Provides for minimum qualifications of the Insolvency Professionals
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## 6. Establishment of Insolvency

### Administration Office

- Licenses and regulates the Insolvency Practitioners.
  - Custodian of documents and files related to insolvency proceedings.
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# Challenge for Nepal

- The immediate challenge from Nepalese context is making the Insolvency Act operational. The Act is has not been able to be operational because:
    - (a) commercial bench not yet formed
    - (b) Insolvency Administration Office not yet constituted
    - (c) Insolvency Practitioners not yet licensed
    - (d) Required rules on yet introduced
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# Challenges in South Asia

- Establishing courts systems capable of handling commercial cases (managing delays and other infrastructure issues)
  - Training of insolvency judges
  - Involving private practitioners (training, regulating) and their training
  - Education (inclusion of insolvency in curriculum law schools, management studies etc)
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