

# Bill Summary

## The Insolvency and Bankruptcy Code (Amendment) Bill, 2017

- The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 was introduced in Lok Sabha on December 28, 2017. It amends the Insolvency and Bankruptcy Code, 2016, and replaces an Ordinance promulgated in November 2017. The Code provides a time-bound process to resolve insolvency of companies and individuals. Insolvency is a situation where a company is unable to repay its outstanding debt.
- **Resolution applicant:** The Code defines a resolution applicant as a person who submits a resolution plan to an insolvency professional. (A resolution plan specifies the details of how the debt of a defaulting debtor can be restructured.) The Bill amends this provision to define a resolution applicant as a person who submits a resolution plan after receiving an invite by the insolvency professional to do so.
- **Eligibility for resolution applicants:** The Code specifies that an insolvency professional will take control of the defaulting company, and invite applicants to submit resolution plans. The Bill amends this provision to state that an insolvency professional will only invite those resolution applicants to submit a plan, who fulfil certain criteria laid down by him (with the approval of the committee of creditors), and other conditions which may be specified by the Insolvency and Bankruptcy Board.
- **Ineligibility to be a resolution applicant:** The Bill inserts a provision prohibiting certain persons from submitting a resolution plan. A person will be ineligible to submit a plan if: (i) he is an undischarged insolvent (individual unable to repay his debt), (ii) he is a wilful defaulter, (iii) his account has been identified as a non-performing asset for more than a year and he has not repaid the amount before submitting a plan, (iv) he has been convicted of an offence punishable with two or more years of imprisonment, (v) he has been disqualified as a director under the Companies Act, 2013, (vi) he has been prohibited from trading in securities by SEBI, (vii) he is the promoter or in the management of a company which has indulged in undervalued, preferential, or fraudulent transactions, (viii) he has given guarantee on a liability of the defaulting company undergoing resolution or liquidation and has not honoured the guarantee, (ix) he has indulged in these specified activities abroad, or (x) he is connected to any person mentioned above (including promoters, management, or any person related to them). The Bill exempts scheduled commercial banks, asset reconstruction companies and alternate investment funds if they are connected to any such person.
- **Approving resolution plan:** The Code specifies that the committee of creditors will approve a resolution plan with 75% majority. The Bill amends this provision to state that the committee will approve this plan by a 75% majority subject to any conditions specified by the Insolvency and Bankruptcy Board.
- The Bill prohibits the committee of creditors from approving a resolution plan submitted before the promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the plan has been submitted by a person ineligible to be a resolution applicant.
- **Liquidation:** The Code allows the insolvency professional to sell the movable or immovable property of the debtor in case of liquidation. The Bill prohibits the insolvency professional to sell this property to any person who is ineligible to be a resolution applicant.
- **Penalties:** The Bill inserts a provision to specify that a person contravening any provisions of the Code, for which no penalty has been specified, will be punishable with a fine ranging between one lakh rupees to two crore rupees.

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