

Ordinance Summary

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 was promulgated on June 5, 2020. The Ordinance amends the Insolvency and Bankruptcy Code, 2016. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. The Ordinance exempts certain companies from the provisions of the Code with respect to initiation of a corporate insolvency resolution process.
- **Initiation of corporate insolvency resolution:** When a default occurs, creditors of the company (financial or operational) or the company itself may file an application before the National Company Law Tribunal (NCLT) for initiating corporate insolvency resolution process (CIRP). Once the application is accepted, a Committee of Creditors (CoC) consisting of the financial creditors of the company is constituted. The CoC appoints a resolution professional who manages the resolution process and presents a resolution plan to the CoC. Once the resolution plan is approved, the resolution process is required to be completed in 180 days (extendable by 90 days).
- **Fraudulent trading:** During the resolution, if it is found that the business of the company is being carried out with an intent to defraud its creditors, the NCLT can pass orders against persons involved in such business to make contributions to the assets of the company. Further, the resolution professional can apply to the NCLT for an order to direct the director or partner of the company to make such contributions if: (i) before the insolvency date, the director or partner knew or should have known that there was no reasonable prospect of avoiding CIRP, or (ii) the director or partner did not exercise due diligence to minimise the potential loss to creditors of the company.
- **Provisions of the Ordinance:** The Ordinance exempts certain companies from the provisions on initiation of CIRP. It states that an application for CIRP cannot be filed where a default has arisen during a period of at least six months starting from March 25, 2020. The central government may extend this period to one year through notification. The Ordinance clarifies that no proceedings can ever be initiated for defaults occurring during this period.
- The Ordinance further states that for such companies, the resolution professional cannot file an application to the NCLT for directions against the partners or directors of the company to make contributions to the assets of the company.

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