

Bill Summary

Insolvency and Bankruptcy Code, 2016

- The Insolvency and Bankruptcy Code, 2015 was introduced by the Minister of Finance, Mr. Arun Jaitley, in Lok Sabha on December 21, 2015, and subsequently referred to a Joint Committee of Parliament. The Committee submitted its recommendations and a modified Code based on its suggestions on April 28, 2016. This modified Code was passed by Lok Sabha on May 5, 2016. The Code creates a framework for resolving insolvency in India. Insolvency is a situation where an individual or a company is unable to repay their outstanding debt.
- The Code repeals the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. In addition, it amends 11 laws, including the Companies Act, 2013, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, among others.
- The Code will apply to companies, partnerships, limited liability partnerships, individuals and any other body specified by the central government.
- **Insolvency Resolution Process:** The Code specifies similar insolvency resolution processes for companies and individuals, which will have to be completed within 180 days. This limit may be extended to 270 days in certain circumstances. The resolution process will involve negotiations between the debtor and creditors to draft a resolution plan.
- The process will end under two circumstances, (i) when the creditors decide to evolve a resolution plan or sell the assets of the debtor, or (ii) the 180-day time period for negotiations has come to an end. In case a plan cannot be negotiated upon during the time limit, the assets of the debtor will be sold to repay his outstanding dues. The proceeds from the sale of assets will be distributed based on an order of priority.
- **Priority under liquidation:** The assets will be distributed in the following order, in case of liquidation: (i) fees of insolvency professional and costs related to the resolution process, (ii) workmen's dues and secured creditors, (iii) employee wages, (iv) unsecured creditors, (v) government dues and remaining secured creditors (any remaining debt if they enforce their collateral), (vi) any remaining debt, and (vii) shareholders.
- **Fresh Start Process:** The Code provides a Fresh Start Process for individuals under which they will be eligible for a debt waiver of up to Rs 35,000. The individual will be eligible for the waiver subject to certain limits prescribed under the Code.
- **Insolvency professionals and agencies:** The resolution process will be conducted by a licensed insolvency professional (IP). The IP will control the assets of the debtor during the process. Insolvency professional agencies will be created to regulate these IPs. The agencies will conduct examinations to enrol IPs and enforce a code of conduct for their functioning.
- **Information Utilities:** The Code establishes multiple information utilities to collect, collate and disseminate financial information related to a debtor. This will include a record of debt and liabilities of the debtor.
- **Insolvency regulator:** The Insolvency and Bankruptcy Board of India will be established as a regulator to oversee functioning of IPs, insolvency professional agencies and information utilities. The Board will have 10 members, including representatives from the central government and the Reserve Bank of India.
- **Adjudicatory Authorities:** The Code proposes two tribunals to adjudicate insolvency resolution cases: (i) the National Company Law Tribunal will adjudicate cases for companies and limited liability partnerships, and (ii) the Debt Recovery Tribunal will adjudicate cases for individuals and partnership firms.
- **Insolvency and Bankruptcy Fund:** The Code creates an Insolvency and Bankruptcy Fund. The Fund will receive voluntary contributions from any person. In case of insolvency proceedings being initiated against the contributor, he will be allowed to withdraw his contribution for making payments to workmen, protecting his assets, etc.
- **Cross-border insolvency:** Cross border insolvency relates to an insolvent debtor who has assets abroad. The central government may enter into agreements with other countries to enforce provisions of the Code.
- **Offences:** The Code specifies penalties for offences committed under corporate insolvency (such as concealing property). This penalty will be imprisonment of up to five years, or a fine of up to one crore rupees, or both. For offences committed under individual insolvency (such as providing false information), the imprisonment will vary based on the offence. For most of the offences, the penalty will be imprisonment of up to six months, or a fine of up to five lakh rupees, or both.

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