

[President gives assent to The Insolvency and Bankruptcy Code \(Amendment\) Act, 2018](#)

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 has been passed by the Parliament on 18<sup>th</sup> January 2018 to be called The Insolvency and Bankruptcy Code (Amendment) Act, 2018.

The Amendment shall be deemed to be in force from November 23, 2017 aims to:

- a. Prohibit certain persons from submitting a resolution plan who on account of their antecedents may adversely impact the credibility of the processes laid down under the Code; and
- b. Specify certain additional requirements for submission and consideration of the resolution plan before approval of the committee of the creditors formed under the Code.

**The key Amendments are:**

S.No	Provision	Particulars	Old Regulation	New Regulation	Implication
1.	Section 2	Applicability of the Code in case of insolvency, liquidation, voluntary liquidation or bankruptcy	The Code was applicable to: <ul style="list-style-type: none"> <li>Companies under the Companies Act</li> <li>Companies governed by any special Act</li> <li>LLPs under the LLP</li> <li>Other incorporated bodies</li> <li>Partnership firms</li> <li>Individuals</li> </ul>	<b>Personal guarantors to corporate debtors and proprietorship firms</b> have also been added to the list	The scope of the Code has been widened by adding these persons
2.	Section 5	Definition of "resolution plan"	A resolution plan may be proposed by any person for insolvency resolution of a corporate debtor	A resolution plan may be proposed <b>only by a resolution applicant</b> as defined under the Code.	Streamlining the process of preparation and execution of a resolution plan
3.	Section 25	Duties of a resolution professional	While seeking monetization of the business of a corporate debtor, the resolution professional may call upon any prospective lender, investor or person to submit a resolution plan	The resolution professional may call upon prospective resolution applicants in consultation with the committee of creditors only to submit a resolution plan	This would help the creditors in effective realization of assets as the creditors would be involved in preparation of the resolution plan

4.	Section 29A	Eligibility for becoming a resolution applicant	N/A	<p>A new clause has been added to the Code which states no such person shall become a resolution applicant if he is:</p> <ul style="list-style-type: none"> <li>• An undischarged insolvent</li> <li>• Willful defaulter as per RBI</li> <li>• Declared as NPA as per RBI</li> <li>• Convicted for 2 years or more</li> <li>• Disqualified as a director under Companies Act</li> <li>• Prohibited by SEBI from trading or accessing securities market</li> <li>• Indulged in preferential, undervalued or fraudulent transaction</li> <li>• Executed an enforceable guarantee in favor of a creditor of corporate debtor</li> </ul>	This prohibits the corporate debtor from buying the business or assets of its own entity at a discount.
5.	Section 35(1)(f)	Sale of assets of a corporate debtor by the liquidator	N/A	A provision has been added to section 35 (1)(f) which prohibits sale of assets of a corporate debtor by the liquidator to persons who are not eligible to become a resolution professional	This would prevent corporate debtors and willful defaulters from purchasing their own assets at discount
6.	Section 235A	Punishment where no specific penalty or punishment is provided	N/A	A new clause has been added to the Code which defines a punishment of Rs. One lakh extending up to Rs. 2 crores where no specific penalty or punishment is provided under the Code.	This clarifies the punishment for offences which are not specifically mentioned in the Code.

The Amendment is a blow on the willful defaulters who take advantage of the Code to reacquire their own business and the assets at discount for personal benefit and causing loss to the lenders who are willing to take a cut on the amounts due to them.

Hope you find the update useful!

Best Regards,

"IBA Team"

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