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The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 was promulgated on November 23, 2017. It 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.
- **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 Ordinance 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 Ordinance amends this provision to state that a resolution professional will only invite those resolution applicants to submit a plan, who fulfil certain criteria laid down by him (approved by the committee of creditors) or by the Insolvency and Bankruptcy Board.
- **Ineligibility to be a resolution applicant:** The Ordinance inserts a provision prohibiting certain persons from being a resolution applicant and 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 identified by the Reserve Bank of India, (iii) his account has been identified as a non-performing asset for more than a year, (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, (vii) he has indulged in undervalued or fraudulent transactions, (viii) he has executed an enforceable guarantee in favour of a person who is a creditor to a defaulter undergoing a resolution process, (ix) he is connected to any such person mentioned above (including promoters or people in control of the defaulting firm during the implementation of the resolution plan), or (x) he has indulged in any of these activities outside India.

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Current Status: Ordinance: In force

Ministry: Law and Justice

Stage	Date
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- **Approving resolution plan:** The Code specifies that the committee of creditors will approve a resolution plan with 75% majority. The Ordinance amends this provision to state that the committee will approve this resolution plan by 75% majority subject to any other conditions specified by the Insolvency and Bankruptcy Board.
- The Ordinance prohibits the committee of creditors from approving a resolution plan submitted before the promulgation of this Ordinance, 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 moveable or immovable property of the debtor in case of liquidation. The Ordinance prohibits the insolvency professional to sell this property to any person who is ineligible to be a resolution applicant.
- **Penalties:** The Ordinance inserts a provision to specify that any person contravening 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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