



**Insolvency Code - Amendments**  
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**Brahmayya & co.**

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## Introduction

Apropos to the introduction of Insolvency and Bankruptcy Code, 2016, (IBC) major activity is evidenced in the socio-economic scenario which is directly impacting the market capitalisation. Be it value and reputation of banks, or that of Corporates termed at “Large houses of debt”. The major step taken by the Government of India through enactment of the Insolvency Code, has undergone overhaul, as and when required. Insolvency and Bankruptcy Board of India has notified Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 and Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018 on 6th February 2018, which amends and introduces important provisions.

## Gist of Amendments

### Evaluation Matrix

The clause related to the requirement of “evaluation matrix” has been inserted. An Evaluation Matrix has been defined as such parameters to be applied and the manner of applying such parameters as approved by the committee for resolution plans for its approval.

A Resolution Professional shall provide the invitation including evaluation matrix atleast 30 days before the last date of submission of resolution plans. If the evaluation matrix is not attached with invitation, the resolution professional shall issue, with the approval of the Committee of Creditors (CoC), the evaluation matrix to the prospective resolution applicants atleast 15 days before the last date for submission of resolution plans. Subject to the timelines, resolution professional can modify the invitation and evaluation matrix with the approval of committee. Brief particulars of invitation shall be published in Form G on the website of Corporate Debtor or any website, designated by the Board.

### Concept of Fair Valuation

The amendments introduces the concept of Fair Valuation. Originally, the Code dealt with the aspect of liquidation value only. Consequent to disruptions in the selling market, stakeholders rights are not restored in all fairness. To promote the requirement to transact at Fair Value, despite initiation of insolvency proceedings, the concept of fair value has been introduced.

Fair value is defined as the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

This amendment requires the Resolution Professional to appoint 2 registered valuers to determine fair value and liquidation value within 7 days of his appointment. Resolution Professional can provide the fair value and liquidation value to every member of committee after receiving confidentiality undertaking and resolution plans. Resolution Professional and Registered valuers should maintain confidentiality of fair value and liquidation value. If resolution professional is of the opinion that estimates by both valuer is significantly different, then he may appoint 3rd valuer and average of closest estimate shall be considered as fair value and liquidation value

### **Confidentiality Undertaking**

Due to continuous monitoring by media houses and the insolvency proceedings being a court driven process, the Code mandates maintenance of confidentiality to all concerned in the process. The Resolution Professional shall submit the Information memorandum in electronic form within 2 weeks of his/her appointment, to each member of CoC and each prospective resolution applicant latest by date of invitation of resolution after receiving an undertaking to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person.

### **Resolution Plan**

The IBC intends to create maximum value to the Corporate Debtor through the court driven process. Accordingly, Resolution plan shall contain the sources of funds which the resolution applicant is proposing to pay along with the intended utilization. Resolution Professional shall submit the resolution plan as approved by CoC to Adjudicating Authority within 15 days before the expiry of maximum period along with a certification that resolution plan meets all requirements of the Code and is approved by the CoC. This amendment will not be applicable to an ongoing corporate insolvency resolution process which has completed 130th day from the day of its commencement.

### **Conclusion**

Being a new law, changes are inevitable. As the NCLT process achieves greater progression, the IBBI would further evaluate certain sections of the IBC and the practicality involved in its application. Ultimately, the intention of the Code is to facilitate resolution and not unfortunate liquidation.

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