Legislative Brief

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 was introduced in the Lok Sabha on August 12, 2025. The Bill has been referred to a Select Committee of Lok Sabha (Chair: Mr. Baijayant Panda).

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Highlights of the Bill

- The Insolvency and Bankruptcy Code, 2016 (Code) provides a time-bound process to resolve insolvency among companies and individuals. The Bill seeks to address procedural delays and interpretational issues that the Code has faced.
- The Bill clarifies that statutory dues do not have the status of secured creditors. It reinforces timelines provided in the Code.
- The Bill removes the liquidator's powers with respect to admitting/rejecting claims and determining their value. It also provides the committee of creditors (CoC) the power to appoint or remove the liquidator and supervise the liquidation process.
- The Bill introduces a Creditor-Initiated Insolvency Resolution Process (CIIRP) that allows for out-of-court commencement of insolvency proceedings by select financial institutions. Further, the debtor remains in control of the company during CIIRP.
- The Bill empowers the central government to frame rules related to group insolvency and cross-border insolvency proceedings.

Key Issues and Analysis

- For liquidation proceedings, the Code grants the liquidator quasi-judicial powers with respect to claims. This is to ensure finality of claims as rights get extinguished once assets are distributed under liquidation. However, the Bill removes these powers of the liquidator, who must now act under the supervision of the CoC.
- CIIRP may only be initiated by select financial institutions specified by the central government. It is unclear why some financial institutions should have a priority over others.
- The trigger for initiating CIIRP remains default, when value erosion has already set in. This undermines the Code's objective of achieving maximum value for assets.
- CIIRP may be triggered upon default on the notified financial creditor's debt. Such a financial creditor will not be able to trigger CIIRP if a default occurs sooner on an operational or other financial debt, and those creditors initiate a corporate insolvency resolution process first.
- The Bill disallows withdrawal of insolvency application before the constitution of the CoC and after invitation of resolution plans, discouraging early and out-of-court settlements.
- The Bill empowers the central government to make rules for cross-border insolvency proceedings, without providing clear guiding principles. This may amount to excessive delegation.

PART A: HIGHLIGHTS OF THE BILL

Context

The Insolvency and Bankruptcy Code was enacted in 2016 to provide a unified, time-bound process for addressing insolvency of companies and individuals. Insolvency refers to an inability to pay debts or meet financial obligations. The objective of the Code is to restructure insolvent companies to ensure their survival as a going concern. In the event that is not possible, it provides for liquidation of the company. The Code is based on the principles of: (a) maximising value of assets, (b) timely and efficient resolution of insolvency, and (c) transparency and predictability of the process. The personal insolvency provisions are yet to be operationalised.

Table 1: Outcome of CIRP cases closed under the Code as of June 30, 2025

Manner of Closure	Number of Cases	% share
Withdrawn	1,191	18%
Closed on appeal or review or settled	1,314	20%
Resolution plan approved	1,258	19%
Liquidation order passed	2,824	43%
Total	**6,587**	**100%**

Source: Insolvency and Bankruptcy Board of India; PRS.

Under the Code, a Corporate Insolvency Resolution Process (CIRP) may be initiated by a financial creditor, operational creditor or the debtor itself. Financial creditors are individuals or institutions who have extended loans to the company, whereas operational creditors are owed money for supply of goods or services. To initiate CIRP, an application is filed with the National Company Law Tribunal (NCLT) upon a default of one crore rupees or more. Resolution professionals (RPs) are appointed to conduct CIRP. Once CIRP begins, control of the company shifts from the debtor to the creditors. The Committee of Creditors (CoC), comprising all financial creditors of the company, takes key business decisions and selects a resolution plan. The resolution plan outlines how the debt of the company would be restructured or settled, in order to revive the company. If a resolution plan is not approved within a specified time or the CoC determines that the company cannot be revived, the NCLT orders liquidation. Under liquidation, assets of the company are sold and the proceeds are distributed as per a specified order, and the company is wound up. NCLT appoints a liquidator to manage the process. RPs and their agencies are regulated by the Insolvency and Bankruptcy Board of India (IBBI). Appeals against NCLT lie before the National Company Law Appellate Tribunal.

As of June 2025, 8,492 CIRP cases have been admitted.[1] Of these, 1,905 cases are ongoing, while the remaining were closed. The CIRPs that resulted in resolution plans took, on average, 602 days to conclude, against the limit of 330 days under the Code. About 78% of the ongoing CIRPs have been continuing for more than 270 days. Resolved cases have yielded recoveries of around 33% of the admitted claims and 171% of the liquidation value. The CIRPs that ended in liquidation took an average of 512 days for CIRP. Till June 2025, companies that were fully liquidated resulted in recoveries equivalent to 90% of the liquidation value.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 was introduced in the Lok Sabha on August 12, 2025. The Bill aims to address procedural delays, uncertainty in recovery outcome, and ambiguity from judicial judgements. It also seeks to introduce an alternate insolvency resolution process for companies and frameworks for group insolvency and cross-border insolvency proceedings. The Bill has been referred to a Select Committee of Lok Sabha (Chair: Mr Baijayant Panda).

Key Features

- **Admission of CIRP:** The Code states that NCLT may admit CIRP if the default is proven, the application is complete, and no disciplinary proceedings are pending against proposed RP. It requires NCLT to pass an order within 14 days of receiving the application. The Bill makes it mandatory to admit the application when these conditions are met. It specifies that: (i) no other grounds can be considered to reject an application, (ii) NCLT must record reasons in writing if no order is passed within 14 days, and (ii) records from information utility will be sufficient proof of default.
- **Withdrawals:** The Bill allows withdrawal of an insolvency application only after the CoC has been constituted and before the first invitation for resolution plans. Such withdrawal would require the approval of 90% of the CoC. Currently, withdrawals are permitted even before the constitution of CoC, and after first invitation of resolution plans. The Bill also allows withdrawal of voluntary liquidation by a special resolution of shareholders and, if required, a resolution of creditors of two-third in value.
- **CoC's role during liquidation:** The Bill empowers the CoC to supervise liquidation. Presently, a stakeholder consultation committee (SCC) is constituted with all creditors, employees and even shareholders/partners during liquidation. The liquidator is required to consult the SCC on key decisions. However, their advice is not binding on him. The Bill also provides that the RP will not be appointed as the

liquidator automatically. The liquidator will be appointed on the proposal of the CoC. CoC may also replace the liquidator.

- **Timelines for liquidation:** The Bill adds that NCLT must pass the order for liquidation within 30 days from the date of the application or intimation. It also specifies that liquidation proceedings must be completed in 180 days, extendable by up to 90 days. Further, voluntary liquidation proceedings must be completed within one year.
- **Security interest and statutory dues:** The Bill clarifies that 'security interest' excludes security interest created by virtue of provisions in law. Further, government dues do not have the status of 'secured creditor'. A security interest is the legal right a creditor has over a debtor's asset(s) that serve as collateral.
- **Introduction of CIIRP:** The Bill introduces an alternative process called Creditor-initiated Insolvency Resolution Process (CIIRP). CIIRP is different from CIRP in the following manner: (i) it may be initiated only by specified financial creditors, (ii) it is to be initiated out-of-court, with at least 51% (by value of debt) of the notified financial creditors agreeing to the initiation, and (iii) during CIIRP, management of the company will remain with the debtor, subject to oversight by the RP. CIIRP must be concluded within 150 days, extendable by up to 45 days. CoC may decide at any time to convert the CIIRP into CIRP and seek an order from the NCLT for that conversion.
- **Cross-border insolvency:** The Bill contains an enabling provision empowering the central government to prescribe rules for administering and conducting cross-border insolvency proceedings.
- **Group insolvency:** The Bill empowers the central government to formulate rules for conducting group insolvency proceedings. The rules may provide for a common bench for such debtors, coordination between the proceedings, common insolvency professionals, and a committee of CoCs of the debtors.
- **Assets of a guarantor:** The Bill enables a creditor, who holds a security interest over a guarantor's asset and has taken possession of that asset under any law, to transfer that asset as part of the corporate debtor's CIRP. This can only be done with the approval of the CoC. Where the guarantor is also undergoing insolvency or bankruptcy proceedings, approval from the guarantor's creditors would also be required.

PART B: KEY ISSUES AND ANALYSIS

Recasting of liquidation proceedings

Bill: Clauses 13, 21, 22, 23, 25

Code: Sections 21, 34, 35(1)(a), 35(2), 38-42

The Bill empowers the CoC to supervise the conduct of the liquidation process. It provides that the liquidator shall be appointed on the proposal of the CoC. The CoC, with the approval of 66% of its members, may also replace the liquidator during liquidation. The Bill also omits the requirement for the liquidator to consolidate, verify, admit or reject claims and determine the value of admitted claims.

Extension of the role of the CoC from CIRP to liquidation

The main objective of the Code is insolvency resolution of corporate debtors in a time-bound manner. The priority is to revive the corporate debtor as a going concern, with liquidation treated as a last resort.[2] Time limits are specified to prevent depletion of value of the assets. Towards this objective, the Code first provides for resolution to be supervised by the CoC under CIRP. If a resolution is not achieved within the specified time, the company goes into liquidation. A liquidator is appointed by NCLT. The liquidator has quasi-judicial powers to decide claims and distribute the assets. Creditors have no role in either appointing the liquidator or in supervising his decisions.

The Code has two stages at which control over the corporate debtor changes hands. Upon commencement of CIRP, the management (equity holders) hand over charge to the RP (who is an agent of the creditors). If the CoC is not able to approve a resolution plan within the stipulated time, control of the company is handed over to a quasi-judicial person (liquidator) who is appointed by NCLT. The Bill amends the second stage by extending the role of the CoC into the liquidation process as well. Further, the CoC shall now have the power to appoint and remove the liquidator. The CoC will also exercise supervision over the liquidator.

In other jurisdictions too, creditors exercise supervisory or advisory role during liquidation. Creditors in the UK are permitted to appoint a liquidation committee which sanctions certain powers of the liquidator.[3,4] In Hong Kong, a committee of inspection comprising certain creditors and contributories supervises the liquidator and approves certain powers of the liquidator.[5] In the US, Chapter 7 (Liquidation) allows for the constitution of an advisory committee comprised of unsecured creditors.[6] Under the German Insolvency Code, the creditors' committee, comprising creditors and employee representative, nominates a preliminary insolvency liquidator.[7] The committee also supervises the insolvency liquidator and provides consent for important legal actions such as sale of the debtor's assets, borrowings, and lawsuits of significant amounts.

Removal of quasi-judicial powers of the liquidator

The stated objective for removing the liquidator's powers with respect to claims is to avoid duplication of activities between CIRP and liquidation. However, the role of the RP and liquidator in relation to claims is not identical. Adjudicatory powers of the liquidator provide finality to claims, which may be necessary because liquidation entails extinguishment of the rights of all parties once assets are distributed.

Under the Code, the liquidator is not just a passive administrator but has been given quasi-judicial powers to admit or reject claims and determine the value of admitted claims. By contrast, the RP's role during CIRP is only limited to verifying claims. This distinction was observed by the Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*.[8] Decision making by the RP and liquidator in relation to claims is governed by different considerations. The RP maintains a list of claims to enable invitation of resolution plans. The decision to approve the resolution plan, including the manner of distribution, rests with the CoC. The objective of liquidation is to wind up the company and distribute the proceeds among creditors. The liquidator must ensure that claims are ranked correctly for distribution.

Introduction of CIIRP

Bill: Clause 40

The Bill introduces an alternative process for insolvency resolution among companies called CIIRP. This process may be initiated only by specified financial creditors. CIIRP involves out-of-court-commencement of insolvency proceedings. To initiate the process, at least 51% of notified financial creditors must agree (by value of debt). During CIIRP, management of the company will remain with the debtor, subject to oversight by the RP. CIIRP may be converted into CIRP at any time by a decision of the CoC.

CIIRP can only be initiated by select financial institutions, thereby prioritising some over others

CIIRP can only be initiated by financial creditors belonging to such class of financial institutions as may be notified by the central government. Restricting initiation right to financial institutions may ensure that the process is used by creditors having sufficient financial expertise and oversight. However, the rationale for limiting it further to only certain notified classes of such institutions is not clear. This may prioritise some creditors over others. This issue may need to be examined when the related notification is issued.

Other jurisdictions follow broader approaches. In the UK, a company, its directors or secured creditor(s) holding a charge over most or all of the company's assets (Qualifying Floating Charge Holder) may appoint an administrator for stress resolution without court intervention.[9,10] In the US, unsecured creditors meeting certain criteria can file Chapter 11 (Reorganization) petitions.[11]

Default as the trigger for initiation may go against the objective of value maximisation

Under the Code, insolvency proceedings may be triggered on default. CIIRP also gets initiated only upon occurrence of default. Default is defined as non-payment of debt (financial or operational) once it becomes due. A key objective of insolvency proceedings is to achieve maximum value for assets. However, once default occurs, value destruction has usually begun, resulting in diminished recoveries.

In some jurisdictions, insolvency or restructuring can be triggered before the company becomes insolvent. In the UK, a Qualifying Floating Charge Holder has the right to appoint an administrator 'out-of-court' provided a few conditions are met.[12] One of the conditions is breach of security terms such as failure to maintain certain solvency ratios or insurance as per loan agreements. This may capture companies at an early stage of stress, before they are technically insolvent. Germany's preventive restructuring mechanism gets triggered when a company is likely to become unable to pay its debts within 24 months.[13,14]

Risk of other creditors triggering CIRP before CIIRP

The Bill provides that CIIRP may be initiated only by a notified financial creditor, and only if default has occurred on the debt owed to such creditor. The Bill specifies that once CIRP has commenced for a company and is ongoing, CIIRP cannot be initiated against it. A company may stop making payments such as rent, taxes, salaries, and other payables, before it defaults on the debt owed to the notified financial creditor(s). In such cases, operational creditors may trigger CIRP before a financial creditor gets the opportunity to trigger CIIRP.

As of June 30, 2025, 8,487 CIRPs had been initiated.[15] 47% of these were filed by financial creditors and another 47% were filed by operational creditors. Under the Code, all creditors (financial or operational) trigger the same process, i.e., CIRP. In contrast, CIIRP is a distinct process available to a class of financial institutions.

Narrower withdrawal window may restrict out-of-court settlements

Bill: Clause 8

Code: Section 12A

The Bill allows withdrawal of insolvency application only after the CoC has been constituted and before the first invitation for resolution plans is issued. The consent of 90% of the CoC will be required for such withdrawals. Narrowing the window for withdrawal may work against the objective of value maximisation.

The Code states that an insolvency application may be withdrawn with the approval of 90% of the CoC. CIRP Regulations issued by IBBI permit withdrawal of insolvency application: (a) by the applicant before the constitution of the CoC, or (b) after the constitution of the CoC, with the approval of 90% of its members.[16] If a withdrawal is sought after the RP issues the first invitation for resolution plans, the applicant must provide reasons justifying the withdrawal.

In *Swiss Ribbons Pvt. Ltd. v. Union of India,* the Supreme Court (2019) clarified that where the CoC has not yet been constituted, a party can approach the NCLT, which may use its powers under Rule 11 of the NCLT Rules, 2016, to allow or disallow an application for withdrawal.[17,18]

The Bill restricts the scope for early settlements, i.e., before constitution of the CoC. It also restricts withdrawal after the invitation for resolution plan. If 90% of the CoC, exercising its commercial wisdom, favors withdrawing CIRP after invitation of resolution plans, it is not clear why that should not be allowed. The insolvency framework seeks to maximise value from a company's assets. Where such value can be realised through settlement between the parties outside the formal process, there may be limited justification for restricting such settlements. Limiting the scope for out-of-court settlements may also increase costs for debtors and creditors, and overburden the courts. As of December 2024, 20,484 cases were pending before NCLT.[19] These included 8,133 cases under the Companies Act, and 12,351 cases under the IBC. As of June 30, 2025, 1,191 CIRP applications were withdrawn, accounting for 14% of admitted CIRP applications.[20] 70% of these withdrawals were for CIRPs initiated by operational creditors. 78% involved claims below Rs 10 crore, suggesting that withdrawals are more commonly used in cases with smaller amounts.

Lack of a clear framework for cross-border insolvency

Bill: Clause 67

The Bill proposes only an enabling provision empowering the central government to make rules for cross-border insolvency. It provides that the central government may prescribe the manner and conditions for administration and conduct of cross-border insolvency proceedings. It does not lay down a comprehensive framework for cross-border insolvency proceedings. This may amount to excessive delegation.

Under Section 234 of the Code, the central government can enter into a bilateral agreement with another country to enforce the provisions of the Code. No such agreements have been signed till date. The Insolvency Law Committee (2018) had noted that the current provisions under IBC (Section 234) are ad-hoc in nature and susceptible to delays and uncertainty for creditors, debtors, and the courts.[21] Entering into mutual agreements may lead to prolonged negotiations with each country.[22] The Committee had recommended insertion of a separate Part Z for corporate debtors in the Code. It had drafted this section on the basis of the UNCITRAL Model Law on cross-border insolvency with certain modifications. The draft provided a framework covering scope, applicability, recognition of foreign proceedings, access to domestic courts, relief measures under the Code, and implementation and oversight. The UNCITRAL Model Law has been adopted in 60 countries.[23]

The Bill delegates these powers to subordinate legislation by providing rule-making power to central government, without any clear guiding principles in the Code. Further, it states that the Rules may provide for any modifications, exceptions, or adaptations to any provisions under the Code or the Companies Act, 2013 for the implementation of the Act and the Rules. This may not be in line with Supreme Court rulings. The Supreme Court (1973) has held that the essential legislative functions which include the determination of the legislative policy and its formulation as a rule of conduct cannot be delegated by the Legislature. The Court observed that the Legislature may go beyond the permissible limits of delegation if: (i) it does not lay down any policy at all, (ii) it declares its policy in vague and general terms, (iii) it does not set down any standard for the guidance of the Executive, and (iv) if it confers arbitrary power on the Executive to change or modify the policy laid down by it without reserving the control over subordinate legislation for itself.[24]

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