

## The IBC (Amendment) Ordinance, 2018

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 has amended the IBC, 2016 which provides for insolvency resolution of corporate persons in a time bound manner for maximization of value of assets of such persons, and whereas, a need has been felt, inter alia, to balance the interests of various stakeholders in the code, especially interest of home buyers and MSMEs, promoting resolution over liquidation of corporate debtor by lowering the voting threshold of committee of creditors and streamlining provisions relating to eligibility of resolution applicants.

The Hon'ble President has promulgated the IBC (Amendment) Ordinance, 2018. Under this code, in section 5 of the principal Act,

- (i) in clause (8), in sub clause (f), the following explanation shall be inserted namely
  - a) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
  - b) the expression, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

Hence, the new ordinance equates an "allottee" of a "real estate project" to be a person having a commercial effect of borrowing. He is now treated as financial creditor. He can initiate a corporate insolvency for a resolution against the errant developer. He acquires the right to be on the committee of creditors. He gets voting right and can influence the resolution process. In the unlikely eventuality

of liquidation, he stands at par with other financial creditors.

**Please find enclosed detailed The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 for your kind reference.**

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**Warm regards,**

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