

OVERVIEW OF EMERGING LAWS

PROHIBITION OF BENAMI
PROPERTIES TRANSACTIONS ACT

TAXATION LAWS (2nd
AMENDMENT) ACT 2016

INSOLVENCY & BANRUPTCY
CODE

PREVENTION OF MONEY
LAUNDERING ACT



LUNAWAT & CO.

Chartered Accountants

21st January 2017, Kota

CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA

AGENDA - OVERVIEW

- ✘ **Prevention of Money Laundering Act, 2002**
- ✘ **Insolvency and Bankruptcy Code, 2016**
- ✘ **Prohibition of Benami Properties Transactions Act, 1988**
- ✘ **Taxation Laws (2nd Amendment) Act, 2016**



THE PREVENTION OF MONEY LAUNDERING ACT, 2002



THE NEED

- × **Part of International/National commitment to fight terrorism, Organized Crime Syndicates, major economic offenders by targeting their financial resources.**
- × **PMLA, 2002 fills the gap in the Criminal Justice System where attachment of proceeds of crimes was very difficult in the existing Major Criminal Acts.**

PREAMBLE

The Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration;

MONEY LAUNDERING.....

- × Money Laundering is the process of conversion of proceeds of crime, the ‘dirty money’, to make it appear as ‘legitimate’ money
- × In PMLA, 2002, money laundering has been defined as “any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”

BASIC

**PROCESS OF MAKING
ILLEGALLY-GAINED PROCEEDS
("DIRTY MONEY")
APPEAR LEGAL
("CLEAN").**

THE LAW ... AMENDMENTS

- × **The Act after being passed by both the houses received the assent of the president on 17th January, 2003.**
- × **The Prevention of Money Laundering Act, 2002 came into force with effect from 1 st July, 2005.**
- × **The Act was amended by Prevention of Money Laundering (Amendment) Act 2009 w.e.f. 1.06.2009.**
- × **The Act was further amended by the Prevention of Money-Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.**

MONEY LAUNDERING CYCLE

Predicate Crimes

- Corruption and Bribery
- Fraud
- Organized crime
- Drug and human trafficking
- Environmental crime
- Terrorism



Placement

- Initial introduction of criminal proceeds into the stream of commerce
- Most vulnerable stage of money laundering process



Layering

- Involves distancing the money from its criminal source:
 - movements of money into different accounts
 - movements of money to different countries
- Increasingly difficult to detect



Integration

- The last stage in the laundering process.
- Occurs when the laundered proceeds are distributed back to the criminal.
- Creates appearance of legitimate wealth.

PMLA ADMINISTRATION

- ✘ **The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002.**
- ✘ **Financial Intelligence Unit - India (FIU - IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.**

INVESTIGATION

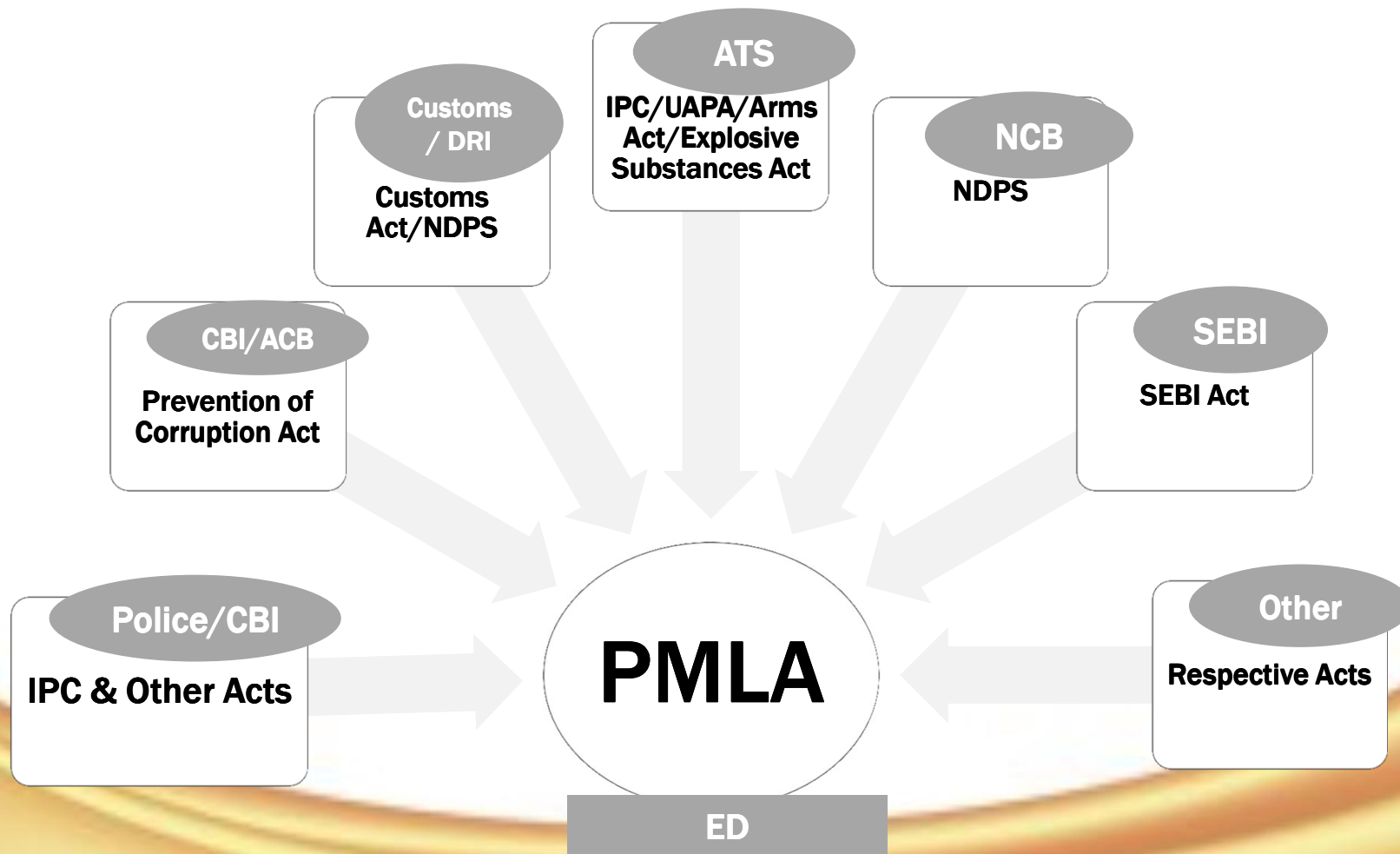
- × **Enforcement Directorate to Investigate offences of money laundering under PMLA**
- × **It to take actions of attachment and confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering.**
- × **There are 156 offences under 28 statutes which are Scheduled Offences under PMLA.**

SCHEDULED OFFENCES

156 OFFENCES UNDER 28 CRIMINAL ACTS

- Indian Penal Code (IPC)
- Narcotic Drugs And Psychotropic Substances Act (NDPS)
- Unlawful Activities (Prevention) Act (UAPA)
- Explosive Substances Act
- Arms Act
- Wild life Protection Act
- Immoral Traffic Act
- **Prevention of Corruption Act**
- The Explosive Act
- **SEBI Act**
- **Customs Act**
- Bonded Labour System (Abolition) Act
- Child Labour (Prohibition and regulation) Act
- Trans Plantation of Human Organ Act
- The Juvenile Justice Act
- The Emigration Act
- The Passports Act
- The Foreigners Act
- **The Copyright Act**
- **The Trade Marks Act**
- The Information Technology Act
- The Biological Diversity Act
- The Protection of Plant Varieties And Farmers Right Act
- The Environmental Protection Act
- The Water (Prevention and Control of Pollution) Act
- The Air (Prevention and Control of Pollution) Act

A MULTI-AGENCY PERSPECTIVE



LEGAL OBLIGATION TOWARDS FIU

PMLA impose obligations on following Reporting Entities:

- × **Banking companies**
- × **Financial institutions**
- × **Intermediaries of the securities market**
- × **Persons carrying on designated business or profession**

to

- × **maintain records**
- × **furnish information**
- × **verify identity of clients**
- × **Identify beneficial owners**

Penalty for non-maintenance – 10 K to 1 Lakh

Section 12

DESIGNATED BUSINESS OR PROFESSION

- × **A person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;**
- × **A Registrar or Sub-Registrar appointed u/s 6 of Registration Act, 1908 as may be notified by CG**
- × **Real estate agent, as may be notified by CG;**
- × **Dealer in precious metals, precious stones and other high value goods, as may be notified by CG;**
- × **Person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by CG; or**
- × **Person carrying on such other activities as CG may, by notification, so designate, from time-to-time**

THE OFFENCE

If any person directly or indirectly

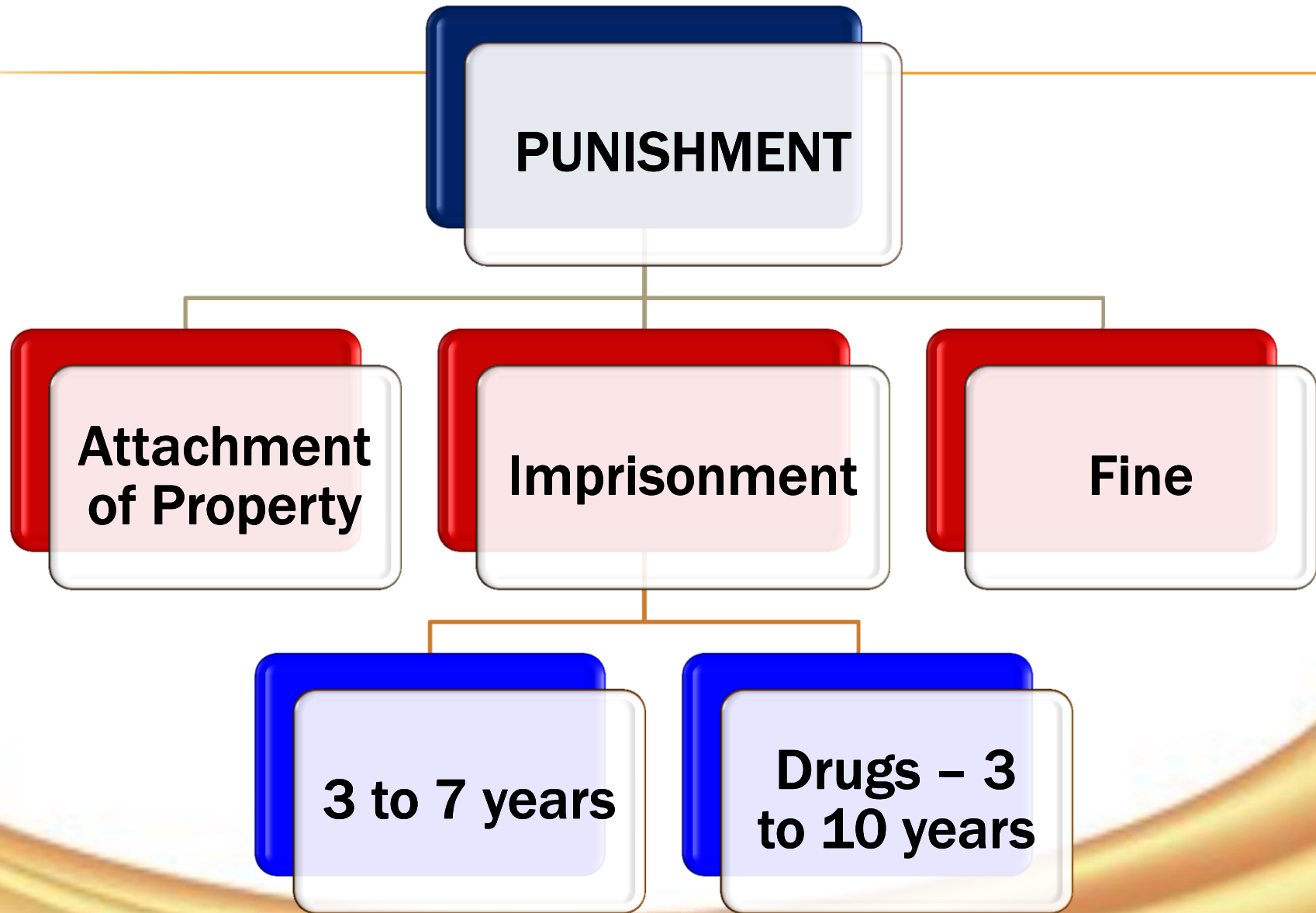
- × attempts to indulge or
- × knowingly assists or
- × knowingly is a party or
- × is actually involved

+ in any activity or process connected with proceeds of crime including its

- × Concealment; or
- × Possession; or
- × Acquisition; or
- × Use

AND

+ Projecting or claiming it as untainted property



ROLE OF CHARTERED ACCOUNTANTS

- × **As consultant/advisor.**
- × **As Auditor**
- × **Representing client before authorities.**



INSOLVENCY AND BANKRUPTCY CODE 2016



EARLIER FRAMEWORK

- × **Companies Act, 1956 / 2013**
- × **Sick Industrial Companies (Spl. Provisions) Act, 1985**
- × **Recovery of Debts Due to Banks and Financial Institutions (“RDDBFI”) Act, 1993**
- × **Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest (“SARFAESI”) Act, 2003**
- × **Presidency Towns Insolvency Act, 1909**
- × **Provincial Insolvency Act, 1920**
- × **LLP Act 2008**
- × **Regulations, directions, circulars, rules... of RBI**

PURPOSE FOR NEW FRAMEWORK

- ✘ **Single consolidated framework for insolvency & bankruptcy resolution dealing with body corporates, partnerships & individuals**
- ✘ **Time-bound resolution of process so as to preserve the value of corporate debtor as a going concern and value and /or of the assets forming part of the corporate debtor**
- ✘ **Improve 'Ease of Doing Business' ranking for India**
- ✘ **Stressed assets in the Indian banking system have peaked at over Rs10 lakh crores (15% of gross advances)**

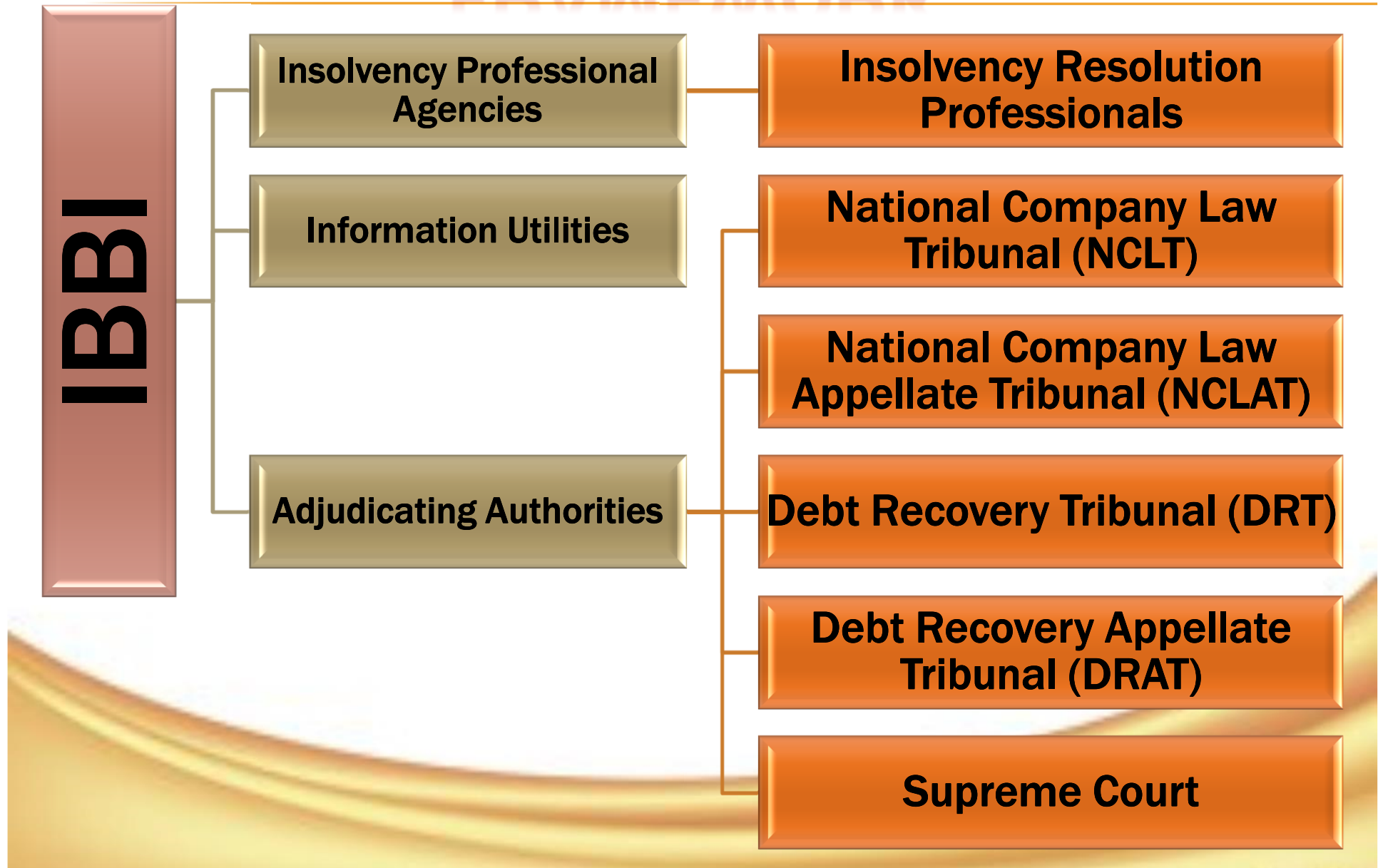
PREAMBLE

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto

LEGISLATION

- ✘ **Insolvency and Bankruptcy Code 2016**
- ✘ **Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.**
- ✘ **IBBI (Liquidation Process) Regulations, 2016.**
- ✘ **IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**
- ✘ **IBBI (Insolvency Professionals) Regulations, 2016**
- ✘ **IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016**
- ✘ **IBBI (Insolvency Professional Agencies) Regulations 2016**
- ✘ **IBBI (Salary, Allowances and other Terms & Conditions of Services of Chairpersons and members) Rules 2016**

FRAMEWORK

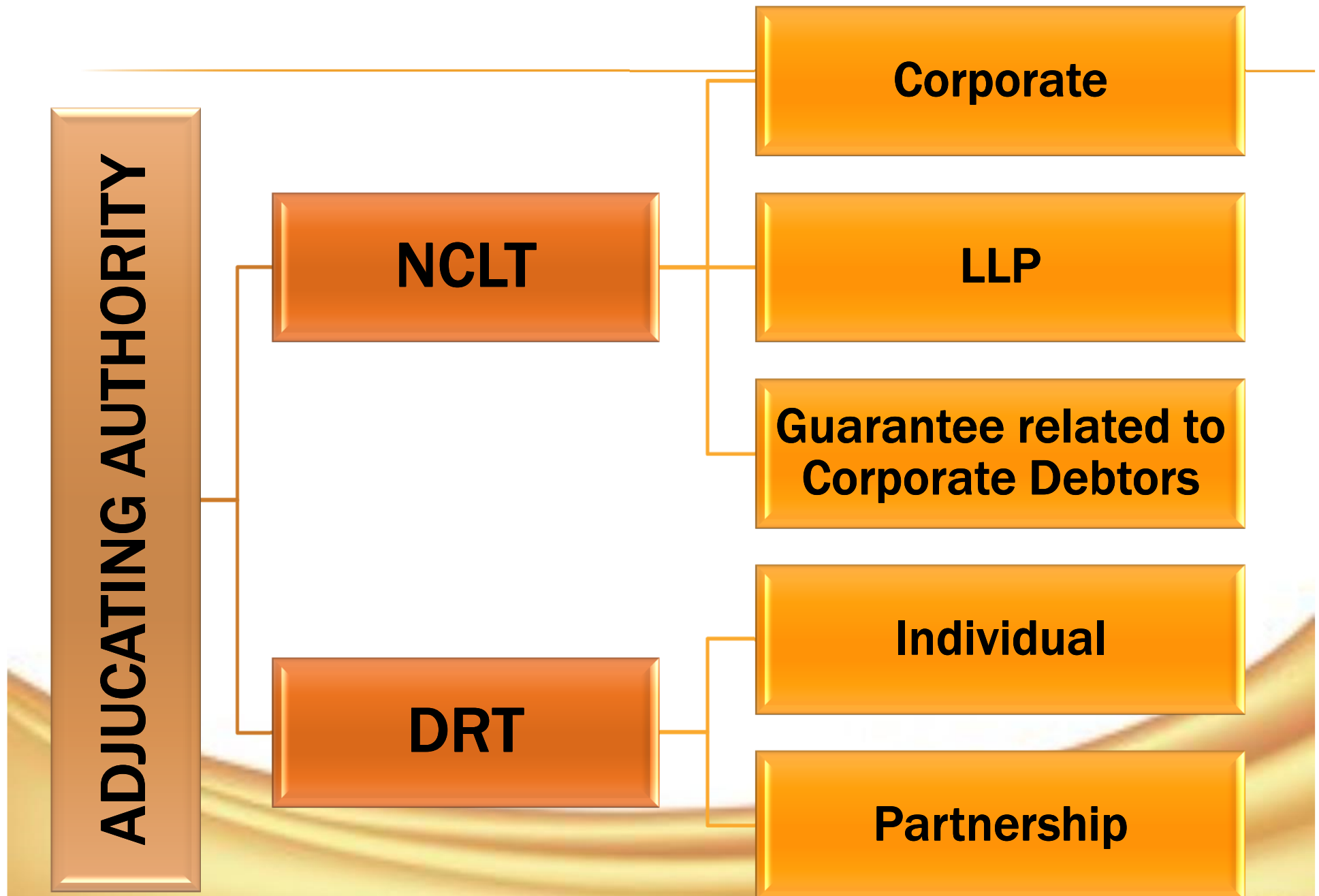


MAJOR CHANGES

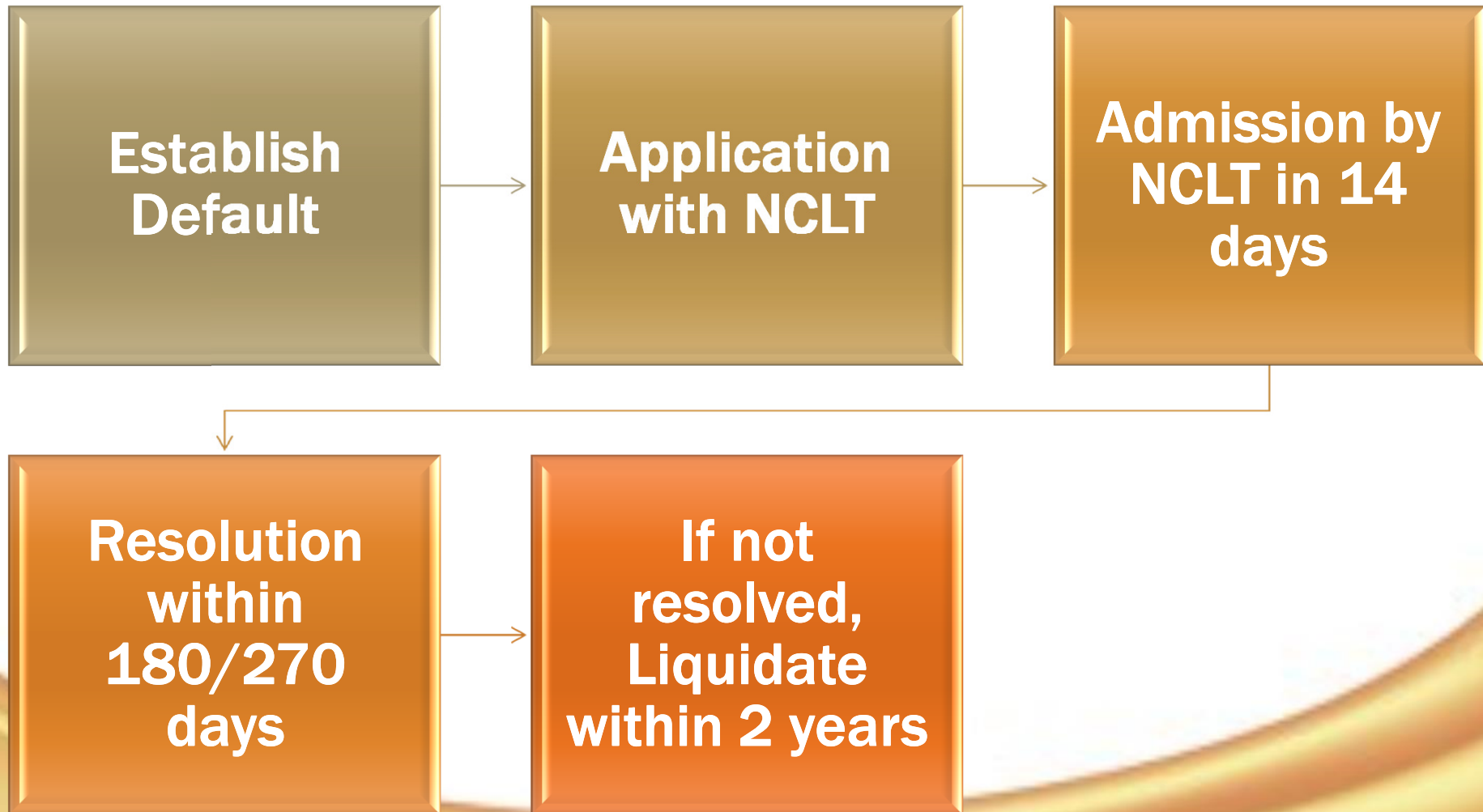
- ✘ **Insolvency test moved from ‘erosion of net worth’ to ‘payment default’**
- ✘ **Single insolvency & bankruptcy framework.**
- ✘ **Time bound resolution process**
- ✘ **Clear and unambiguous process to be followed by all stakeholders.**
- ✘ **Shift of control from shareholders and promoters to creditors**
- ✘ **Provide confidence to lenders of their rights and their enforcement.**

MAJOR CHANGES....

- ✘ **Shift of jurisdiction to NCLT and DRT**
- ✘ **Government dues would rank below to those of secured creditors and unsecured financial creditors**
- ✘ **In case of fraudulent diversion of assets, personal contribution can be sought; imprisonment possible**
- ✘ **Insolvency Professional (IP) to take over the management and operations of the borrower during the CIRP**



CORPORATE INSOLVENCY – BASIC PROCESS



CORPORATE INSOLVENCY



DEBT

FINANCIAL

- Money borrowed agnst Intt.
- Term Loans, working Capital Limits
- Bank guarantees, LC
- Lease / HP agreements
- Receivables sold or discounted
- Bonds, Notes, Deb..

OPERATIONAL

- Dues against supply of goods
- Dues against supply of services including employment
- Dues payable to CG, SG or any local authority

CREDITOR

FINANCIAL

- Any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to

OPERATIONAL

- A person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred

DEFAULT – FINANCIAL CREDITOR

Minimum default
Rs. 1 Lakh of debt
or Interest

On day 1 of
default F. Cr. Can
file application
with NCLT

NCLT to ascertain
existence of
default in 14 Days

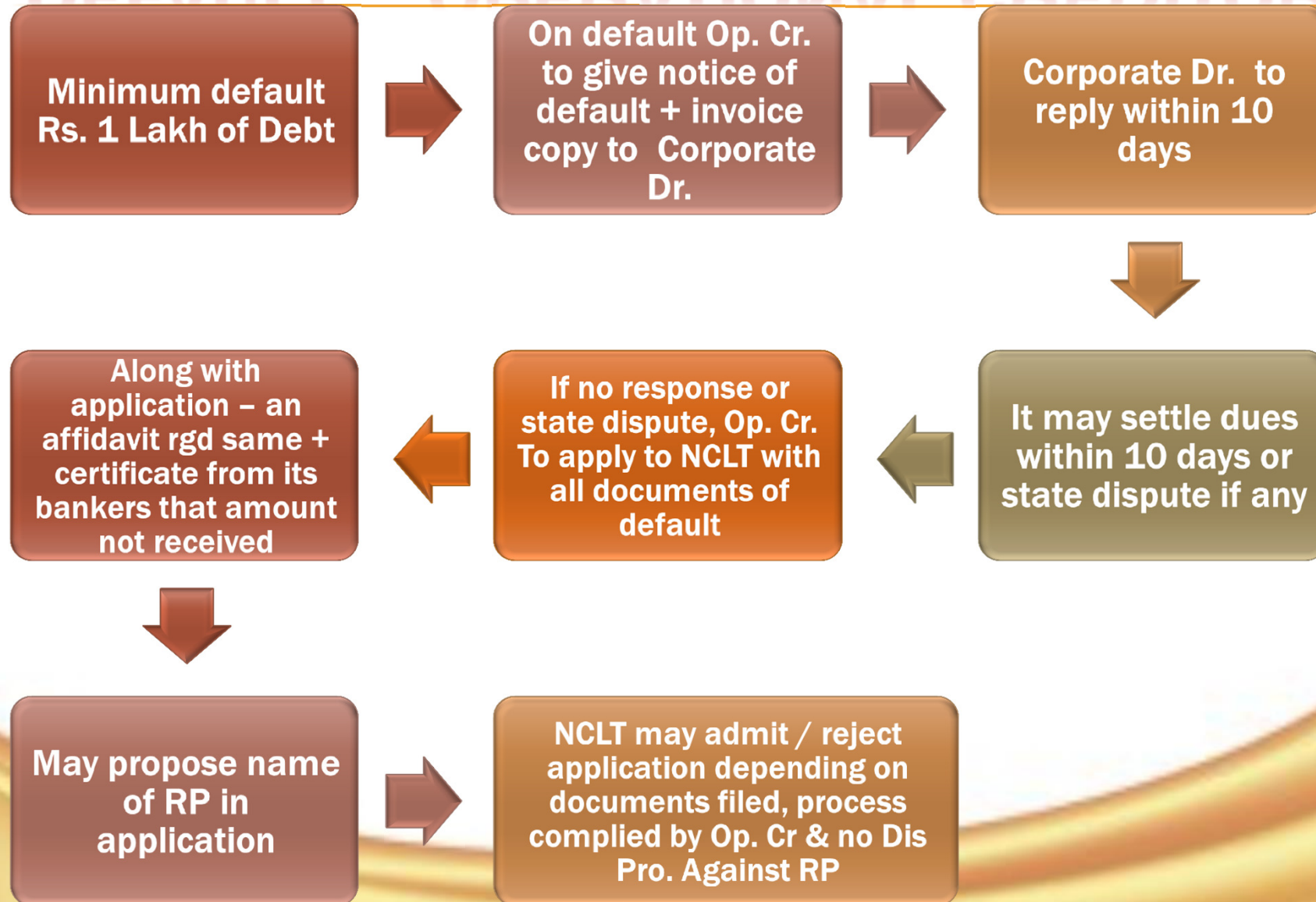
On admission by
NCLT resolution
process
commence – to
communicate
order to Fin. Cr &
Corp. Dr.

Before rejection
shall allow to
rectify mistake
within 7 days

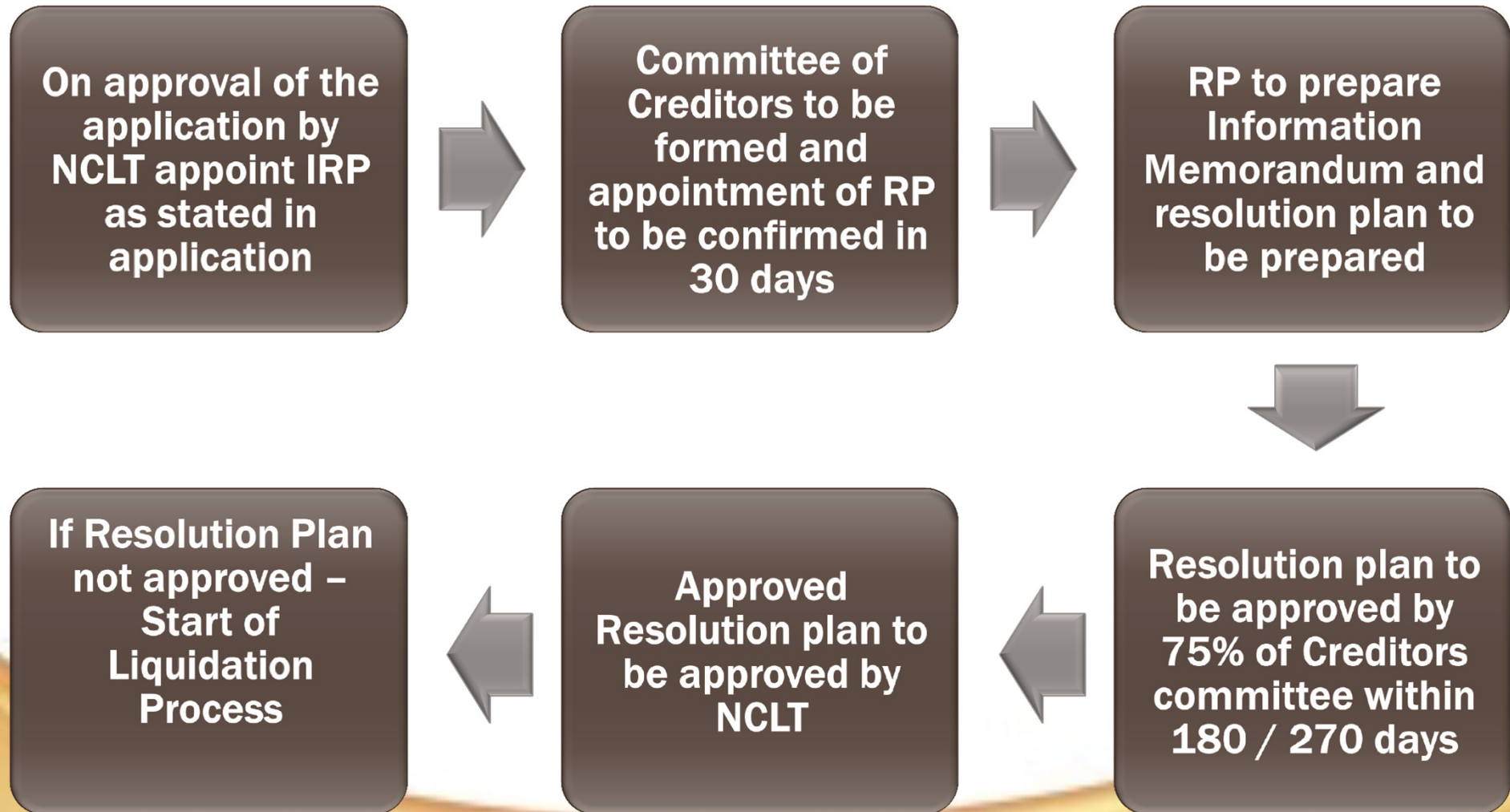
NCLT may admit
application if
satisfied – default
exist & no
Disciplinary
proceeding
against RP



DEFAULT – OPERATIONAL CREDITOR



RESOLUTION PROCESS



WHO CANNOT FILE APPLICATION

- ✘ **A corporate debtor undergoing a corporate insolvency resolution process**
- ✘ **A corporate debtor having completed corporate insolvency resolution process 12 months preceding the date of making of the application**
- ✘ **A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 months before the date of making of an application**
- ✘ **A corporate debtor in respect of whom a liquidation order has been made**

DISPUTE

- ✘ It includes a suit or arbitration proceedings relating to—
 - + the existence of the amount of debt;
 - + the quality of goods or service; or
 - + the breach of a representation or warranty



MORATORIUM

- ✘ **NCLT to declare moratorium period (180 days) on admission of application till approval of RP or liquidation. Extension Exceptional - 90 days.**
- ✘ **Moratorium shall prohibit:**
 - + **Institution /continuation of suits. Execution of judgment, decree , order, etc**
 - + **Transfer of assets**
 - + **Foreclosure, recovery or enforcement under SARFAESI**
 - + **Recovery of assets**
- ✘ **Resolution Plan would have to be prepared and approved by CoC within this period**
- ✘ **Also to make public announcement of initiation**

COMMITTEE OF CREDITORS

- ✘ **IRP after evaluating all claims received against corporate debtor shall constitute CoC consisting of financial creditors only, excluding related parties**
- ✘ **If no Financial Crs– IBB to specify members**
- ✘ **Operational Crs. & Corporate Dr. to be invited in all meetings but would be non- voting members**
- ✘ **Financial creditors shall have voting power in the committee in the ratio of debt owed**
- ✘ **All material decisions taken by RP – raising of interim funding, sale of assets, creation of security interest, settlement of legal disputes, etc to be approved by 75% of financial creditors**

COC IF NO FINANCIAL CREDITORS

- ✘ **If corporate debtor has no financial debt or where all financial creditors are related parties then committee to consist of:**
 - + **18 largest operational creditors by value or less if less Crs**
 - + **1 representative elected by all workmen other than 18 above**
 - + **1 representative elected by all employees other than 18 above**
- ✘ **Voting power in proportion to debt due**
- ✘ **Committee to have same rights, powers, duties & obligations as CoC and its members,**

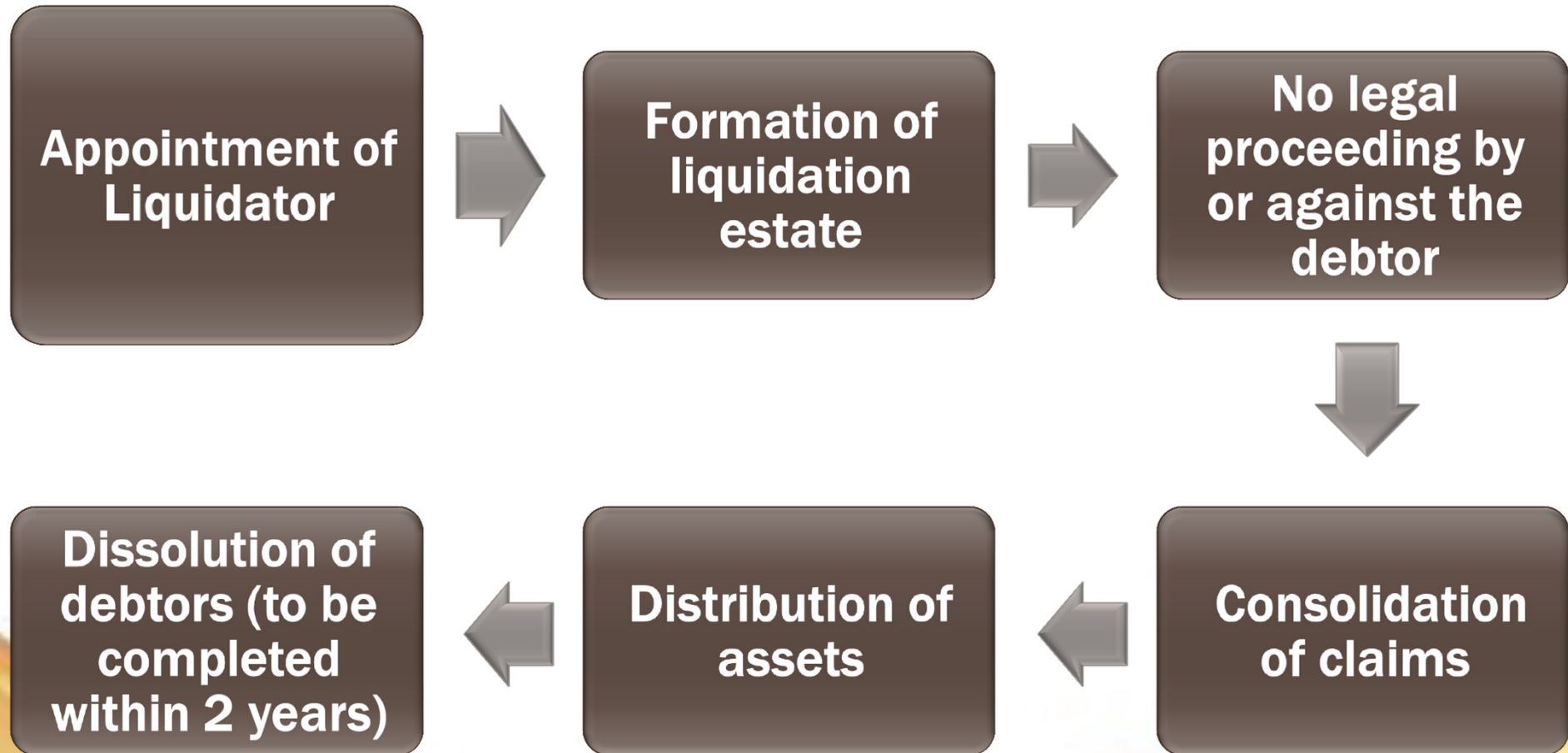
RESOLUTION PLAN

- ✘ **The resolution plan must provide for:**
 - + **Payment of insolvency resolution process costs – IRP & liquidation**
 - + **Repayment of the debts of operational creditors which should not be lesser than amount receivable by them in case of liquidation**
 - + **Management of the affairs of the borrower after the plan is approved**
 - + **Implementation and supervision of the approved plan**
- ✘ **Resolution Plan must comply with applicable laws, regulations & other criteria specified by IBB**

WHEN LIQUIDATION?

- ✘ Resolution plan does not meet minimum required criteria prescribed under Code
- ✘ Plan not approved by CoC within 180/270 days
- ✘ Decided by CoC to liquidate
- ✘ Corporate Dr. fails to adhere to terms of approved Resolution Plan
- ✘ Corporate Dr. may opt for voluntary liquidation by passing SR in a GM & filing affidavit of solvency of Co.

LIQUIDATION STEPS



ORDER OF PRIORITY OF DISTRIBUTION

Insolvency resolution process & liquidation costs

Secured creditors and workmen dues (upto 24 months)

Other employee's salaries/dues (up to 12 months)

Financial debts (unsecured creditors)

Government dues (up to 2 years) & unpaid secured Creditors

Any remaining debts and dues

Preference Shareholders, if any

Equity Shareholders / Partners

IRP

✘ Should have practical knowledge of:

- + **Company Law / LLP**
- + **Banking / Finance**
- + **Cash Flow Management**
- + **Insolvency Law**
- + **Stake Holder management**
- + **Negotiation Skills**
- + **Taxation**
- + **Valuation / Sale of Assets**
- + **Commercial / business skills**

APPOINTMENT OF IRP

- ✘ **Financial Creditors while filing application to NCLT to propose name of IRP. No disciplinary proceedings should pending against him.**
- ✘ **NCLT to appoint IRP within 14 days of commencement date. His term is for 30 days.**
- ✘ **Operational Creditors may propose IRP. If not NCLT to propose Board. The Board to recommend within 10 days**
- ✘ **On appointment IRP to make public announement**
- ✘ **IRP appointment to be approved by CoC by 75% by value in 1st meeting -within 7 days. Fee to be decided by CoC**
- ✘ **CoC may replace RP with IBB approval after giving cause & needs**

POWERS & ROLE OF RP

- ✘ To have all powers of BOD of Corporate Dr.**
 - + The powers of BOD of the corporate debtor, shall stand suspended and be exercised by the IRP / IP**
 - + The officers and managers of the corporate debtor shall report to the IRP / RP and provide access to such documents and records of the corporate debtor as may be required**
 - + The IRP / IP shall act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents**
 - + RP shall prepare an information memorandum of all information about Corporate Dr.**

POWERS & ROLE OF RP

× Key powers & duties of Resolution professional

- + Form Committee of creditors**
- + Call meeting as he deem fit or has to if 33% voting members makes a request for meeting**
- + Prepare the information memorandum (IM) and invite resolution plans**
- + Investigate the financial affairs of the company**

× IP shall have immunity from criminal prosecution and any other liability for anything done in good faith

POWERS & ROLE OF IRP

× Key powers and duties of Liquidator

- + Receive, verify & value claims of all the creditors, and settle such claims**
- + Take into his custody or control all assets and sell**
- + Carry on the business of the corporate debtor for its beneficial liquidation**
- + Form an estate of assets called liquidation estate**
- + Apply to Adjudicating Authority for avoidance of transactions**
- + Can cancel transactions preferential to certain Crs. if entered within 1 year before commencement of liquidation (2 years in case with related parties)**

QUALIFICATION FOR BEING RP

✘ Limited period

- + An individual who has been “in practice” for 15 years as a CA, CS, CA (Cost), and advocate
- + Valid for a period of 6 months
- + This is notwithstanding Regulation 5 (i.e without exams)


✘ Any person resident of India who:

- + Has passed National insolvency examination; or
- + Has passed the Limited Insolvency Examination, and has 15 years of experience.. or
- + Has passed the Limited Insolvency Examination and has ten 10 years of experience as a member of ICCA; ICSI: ICAI (Cost): and Bar council

RP TO BE INDEPENDENT

- ✘ **He & all partners & directors of the insolvency professional entity of which he is a partner or director, are independent of corporate dr. i.e:**
 - ✘ **is eligible to be appointed as independent director on Board of the corporate debtor;**
 - ✘ **is not a related party of the corporate debtor; or**
 - ✘ **is not an employee or proprietor or a partner:**
 - ✘ **of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or**
 - ✘ **of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 10% or more of the gross turnover of such firm, in the last 3 FYs.**

APPLICATION FOR REGISTRATION AS IP

- ✘ **An individual enrolled with an insolvency professional agency may make application in to Board in form A with application fee of Rs 10,000/-**
 - ✘ **LLP, partnership firm, or a company if majority of the partners of the LLP or partnership firm or a majority of whole time directors of the company are registered as insolvency professionals.**
- 

PROHIBITION OF BENAMI PROPERTIES TRANSACTIONS ACT



BENAMI ??

- × ‘Benami’ transaction means a transaction ‘without name’.
- × In every commercial transaction following essential elements:
 - + ‘**Source**’ of funds from which the asset is purchased / transaction undertaken;
 - + ‘**Title**’ of the asset or person who carry legal title;
 - + Person to whom ‘**benefits**’ arising from such assets/ transaction relate (the beneficiary)

LEGISLATION

- ✘ **The Benami Transactions (Prohibition) Act 1988 – 9 Sections**
- ✘ **The Prohibition of Benami Transactions Act 1988 – by 10th August 2016 amendment – 72 Sections**
- ✘ **Prohibition of Benami Transactions Rules 2016**
- ✘ **The amended Act and Rules effective from 1st November 2016**

BENAMI PROPERTY

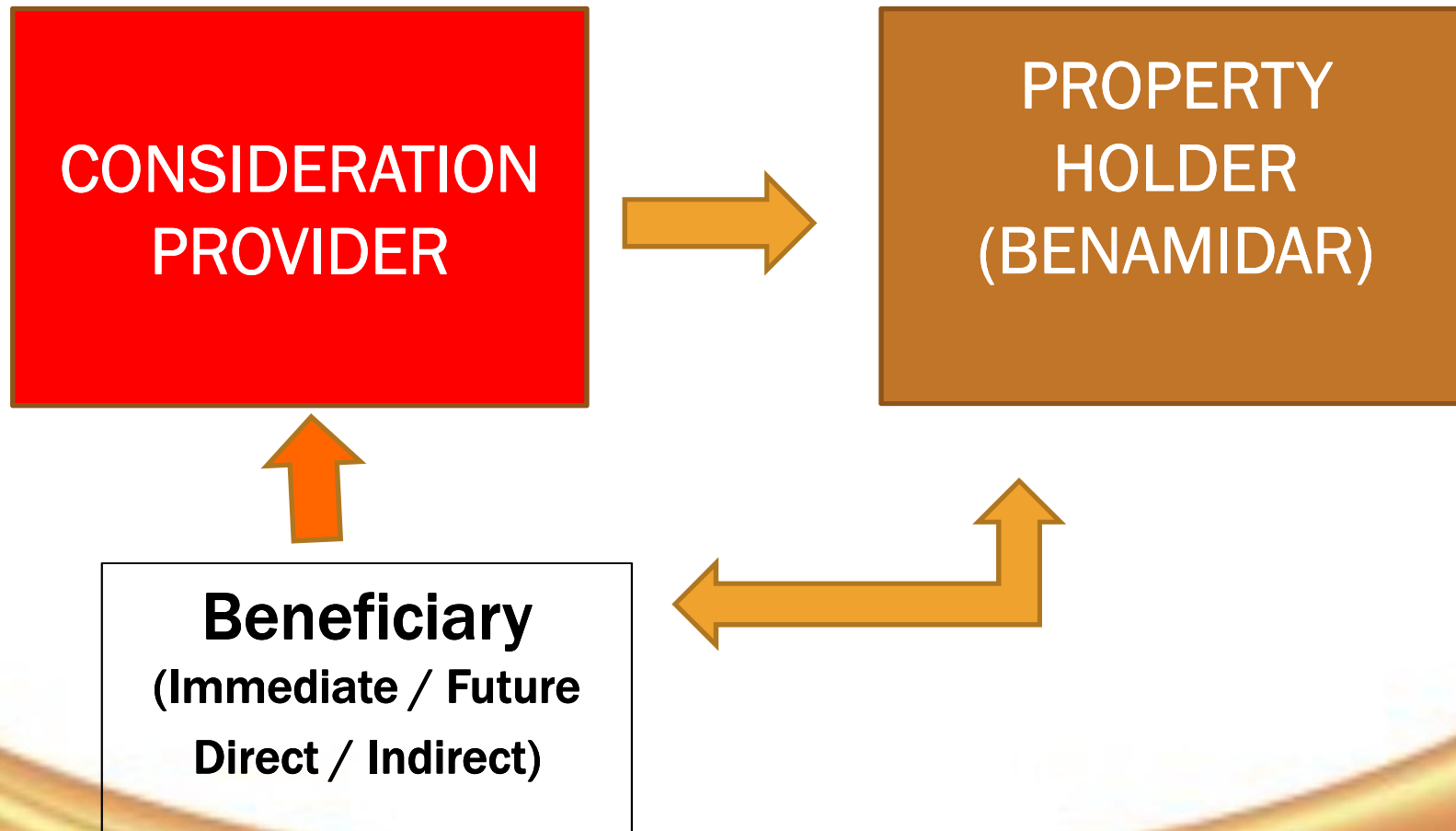
- ✘ **“Benami Property” means**
 - ✘ **Any property which is the subject matter of a benami transaction; and also includes**
 - ✘ **Proceeds from such property**



PROPERTY

- ✘ **Asset of any kind - Movable or Immovable**
- ✘ **Tangible or Intangible,**
- ✘ **Corporeal or Incorporeal**
- ✘ **Any right or interest**
- ✘ **Legal documents or instruments evidencing title to or interest in property**
- ✘ **Where it is capable of conversion into some other form, then in converted form**
- ✘ **Proceeds from the Property**

BENAMI TRANSACTION



BENAMI TRANSACTION / ARRANGEMENT

- ✘ **Carried out or made in a fictitious name**
- ✘ **Where owner of property is:**
 - + **Not aware of, or**
 - + **Denies knowledge of such ownership**
- ✘ **Where person providing consideration is:**
 - + **Not traceable or**
 - + **Is fictitious**

EXCEPTIONS

- ✘ **Karta – on behalf and benefit of HUF and consideration by known sources of HUF**
- ✘ **Fiduciary capacity for the benefit of other person towards whom he stands – trustee, executor, partner, director, depository, participant**

EXCEPTIONS

- ✘ **Spouse or child and consideration by known sources of Individual**
- ✘ **Joint ownership with**
 - + **Brother**
 - + **Sister**
 - + **Lineal Ascendant**
 - + **Lineal Descendant**
 - + **And consideration by known sources of Individual**

EXCEPTIONS

- ✘ **Property to be taken or retained in part performance u/s 53A of Transfer of Property Act, 1882, where:**
 - + **Consideration for such property has been provided by person to whom possession of property has been allowed but person who has granted possession thereof continues to hold ownership of such property;**
 - + **Stamp duty on such transaction or arrangement has been paid; and**
 - + **Contract has been registered**

LETS TEST – FS ITEMS ??

- × Immovable Property?**
- × Vehicles ?**
- × Bank Deposits ?**
- × Mutual Funds ?**
- × Share Capital ?**
- × Loans ?**
- × S. Creditors / S. Debtors ?**
- × Bogus Purchase / Expenses**

IMPLICATION

- ✘ **No suit, claim or action against holder of benami property by real owner**
- ✘ **No defence to be allowed to real owner in such case**
- ✘ **Benami property liable for confiscation**
- ✘ **Benamidar shall not re-transfer benami property to beneficial owner or any other person acting on his behalf. Such transaction – null and void**

AUTHORITIES

**Initiating
Officer**

- **ACIT / DCIT**

**Approving
Authority**

- **JCIT / Addl. CIT**

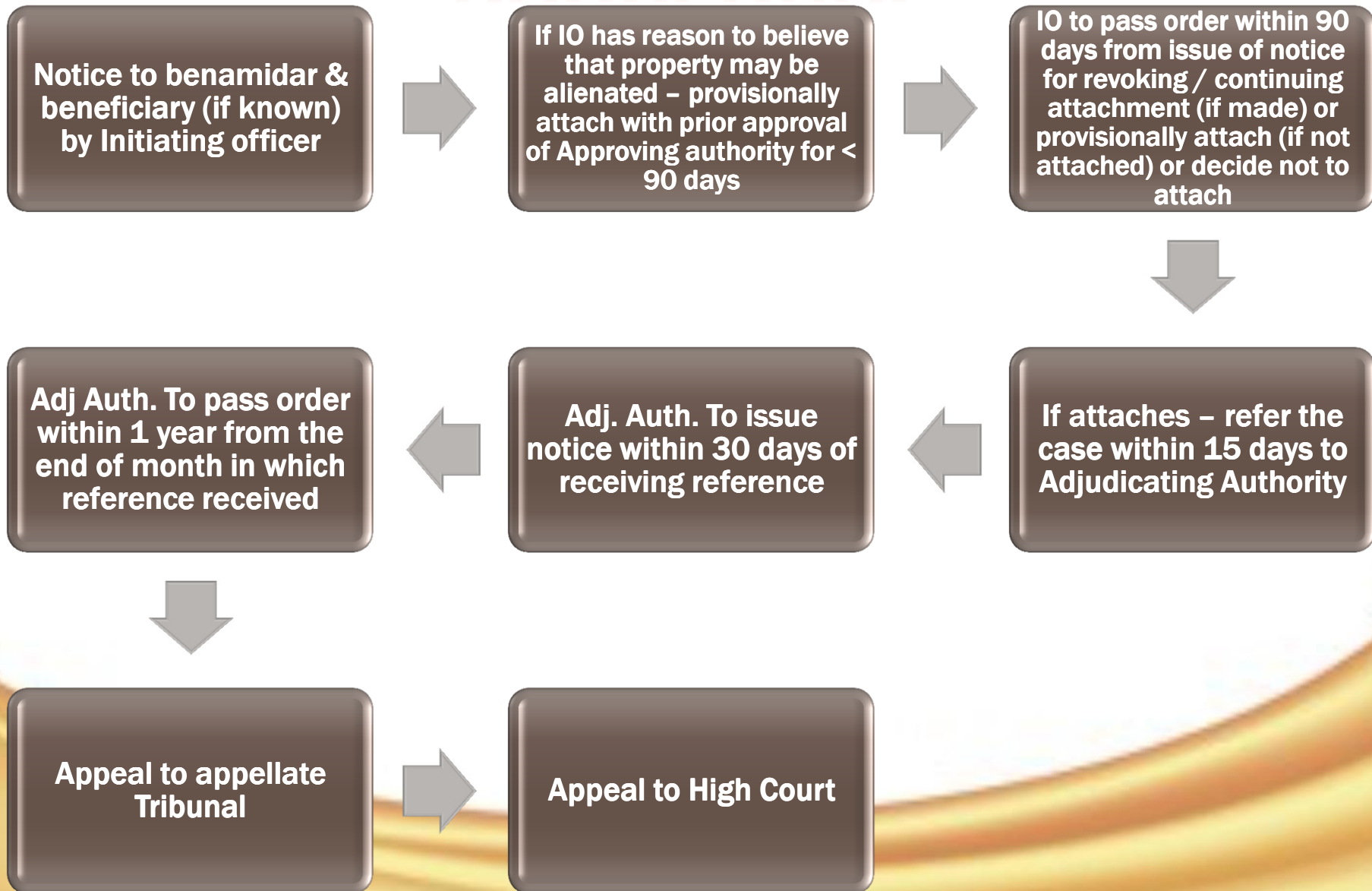
Administrator

- **Tax Recovery Officer**

**Adjudicating
Authority**

- **Enforcement Directorate
PMLA**

PROCEDURE




PUNISHMENT

- ✘ **Old – Imprisonment upto 3 yrs / fine/ both**
- ✘ **New - Beneficial owner, benamidar , any other person who abets or induces any person to enter into benami transaction guilty if enters into benami Transaction in order to:**
 - + **Defeat the provisions of any law**
 - + **Avoid payment of statutory dues**
 - + **Avoid payment to creditors**

PUNISHMENT

- ✘ **If guilty :**
 - + **Imprisonment from 1 Yr to 7 Yrs; and**
 - + **Fine upto 25% of FMV of property**
- ✘ **If furnishes false information / document:**
 - + **Imprisonment from 6 months to 5 Yrs; and**
 - + **Fine upto 10% of FMV of property**
- ✘ **No prosecution without prior CBDT sanction**
- ✘ **FMV = Property would ordinarily fetch on sale in open market on date of transaction.**
Unquoted Shares as per Rules

AUTHORISED REPRESENTATIVES

- × **Employee**
 - × **Officer of bank, where regular account is made**
 - × **Advocate**
 - × **Person who has passed accountancy examination recognised by Board – CA**
 - × **Others as by Board**
- 

ADJUDICATING AUTHORITY

- ✘ **Adjudicating authority & Appellate tribunal referred to in the Prevention of Money Laundering Act, 2002 have been assigned the task under PBPT Act as well.**
- ✘ **Each of the Principal CCIT regions, a joint /additional CIT, an assistant / deputy CIT & a tax recovery official have been notified to perform functions & exercise the powers of the approving authority, initiating official & administrator, respectively.**

CA'S ROLE

Consultant

Represent

DEMONETIZATION

✘ **Consequence of trying to be smart**

**Taxation (2nd Amendment) Act 2016 –
Effective from 15th December 2016**



**Amendment
Act 2016**

**Not
Disclosed**

Disclosed

**Higher Taxes
& Penalties**

**PMGKDS
2016**

Higher Tax

VARIOUS TAXES & PENALTIES

**S.
115BBE**

- Tax if income u/s 68 / 69 / 69A / 69B / 69C / 69 D

S. 270A

- Under reporting - 50%
- Misreporting 200%

271AAC

- Penalty if tax u/s 115BBE

271AAB

- Search 10% - Source etc
- 60% - no source

TAX U/S 115BBE

- ✘ **S. 115BBE substituted**
- ✘ **Applicable if Income assessed u/s 68 / 69 / 69A / 69B / 69C / 69D even if reflected in IT Return**
- ✘ **Tax Rate increased from 30% to 60%.**
- ✘ **Plus surcharge u/Chapter II of Finance Act @ 25% i.e. 75% plus... cesses i.e. 77.25%**
- ✘ **Other cases of share capital, loans, !!!**

115BBE – SECTIONS – NO SOURCE

68

- Cash Credits in books

69

- Unexplained Investments

69A

- Unexplained Money, Jewellery, bullion, etc

69B

- Investments, etc not fully disclosed in books

69C

- Unexplained Expenditure

69D

- Amount borrowed or repaid in Hundi

PENALTY U/S 271AAC

- ✘ **New section introduced**
- ✘ **If tax u/s 115BBE paid within relevant previous year – no penalty otherwise penalty @ 10% of tax**
- ✘ **Procedure u/s 274 / 275 to be followed for imposing penalty**
- ✘ **No penalty u/s 270A**
- ✘ **In case of search penalty u/s 271AAB to be levied not u/s 271AAC**

PENALTY U/S 271AAB

- ✘ **In case of search initiated after the Amendment Act – if income declared in statement u/s 132(4) and tax and interest paid & ITR Filed– penalty increased from 10% to 30% of income**
- ✘ **If source not declared or other conditions not satisfied – Penalty fixed @ 60% of income by Finance Act 2016**

PMGKY 2016 & PMGKDS 2016

- ✘ **Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojna 2016**
- ✘ **Chapter IX A introduced in Finance Act.**
- ✘ **Any person including non resident can declare**
- ✘ **Deposit in scheme named as Pradhan Mantri Garib Kalyan Deposit Scheme 2016**
- ✘ **Tax in PMGKY 2016**
- ✘ **Investment in PMGKDS 2016**
- ✘ **Commences on 17th December 2016**
- ✘ **Ends on 31st March 2017**

PMGKY 2016

- ✘ **To include cash or deposit in account maintained with Bank / PO for any A. Y. commencing on or before 1.4.2017**
- ✘ **Declaration in Form 1**
- ✘ **Amount declared not to be included in total income**
- ✘ **Certificate in Form 2 within 30 days from end of month in which declaration made**
- ✘ **Revision allowed due to omission or wrong statement – within time limit**

PMGKY 2016

- ✘ No deduction of any expenditure or allowance to be allowed against income in respect of which declaration is made.**
- ✘ Tax to be paid @ 30% plus surcharge (PMGKC) @ 33% & penalty @ 10% of income i.e. 49.90% in ITNS 287**
- ✘ To be paid before making declaration**
- ✘ Amount paid is not refundable**

PMGKDS 2016

- ✘ To deposit not less than 25% of undisclosed income in PMGKDS 2016
Lock in period of 4 years**
- ✘ Deposit in multiple of Rs. 100/-**
- ✘ Deposit in single payment with banks in Form II**
- ✘ All Banks to accept deposits**
- ✘ Bond ledger A/c with RBI – Certificate in Form I**

PMGKDS 2016

- ✘ **No interest to be paid**
- ✘ **Applicant to have PAN**
- ✘ **Nomination to be made in Form III**
- ✘ **Nomination varied / cancelled - Form IV**
- ✘ **Transferable to nominee / legal heir in case of death only**
- ✘ **Bonds not Tradable**
- ✘ **On maturity - credit to bank a/c as per details on record – if changed - intimate**

NOT TO APPLY – CASES SPECIFIED UNDER

- ✘ **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.**
- ✘ **Offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code**
- ✘ **Narcotic Drugs and Psychotropic Substances Act**
- ✘ **Cases under Black Money Act**
- ✘ **Persons notified under Special Court (Trial of offences relating to securities) Act 1992**
- ✘ **Unlawful Activities (Prevention) Act, 1967,**
- ✘ **Prevention of Corruption Act, 1988,**
- ✘ **Prohibition of Benami Property Transactions Act, 1988**
- ✘ **Prevention of Money-Laundering Act, 2002**

EVIDENCE


IDS
2016

- Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made u/s 183 shall be admissible in evidence against declarant for purpose of any proceeding relating to imposition of penalty, other than the penalty leviable u/s 185, or for purposes of prosecution under IT Act or the WT Act.

PMGKDS
2016

- Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made u/s 199C(1) shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts mentioned in section 199-0

115BBE VS. PMGKDS

- ✘ **Assumptions:**
 - ✘ **Amount to be disclosed Rs. 10 Lakhs**
 - ✘ **No Source**
 - ✘ **Tax to be paid during the year, hence no penalty**
- 

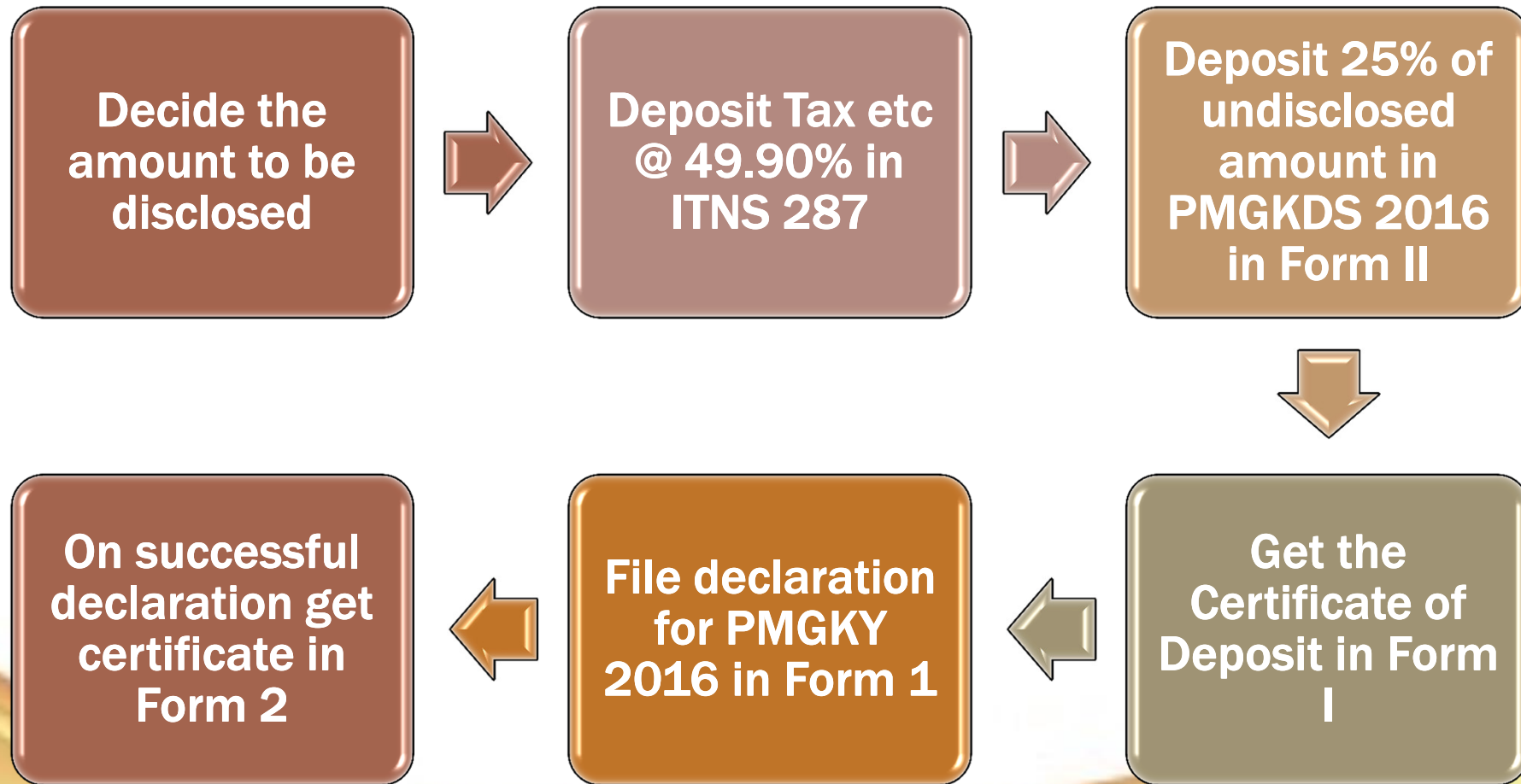
115BBE VS. PMGKDS

	S.115BBE	PMGKDS
Tax to be paid	7.725	4.99
To be deposited in Scheme	Nil	2.50
Immediate available in Hand	2.275	2.51
Intt @ 9% earned for 4 years	0.82	0.90
Money in hand after 4 years	3.095	5.91

TAX NOT PAID – 115BBE APPLICABLE

	143(3) / 147	158BC
Tax to be paid on assessment	7.725	7.725
Penalty u/s 271AAC	0.75	NA
Penalty u/s 271AAB (No source)	NA	6.00
Total (Plus Interest)	8.475	13.725

PMGKY 2016 & PMGKDS 2016



CBDT CLARIFICATIONS

- ✘ **Only cash/deposit covered not other assets.**
- ✘ **CC limits Term loan limits covered.**
- ✘ **Foreign deposits not covered**
- ✘ **Can avail even if notice u/s 142(1)/ 143(2)/148/
153A/ 153C**
- ✘ **Cash seized during search is also covered. Can
pay tax, but cannot be used for PMGKDS**
- ✘ **TDS / TCS cannot be availed**
- ✘ **A gives advance for good, receives back by
cheque as transaction did not materialize. No
penalty u/s 271D/271E**



CA. Pramod Jain

pramodjain@lunawat.com

+91 9811073867



© 2017 CA. Pramod Jain, Lunawat & Co