



# Opportunities under the Insolvency and Bankruptcy Code

# Key areas of discussion

- a. History for professionals
- b. Understanding the New Code
  - Corporate Persons
- c. Emerging opportunity
- d. Interesting considerations
- e. Questions



## Some trivia

Difference between Insolvency & Bankruptcy

Cash test vs. Asset Test

Who does the bankruptcy code protect?

Why is the new code required?

A silhouette of a human evolution sequence, starting from an ape-like creature on the left and progressing through various stages of upright, modern human forms on the right. The silhouettes are set against a dark, textured background.

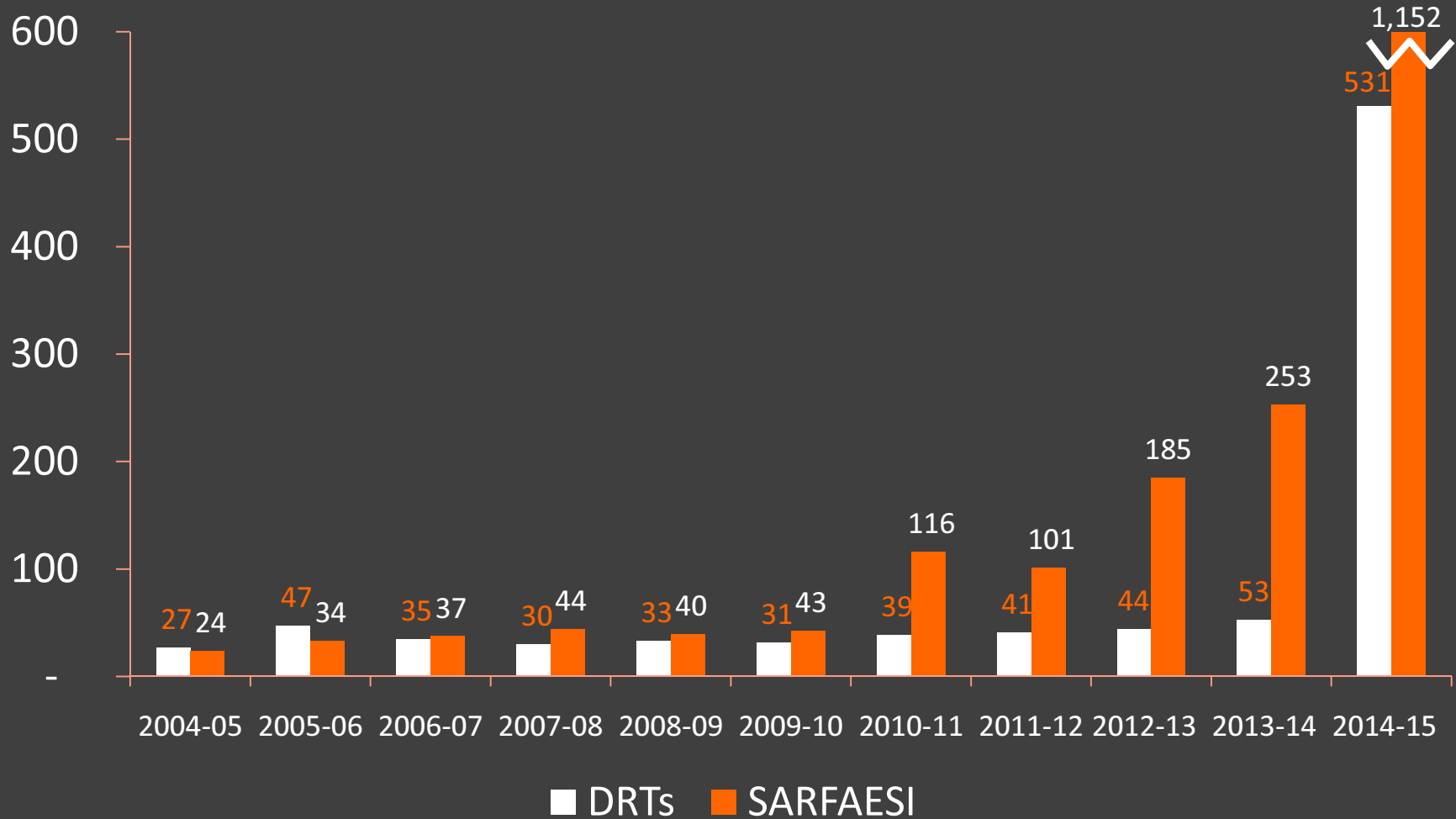
# A Brief History : Evolution of the Bankruptcy Framework

# Measures adopted for NPA management

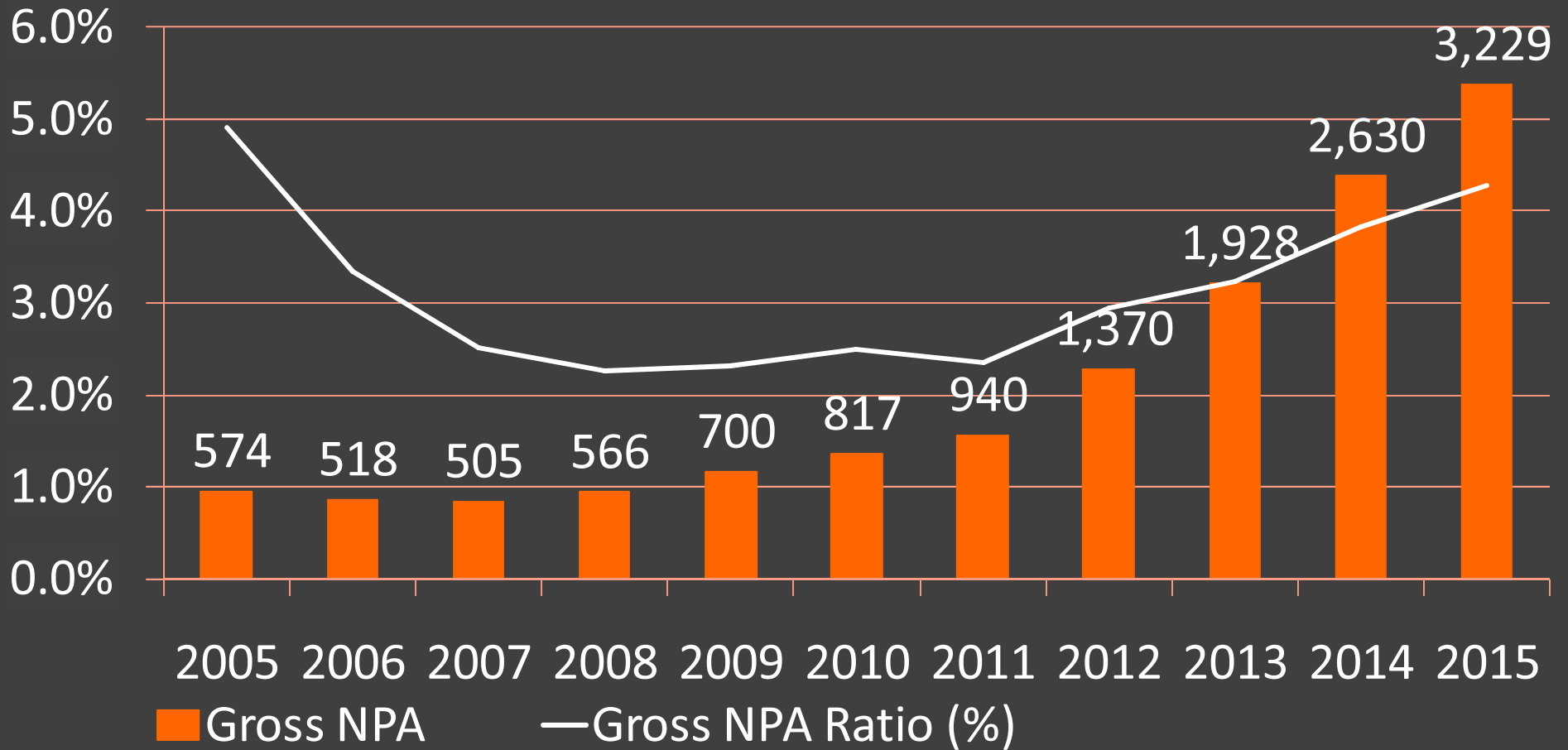
1985	1993	2001	2002	2015	2016
Sick Industrial Companies Act (Tiwari Committee)	Recovery of Debts due to Banks & Financial Institutions Act	Corporate Debt Restructuring Scheme	SARFAESI Act	Strategic Debt Restructuring S4A	Insolvency and Bankruptcy Code  SIC Repeal Act

# How have recent measures performed

## Amount Recovered by SCBs (INR billion)



# Why a new code was required



The growing NPA problem

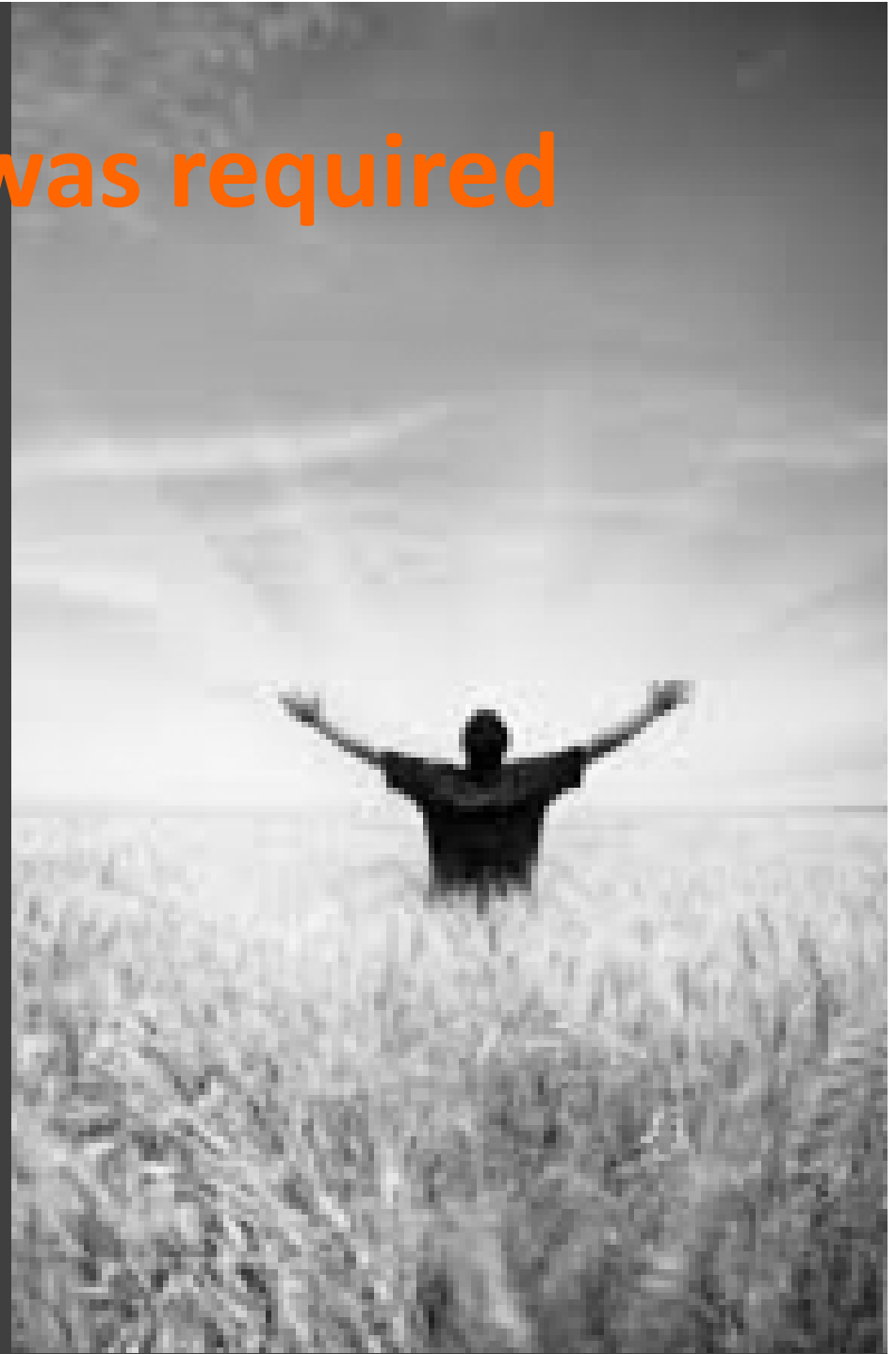
# Why a new code was required

Removal of control of promoters

Time bound

- Defined Time line
- Under Jurisdiction of NCLT and DRT

Access to information





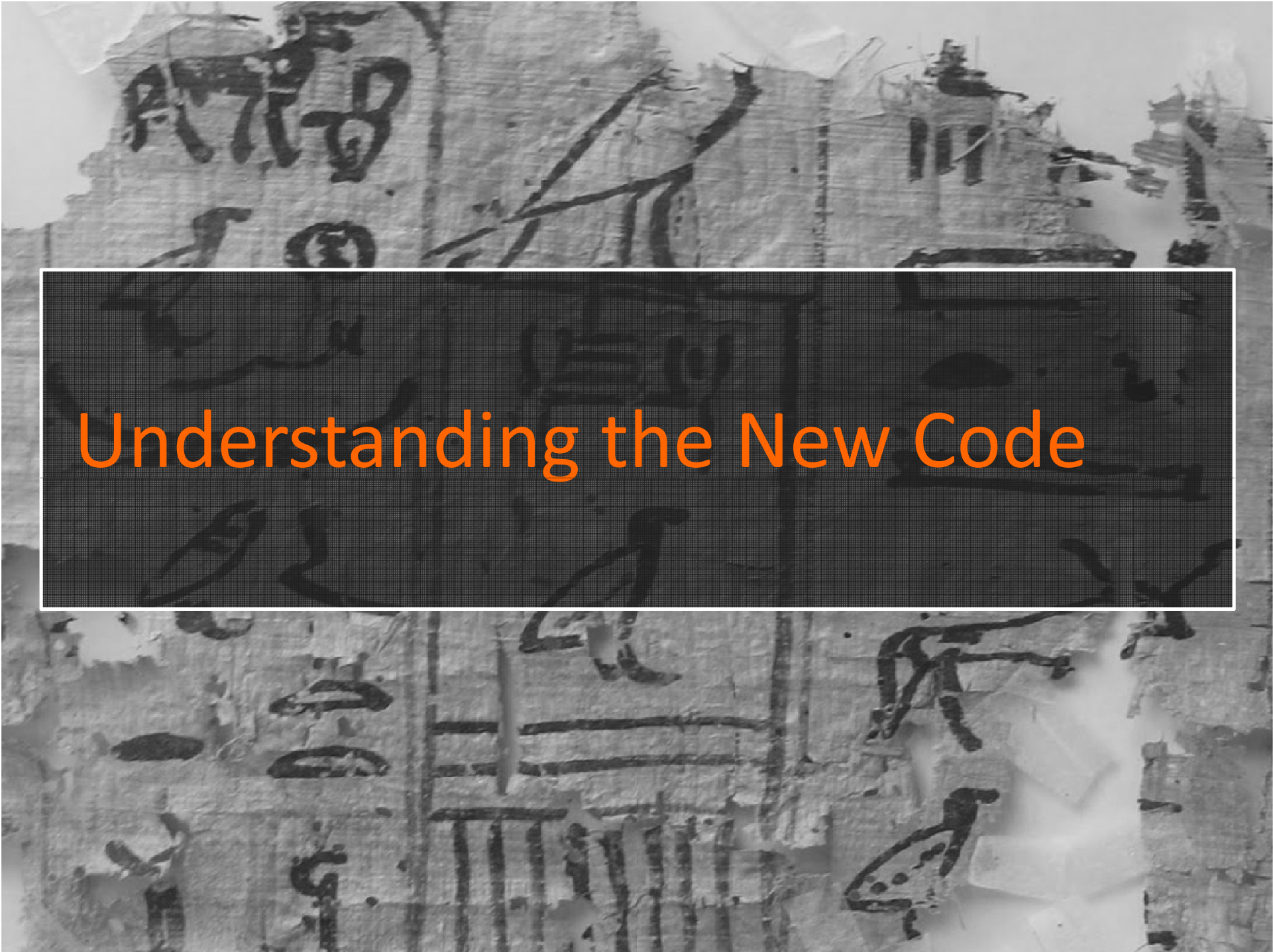
# Why a new code was required

Reduce ambiguity

New waterfall  
mechanism on  
liquidation

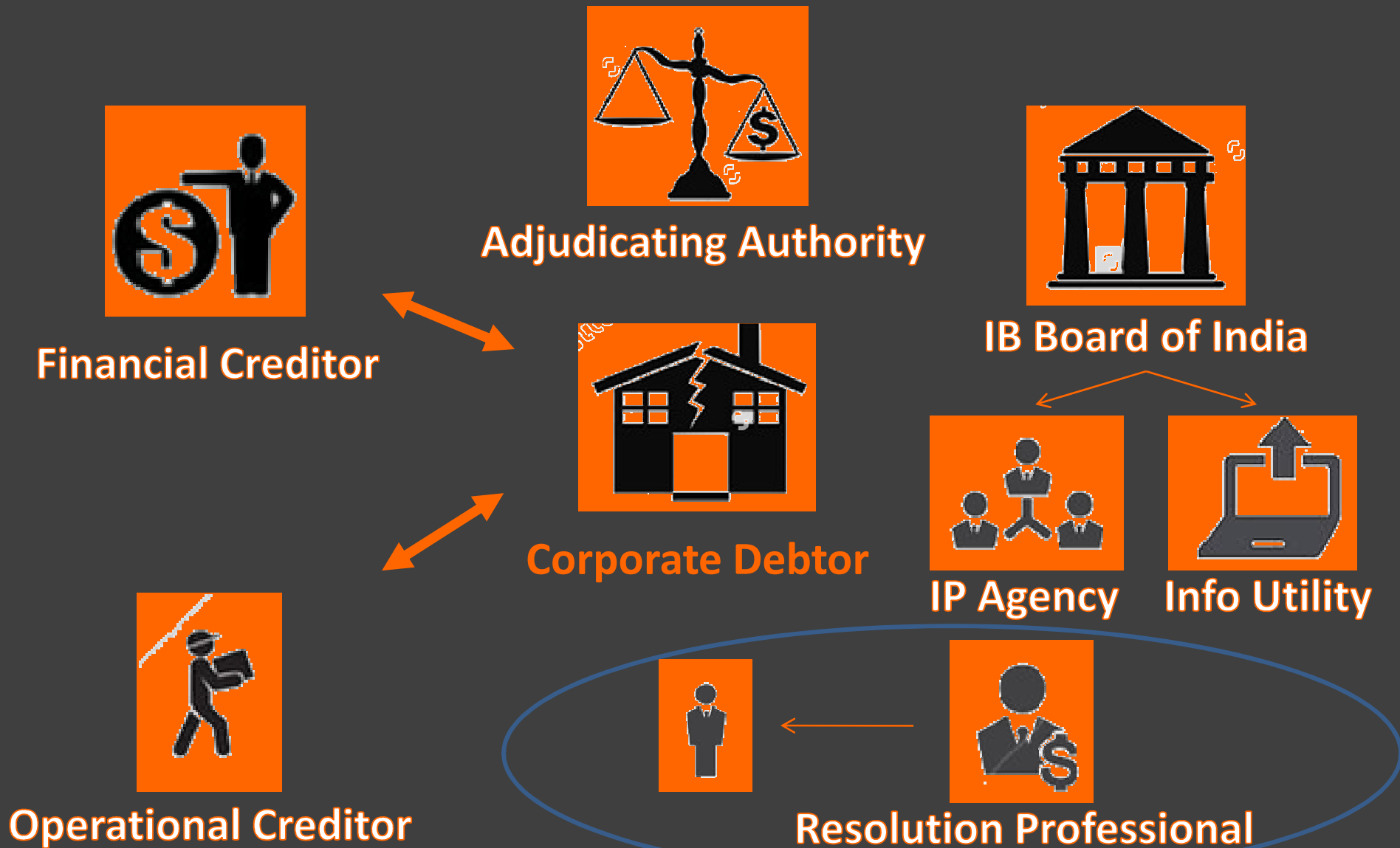
Promote  
specialization



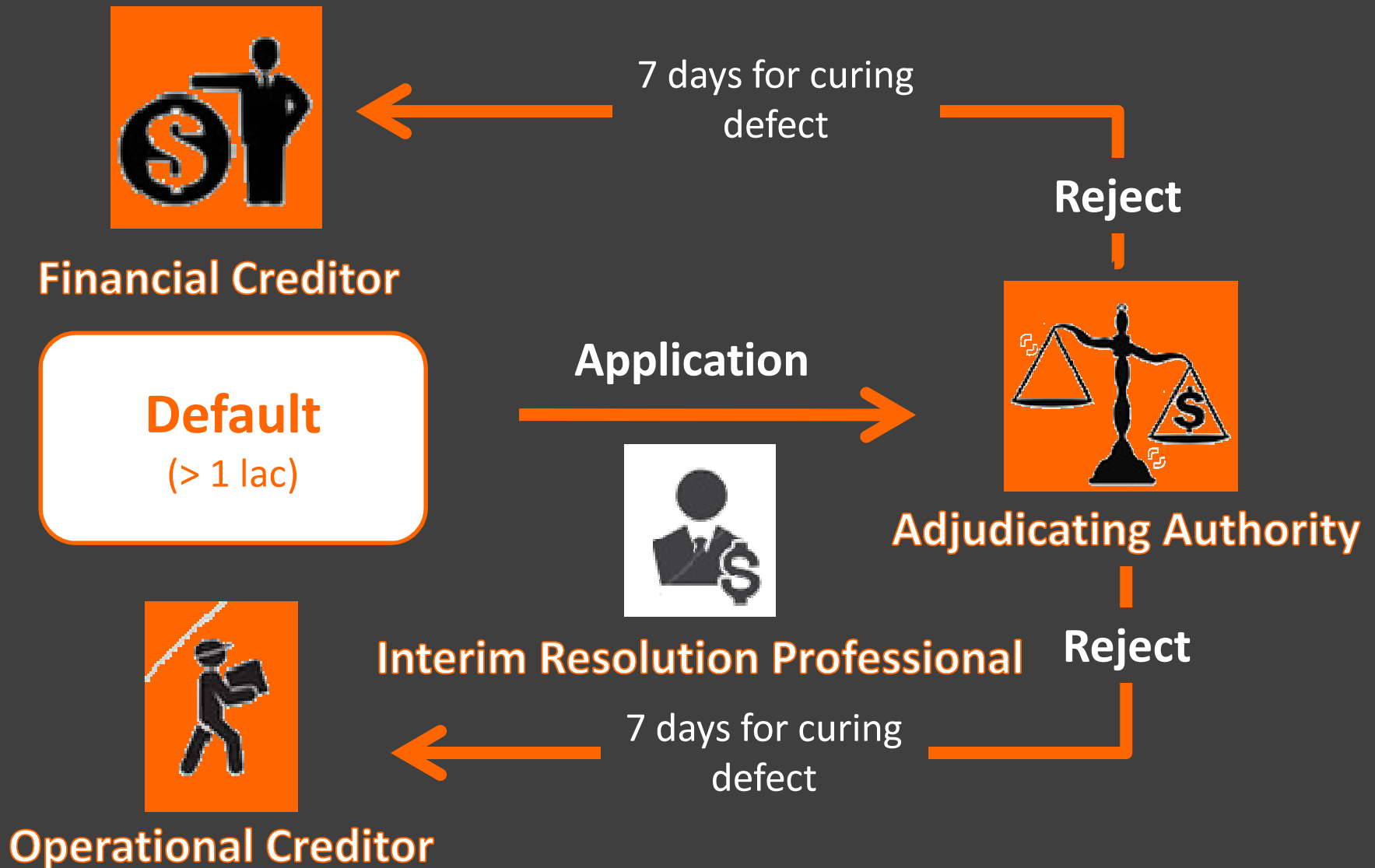


Understanding the New Code

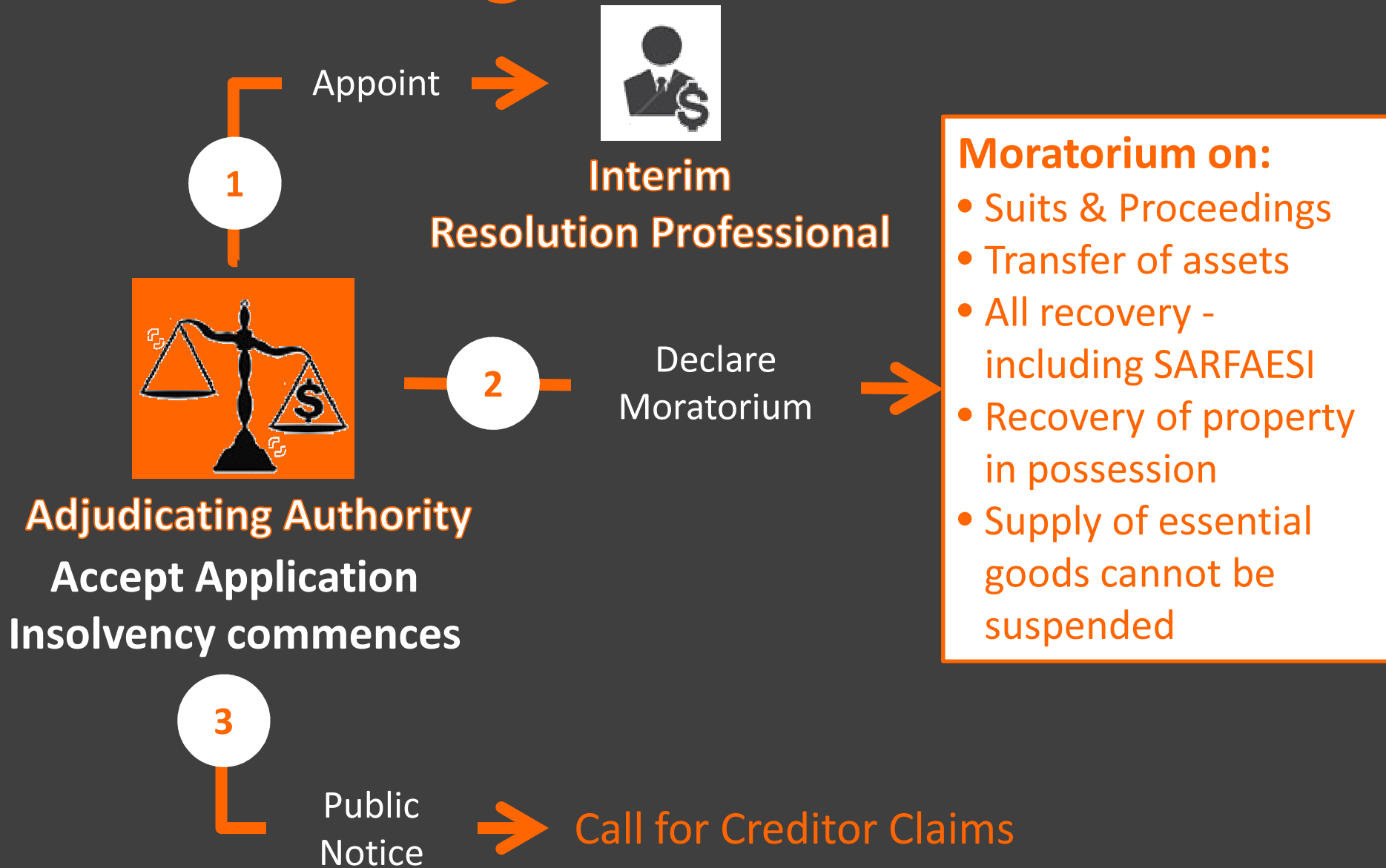
# Participants under the New Code



# The Working of the new code



# The Working of the new code



# The Working of the new code



Term of Max 30 days

## Interim Resolution Professional

### Rights

- Management of the affairs
  - Powers of Board of Directors
- Financial institutions to act on instruction of IRP
- Act and execute all deeds, receipts and documents
- Access records of Info Utility

### Duties

- Collect all info
  - Business operations, financial and operational payments for previous 2 years
  - List of assets and liabilities
- Appoint registered valuer
- Collate claims submitted by Creditors
- Constitute CC
- Take control and custody of assets
- Ensure 'Going Concern'



# The Working of the new code



Confirm Appointment of  
IRP / Replace with new RP



Take approval for key items



## Creditor Committee

### Constitution & Voting

- Consists of all financial creditors
- Voting share based on financial debt owed
- Decisions require 75% vote of voting shares
- BOD and Operational creditor representative may attend (No Vote)

## Resolution Professional

### Duties

- Ensure 'Going Concern'
- Maintain updated list of claims
- File application for Avoidance of Transactions
- Prepare IM to share to resolution applicants
- Review Resolution plan



# The Working of the new code

## Resolution Plan

- To be prepared by Applicant
- Priority of payment of certain costs
- Provides for term of plan
- Provides for Management & Control during the term
- Implementation and supervision of the plan

Review



Resolution Professional

Present



Creditor Committee

Decide to Liquidate



Approve  
75%

Adjudicating Authority



Reject

Approve

Liquidate

## Implement Plan

- Moratorium Order ceases
- Records to be provided to the Board



# Resolution plan – Payments that must be provide for

## **Insolvency resolution process costs in priority to other creditors**

- Interim finance costs
- Fees of RP – Fees of IRP ratified by the Committee of Creditors
- Costs in running the business of the corporate as going concern
- Supply of essential goods
- Amounts due to a person whose rights are prejudicially affected on account of the moratorium

**Liquidation Value due to operational creditors (prior to any financial creditor and within 30 days of approval of the plan)**

**Liquidation Value due to dissenting financial creditors (prior to financial creditors who voted for the plan)**

# The Working of the new code



Resolution Professional to act as liquidator, unless replaced by adjudicating authority

## Liquidator

- Shall have all the rights of Management
- Will need to verify & collate creditor claims
- Investigate preferential transactions
- Evaluate and take custody of assets
- Disclaim onerous assets
- Sale of the assets



**Process Not time Bound**

Liquidation timeline managed through economic incentive of Liquidator

# Distribution of Assets

1. Insolvency resolution process/ liquidation costs.
  - Interim funding cost
  - Cost of running debtor as a going concern
  - Cost of IP / Cost of liquidation
2. Workmen's dues (24months preceding liquidation date)  
Secured Creditors (where right to security has been relinquished).
3. Wages/ Unpaid dues to employees (24 months preceding liquidation date).
4. Financial debts of Unsecured Creditors
5. Sums due to the CG & SG for period of 2 years prior to liquidation commencement  
Secured Creditors (amount to be settled where realised security falls short)
6. Remaining debts and dues



# Opportunities for Chartered Accountants

# Becoming an Insolvency Professionals

Individual

Experience of 10 years as member of CA Institute

Clear 'Limited Insolvency Exam'

Take membership of IPA

Register with the Board

Experience less than 10 years

Clear 'National Insolvency Exam'

Take membership of IPA

Register with the Board

Entity

Majority of Partners / Directors need to be Insolvency Professionals

Member 'in practice' for 15 years can make an application for membership before 31<sup>st</sup> Dec 2016 (temporary membership for 6 months without exam)

# Becoming an Insolvency Professional

## 3 P's of an IP

### Participant Management

- Management
- Shareholders
- Workers & Employees
- Government
- Trade Creditors
- Unsecured Creditors
- Secured Creditors

### Service Providers

- General/Technical Management
- Forensic Investigation
- Audit / Due Diligence
- Valuation
- Back-end support
- Litigation

### Process Driven

- Documentation
- Audit Trail
- Defined Time-line

# Opportunities for Professionals

- General/Technical Management
- Forensic Investigation
- Audit /Due Diligence
- Valuation
- Back-end support
- Litigation -

Required to ensure 'Going Concern' for Corporate Debtor

Identification of Preferential and Under Valued Transactions

Verification of status of assets and liabilities

Liquidation analysis / valuation required at-least 2 registered valuers

Support to maintain various registers (status of creditors, claims) and reporting to AA

Representation in front of NCLT



Interesting considerations



# Interesting considerations

Participation of other stakeholders

- Workers / Govt. / Trade Creditors / Pref shareholders

Waiver of Govt dues in case of restructuring

Interim financing – super priority



# Interesting considerations

'Going Concern' criteria

- Cost vs. Benefit
- Liability of resolution professional

Impact of quality of security of secured creditors

Preferential and Undervalued transactions





Questions