

Overview of IBC and Voluntary Liquidation of Companies under IBC, 2016

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Introduction to IBC

- IBC Code 2016 –Codification of all laws that existed in form of various statutes related to insolvency under one umbrella addressing:
 - Problem of multiplicity of laws related to insolvency in India
 - No timeframe for resolution of Insolvency
 - Bad debts and defaulter's crisis in Banks
- In a time bound manner for maximization of value of assets of such persons
- It focus on creditor's driven insolvency resolution wherever possible and orderly exit
- Committee of Creditor - Debtor in Possession to Creditor in Possession
- Biggest economic reform next only to GST

Introduction to IBC

- Allow creditors, whether secured; unsecured; financial or operational; domestic or international to initiate a resolution processes thereby aiming for an early detection of the fraud;
- Establishes time-bound moratorium on acceleration and enforcement of debts against the company;
- The resolution professionals can replace the existing management during insolvency proceedings;
- Provides for time-bound viability assessment mechanisms, liquidation processes and distribution waterfalls;
- Provides for penalties on promoters for asset diversion leading up to liquidation;

Applicability of IBC

Any company
incorporated
under the
Companies Act,
2013 or 1956.

Any Limited
Liability
Partnership

Partnership
firms and
Individuals (yet
to be notified)

Any other
company
governed by any
special Act for
the time being in
force (yet to be
notified)

Such other body
incorporated
under any law
for the time
being in force as
specify by the
Central
Government (yet
to be notified)

Coverage of IBC



INSOLVENCY
(SECTION 6 TO 32)



LIQUIDATION
(SECTION 33 TO 54)

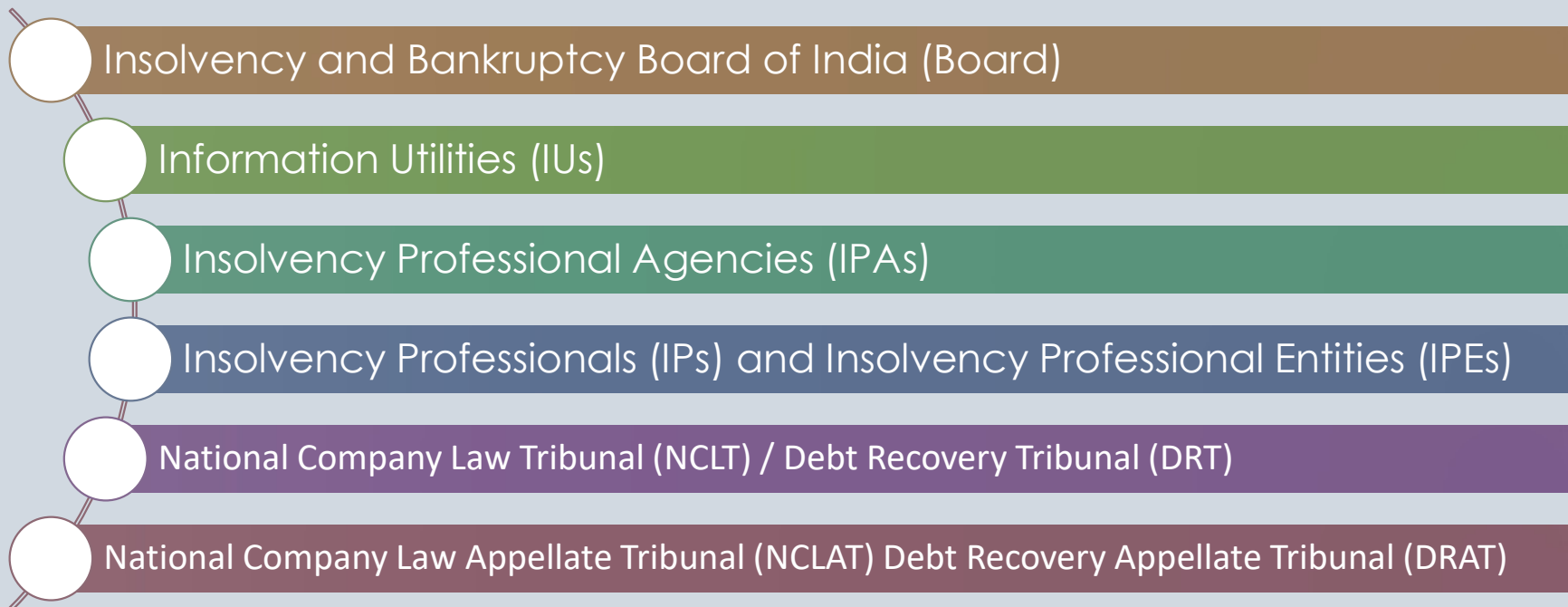


VOLUNTARY
LIQUIDATION
(SECTION 59)

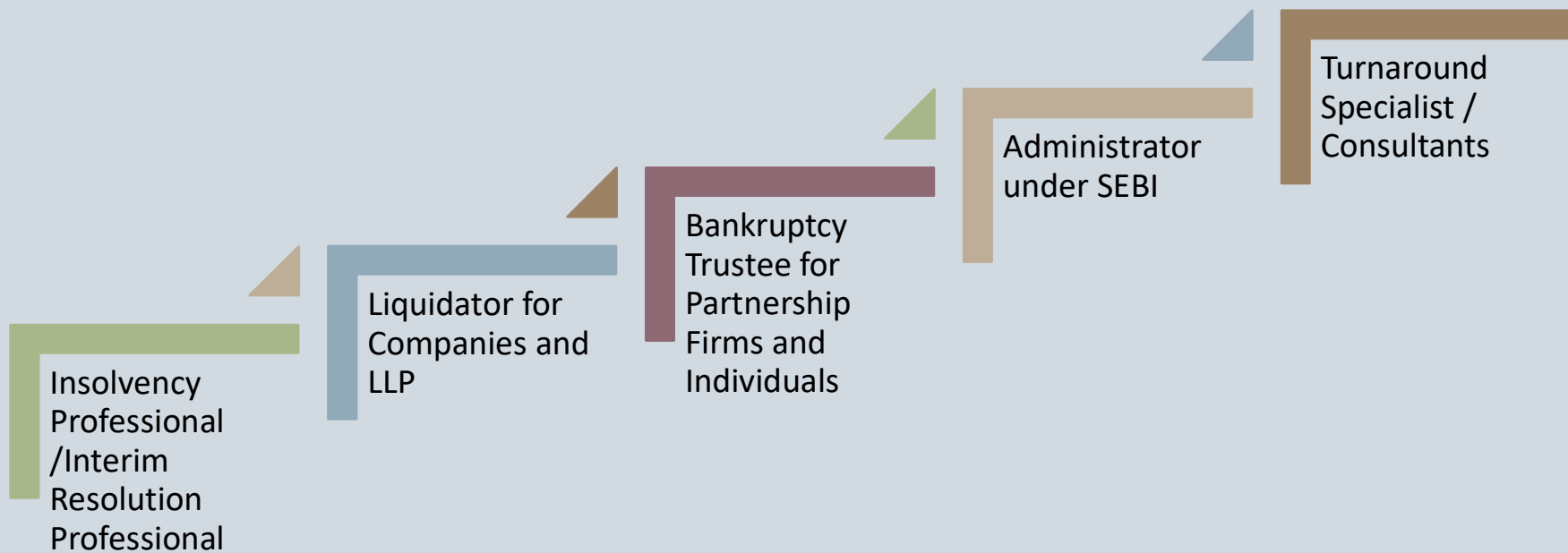


BANKRUPTCY
(SECTION 60 TO 67)

Eco System of IBC



Professional Opportunities



Reasons for Company Closure

Completion of
Purpose of the
Business

Completion of the
Tenure of the
Business

Non-Operative
Company

Business
Restructuring,
Mergers,
Acquisitions

Nonviable Business
Operations

Options for Closure of Companies



**Fast Track Exit (FTE) under
provisions of Companies Act,
2013**



**Voluntary Liquidation u/s 59
of Insolvency and Bankruptcy
Code, 2016**



Fast Track Exit

The company applying under FTE should not have any asset and liability.



A company is not carrying on any business or operation for a period of two immediately preceding financial years



No Liability or default pending



If any liability arises after striking off the Director remains liable

Voluntary Liquidation - Journey

Voluntary Liquidation is a process when a company self imposes to wind up and dissolve itself after approval of its shareholders.

Earlier

- The process was classified into 2 types which are Creditors winding up or Members Voluntary winding up.
- The Companies Act 2013 had 20 Sections have for Voluntary Liquidation (Sec 304 to 323)

Now,

- Provisions of Voluntary Liquidation under Companies Act 2013 have been repealed
- Section 59 of IBC, 2016 deals with Voluntary Liquidation covered in Chapter V of Part II

Important Definitions

➤ **Section 2(94A) of Companies Act, 2013:**

‘Winding up’ means winding up under this Act or liquidation under the IBC, 2016, as applicable

➤ **Section 2(23) of Companies Act, 2013:**

‘Company’s Liquidator’ means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this act

➤ **Section 117 (3)(f) of Companies Act, 2013:**

The provisions of this section shall apply to resolutions requiring a Company to be wound up Voluntarily passed in pursuance of **Section 59** of the Insolvency and Bankruptcy Code, 2016;

Important Definitions

➤ **Section 3 (7) of IBC, 2016:**

‘Corporate Person’ means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

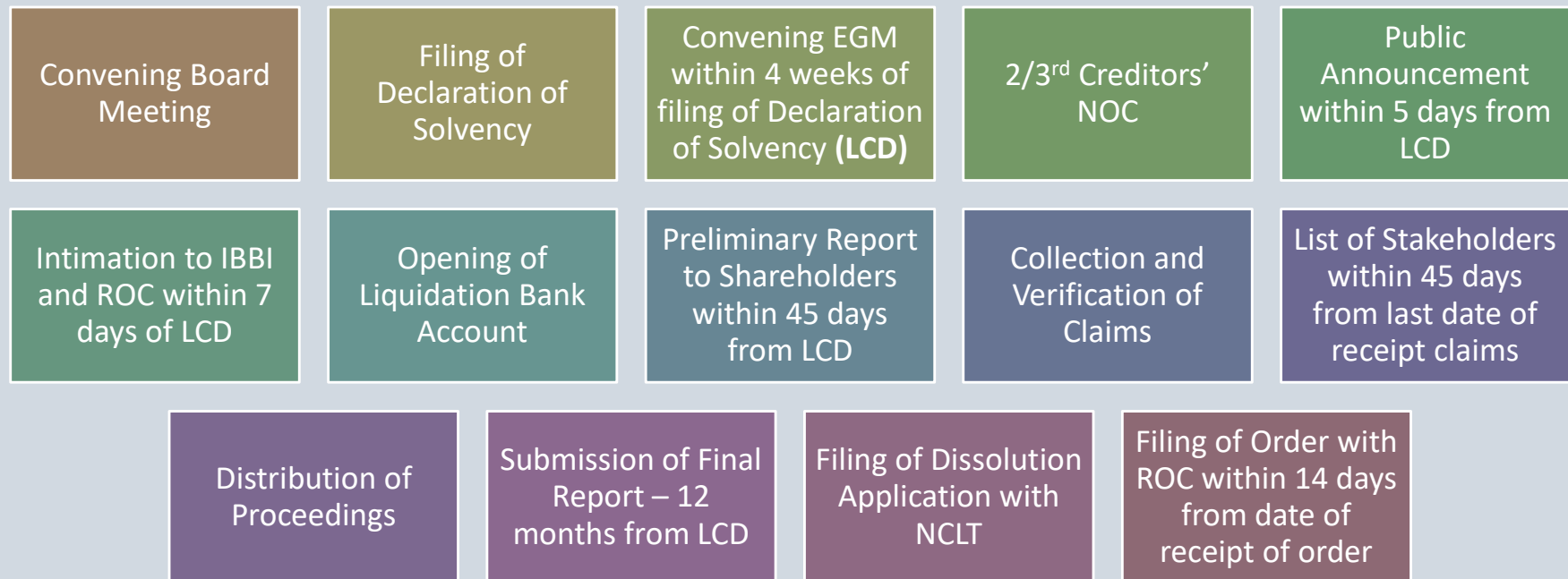
➤ **Reg. 2 (1) (b) of Voluntary Liquidation Regulation, 2017**

‘Contributory’ means a member of a company, partner of a LLP, and any other person liable to contribute towards the assets of the corporate person in the event of its liquidation.

➤ **Reg. 2 (1) (c) of Voluntary Liquidation Regulation, 2017**

‘Liquidation Commencement Date’ means the date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4)

Process of Voluntary Liquidation



Convening the Board Meeting

- To Approve Voluntary Winding up;
- To Approve Declaration of Solvency to be filled with ROC and IBBI;
- To Appoint Insolvency Professional to act as Liquidator and Registered Valuer, Subject to Shareholder' approval;
- To Call notice calling General Meeting for consideration of Voluntary winding up, appointment of Liquidator and Registered valuer;

Declaration of Solvency

- The Management/Directors of the Company has to give a Declaration of Solvency by presenting a form of an Affidavit that confirms the following:
 - The company has not defaulted any debt repayments.
 - The company is solvent in terms of credit standing and can pay its debts in full, from the earnings of assets to be sold in the procedure for voluntary liquidation under IBC; and
 - The company is not getting liquidated to defraud any individual.
- A declaration under sub-regulation (1) shall be accompanied by Audited financial statements and record of business operations of the corporate person for the previous **two years** or for the period since its incorporation, whichever is later and A report of the valuation of the assets of the corporate person, if any, prepared by a registered valuer
- The declaration of solvency under voluntary liquidation regulations should be filed in Form GNL-2 with the Registrar of Companies

General Meeting of Shareholder

- Arrange a General Meeting of shareholders/ investors within 4 weeks of the Declaration of Solvency and to pass these subsequent resolutions
 - Special Resolution in a general meeting for voluntary winding up of a company under IBC or an ordinary resolution that the corporate person requiring the corporate person has to be liquidated voluntarily as a result of expiry of the period of its duration, which was fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person has to be dissolved
 - Resolutions for appointing an Insolvency Professional as Liquidator for the procedure of voluntary liquidation of a company.

Creditor's NOC

- If a corporate person has creditors, then, Approval from Creditors' representing 2/3rd value of debt is required either by way of holding meeting or NOC from each creditors within 7 days from the date of passing of resolution.
- On and from the Liquidation Commencement Date, the corporate person shall cease to carry on its business except as far as required for the beneficial winding up of its business.
- The corporate person shall continue to exist until it is dissolved

Public Announcement

- IP to do public announcement within 5 days of appointment in Form A.
- The public announcement to be published in English and other vernacular language newspapers circulated widely at registered office and principal office of the Company and on website of Company and IBBI
- Public announcement shall call for claims from stakeholders.
- Last date of submission of claim is 30 days.

Intimation to Stakeholders

- Within 7 days of public announcement, Intimation of commencement of Liquidation must be sent to IBBI and ROC.
- Liquidation of the corporate debtor is deemed to have commenced from the date of passing of Special Resolution of approving voluntary liquidation.
- As a good practice and to ensure that there are no outstanding dues with other statutory departments, intimate the other departments regarding the commencement of Voluntary Liquidation of the corporate debtor.

Opening of Bank Account

- Immediately on passing liquidation resolution the liquidator is to open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank.
- The realizations of each day shall be deposited into the bank account without any deduction not later than the next working day
- After realization of proceeds liquidator shall distribute the same within six months from the receipt to the stakeholders

Preliminary Report

- Liquidator to submit Preliminary Report to Corporate Person
- The report shall be submitted within 45 days from the date of commencement of liquidation
- It shall contain –
 - Capital structure of Corporate Person
 - Estimates of its assets and liabilities
 - Proposed plan of action for carrying out the liquidation etc.

Collection and Verification of Claims

- On receipt of claims (if any), liquidator may either admit or reject the claim, a creditor may appeal to the AA against the decision.
- Proof of Claims be received in prescribed form –
 - Form B - Operational Creditors
 - Form C- Financial Creditors
 - Form D - Workmen and Employees
 - Form E- Authorized representative in case of workmen or employees
- After verification, liquidator to Prepare and submit the list of stakeholders within 45 days from the last date for receipt of claims (Reg. 30)

Realisation and Distribution of proceeds

- Value and sell the assets in the manner and mode approved by the corporate person in compliance with provisions (Reg. 31)
- Liquidator to realize uncalled capital or unpaid capital contribution from any contributory to Corporate Person. No distribution, unless he makes his contribution
- Distribute the proceeds within six months from the receipt of the amount to the stakeholders, liquidation costs shall be deducted before such distribution (Reg. 35) The assets of the corporate person has been disposed-off
- The debt of the corporate person has been discharged to the satisfaction of the creditors;
- Company has received NOC from Tax Authorities and other government authorities as may be applicable
- no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation

Books to maintained

- (a) Cash Book; (b) Ledger; (c) Bank Ledger;
- (d) Register of Fixed Assets and Inventories; (e) Securities and Investment Register;
- (f) Register of Book Debts and Outstanding Debts; (g) Tenants Ledger; (h) Suits Register;
- (i) Decree Register; (j) Register of Claims and Dividends; (k) Contributories Ledger;
- (l) Distributions Register; (m) Fee Register; (n) Suspense Register; (o) Documents Register;
- (p) Books Register; (q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 39;
- and (r) such other books or registers as may be necessary to account for transactions entered by him in relation to the corporate person

Unclaimed Proceeds

- Regulation 39 Before order of dissolution,- apply to the AA for an order to pay into the Companies Liquidation Account in the Public Account of India any unclaimed proceeds or undistributed assets.
- He shall Furnish a statement to the Registrar and the Board setting forth nature of the sums, the names & last known addresses of the stakeholders, the amount entitled & nature of their claim. Entitled to a receipt from the RBI, such shall be an effectual discharge.
- Liquidator who retains any money- interest @12% p.a. + Penalty.
- A person claiming any money paid into the Companies Liquidation account may apply to the Board. If satisfied board shall order for the payment, after taking such security from him as it may think fit.

Completing the Liquidation Process


- Reg. 38- Liquidator shall prepare & send the Final Report on completion of the process, to
 - The registrar; and
 - The board
- Report shall consist of-
 - Audited account & Statement demonstrating that the assets has been disposed of;
 - the debt discharged to the satisfaction of the creditors; no litigation is pending/sufficient provision to meet the obligations
- Sale statement in respect of all assets containing
 - the realized value, cost of realization, if any; the manner and mode of sale; an explanation- if the value realized is less than valuation

Time Limits

Liquidator shall endeavor to complete the liquidation process of the corporate person within **270 days** from the liquidation commencement date



Liquidator to call meeting of contributories within 15 days if process is not completed within 12 months



Liquidator shall present an Annual Status Report(s) indicating progress in liquidation

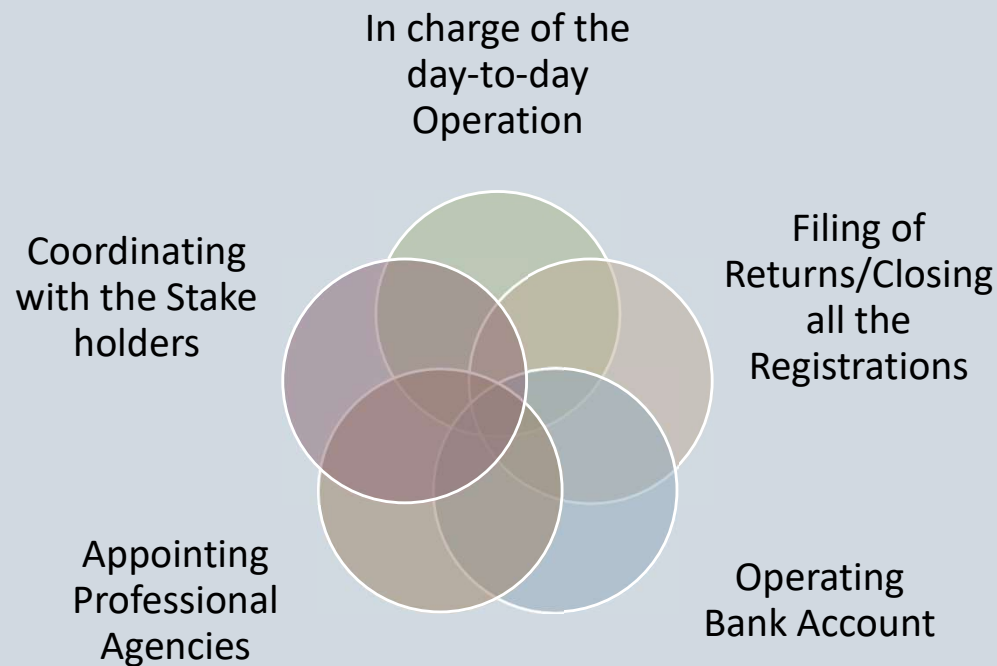
Filing the Petition before Hon. NCLT

- Once the affairs of the corporate person have been completely wound up and its assets fully liquidated
 - the Liquidator shall make an application along with Final Report to the NCLT for the dissolution of such Company (Reg. 38 (3))
 - The Tribunal shall fix a date for the hearing of the petition.
 - Where Tribunal is satisfied- NCLT shall pass an order for dissolution (Sec.59 (8))
 - Entity shall stand dissolved from the date of NCLT's order

Filing of dissolution order to MCA

- The Copy of order shall be filed with the Registrar by the company within 14 days of the receipt of the copy of order (Sec. 59 (9))
- Apply to ROC for Change in status to '**Dissolved**' on MCA Portal.

Role of Liquidator



VL - Statistics published by IBBI as on 31.03.2022

Table 5: Details of 1211 Voluntary Liquidations (Excluding Twelve Withdrawals)

Details of	No. of Liquidations	Amount (in ₹ crore)				
		Paid-up capital	Assets	Outstanding debt	Amount paid to creditors	Surplus
Liquidations for which Final Reports submitted	644	3476*	4473	31##	31##	4011##
Ongoing Liquidations	567	3690#	1918#	**		
Total	1211	7166	6391	**		

Note:

* Paid up capital is not available in case of two companies as they are limited by guarantee companies.

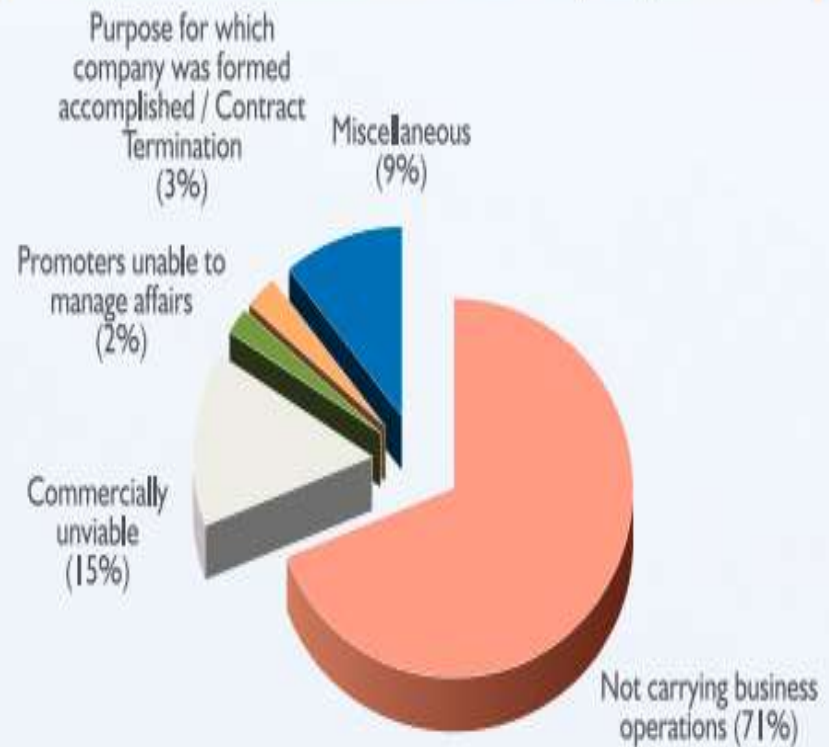
**For ongoing liquidations, outstanding debt amount is not available.

Paid up capital and assets of 404 and 394 cases, respectively, are available.

Details regarding five cases not available.

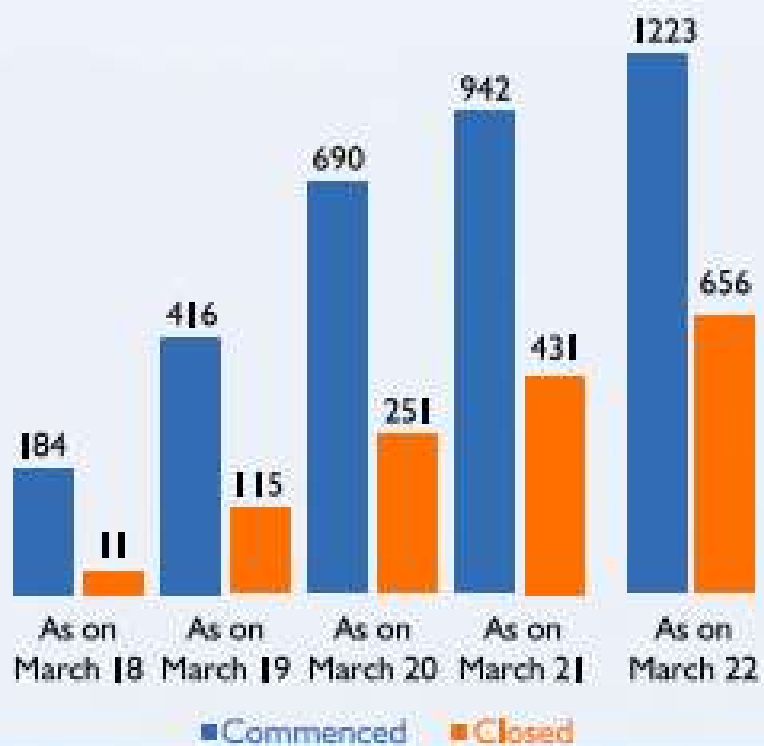
VL - Statistics published by IBBI as on 31.03.2022

Figure 20: Reasons for Voluntary Liquidation



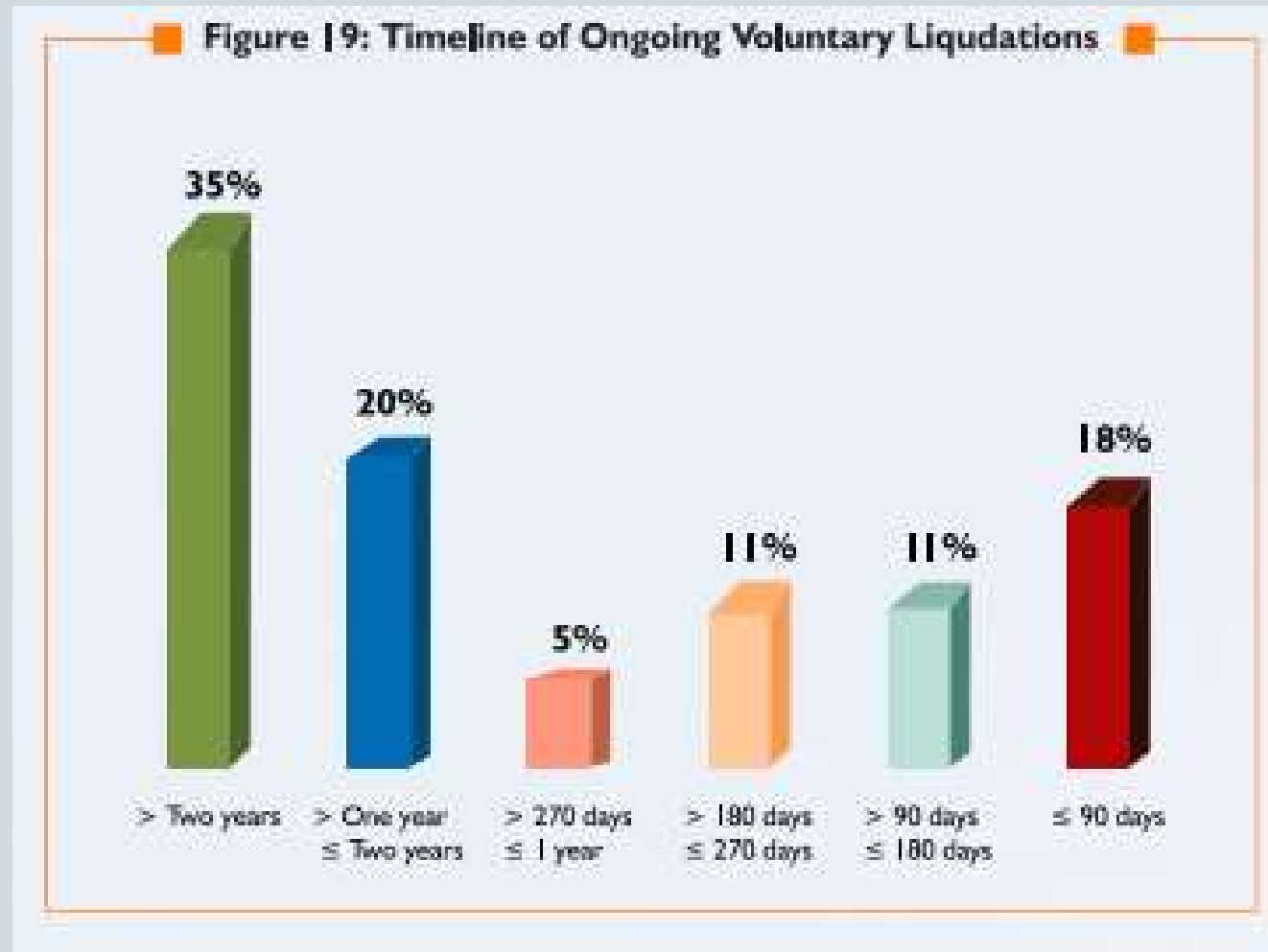
VL - Statistics published by IBBI as on 31.03.2022

Figure 18: Commencement of Voluntary Liquidations



VL - Statistics published by IBBI as on 31.03.2021

Total Cases



Thank you!!!

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