

VOLUNTARY LIQUIDATION PROCESS

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Voluntary Liquidation of Companies under Companies Act, 2013

Any corporate person who intends to liquidate itself voluntarily may initiate voluntary liquidation proceedings under the provisions of Section 59 of Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016.

A '**corporate person**' as defined in Section 3 of Part I of the said Code means:

- A Company;
- A Limited Liability Partnership;
- Any other person incorporated with limited liability under any law

A corporate person does not include a financial service provider.

The Process...

The conditions and procedural requirements for the voluntary winding up are as follows:

- The corporate person should not have committed any default
- A declaration along with affidavit from the majority of the directors is required
- A special resolution for the voluntary liquidation of the company and appointment of insolvency professional as liquidator to be passed by the company within four weeks of giving the above declaration
- The date of passing the special resolution for appointment of a Liquidator will be called as a “**Liquidation Commencement date**”
- Where the company owns any debt to any person, then such resolution should also be approved by creditors being 2/3rd in value within seven days of passing such resolution

- The resolution so passed should be notified to the Registrar of Companies and the Insolvency and Bankruptcy Board within **seven days**.

Public Announcement By the Liquidator

The liquidator shall make a public announcement in Form A of Schedule I to the Regulations, within five days from his appointment in one English and one regional language newspaper and on the website of the corporate person, if any.

The public announcement shall call upon stakeholders to submit their claims as on liquidation commencement date and provide for last date for submission of claims which shall be thirty days from the liquidation commencement date.

Other Action Points By the Liquidator

- The liquidator shall verify the claims submitted by the Claimants within 30 days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.

Claim Forms to be submitted By the Stakeholders

➤ OPERATIONAL CREDITORS

A person claiming to be an operational creditor of the corporate person shall submit proof of claim to the liquidator in **Form B of Schedule I**.

➤ FINANCIAL CREDITORS

A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in **Form C of Schedule I**.

➤ WORKMEN AND EMPLOYEES

A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the liquidator in **Form D (for individual claimant)/E (for a group of claimants) of Schedule I.**

➤ OTHER STAKEHOLDERS

A person claiming to be a stakeholder other than those mentioned above, of the corporate person shall submit proof of claim to the liquidator in **Form F of Schedule I.**

- **The liquidator shall prepare the list of stakeholders on the basis of claims submitted within 45 days from the last date for receipt of claims.**

Opening of Bank Account

- The liquidator shall open a bank account in the name of the corporate person followed by the words ‘ in voluntary liquidation’ in a scheduled bank for receipts and payments of all monies.

Income-Tax No Objection Certificate

- The Liquidator shall apply to Income Tax for seeking its No objection for undergoing Voluntary Liquidation.

Reporting By the Liquidator

➤ Preliminary Report

To be submitted to the corporate person within 45 days from the liquidation commencement date detailing the capital structure of the corporate person and the estimates of its assets and liabilities as on the liquidation commencement date.

- Apart from Preliminary Report, the liquidator shall also prepare Annual Status Report, Minutes of consultations with Stakeholders and Final Report in such manner as specified under the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Distribution of Proceeds and Unclaimed Proceeds of Liquidation

- The liquidator shall distribute the proceeds from realization within six months from the receipt of amount to other claimants and the stakeholders.

Completion of Liquidation

The liquidator shall complete the liquidation process within 12 months from the liquidation commencement date. If the liquidation process continues for more than 12 months, the liquidator shall hold a meeting of the contributories within 15 days from the end of 12 months from the liquidation commencement date and at the end of every succeeding twelve months till the dissolution of corporate person.

The liquidator shall present the Annual Status Report indicating the progress in liquidation including the settlement of list of stakeholders, details of assets remaining to be sold and realized, distribution made to the stakeholders etc.

Final Report

To be submitted to NCLT along with the application under Section 59(7) and also to be sent to the Registrar and the Board on completion of the liquidation process.

The Final Report shall consist of:

- audited accounts of the liquidation;
- a statement demonstrating that the assets has been disposed of, the debt has been discharged and no litigation is pending against the corporate person;
- a sale statement in respect of all assets containing the realized value, cost of realization, manner and mode of sale, the person to whom the sale is made, any other relevant details of the sale.

Filing of PRECIPE

- Where the affairs of the corporate person have been completely wound up and its assets are completely liquidated, the liquidator shall make an application to the Adjudicating Authority for dissolution and the Adjudicating Authority shall pass an order for dissolution of such corporate person.

The **order of the NCLT** shall be forwarded to the adjudicating authority with which the corporate person is registered **within 14 days** of date of such order.

Preservation of Records

The liquidator shall preserve physical or an electronic copy of the reports, registers and books of account for at least 8 years after the dissolution of the corporate person either with himself or with an information utility.

Who Should Be Appointed As a Liquidator?

An insolvency professional shall be eligible to be appointed as a liquidator if he, and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person.

An **‘insolvency professional’** means a person enrolled under Section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under Section 207.

A person shall be considered independent of the corporate person, if he:

- is eligible to be appointed as an independent director, where the corporate person is a company;
- is not a related party of the corporate person;
- has not been an employee or proprietor or partner of a firm of auditors/ company secretaries/ cost auditors of the corporate person or of a legal or a consulting firm having transactions with the corporate person contributing 10% or more of the gross turnover of such firm at any time in the last three years.

An insolvency professional shall not be appointed as a liquidator if he is under a restraint order of the Board or represents any other stakeholder in the same liquidation.

Powers And Functions of the Liquidator

- To verify the claims of all the creditors;
- To take into his custody or control all the assets, property, effects and actionable claims and to take such measures to protect and preserve the assets and properties of the corporate debtor;
- To obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- To invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of the Code;
- To take such actions, steps, or to sign, execute and verify any paper, deed, application, affidavit or instrument for liquidation, distribution of assets and in discharge of his duties as liquidator;
- To make an application before the NCLT for such orders for liquidation of the corporate debtor and to report the progress of the liquidation process;
- To perform such other functions as may be specified by the Board

Frequently Asked Questions (FAQs)

- What will be the role of an Insolvency Professional, as envisaged in the provisions of the IBC, 2016 ?

Ans: The Insolvency Professional shall take over the supervisory management of the Corporate Debtor, that is to say, the powers of the Board of Directors shall be vested with the Insolvency Professional. However, there shall be no impediment in the functioning of the executive Management and the daily operations of the Business shall not be hindered.

- Can a statutory Auditor be appointed as a Valuer ?

Ans: No, as per the provisions of regulation 11(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017, a professional engaged or proposed to be engaged should not be a related party of the corporate person or has served as an Auditor to the Corporate Person at any time during the five years preceding the Liquidation commencement date.

- Whether Banks, Financial Institutions, NBFCs, Insurance Companies, Brokers, etc. fall under the definition of Corporate Debtor ?

Ans: No, since these entities are registered with the financial regulators like RBI, SEBI, IRDA etc.

- Is it necessary to seek No Objection Certificate from Income Tax Authority ?

Ans: Yes. Although it is not mentioned in IBC, 2016 unlike in Companies Act, 2013. But however section 178 of the Income Tax Act, 1995, requires Liquidator to give notice to the Authority within 30 days of his appointment.

Thank You

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