

VOLUNTARY LIQUIDATION

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The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("**Regulations**") provides the process for commencing the voluntary liquidation by a corporate person (i.e. companies, limited liability partnerships and any other persons incorporated with limited liability). These Regulations were notified by the Insolvency and Bankruptcy Board of India last year.



Prior to the prelude of Regulations, voluntary liquidation was governed by the Companies Act, 1956. The provisions relating to voluntary winding up of a company under the Companies Act, 2013 were not notified. The enforcement of the Section 59 of the Insolvency and Bankruptcy Code, 2016 and the Regulations repealed the provisions of voluntary liquidation under the Companies Act, 1956 as well as the Companies Act, 2013.

Under Section 59 of the Insolvency and Bankruptcy Code, 2016, there are two (2) preconditions to commence the voluntary liquidation proceeding under the provisions of Chapter V of Insolvency and Bankruptcy Code, 2016 i.e. (i) corporate person intends to liquidate itself voluntarily; (ii) corporate person has not committed any default.

In accordance with the section 2(12) of Insolvency and Bankruptcy Code, 2016, default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

Following are the key highlights of winding up under Insolvency and Bankruptcy Code, 2016:

1. It provides eligibility guidelines under Regulations to become liquidator of the corporate person.
2. Preparation of various reports (preliminary report and final report) by the liquidator to be submitted to the corporate person, the Registrar and the Insolvency and Bankruptcy Board of India.
3. The liquidator shall wind up the affairs of the corporate person within 12 (twelve) months from the commencement date.
4. The liquidator is required to preserve a physical or electronic copy of the documents (i.e. books of accounts and registers) for at least 8 (eight) years after the voluntary liquidation of the corporate person.

Brief procedure for voluntary liquidation is as under:-

1. Preparation of declaration of solvency by the directors of the company along with an affidavit, stating that the company will be able to pay its dues and is not being liquidated to defraud any person.



2. Within 4 (four) weeks of the declaration of solvency, the special resolution for approving the voluntary liquidation and appointment of liquidator is required to be passed by the members. The voluntary liquidation process commences from the date on which the special resolution is passed by the members of the corporate person.
3. Within 5 (five) days of appointment, the liquidator is required to make a public announcement in the newspaper in the prescribed form to call upon the claims from the stakeholders.
4. The liquidator then prepares and its submits the preliminary report in a prescribed format to the corporate person within 45 (forty five) days of the date of general meeting.
5. The liquidator verifies the claims received and prepares a list of the stakeholders.
6. The liquidator recovers and realizes all the dues and assets of the corporate person in time bound manner for maximisation of value for the stakeholders.
7. On completion of the liquidation process, the liquidator prepares the final report and submits to the National Company Law Tribunal (“NCLT”) for dissolution.
8. The NCLT scrutinises the final report and passes an order for dissolution, if satisfied.

Conclusion: Earlier, an opening of business in India was much easier, but their closure was a difficult and time-consuming process. The notification of the voluntary winding up regulations is a step forward for the closure of solvent businesses in India. The Regulations aims at speedy winding up and protecting the interest of all the stakeholders of a company. The liquidator is required to wound up the company affairs within 12 (twelve) months from the commencement date.

At present, cases relating to the voluntary winding up are under the respective benches of NCLT instead of the respective High Court. Under the Insolvency and Bankruptcy Code, 2016, liquidator plays a vital role in the voluntary winding up. Hence, the efficiency of the winding up process would be largely dependent upon the person who is appointed as the liquidator of the company.

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