

## Voluntary Winding up under Insolvency & Bankruptcy Code

A company comes into existence by the legal process of incorporation whereas by means of the winding up of the Company, the life of the Company comes to an end.

Winding up of a company is the process through which life of a Company comes to an end and its property is administered for the benefit of its members & creditors. An Administrator, called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

The modes of winding up of the Company can be classified into following heads

1. Compulsory winding up by the Court,
2. Voluntary winding up, its two kinds
  - By the members voluntary winding up
  - By the Creditors voluntary winding up.

Voluntary liquidation occurs when the members or the creditors of a company formally resolve to voluntarily wind up the affairs of the company and dissolve it.

The objective of voluntarily winding up a company is to enable the members and creditors to settle their affairs among themselves without seeking the assistance of the Tribunal. Voluntary winding up by members is an option available only to solvent companies.

Apart from winding up voluntarily, a company can opt for the Fast Track Exit (FTE) mode, which is striking off the name/deregistration of a company from the Register of Companies, subject to the fulfilment of certain conditions laid down by the Companies Act.

The provisions associated with voluntary liquidation of corporates are covered under the Insolvency and Bankruptcy Code, 2016 (the Code) which was enforced in 2016. The Code has further notified regulations which provide the process to be followed for voluntary liquidation.

### **REQUIREMENTS**

Corporates need to ensure that they have not committed any defaults. Default here includes those debts that are not repaid and has become due and payable.

The principal difference between a member's and a creditor's winding up is that in a member's winding up, the board of directors have to make a declaration stating that the company has no debts. The directors shall call a board meeting and make a declaration of winding up accompanied by an affidavit stating that:

They have made a full inquiry into the affairs of the corporate and they have formed an opinion that either the corporate has no debts or will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation; and

The corporate is not being liquidated to defraud any person.

Liquidator can be insolvency professional who fulfils criteria under the regulations;

Registers to be maintained and preserved in prescribed manner.

Liquidators to receive claims of stakeholders only in specified forms;

Within twelve months from commencement of voluntary winding up, the affairs of corporate person to be wound up;

Reports by Liquidator to be submitted to corporate person, Registrar of Companies and Insolvency and Bankruptcy Board of India.

The time period to comply the requirements has also been reduced to expedite the process.

The article in detailed discusses the steps for Voluntary winding-up of the Company by Members as per Insolvency and Bankruptcy Code, 2016

Sections	Requirements
59 (3) (a) of the Insolvency and Bankruptcy Code, 2016	Declaration of Solvency duly verified by an Affidavit by Majority of Directors of the Company on:  In case of Foreign Directors, where the Directors are signing Declaration in a Foreign Country, such Declaration to be duly notarized and apostiled.  Affidavit to be accompanied by : Audited Financial Statement of past two years/ Since Incorporation whichever is later  Records of Business Operations of past two year/ Since Incorporation whichever is later  Report by the Registered Valuer about the valuation of the assets of the Company, if any.  Latest Financial Position of the Company, if any.

<p>Section 173 &amp; 117 (3) (f) of the Companies Act, 2013 (In case of a Company)</p>	<p>Company will have to convene Board Meeting to discuss and approve :  Voluntary winding up of the Company, subject to the approval of the Members in the General Meeting.  Appointment of Liquidator subject to the approval of Members in the General Meeting.  To consider and approve Declaration of Solvency and affidavit by the directors of the Company.  To fix day, date, time and to send notice and agenda for General Meeting</p>
<p>59 (3) (c) of Insolvency and Bankruptcy Code, 2016 – Within 4 weeks of Declaration of Solvency</p>	<p>To pass the Special Resolution for Voluntary Winding up and Appointment of Insolvency Professional to act as a Liquidator</p>
<p>Approval of Creditors</p>	<p>In case of Creditors owning 2/3rd of the Value of Debt, approval of Creditors is required within 7 days of the resolution.</p>
<p>Intimation by the Company to Registrar of Companies as Section 59 (4) of the Insolvency and Bankruptcy Code, 2016</p>	<p>Intimation to ROC within 7 days of approval of liquidation of Company /subsequent approval by the creditors owing 2/3rd of the Value of the Debt of the Company :   Filing of form MGT-14 – For Board &amp; Special Resolution   Filing of form GNL-2 – For Declaration of Solvency &amp; Appointment of Liquidator</p>
<p>Intimation by the Company to Insolvency and Bankruptcy Board of India (IBBI) as per section 59 (4) of Insolvency and Bankruptcy Code, 2016</p>	<p>Company to intimate IBBI regarding initiation of Voluntary Winding up within 7 days of approval of liquidation of Company /subsequent approval by the creditors owing 2/3rd of the Value of the Debt of the Company</p>
<p>Public Announcement by the Liquidator as per Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017</p>	<p>Public Announcement to be published in one English Newspaper and one Regional Language Newspaper having wide circulation where the registered office and the principal office if any, of the Company is situated.   Liquidator to intimate Insolvency and Bankruptcy Board of India (IBBI) regarding Public Announcement.   Public Announcement to be updated on website, if any.</p>

Intimation and NOC from Income Tax Department	Intimation to Income Tax Department within One month of passing resolution regarding Voluntary Winding up of the Company and to obtain NOC for the same
Reporting as per Regulation 9 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Preparation of Preliminary Report (To be submitted within 45 days from the commencement of the liquidation process)</p> <p>Content of the Report :</p> <ul style="list-style-type: none"> <li>Capital Structure of the Company</li> <li>Estimates of Assets and liabilities as on the liquidation commencement date based on the books of Accounts of the Company.</li> <li>Any further inquiry relating to promotion/formation/conduct of the business Proposed plan of action by liquidator including the timeline within in which he proposes to carry it out and the estimated liquidation costs.</li> </ul>
Collation of Claims by Liquidator and Verification of the same within 30 days from the last date for receipt of claims. Liquidator may either admit or reject the claim	<ul style="list-style-type: none"> <li>Claims by Operational Creditors</li> <li>Claims by Financial Creditors</li> <li>Claims by Workmen and Employees</li> <li>Claims by any other Stakeholders</li> <li>Claims by Secured Creditor</li> <li>Claims through Bills of Exchange and Promissory Notes</li> </ul>
Preparation of List of Stakeholders as per Regulation 30 and Consultation with Stakeholders as per Regulation 12 of Insolvency and Bankruptcy Board of India	<p>Liquidator to prepare list of stakeholders within 45 days from the last date for receipt of claims along with :</p> <ul style="list-style-type: none"> <li>Amount of Claim admitted</li> <li>Extent of Debts-Secured or Unsecured</li> <li>Details of Stakeholders</li> <li>Proofs (Admitted or Rejected- In part or wholly rejected)</li> </ul> <p>Liquidator to make the maintain the minutes about any consultation with Stakeholder</p>
Realisation of Assets as per Regulation 31 and Proceeds of Liquidation as per Regulation 34	Liquidator to value and sell the assets of the Corporate Person in the manner and mode approved by the Company and deposits the proceeds of distribution in Bank Account.

<p>Distribution of Proceeds as per Regulation 35 of Insolvency and Bankruptcy Board of India</p>	<p>Distribution of Proceeds within 6 months from the receipt of amount to the stakeholders.</p> <p>Distribution of Assets that cannot be sold with the approval of Company</p>
<p>Preparation and Audit of Liquidation Accounts as per regulation 38 of Insolvency and Bankruptcy Board of India</p>	<p>Liquidator to maintain accounts for liquidation period and conduct audit for Liquidation period.</p>
<p>Completion of Liquidation Process as per Regulation 37 of Insolvency and Bankruptcy Board of India</p>	<p>The entire process to be completed within 12 months from the date of commencement of liquidation</p> <p>If the liquidation process extends for more than 12 months, the liquidator shall –</p> <p>Within 15 days of from the end of 12 months hold meeting of contributories</p> <p>Present Annual Report indicating-</p> <p>Settlement of List of Stakeholders</p> <p>Details of Assets remaining to be sold/realized</p> <p>Distribution made to the stakeholders</p> <p>Unsold assets distributed to the stakeholders</p> <p>Any material litigation for/against Company.</p>

<p>Preparation of Final Report as per Regulation 38 of Insolvency and Bankruptcy Board of India</p>	<p>To prepare Final Report with details consisting of –</p> <ul style="list-style-type: none"> <li>Details of Audited Accounts of Liquidation</li> <li>A statement containing- <ul style="list-style-type: none"> <li>Disposal of Assets of the Company</li> <li>Disposal of the debts of the Company to the satisfaction of creditors</li> <li>Disposal of litigation pending against/Sufficient Provision for any obligation arising out of any pending litigation</li> <li>Statement of Sale of Assets showing Realized value</li> <li>Cost of Realization</li> <li>Manner &amp; Mode of Sale</li> <li>Details of the person to whom the sale is made</li> <li>Explanation stating reasons for shortfall if the value of sale realized is less than the value is assigned</li> </ul> </li> </ul> <p>The Final report needs to be send to:</p> <ul style="list-style-type: none"> <li>The Registrar of Companies by filing GNL-2</li> <li>The Insolvency and Bankruptcy Board of India via Courier/E-mail</li> <li>The Adjudicating Authority i.e NCLT via Physical Filing</li> </ul>
<p>Unclaimed proceeds of liquidation as per regulation 39 of Insolvency and Bankruptcy Board of India</p>	<p>the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India.</p>
<p>Application for Dissolution of Company by Liquidator as per Section 59 (7) of Insolvency and Bankruptcy Board of India</p>	<p>Liquidator shall make an application to Adjudicating Authority for the dissolution of such Company.</p> <p>The Adjudicating Authority -NCLT shall on an application filed by the liquidator pass an order for the dissolution of the Company.</p> <p>Copy of such order to be filed within 14 days with the Registrar of Companies (ROC).</p>
<p>Preservation of Records as per regulation 41 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017</p>	<p>The liquidator shall preserve all the reports, records, registers and books of accounts either in physical or electronic form for a period of 8 years after the dissolution of the Company</p>

## **Advantages of Voluntary Winding up**

**Limit on Director's liability:** In voluntary winding up the liabilities of a Director shall not continue post the dissolution of the company, except in the cases of fraud, misrepresentation, etc.

**No waiting period:** In Fast track Exit, the intent is different. Operational companies cannot apply for striking off the name from the ROC, whereas in voluntary winding up, both operational as well as non-operational companies can make an application.

**Licensed Professional:** As per the new Code, only a licensed professional can act as the liquidator of the company which ensures speedy closure in the most appropriate way. A licensed professional is well-versed with the provisions of the Code to complete winding up on time.

**Single window for the entire process:** The new Code is a single window legislative code under which closure of a company has become easier and more uniform compared to that under the Companies Act, 1956 and 2013.

**Minimal intervention from the government:** Previously, the voluntary liquidation process had high government intervention and was processed by various authorities such as the official liquidator and the High Court in addition to the company liquidator. Under the new Code, the process is single-handedly run by the liquidator with minimal involvement of the adjudicating authorities as the role of the official liquidator has been eliminated.

## **Conclusion**

The fundamentals of the process remains similar to the erstwhile provisions under the Companies Act, 1956, however, the Code seeks to reduce the intervention of regulatory authorities drastically. Once the affairs of the company are wound up entirely, the liquidator has to make an application to the Tribunal for passing the order of dissolution of the company.

A company is an artificial legal entity hence it could not come to an end as natural person or other entity. The winding up is one of the legal procedures through which the life of the Company can be ended. This mechanism comprehends the process of selling the assets pays it debts and disseminated any residual assets to the creditors or shareholders and then dissolving the affairs of the company according to laws as well as the article of association.

With the development of times and progress of winding up companies, there are several issues came in front of the judiciary and it always tried to mitigate the friction in the process of winding up of companies. In the recent time, for the serving, the interest of the stakeholders in the process of winding up the role played by NCLT can't be ignored. Indeed the effort of NCLT is to expedite the winding up process and serve it is mandate.