

## Member's Voluntary Winding Up under the Insolvency and Bankruptcy Code, 2016

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The Process of Voluntary Winding up of solvent company is now shifted from the Companies Act, 2013 to Insolvency and Bankruptcy Code, 2016 w.e.f. 1<sup>st</sup> April, 2017. Some of the major differences as compared to earlier regime are as follows:

- ✓ Shifting of Powers from Official Liquidator to Insolvency Professional.
- ✓ Jurisdictional Authority has been shifted from High Court to National Company Law Tribunal (NCLT)
- ✓ Governing sections and corresponding rules and regulations for Member's Voluntary Winding is now shifted to Section 59 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017.
- ✓ Timeline for carrying out the Voluntary Winding up process under the IBC is of 12 months, however in the event of Liquidation process continuing for more than 12 months, the Liquidator has to submit Annual Status Report indicating the progress of such Liquidation.

The shifting of Jurisdictional Authority from High Court to NCLT will result into faster execution and settlement of cases since Insolvency Professionals have been bestowed upon with powers for completing the winding up process and reporting to NCLT.

With the passing of special resolution at the Members meeting and declaration of solvency, an applicant can commence with the winding up proceedings.

Steps for Voluntary Winding up Process of Company as per Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and Companies Act, 2013

Corresponding Sections as per Insolvency And Bankruptcy Code, 2016 and Companies Act, 2013	Requirements Before the Commencement of the Liquidation Process	Timeline
59 (3) (a) of the Insolvency and Bankruptcy Code, 2016	<ul style="list-style-type: none"> <li>➤ Declaration of Solvency duly verified by an Affidavit by Majority of Directors of the Company on:               <ul style="list-style-type: none"> <li>• Stamp paper of Rs.100/- (In case of Indian Directors)</li> <li>• In case of Foreign Directors, where the Directors are signing Declaration in a Foreign Country, such Declaration to be duly notarized and apostilled.</li> </ul> </li> </ul> <p><b>Affidavit</b> to be accompanied by :</p> <ul style="list-style-type: none"> <li>➤ Audited Financial Statement of past two years/Since Incorporation whichever is later</li> <li>➤ Records of Business Operations of past two year/Since Incorporation whichever is later</li> <li>➤ Report by the Registered Valuer about the valuation of the assets of the Company, if any.</li> <li>➤ Latest Financial Position of the Company, if any.</li> </ul>	X
As per section 173 & 117 (3) (f) of the Companies Act, 2013 (In case of a Company)	<p>Company will have to convene Board Meeting to discuss and approve :</p> <ul style="list-style-type: none"> <li>➤ Voluntary winding up of the Company, subject to the approval of the Members in the General Meeting</li> <li>➤ Appointment of Liquidator subject to the approval of Members in the General Meeting</li> <li>➤ To consider and approve Declaration of Solvency and affidavit by the directors of the Company.</li> <li>➤ To fix day, date, time and to send notice and agenda for General Meeting</li> </ul>	

<p>59 (3) (c) of Insolvency and Bankruptcy Code, 2016 – Within 4 weeks of Declaration of Solvency</p>	<ul style="list-style-type: none"> <li>➤ <b>Voluntary Winding up of the Company and Appointment of Insolvency Professional to act as Liquidator</b> subject to the approval of the Members in General Meeting through Special Resolution.</li> <li>➤ To pass the Special Resolution for Voluntary Winding up and Appointment of Insolvency Professional to act as a Liquidator.</li> </ul>	<p>X+28</p>
	<p><b>*(Approval of the resolution within 7 days is also needed by the creditors owing 2/3<sup>rd</sup> of the Value of the Debt of the Company)</b></p>	<p>X+28+7*</p> <p><i>* (Incase of Creditors owning 2/3<sup>rd</sup> of the Value of Debt, approval of Creditors is required)</i></p>
<p>Intimation by the Company to Registrar of Companies as Section 59 (4) of the Insolvency and Bankruptcy Code, 2016</p>	<ul style="list-style-type: none"> <li>➤ Intimation to ROC within 7 days of approval of liquidation of Company /subsequent approval by the creditors owing 2/3<sup>rd</sup> of the Value of the Debt of the Company :</li> <li>➤ *MGT-14 – For Board &amp; Special Resolution</li> <li>➤ **GNL-2 – For Declaration of Solvency &amp; Appointment of Liquidator</li> </ul>	<p>X+28+(7)*+7</p> <p><i>* (Incase of Creditors owning 2/3<sup>rd</sup> of the Value of Debt, approval of Creditors is required)</i></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 2/3<sup>rd</sup> of the Value of the Debt of the Company</p>	<p>X+28+(7)*+7</p> <p><i>* (Incase of Creditors owning 2/3<sup>rd</sup> of the Value of Debt, approval of Creditors is required)</i></p>

Corresponding Sections as per Insolvency And Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	Requirements/ Compliances/Role of Liquidator during the Liquidation Process	Timeline
Public Announcement by the Liquidator as per Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Within 5 days of Appointment of Liquidator:</p> <ul style="list-style-type: none"> <li>➤ Public Announcement (PA) 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.</li> <li>➤ Liquidator to intimate Insolvency and Bankruptcy Board of India (IBBI) regarding PA.</li> <li>➤ PA to be updated on website of Company, if any.</li> </ul>	X+28+5
Opening of bank account as per Regulation 34 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<ul style="list-style-type: none"> <li>➤ Liquidator to open Bank Account within One month of passing of SR.</li> <li>➤ Bank Account needs to be opened in the Name of the Company followed by the words 'in voluntary liquidation' in a scheduled bank.</li> </ul>	X+28+30
Intimation and NOC 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.	X+28+30
Reporting as per Regulation 9 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>1. 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</li> <li>➤ 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>	X+28+45
Records to be maintained of any Extortionate Credit Transactions as per Regulation 13 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	Keeping track and records of any extortionate credit transactions requiring Corporate Person to make exorbitant payments in respect of the credit provided	
<b>Collation of Claims by Liquidator</b>		X+28+30
Claims by Operational Creditors as per Regulation 16 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Submission of Proof of Claim in <b>Form B</b> by post or by Electronic means.</p> <p>Basis of Claims to be proved by :</p> <ul style="list-style-type: none"> <li>➤ Records available with Information Utility</li> <li>➤ Other relevant Documents : Contract supported by Invoice for payments</li> </ul>	

	<ul style="list-style-type: none"> <li>➤ Any order by Court/Tribunal for Non-payment of Debt.</li> <li>➤ Financial Accounts of Company</li> </ul>	
Claims by Financial Creditors as per Regulation 17 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Submission of Proof of Claim in <b>Form C</b> by Electronic means. Basis of Claims to be proved by :</p> <ul style="list-style-type: none"> <li>➤ Records available with Information Utility</li> <li>➤ Financial Contract supported by Financial Statement</li> <li>➤ Non-repayment of Debt as reflected in Financial Statements</li> <li>➤ Any order by Court/Tribunal for Non-payment of Debt.</li> </ul>	
Claims by Workmen and Employees as per Regulation 18 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Submission of Proof of Claim by single employee or workmen in <b>Form D</b> by Post or Electronic means.</p> <p>Submission of Proof of Claim of Numerous Employee or workmen by Authorized Representative in Form E.</p> <p>Basis of Claims to be provided by :</p> <ul style="list-style-type: none"> <li>➤ Records available with Information Utility</li> <li>➤ Proof/Contract of Employment for the period for which the claim is pending</li> <li>➤ Evidence of Notice/Document/Other Proof demanding payment of unpaid dues</li> <li>➤ Any order by Court/Tribunal for Non-payment of Debt</li> </ul>	
Claims by any other Stakeholders as per Regulation 19 of Insolvency and Bankruptcy Board of India (Voluntary liquidation Process) Regulations, 2017	<p><u>Any stakeholder other than those mentioned under Regulation 16, 17, 18</u></p> <p>Submission of Proof of Claims in Form F either in Person, or by post or by electronic means. Basis of Claims to be provided by :</p> <ul style="list-style-type: none"> <li>➤ Records available with Information Utility</li> <li>➤ Notice/Bank Statement claiming unpaid dues along with affidavit stating that the Bank Statement are true and valid.</li> <li>➤ Documentary/Electronic Evidence of Shareholding</li> <li>➤ Any order by Court/Tribunal for Non-payment of Debt.</li> </ul>	
Claims by Secured Creditor as per Regulation 20 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Proces) Regulations, 2017	<p>Basis of Claims of Security Interest to be provided by :</p> <ul style="list-style-type: none"> <li>➤ Records available with Information Utility</li> <li>➤ Certificate of Registration of Charge issued by ROC</li> <li>➤ Proof of Registration of Charge with the Central Registry of Securitisation Asset Reconstruction And Security Interest of India</li> <li>➤ Any other relevant document</li> </ul>	
Claims through Bills of Exchange and Promissory Notes as per Regulation 21 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process)	Submission of Claim through production of Bills of Exchange/Promissory Notes/Instrument/Security	

Regulations, 2017		
Verification of Claims as per Regulation 20 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	The liquidator shall verify the claims submitted within 30 days from the last date for receipt of claims and may either admit or reject the claim	X+28+30+30
Preparation of List of Stakeholders as per Regulation 30 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	Liquidator to prepare list of stakeholders within 45 days from the last date for receipt of claims along with : <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>	X+28+30+45
Consultation with Stakeholders as per Regulation 12 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	Maintenance of Particulars/Minutes by Liquidator about any consultation with Stakeholders	
Realisation of Assets as per Regulation 31 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	Liquidator to value and sell the assets of the Corporate Person in the manner and mode approved by the Company.	This is an ongoing process. There is no specific timeline.
Proceeds of Liquidation as per Regulation 34 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<ul style="list-style-type: none"> <li>➤ Liquidator to deposit proceeds of distribution in Bank Account</li> </ul>	This is an ongoing process. There is no specific timeline.
Distribution of Proceeds as per Regulation 35 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<ul style="list-style-type: none"> <li>➤ Distribution of Proceeds within <b>6 months</b> from the receipt of amount to the stakeholders</li> <li>➤ Distribution of Assets that cannot be sold with the approval of Company</li> </ul>	
Preparation and Audit of Liquidation Accounts as per regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<ul style="list-style-type: none"> <li>➤ Liquidator to maintain accounts for liquidation period and conduct audit for Liquidation period.</li> </ul>	
Completion of Liquidation Process as per Regulation 37 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	The entire process to be completed within 12 months from the date of commencement of liquidation If the liquidation process extends for more than 12 months, the liquidator shall – <ul style="list-style-type: none"> <li>➤ Within 15 days of from the end of 12 months hold meeting of contributories</li> <li>➤ Present Annual Report indicating- <ul style="list-style-type: none"> <li>• Settlement of List of Stakeholders</li> <li>• Details of Assets remaining to be sold/realized</li> <li>• Distribution made to the stakeholders</li> </ul> </li> </ul>	X+28+12 (Months)

	<ul style="list-style-type: none"> <li>• Unsold assets distributed to the stakeholders</li> <li>• Any material litigation for/against Company.</li> </ul>	
<b>Corresponding Sections as per Insolvency And Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017</b>	<b>Requirements/ Compliances/Role of Liquidator on Completion of Liquidation Process</b>	<b>Timeline</b>
Preparation of Final Report as per Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<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> </ul> </li> <li>➤ Statement of Sale of Assets showing <ul style="list-style-type: none"> <li>• 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><b>The Final report needs to be send to:</b></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>	This is to be done when the entire liquidation process is completed.
Unclaimed proceeds of liquidation as per regulation 39 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Before the order of liquidation is passed, the liquidator shall :</p> <ul style="list-style-type: none"> <li>➤ In case of unclaimed proceeds or undistributed assets , the liquidator shall apply to the Adjudicating Authority for an order to pay into the Companies Liquidation Account in the Public Account of India.</li> <li>➤ The liquidator shall, when making any payment furnish to the registrar and the Board, a statement setting forth the nature of the sums included, the names and last known address of the stakeholders, the amount to which each is entitled to and the nature of their claim.</li> </ul>	
Application for Dissolution of Company by Liquidator as per Section 59 (7) of Insolvency and	<ul style="list-style-type: none"> <li>➤ Where the affairs of the Company is completely wound up and its assets completely liquidated, the liquidator shall make an application to Adjudicating</li> </ul>	

Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<p>Authority for the dissolution of such Company.</p> <ul style="list-style-type: none"> <li>➤ The <b>Adjudicating Authority -NCLT</b> shall on an application filed by the liquidator pass an order for the dissolution of the Company.</li> <li>➤ Copy of such order to be filed within 14 days with the <b>Registrar of Companies (ROC)</b>.</li> </ul>	Within 14 days of passing an order by NCLT.
Preservation of Records as per regulation 41 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017	<ul style="list-style-type: none"> <li>➤ The liquidator shall preserve all the reports, records, registers and books of accounts either in physical or electronic form for a period of <b>8 years</b> after the dissolution of the Company either with himself or with an Information Utility.</li> </ul>	

Notes :

1. \* **MGT-14** - Two forms of MGT-14 to be filed, One for Special Resolution pursuant to Section 117 (3) (a) and Second for Board Resolution as per Section 117 (3) (f) read with Section 59 of the Insolvency and Bankruptcy Code, 2016.
  - ✓ **Attachments for MGT-14 (For Board Meeting):** CTC of Board Resolution passed for **Winding up and Appointment of Liquidator and Declaration of Solvency**. If the Board Meeting is held on shorter notice, please attach Shorter Notice.
  - ✓ **Attachments for MGT-14 (For General Meeting):** CTC of Special Resolution passed for Voluntary Winding up and Appointment letter along with explanatory statement. If the General Meeting is held on shorter notice, please attach shorter notice.
  
2. \*\* **GNL-2** – Two forms of GNL-2 to be filed, One for Special Resolution confirming the appointment of Liquidator and Second for Board Resolution wherein the Declaration of Solvency given by the Majority of Directors was duly noted by the Board of Directors pursuant to Section 117 (3) (a) and (f) read with Section 59 of the Insolvency and Bankruptcy Code, 2016.
  - ✓ **Attachments for GNL-2 (For Declaration of Solvency) :** CTC of Board Resolution passed for Declaration of Solvency, in case the meeting is held on shorter notice, please attach shorter notice, Declaration of Solvency with Affidavit by Majority of Directors along with audited Financial Statements of Past two years, Valuation Report, if any, latest financial position, if any. In case the Foreign Director signs the



Declaration of Solvency in India, **please attach copy of Visa, confirming such Director's presence in India.**

- ✓ **Attachments for GNL-2 (Appointment of Liquidator)** : CTC of Special Resolution passed for Appointment of Liquidator along with explanatory statement, incase the the Meeting is held at Shorter Notice, please attach shorter notice consent, Letter of Appointment issued to Liquidator, Notice of Appointment of Liquidator to ROC, copy of public announcement made by the liquidator in newspaper.
  - 3. Cost of Proof : Claimant shall bear the Cost of proving its claim.
  - 4. Incase any stakeholder wants to inspect Minutes of Consultation and report, then an application for inspection needs to be submitted in writing along with Cost and undertaking from stakeholder for maintaining the confidentiality of reports and minutes.
  - 5. Incase of claims denominated in Foreign Currency, it shall be valued in Indian Currency at the official exchange rate as on the liquidation commencement date.
  - 6. Incase of the Capital of the Company, no distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital of the Company.
  - 7. Any money paid into the Companies Liquidation Account which remains unclaimed for a period of 15 years should be transferred to the General Revenue Account of the Central Government.
  - 8. All payments out of the account by the liquidator above Five thousand rupees shall be made by cheques drawn or online banking transactions.
  - 9. Where there are mutual dealings between the Company and another party, the sums due from one party shall be set off against the sum due from the other party to arrive at net amount payable to the Company or to the other party.
  - 10. Where the amount claimed by a claimant is not precise due to any contingency or any other reason, the liquidator shall make the best estimate of the amount of the claim, based on consultation with the claimant and Company as well as the information available with him.
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