



# NEWSLETTER

March 2022

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**dvmgopal & associates**  
Company Secretaries

# VOLUNTARY LIQUIDATION UNDER IBC, 2016

*Under Section 59 in Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016*

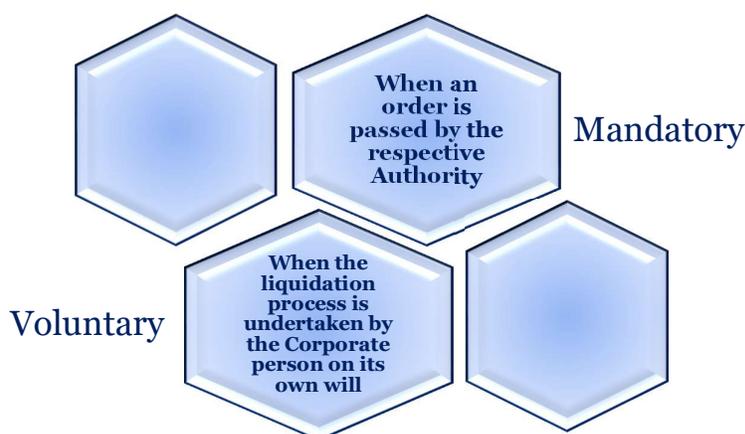
A Company once incorporated may shut down its operations in any of the following ways:

1. By the process of liquidation under the Insolvency and Bankruptcy Code, 2016
2. By the process of winding up under the Companies Act, 2013
3. By the process of striking off under the Companies Act, 2013

The process to be followed by the Company upon choosing any of the abovementioned mode of shutting down the operations, majorly depends upon the financial strength of the Company. For example, if the Company has debts and is willing to pay off the debts with the available assets, then the Company may adopt for a 'Liquidation Process'. Similarly, in case the Company has no operations in the last two years, then it may undergo the 'Striking Off Process'. This Article emphasizes on the liquidation process taken up by the Company on a voluntary basis.

Liquidation refers to the process where the corporate person is dissolved or is wound up. It is a process adopted when the corporate debtor becomes incapable to pay its debts or to run its business in the ordinary course. It is undertaken by the corporate person legally by which the existence of the corporate person then comes to an end.

A corporate person may undergo liquidation in any of the two ways:



This Article contains an elaborative approach towards 'Voluntary Liquidation' under the Insolvency and the Bankruptcy Code, 2016 ("Code").

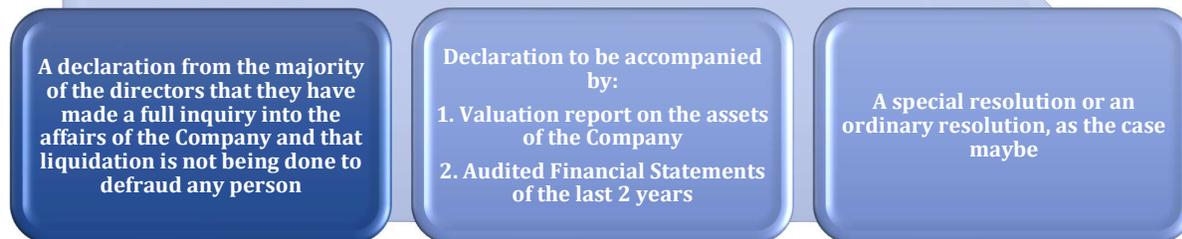
## VOLUNTARY LIQUIDATION

Section 59 in Chapter V of Part II of the Code contains the applicable provisions to any liquidation commenced on a voluntary basis.

### **I. Who may initiate Voluntary Liquidation?**

As per Section 59(1) of the Code, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of Part II of the Code.

Any Corporate person in order to liquidate voluntarily shall satisfy certain conditions. These Conditions include



## II. Approvals Required

A resolution is required to be passed in the general meeting of the Company within a period of four weeks from the date of the declaration.

A special resolution is required for the same, except when the liquidation is initiated due to any of the following reasons:

- a. On the expiry of its duration, if any, in pursuance to the Articles of Association of the Company
- b. When the object for which the Company was incorporated is duly fulfilled

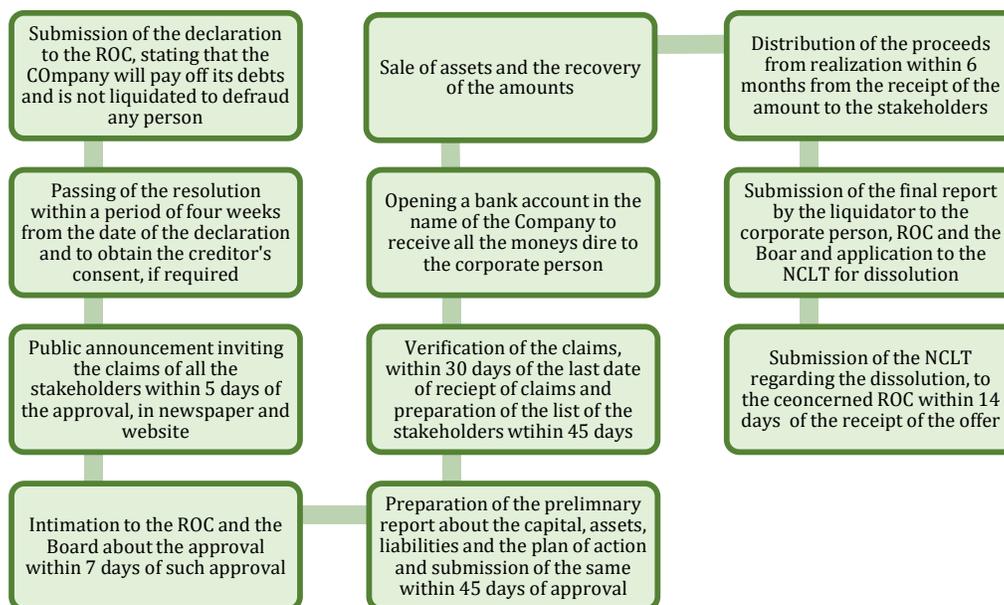
**NOTE:** If the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed within seven days of such resolution.

### Commencement of the Liquidation Proceedings:

Subject to the approval of the creditors, liquidation proceedings are deemed to be commenced from the date of the resolution passed in this regard.

A procedure is to be followed by the corporate person liquidating voluntarily as per the Code. The process is as given further in this Article.

## III. Steps Involved in a Voluntary Liquidation



The process under Voluntary Liquidation, though similar to that of the process under insolvent liquidation, has the following differences:

1. To initiate voluntary liquidation proceedings, where the corporate debtor is a company, the directors have to provide a declaration of solvency and a declaration that the company is not being liquidated to defraud any person.
2. The declarations have to be accompanied by (a) the audited financial statements of the company and (b) a record of its business operations for the previous two years or the periods since its incorporation, whichever is later.
3. Further, a report of the valuation of the assets of the company prepared by a registered valuer has to be provided.
4. A resolution in favor of the voluntary winding up of the company and appointment of an insolvency professional as the liquidator has to be passed within four weeks of the declaration given.
5. A resolution in favor of the voluntary winding up of the company and appointment of an insolvency professional as the liquidator has to be passed within four weeks of the declaration given.

#### IV. Effect of Liquidation

1. The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business.
2. Notwithstanding the provisions as mentioned in Point (1), the corporate person shall continue to exist until it is dissolved under section 59(8) of the Code.

#### V. Discussion Paper On Voluntary Liquidation

In light of the [Discussion Paper dated 1<sup>st</sup> February, 2022](#), given by the Insolvency and Bankruptcy Board of India; it has solicited public comments on the issues as discussed in the Paper on the following:

- a. Review of Timelines
- b. Compliance Certificate

Analytically, a same period of one year has been provided to Liquidation and Voluntary Liquidation under the Code. In general, the voluntary liquidation process is much simpler in nature on account of nil or negligible claims of creditors filed against the corporate person, fewer assets, if any, to be realized and not many litigations being pending. Therefore, it may not appear justifiable to put both the processes on equal footing in terms of the timelines provided for their completion. Therefore, the purpose of the Amendment is to reduce the time taken for liquidating a Company on a voluntary basis. The Proposed amendments have been mentioned as below:

##### 1. REVIEW OF TIMELINES

**1.1. Preparation of List of Stakeholders:** Sub-regulation (2) of regulation 30 of the Voluntary Liquidation Regulations provides that “The liquidator shall prepare the list of stakeholders within forty-five days from the last date for receipt of claims”. It may be noted that a period of thirty days from the liquidation commencement date is provided for submission of claims by the stakeholders. Therefore, a total period of seventy-five days from the liquidation commencement date is provided for preparation of the list of stakeholders. However, in cases where there are no creditors, the preparation of list of stakeholders should not take such an unduly long period, as the list of shareholders / partners is available with the liquidator at the time of commencement.

**Proposal:** In cases where no claims are received from the creditor(s), the period for preparation of list of stakeholders by liquidator may be reduced to fifteen days from the last date for receipt of claims.

**1.2. Distribution:** Sub-regulation (1) of regulation 35 of the Voluntary Liquidation Regulations provides for a period of six months from the receipt of the amount for its distribution to the stakeholders. In cases where there are no creditors, the stakeholders who are entitled for distribution are the shareholders / partners of the corporate person. It may be noted that prior to the amendment dated 25th July 2019, the Liquidation Regulations also provided a period of six months for distribution of proceeds from realization to the stakeholders. The same was reduced to ninety days vide the amendment dated 25th July 2019. Since the liquidation proceedings are generally more complex and involves far greater number of stakeholders, the distribution under voluntary liquidation process may not require even ninety days.

**Proposal:** The period for distribution of proceeds from realization to the stakeholders may be reduced from the current six months to a period of thirty days from the receipt of the amount.

**1.3. Submission of Final Report:** In cases where there are no creditors, the liquidator is not required to undertake various activities such as verification of claims, intimation about decision of acceptance / rejection of claims, etc. or the activities such as preparation of list of stakeholders, may take lesser time. Therefore, in case of no creditors involved in a voluntary liquidation process, the preparation and submission of Final Report should take much lesser period as compared to the situation where creditors are involved.

**Proposal:** It is proposed that the period for submission of Final Report, in cases where no claims are received from any creditor(s), may be provided as ninety days from the liquidation commencement date. On the other hand, in cases where claims are received from creditor(s), the period for submission of Final Report may be provided as two hundred and seventy days from the liquidation commencement date. Therefore, the liquidator shall submit the Final Report, along with the application for dissolution, to the AA within ninety days or two hundred and seventy days, as the case may be, from the liquidation commencement date.

## **2. COMPLIANCE CERTIFICATE**

**2.1. Statement of Problem:** The liquidators have submitted final reports to the AA in 546 cases, as on 31 st December, 2021. Of which, 263 cases (around 48%) are still pending for dissolution. The Board had conducted Round Table Discussion with the IPs handling voluntary liquidation cases on 21st August, 2021 to ascertain the reasons for delay in timely completion of voluntary liquidation process and possible solutions to address them. One of the suggestions put forward by the IPs therein that the availability of such checklist / certificate would enable faster disposal of voluntary liquidation cases by the AA.

**Proposal:** On the lines of Compliance Certificate provided under CIRP Regulations and Liquidation Regulations, it is proposed that a similar compliance certificate / checklist may be introduced for voluntary liquidation process, to be submitted along with final report to AA, in the specified Form under regulation 38(3) of the Voluntary Liquidation Regulations. It would contain summary of the voluntary liquidation process including the time taken for various actions by the liquidator (against the prescribed time limit), details of receipts and payment during the process, etc.

## VI. Frequently Asked Questions

### Q.1. What are the requirements for initiation of the voluntary liquidation proceedings?

The following are the requirements for initiating liquidation proceedings voluntarily:

- a. Either the company has no debt or will be able to pay off its debts in full from the proceeds of assets.
- b. The company is not being liquidated with an intention to defraud any person.

### Q.2. What is the duration of the liquidation proceedings?

The liquidation shall be completed within a period of twelve months from the liquidation commencement date

### Q.3. Who is a liquidator and when is the liquidator appointed?

"Liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of Insolvency and Bankruptcy Code.

The members of the company shall after furnish the declaration of solvency pass special resolution for the appointment of Insolvency Professional as liquidator to undertake the voluntary liquidation process.

### Q.4. What shall be the remuneration of liquidator during voluntary liquidation process?

The remuneration of liquidator shall be determined by the members, partners, or contributories, as the case may be, while passing the resolution for initiation of voluntary liquidation process of the corporate person under section 59(3)(c) of the Code or regulation 3(1)(c) of the Voluntary Liquidation Regulations (regulation 5(1) of the Voluntary Liquidation Regulations)

### Q.5. What is the process for replacing a liquidator?

The liquidator may be replaced by the same procedure as was followed for initial appointment of the liquidator under regulation 3(1)(c) of the Voluntary Liquidation Regulations or section 59(3)(c) of the Code (regulation 5(1) of the Voluntary Liquidation Regulations).

### Q.6. Does the corporate person cease to carry on its business upon commencement of voluntary liquidation process?

The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business (regulation 4(1) of Voluntary Liquidation Regulations).

## Monthly Updates

Provision	Amendment
The due date for filing e-form forms AOC-4, AOC-4 (CFS), AOC-4, AOC-4 XBRL AOC-4 non-XBRL is within 30 days of AGM and MGT -7 / MGT -7A within 60 days of AGM	Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 (CFS), AOC-4, AOC-4 XBRL AOC-4 Non-XBRL and MGT -7 / MGT -7A for the financial year ended on 31.03.2021 up to 31.03.2022.

**General Circular No. 01/2022**  
**F.No. 01/34/2013 CL-V -Part-III**  
**Government of India**  
**Ministry of Corporate Affairs**  
 5<sup>th</sup> Floor, 'A' Wing, Shastri Bhawan,  
 Dr. Rajendra Prasad Road, New Delhi-1  
**Dated: 14<sup>th</sup> February, 2022**

To

DGCoA,  
 All Regional Directors,  
 All Registrar of Companies,  
 All Stakeholders.

**Subject: Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and MGT-7/MGT-7A for the financial year ended on 31.03.2021 under the Companies Act, 2013 - reg.**

Sir/madam,

In continuation to Ministry's General Circular No.22/2021 dated 29.12.2021, keeping in view various requests received from stakeholders regarding relaxation of levy of additional fees for annual financial statement/return filings required to be done for the financial year ended on 31.03.2021, it has been further decided that no additional fees shall be levied upto **15.03.2022** for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and upto **31.03.2022** for filing of e-forms MGT-7/MGT-7A in respect of the financial year ended on 31.03.2021 respectively. During the said period, only normal fees shall be payable for the filing of the aforementioned e-forms.

2. This issues with the approval of the competent authority.

Yours faithfully,

(KMS Narayanan)  
 Deputy Director (policy)

Copy forwarded for information and necessary action to:-E-Governance section and  
 (ii) Guard file.

## Compliance Calendar

FEMA			
Compliance details	Form	Applicability	Due Date
Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA	Form ECB-2	All Companies having ECB	07/03/2022
Labour Laws			
Compliance details	Form	Applicability	Due Date
PF Payment	Monhly ECR	Entities registered with PF Authorities	15/03/2022
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	15/03/2022
INCOME TAX			
Compliance details	Form	Applicability	Due Date
Deposit of Tax Deducted	Challan 281	Non-government deductors	07/03/2022
Advance tax		Those taxpayers who has tax payable more than of Rs.10,000/-	15/03/2022
Income tax return	Belated return/Revised return	Applicable taxpayers	31/03/2022
GST			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	11/03/2022
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	13/03/2022
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	20/03/2022
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	25/03/2022
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non-Resident GST Taxpayers	20/03/2022
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	13/03/2022
Return for TDS under GST	GSTR 7	Government Authorities	10/03/2022
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/03/2022
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	28/03/2022