

### Check list for Voluntary Liquidation of a Company

The Insolvency and Bankruptcy Code 2016 (IBC 2016), has opened a new and simple way of Voluntary Liquidation. This procedure has been stated in Chapter III of IBC 2016, and the Regulations issued thereunder. The Corporate Persons are able to use these provisions after ensuring that there is no default within the meaning of IBC 2016, and any Conditions and procedural requirements of Board (IBBI) are complied. For the sake of fair understanding, these Steps and Procedures of the Process may be elaborated as follows:

1. **A declaration from majority of the directors** of the company verified by an affidavit stating that—
  - a. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - b. the company is not being liquidated to defraud any person;

This Declaration shall include:

- a. audited financial statements of the company for the previous two (2) years or for the period since its incorporation, whichever is later
- b. record of business operations of the company for the previous two (2) years or for the period since its incorporation, whichever is later
- c. a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- d. The declaration shall list each debt of the corporate person as on that date and state that the corporate person will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation.

2. Within four (4) weeks of above declaration :
  - a. A **special resolution** of the members of the company in a **general meeting** requiring the company to be **liquidated voluntarily** and appointing an insolvency professional to act as the liquidator OR
  - b. A **resolution** of the members of the company in a **general meeting** requiring the company to be liquidated voluntarily as a result of **expiry of the period** of its duration, if any, fixed by its articles or on the **occurrence of any event** in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator
  - c. If the company **owes any debt** to any person, creditors representing **two- thirds (2/3) in value of the debt** of the company shall **approve the resolution passed as above** within seven (7) days of such resolution.
  - d. The resolution passed as above shall contain the terms and conditions of the appointment of the liquidator, including the remuneration payable to him.
  - d. 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.
3. The company shall notify the **Registrar of Companies** and **the Board (IBBI)** about the resolution under as above to liquidate the company within seven (7) days of such resolution or the subsequent approval by the creditors, as the case may be.
4. The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the **date of passing of the resolution** under as above.
5. The provisions of sections 35 to 53 of Chapter III and Chapter VII of IBC 2016, shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

## 6. Applicable Provisions of IBC 2016, for Voluntary Liquidation

Sec. 33	Powers and Duties of Liquidator
Sec. 36	Liquidation Estate
Sec. 37	Power of Liquidator to Access Information
Sec. 38	Consolidation of Claims
Sec. 39	Verification of Claims
Sec. 40	Admission or Rejection of Claims
Sec. 41	Determination of valuation of claims
Sec. 42	Appeal against the decision of liquidator
Sec. 43	Preferential Transactions and relevant time
Sec. 44	Orders in case of preferential transactions
Sec. 45	Avoidance of Undervalued Transactions
Sec. 46	Relevant period for avoidable transactions
Sec. 47	Application by creditor in case of undervalued transactions
Sec. 48	Order in case of Undervalued Transactions
Sec. 49	Transactions defrauding Creditors
Sec. 50	Extortionate Credit transactions
Sec. 51	Order of Adjudicating Authority in respect of Extortionate Credit Transactions.
Sec. 52	Secured Creditor in Liquidation Proceedings
Sec. 53	Distribution of Assets.

7. Sec. 53 speaks about Distribution of Assets, the the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified
- a. the insolvency resolution process costs and the liquidation costs paid in full;  
The remuneration payable to the liquidator shall form part of the liquidation cost.
  - b. the following debts which shall rank equally between and among the following :—
    - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
    - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

The term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.
  - c. wages and any unpaid dues owed to employees other than workmen for the period of twelve (12) months preceding the liquidation commencement date;
  - d. financial debts owed to unsecured creditors;
  - e. the following dues shall rank equally between and among the following:—
    - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
    - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
  - f. any remaining debts and dues;
  - g. preference shareholders, if any;
  - h. equity shareholders or partners, as the case may be.
8. The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction.

9. At each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will **either be paid in full**, or will be **paid in equal proportion within the same class of recipients**, if the proceeds are insufficient to meet the debts in full.

10. The liquidator shall prepare and submit-

(a) **Preliminary Report;**

The liquidator shall submit a Preliminary Report to the corporate person within forty five (45) days from the liquidation commencement date, detailing-

- (a) the capital structure of the corporate person;
- (b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person:

(b) **Annual Status Report;**

In the event of the liquidation process continuing for more than twelve (12) months, the liquidator shall-

- (a) hold a meeting of the contributories of the corporate person within fifteen (15) days from the end of the twelve (12) months from the liquidation commencement date, and at the end every succeeding twelve (12) months till dissolution of the corporate person; and
- (b) shall present an Annual Status Report(s) indicating progress in liquidation, including-
  - (i) settlement of list of stakeholders,
  - (ii) details of any assets that remains to be sold and realized,
  - (iii) distribution made to the stakeholders, and
  - (iv) distribution of unsold assets made to the stakeholders;
  - (v) developments in any material litigation, by or against the corporate person; and
  - (vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.

The Annual Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

(c) **Minutes of consultations with stakeholders;** and

(d) **Final Report** in the manner specified.

On completion of the liquidation process, the liquidator shall prepare the Final Report consisting of -

- (a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date; and
- (b) a statement demonstrating that-
  - (i) the assets of the corporate person has been disposed of;
  - (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;
  - (iii) no litigation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation.
- (c) a sale statement in respect of all assets containing -
  - (i) the realized value;
  - (ii) cost of realization, if any;
  - (iii) the manner and mode of sale;
  - (iv) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets;
  - (v) the person to whom the sale is made; and
  - (vi) any other relevant details of the sale.

The liquidator shall send the Final Report forthwith, to the **Registrar** and the **Board (IBBI)** and to the **Adjudicating Authority**.

11. The liquidator shall maintain the following registers and books, as may be applicable, in relation to the liquidation of the corporate debtor:-
- (a) Cash Book;
  - (b) Ledger;
  - (c) Bank Ledger;
  - (d) Register of Fixed Assets and Inventories;
  - (e) Securities and Investment Register;
  - (f) Register of Book Debts and Outstanding Debts;
  - (g) Tenants Ledger;
  - (h) Suits Register;
  - (i) Decree Register;
  - (j) Register of Claims and Dividends;
  - (k) Contributories Ledger;
  - (l) Distributions Register;
  - (m) Fee Register;
  - (n) Suspense Register;
  - (o) Documents Register;
  - (p) Books Register;
  - (q) Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 39; and
  - (r) such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.
12. The registers and books as above may be maintained in the forms indicated in Schedule II, with such modifications as the liquidator may deem fit in the facts and circumstances of the liquidation.
13. The liquidator shall keep receipts for all payments made or expenses incurred by him.
14. A liquidator may engage professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

15. The stakeholders consulted shall extend all assistance and cooperation to the liquidator to complete the liquidation of the corporate person. The liquidator shall maintain the particulars of any consultation with the stakeholders made under this Regulation.
16. The liquidator shall make a **public announcement** in Form A of Schedule I within five (5) days from his appointment. The public announcement shall-

- (a) call upon stakeholders to submit their claims as on the liquidation commencement date; and
- (b) provide the last date for submission of claim, which shall be thirty (30) days from the liquidation commencement date.

The announcement shall be published-

- (a) in **one English** and **one regional language** newspaper with wide circulation at the location of the **registered office** and **principal office**, if any, of the corporate person and **any other location** where in the opinion of the liquidator, the corporate person **conducts material business operations**.
  - (b) on the website, if any, of the corporate person; and
  - (c) on the website, if any, designated by the Board for this purpose.
17. The liquidator shall verify the claims submitted within thirty (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. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator.



18. The liquidator shall prepare a list of stakeholders on the basis of proofs of claims submitted and accepted under these Regulations, with-

- (a) the amounts of claim admitted, if applicable,
- (b) the extent to which the debts or dues are secured or unsecured, if applicable,
- (c) the details of the stakeholders, and
- (d) the proofs admitted or rejected in part, and the proofs wholly rejected.

The liquidator shall prepare the list of stakeholders within forty-five (45) days from the last date for receipt of claims

The list of stakeholders, as modified from time to time, shall be-

- (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, directors and guarantors of the corporate person;
- (c) displayed on the website, if any, of the corporate person;
- (d) displayed on the website, if any, designated by the Board for this purpose.

19. **Bank Account of Liquidator**

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 the receipt of all moneys due to the corporate person. The liquidator shall pay to the credit of the bank account opened, all moneys, including cheques and demand drafts received by him as the liquidator of the corporate person, and the realizations of each day shall be deposited into the bank account without any deduction not later than the **next working day**. The money in the credit of the bank account shall be used only in accordance with IBC 2016 and Regulations. All payments out of the account by the liquidator above five thousand (45,000) rupees shall be made by cheques drawn or online banking transactions against the bank account.

20. The liquidator is supposed to distribute the proceeds from realization, at least, within six (6) months from the receipt of the amount to the stakeholders. The liquidator may endeavour to complete the liquidation process of the corporate person within twelve (12) months from the liquidation commencement date.
21. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority **for the dissolution of such corporate person.**
22. The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor **shall be dissolved** from the date of that order and the corporate debtor shall be dissolved accordingly.
23. A copy of an order of **Dissolution of Corporate Debtor** shall within fourteen (14) days from the date of such order, be forwarded to the authority with which the corporate person is registered (i.e. Registrar of Companies).
24. The liquidator shall **preserve a physical or an electronic copy of the reports, registers and books of account** referred to in Regulations for at least eight (8) years after the dissolution of the corporate person.

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