

1. Which notification makes the voluntary winding up effective? The following notifications make the voluntary winding up effective?

- ✚ The Ministry of Corporate Affairs vide notification dated 30th March 2017 notified Section 59 of the Insolvency and Bankruptcy Code, 2016 which is relating to Voluntary Liquidation of Corporate persons.

The Insolvency and Bankruptcy Board of India (IBBI) vide its notification dated 31st March 2017, notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 which came into effect from 1st April 2017.

2. Who can apply for the process of Voluntary winding up?

- ✚ A corporate person who seeks an intention to liquidate itself voluntarily (at its own wish) and has not committed any default can initiate the voluntary winding up subject to the criteria provided in the act.

3. Which sections of Insolvency and Bankruptcy Code, 2016 deals with voluntary winding up?

- ✚ Following are the sections of Insolvency and Bankruptcy Code, 2016 which deals with voluntary winding up:
 1. Section 59 – Voluntary liquidation of corporate persons.
 2. Section 209 – 215 (both inclusive) – Information utilities.
 3. Sub-section (1) of section 216 – Rights and obligations of persons submitting financial information.
 4. Section 234 – Agreements with foreign countries; and
 5. Section 235 – Letter of request to a country outside India in certain cases.

4. What are the conditions for voluntary winding up?

- ✚ The entity should comply with the following conditions for voluntary winding up:

Declaration from majority of the directors of the company verified by an affidavit stating that-

- 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 of the proceeds of assets to be sold in the voluntary liquidation; and
- the company is not being liquidated to defraud any person.

The above said declaration shall be accompanied with the following documents, namely: —

- audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later.
- a report of the valuation of the assets of the company, if any prepared by a registered.

5. Which form is required to file to submit the dissolution order?

- ✚ The company is required to file the order in Form INC-28 with the ROC within the prescribed time.

6. What are the powers of liquidator in voluntary liquidation process?

✚ The liquidator has the following powers:

To verify claims of all the creditors.

To evaluate the assets and property of the corporate debtor.

To sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract.

To carry on the business of the corporate debtor for its beneficial liquidation.

To take into his custody or control all the assets, property.

To take such measures to protect and preserve the assets and properties of the corporate debtor.

To draw, accept, make and endorse any negotiable instruments including bill.

of exchange, hundi, or promissory note in the name and on behalf of the corporate debtor.

Other powers as mentioned in code.

7. What are the rights of secured creditor in liquidation proceedings?

✚ A secured creditor in the liquidation proceedings may—

relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator

realise its security interest

8. What are the preferences of distribution of assets?

✚ The proceeds from the assets shall be distributed in the below preferences:

Insolvency resolution process costs and the liquidation costs paid in full.

Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and debts owed to a secured creditor in the event such secured creditor has relinquished security.

wages and any unpaid dues owed to employees other than workmen for the Period of twelve months.

Financial debt owed to unsecured creditor.

any amount due to the Central Government and the State Government.

any remaining debts and dues.

Preference shareholders, if any.

Equity shareholders or partners.

9. Name the categories from whom liquidator shall collect the claims and their proofs?

✚ Liquidator shall collect the claims and their proofs in respective forms as mentioned in schedules:

Financial creditor- Form C

Operational creditor- Form B

Employees and workmen- Form D

Any other person not included above- Form F

10. What is the approximate time period for completion of process of liquidation?

- ✚ The liquidator shall complete the liquidation process within 12 months from within commencement date.

If the liquidation proceedings remains in-complete in 12 months, the liquidator shall hold a meeting of the contributories of the corporate person within fifteen days from the end of the period of twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the corporate person.

11. What are the eligibilities for appointment as liquidator?

- ✚ The eligibilities for appointment as liquidator are as follows:

An insolvency professional and every partner or director of the insolvency professional entity of which he is a partner or director is independent of the corporate person.

An insolvency professional and every partner or director of the insolvency professional entity of which he is a partner or director is not under a restraint order of the Board.

A liquidator shall disclose the existence of any pecuniary or personal relationship with the concerned corporate person or any of its stakeholders as soon as he becomes aware of it, to the Board and the Registrar.