

PROCEDURE FOR VOLUNTARY WINDING UP OF COMPANY



BACKGROUND

The purpose of this presentation is to highlight the brief procedure for Voluntary Winding up of Company as per the relevant provisions of Insolvency and Bankruptcy Code, 2016, rules and regulations made thereunder and other statutory laws.



BACKGROUND

In the event where a Company voluntarily seeks to undergo winding up by discharging all its debts / liabilities through the sale of assets, if any with the aid of Liquidator duly appointed by the Company for the aforesaid purpose.

Thus in such scenarios there is a provision under the Insolvency and Bankruptcy Code, 2016 to undertake voluntary winding up.

Pre-requisites for Voluntary Winding Up

Enquiry into the affairs of the Company

Full enquiry is to be made into the affairs of the Company that either the Company has no debt or it will be able to pay its debt in full from the proceeds of assets to be sold in during the course winding up.

No defraud

It is to be assured that Company is not being wound up to defraud any person.

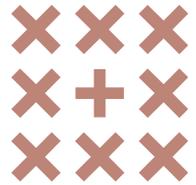
Preparation and collation of Financials

Company is required to prepare and collate duly audited Financial Statements for the preceding two Financial years, a statement of assets and liabilities duly audited and report of the valuation of assets of the Company, if any which is to be prepared by a registered valuer.

Identification of Liquidator

Company shall make arrangements to identify a prospective Insolvency Professional (“IP”) an individual possessing the eligibility as prescribed under the IP Regulations laid down by the Insolvency and Bankruptcy Board of India (“IBBI”) for his appointment as Voluntary Liquidator of the Company.





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Steps for Voluntary Winding up

Step 1

The first step is to hold Meeting of Board of Directors (“BOD”) of the Company for the aforesaid purposes:

- a) to consider and approve the Voluntary Winding up of Company subject to the consent of Shareholders;*
- b) to consider and approve the appointment of Insolvency Professional as Liquidator of the Company subject to the consent of Shareholders;*
- c) to consider and approve Declaration of Solvency supported by an Affidavit provided by majority of Directors of the Company stating that full enquiry has been made into the affairs of the Company that either the Company has no debt or it will be able to pay its debt in full from the proceeds of assets to be sold in during the course winding up.*

Step 2

Next step is to hold General Meeting of Shareholders of the Company within 4 weeks of the date of Declaration of Solvency for according their consent by way of special resolution to the Voluntary Winding up of Company, appointment of Liquidator and approval of Declaration of Solvency. The date of General Meeting is deemed to be the date of commencement of voluntary liquidation.



Steps for Voluntary Winding up

Step 3

In case Company under winding up owes any debt to Creditors of the Company representing 2/3rd in value of the debt of the Company then it shall also seek approval of its Creditors within 7 days from the date of General Meeting.

Step 4

The liquidator shall make a Public Announcement of Voluntary Winding up within 5 days from the passing of special resolution, which shall published in both English and regional language newspaper circulating at the location of the Registered office of the Company under winding up and it 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 days from the liquidation commencement.*

Step 5

Filing special resolution passed in the General Meeting with Registrar of Companies ("ROC") in the prescribed e form within 7 days from the date of passing special resolution and in case of creditors approval is also accorded, then the same is to be filed within 14 days from the date of special resolution.



Steps for Voluntary Winding up

- Step 6** *Intimation to Income Tax Department within 1 month of passing special resolution and to obtain NOC.*
- Step 7** *Intimation to Insolvency and Bankruptcy Board of India (“IBBI”) about the special resolution passed in General Meeting at the earliest.*
- Step 8** *The Liquidator shall open a separate Bank Account of the Company followed by the words “in voluntary liquidation”, in a scheduled bank within 30 days from the date of General Meeting of the Company so as to carry out all the transactions pertaining to the Liquidation like payment of claims to creditors, liquidation cost, etc.*



Steps for Voluntary Winding up

- Step 9** *The Liquidator shall prepare a Preliminary Report within 45 days from the date of General Meeting containing the capital structure of the Company, estimates of assets and liabilities as on date of liquidation and the said report shall be submitted to IBBI by the Liquidator.*
- Step 10** *Apart from Preliminary Report, Liquidator shall also prepare a Progress Report on quarterly basis and submit the same with IBBI within 15 days from the end of each quarter.*
- Step 11** *Liquidator shall also receive all the claims from the Liquidator in the prescribed form within 30 days from the General Meeting , verify them and prepare list of stakeholders within 45 days from the last date of submission of claims. Further, liquidator shall make attempt to distribute proceeds to the concerned stakeholders within 6 months from the receipt of amount.*
- Step 12** *Liquidator shall endeavour to complete the process of liquidation within 12 months from the date of commencement of liquidation i.e. date of General Meeting. In case the same is not completed within 12 months, then Liquidator shall hold Meeting of Contributories within 15 days from the end of 12 months, at the end of each succeeding year till dissolution of the Company.*



Steps for Voluntary Winding up

- Step 13** *On completion of the Liquidation process, Liquidator shall prepare a Final report consisting of audited accounts of Liquidation, statement of assets that have been disposed off, debts of the Company that has been discharged and other matters pertaining to liquidation. This Final Report is to be submitted with ROC in the prescribed e form and with both IBBI and National Company law Tribunal (“NCLT or Tribunal”).*
- Step 14** *When the affairs of the Company have been completely wound up, the Liquidator shall make an Application to the NCLT in the prescribed form and it shall fix a date of hearing.*
- Step 15** *After the hearing, the Tribunal shall approve the application, as it deems fit and shall pass the final order for voluntary winding up of the Company.*
- Step 16** *On receipt of the final order as passed by the Tribunal, the same is required to be filed by the Company in the prescribed e form with ROC within 14 days from the date of order.*



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