



# THE BUZZ

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## Rules and Regulations

The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Proceedings) Regulations, 2017 also govern voluntary winding-up procedure. As per the Regulations, the liquidation process is to be completed within a period of:

- 90 days from the liquidation commencement date; or
- 270 days from the liquidation commencement date where the creditors have approved the resolution

The company is also required to notify the Registrar of Companies and the Insolvency and Bankruptcy Board of India ("IBBI") regarding its resolution to wind-up.

## VOLUNTARY WINDING UP

**W**hen a company chooses to cease its operations, then the shareholders of the company may opt for a voluntary winding up. After the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) the procedure for voluntary winding up, which were previously in the Companies Act, 2013 have been consolidated into the IBC

### Declaration Of Solvency

Where it is proposed to wind-up a company voluntarily, the majority of the directors, shall make a declaration verified by an affidavit that:

- they have made a full inquiry into the affairs of the company and that the company has no debt or that it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.
- that the company is not being wound up to defraud any person or persons;
- audited financial statements and record of business operations of the company for the previous two years
- A report of the valuation of the assets of the company prepared by a registered valuer

Further, the liquidator is to make a public announcement within 5 days from his date of appointment announcing the decision of the Company to wind-up. The announcement also serves as an invitation for stakeholders submit their claims.

The liquidator shall open a bank account in the name of the corporate person for the receipt of all moneys due to the corporate person during liquidation.

The IBBI shall also operate and maintain an Account to be called the Corporate Voluntary Liquidation Account in the Public Accounts of India. The liquidator shall deposit the unclaimed dividends or undistributed proceeds into this account.

## Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

## Passing a Resolution

To initiate voluntary winding up, the company can in a general meeting pass a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for 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 should be dissolved.

The Company may also pass a special resolution that the company be wound up voluntarily.

Through the resolution an insolvency professional shall be appointed to act as the liquidator.

If there are any dues payable to creditors, then the resolution must be approved by the creditors.

## Liquidation Estate

The liquidator shall take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor. The liquidator shall then form an estate of the assets of the Company, which will be called the liquidation estate. The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

The liquidator shall also receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process and value these claims.

## Winding Up

As soon as the affairs of a company are fully wound up, and the assets liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person. 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.