

Insolvency and Bankruptcy Board of India

Frequently Asked Questions (FAQs) on Voluntary Liquidation Process

(As on 31.10.2021)

A. Initiation

Question 1. Who can initiate voluntary liquidation process of corporate person?

Answer. A corporate person who intends to liquidate itself voluntarily and has either not committed any default, has no debt or in case of having debt, it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, may initiate voluntary liquidation process (section 59 of the Insolvency and Bankruptcy Code, 2016 (“Code”)).

Question 2. How to initiate voluntary liquidation process of corporate person?

Answer. Under section 59(3) of the Code read with regulation 3(1) of IBBI (Voluntary Liquidation Process) Regulations, 2017 (‘Voluntary Liquidation Regulations’), a corporate person may initiate the voluntary liquidation process after fulfilling the following conditions:

- i) A declaration from majority of the directors, designated partners, individuals constituting the governing body of the corporate person, as the case may be, that (a) the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets and (b) the corporate person is not being liquidated to defraud any person;
- ii) Within four weeks of a declaration, there shall be a resolution of the members, partners, contributories of the corporate person, as the case may be, requiring the corporate person to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator.
- iii) In case the corporate person owes any debt, creditors representing two-thirds in value of the debt of the corporate person shall approve the aforesaid resolution, within seven days of such resolution.

Subject to the approval of the creditors as stated in point iii) above, the voluntary liquidation process in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution as stated in point ii) above (section 59(5) of the Code read with regulation 3(3) of Voluntary Liquidation Regulations).

B. Appointment and Remuneration of Liquidator

Question 3. Does insolvency professional (IP) need to intimate the Insolvency and Bankruptcy Board of India ('Board') about his appointment as liquidator during voluntary liquidation process?

Answer. An IP shall intimate the Board within three days of his appointment as liquidator during voluntary liquidation process (regulation 5(2) of the Voluntary Liquidation Regulations).

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

Answer. 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).

Question 5. What is the process of replacing the liquidator?

Answer: 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).

C. Role of Liquidator and Corporate Person

Question 6. What are the duties of liquidator during voluntary liquidation process?

Answer. The liquidator may, *inter-alia*, perform the following duties:

- i) Make public announcement to call upon stakeholders to submit their claims;
- ii) Verify claims of stakeholders;
- iii) Realise all assets of the corporate person;
- iv) Distribute the proceeds from realization;
- v) File application to the Adjudicating Authority for dissolution of the corporate person.

Question 7. Does the corporate person cease to carry on its business upon commencement of voluntary liquidation process?

Answer. 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).

Question 8. Whether all the powers of board of directors, key managerial personnel and the partners of the corporate person, as the case may be, cease to have effect on the appointment of liquidator during voluntary liquidation process?

Answer. The powers of the board of directors, key managerial personnel and the partners of the corporate person, as the case may be, may continue to exist during voluntary liquidation process to monitor the process, approve the manner and mode of sale of assets of the corporate person by the liquidator, etc.

D. Claims

Question 9. What is the stipulated timeline for making public announcement calling upon the stakeholders to submit their claims?

Answer. The liquidator shall make public announcement within five days from his / her appointment calling upon the stakeholders to submit their claims (sub-regulation (1) and (2) of regulation 14 of Voluntary Liquidation Regulations).

Question 10. What is the process of filing claim as a stakeholder?

Answer. A stakeholder shall submit the proof of his claim to the liquidator in the specified Form:

- i) through electronic means only, if he is a financial creditor (regulation 17(1) of the Voluntary Liquidation Regulations);
- ii) in person, by post or by electronic means, if he is an operational creditor including workmen and employee or any other stakeholder (regulation 16(1), 18(1) and 19(1) of the Voluntary Liquidation Regulations).

Question 11. What forms have been specified for submitting the claims by various stakeholders during voluntary liquidation process?

Answer. The forms to be filed by various stakeholders, accessible through link-<https://ibbi.gov.in/home/downloads>, are:

S. No.	Stakeholder	Prescribed Form
1.	Operational Creditors except Workmen and Employees	B
2.	Financial Creditors	C
3.	Workmen or Employee	D
4.	Authorised Representative of Workmen or Employees	E
5.	Any other stakeholder	F

Question 12. Can mutual dealings between corporate person and creditors be set-off?

Answer. Regulation 28 of the Voluntary Liquidation Regulations provides that where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

Question 13. Can a creditor appeal the admission or rejection of claims by the liquidator?

Answer. A creditor has the option to file an appeal to the Adjudicating Authority against the decision of the liquidator within 14 days of receipt of such decision (section 42 of the Code).

E. Valuation

Question 14. Whether valuation of assets of the corporate person get conducted during voluntary liquidation process?

Answer. Section 59(3)(b) of the Code read with regulation 3(1)(b) of the Voluntary Liquidation Regulations provides for submission of valuation report, if any prepared by registered valuer, of assets of the corporate person at the time of declaration of its solvency by majority of directors, designated partners, or individual constituting the governing board, as the case may be, of the corporate person. Further, regulation 31 of Voluntary Liquidation Regulations provides that the liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person.

F. Sale

Question 15. What are the modes by which liquidator can sell assets of the corporate person?

Answer. The liquidator may sell the assets of the corporate person in the manner and mode approved by the corporate person (regulation 31 of Voluntary Liquidation Regulations).

Question 16. Where should the liquidator keep proceeds received during voluntary liquidation process?

Answer. The liquidator is required to open a separate bank account in the name of the corporate person followed by the words 'in voluntary liquidation' for receipt of all money received by him as the liquidator (regulation 34(1) of Voluntary Liquidation Regulations).

G. Reporting

Question 17. What are the reporting requirements for liquidator during voluntary liquidation process?

Answer. In accordance with regulation 8(1) of the Voluntary Liquidation Regulations, the liquidator shall prepare:

- i) Preliminary Report;
- ii) Annual Status Report;
- iii) Minutes of consultations with stakeholders; and
- iv) Final Report prior to dissolution.

Question 18. Does the liquidator need to share the reports / documents mentioned under regulation 8(1) of the Voluntary Liquidation Regulations, with the stakeholders?

Answer. In case a stakeholder submits an application in writing together with confidentiality undertaking and provides the cost of making such reports available, the liquidator shall make such reports available (regulation 8(2) of Voluntary Liquidation Regulations).

H. Appointment of Professionals

Question 19. Is there any upper limit on the number of professionals to be appointed by liquidator and their fees?

Answer. No upper limit has been stipulated either on the number of professional to be engaged or their fee. However, the number of professionals appointed and the fee payable to them should be commensurate with the size and complexity of the voluntary liquidation process.

Question 20. Is there any restriction on the liquidator regarding appointment of professionals?

Answer. The liquidator shall not appoint a professional, under regulation 11 of the Voluntary Liquidation Regulations, if:

- i) he / she is his / her relative;
- ii) he / she is a related party of the corporate person; or
- iii) he / she has served as an auditor to the corporate person in the five years preceding the liquidation commencement date.

Question 21. Are there any disclosure requirements regarding appointment of professionals?

Answer. Regulation 11(3) of the Voluntary Liquidation Regulations provides that a professional appointed or proposed to be appointed by the liquidator shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate person as soon as he becomes aware of it, to the liquidator.

I. Unclaimed Dividends / Undistributed Proceeds

Question 22. Where should the unclaimed dividends and / or undistributed proceeds be deposited during voluntary liquidation process?

Answer. In accordance with regulation 39(1) and (2) of the Voluntary Liquidation Regulations, the liquidator shall deposit the amount of unclaimed dividends and / or undistributed proceeds, if any, into Corporate Voluntary Liquidation Account operated as part of the Public Accounts of India. However, since the said account has not yet been operationalised, the liquidator needs to deposit the said amount into Corporate Voluntary Liquidation Account maintained by the Board with a scheduled bank. The liquidator shall thereafter submit Form-G, mentioning the nature of the amount deposited, etc., along with the supporting documents, to the Board and the authority with which the corporate person is registered (regulation 39(5) of the Voluntary Liquidation Regulations).

Question 23. When should the liquidator deposit unclaimed dividends and / or undistributed proceeds into Corporate Voluntary Liquidation Account?

Answer. The unclaimed dividends and / or undistributed proceeds, if any, needs to be deposited into Corporate Voluntary Liquidation Account by the liquidator prior to submission of application for dissolution of the corporate person to Adjudicating Authority under section 59(7) of the Code (regulation 39(2) of the Voluntary Liquidation Regulations).

Question 24. How should a stakeholder apply for withdrawal from the Corporate Voluntary Liquidation Account?

Answer. A stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form-H for an order for withdrawal of the said amount, after the dissolution of the corporate person (regulation 39(7) of the Voluntary Liquidation Regulations).

J. Detection of Fraud or Insolvency

Question 25. What action should be taken if it is detected that the voluntary liquidation process has been initiated to defraud a person or the corporate person shall not be able to pay its debts completely from realization of assets?

Answer. If it is detected that the voluntary liquidation process has been initiated to defraud a person or the corporate person will not be able to pay its debts completely from the realization of assets, the liquidator shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass appropriate orders (regulation 40 of the Voluntary Liquidation Regulations).

K. Completion of Liquidation

Question 26. What is the stipulated timeline for completion of voluntary liquidation process?

Answer: The liquidator shall endeavour to complete the voluntary liquidation process of the corporate person within twelve months from the liquidation commencement date (regulation 37(1) of the Voluntary Liquidation Regulations).

Question 27. What happens if the process continues for more than twelve months?

Answer: The liquidator shall hold a meeting of the contributories of the corporate person within fifteen days from the end of twelve months from the liquidation commencement date, and at the end of every succeeding twelve months till dissolution of the corporate person. The liquidator shall also present an Annual Status Report(s) indicating progress in liquidation (regulation 37 of the Voluntary Liquidation Regulations).

Question 28. What steps are to be taken by the liquidator post dissolution of corporate person?

Answer: The liquidator has to submit a copy of the dissolution order to the authority with which the corporate person is registered and the Board.

L. Withdrawal

Question 29. Can voluntary liquidation process be withdrawn once it has commenced?

Answer. There is no provision for withdrawal from the voluntary liquidation process once it has been initiated.

M. Non-Cooperation

Question 30. Against whom, the liquidator can file application for non-cooperation during voluntary liquidation process?

Answer. Where any personnel of the corporate person, its promoter or any other person required to assist or cooperate with the liquidator does not assist or cooperate, the liquidator may make an application to the Adjudicating Authority for necessary directions (section 34(3) read with section 19(2) of the Code).

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