

Insolvency and bankruptcy Board of India

Subject: Status Note on Voluntary Liquidation Process

Section 59 of the Insolvency and Bankruptcy Code, 2016 (Code) provides that a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of the Code. The IBBI (Voluntary Liquidation Process) Regulations, 2017 govern the process.

2. A corporate person may initiate a voluntary liquidation proceeding if majority of the directors or designated partners of the corporate person make a declaration to the effect that (i) the corporate person has no debt or it will be able to pay its debts in full from the proceeds of the assets to be sold under the proposed liquidation, and (ii) the corporate person is not being liquidated to defraud any person. Within four weeks of the declaration, a special resolution needs to be passed by majority of the members of the corporate person requiring the corporate person to be liquidated and appointing an Insolvency professional to act as the liquidator. The liquidation proceedings are deemed to have been commenced from the date of passing of this resolution. If the corporate person owes any debt to any person, creditors representing two-thirds in value of debt of the corporate person also need to approve the resolution passed by its members within seven days of such resolution.

3. The liquidator makes a public announcement within five days from his appointment calling upon stakeholders to submit their claims within thirty days from the liquidation commencement date. The announcement is published in one English and in one regional language newspaper, on the website, if any, of the corporate person and on the website, if any, designated by the Board for this purpose. The liquidator submits a preliminary report to the corporate person within forty-five days from the liquidation commencement date, detailing the capital structure of the corporate person, estimates of its assets and liabilities as on liquidation commencement date, the proposed plan of action, etc. He verifies the claims submitted within thirty days from the last date for receipt of claims and prepares the list of stakeholders within forty-five days from the last date for receipt of claims. He endeavors to recover and realize all assets of and dues to the corporate person in a time-bound manner for maximization of value for the stakeholders. The liquidator distributes the proceeds from realization within six months from

the receipt of the amount to the stake holders. He endeavors to complete the liquidation process within 12 months from the liquidation commencement date.

4. In the event of the liquidation process continuing for more than 12 months, he holds a meeting of the contributories of the corporate person within 15 days from the end of the 12 months from the liquidation commencement date, and at the end of every succeeding 12 months till dissolution of the corporate person. On completion of the liquidation process, he prepares the final report consisting of audited accounts of the liquidation, disposal of the assets of the corporate person, sale statement, etc. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, he makes an application to the Adjudicating Authority for the dissolution of such corporate person along with final report. The Adjudicating Authority passes an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. A copy of the order is forwarded to the authority with which the corporate person is registered. If at any time, the liquidator is of the opinion that the liquidation is being done to defraud a person or the corporate person will not be able to pay its debts in full from the proceeds of the assets to be sold in the liquidation, he makes an application to the Adjudicating Authority to suspend the process of liquidation and pass any orders as it deems fit.

5. Withdrawal of Application - Section 12A of the Code states "*The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.*" There may be instances where an applicant may want to withdraw the application of Voluntary Liquidation. However, currently there is no provision in the code or the regulations that would facilitate the same.

6. Changing Liquidator – Currently there is no provision under the Code or the Voluntary Liquidation regulation permitting change of Liquidator during the Voluntary Liquidation process. Hence once a liquidator is appointed under the liquidation process, he/she is to continue till the process is complete. Thus, a provision may be added to facilitate the same.

7. Under the current provisions of the Code and the Voluntary Liquidation regulations, a person cannot backout once appointed as Liquidator. A situation may during the process where the

Liquidator does not want to continue in his/her role. Thus, a provision may be added to facilitate the same.

8. The first voluntary liquidation was initiated on 7th April, 2017. As at 31st October 2018, 280 corporate persons have filed for voluntary liquidation. As on 28th February, 2019, 357 corporate persons have filed applications for liquidation, however the details are available in respect of 300 of them. The reasons for initiating voluntary liquidation of 300 corporate persons for which information is given in Table 1 below:

Table 1: Reasons for Voluntary Liquidations

Sl. No.	Reason for Voluntary Liquidation	No. of Corporate Persons
1	Not carrying business operations	160
2	Commercially unviable	52
3	Running into losses	8
4	No revenue	15
5	Promoters unable to manage affairs	5
6	Purpose of the company accomplished	5
7	Contract termination	5
8	Miscellaneous	50
Total		300

9. The total paid up capital of the 300 corporate persons which are into voluntary liquidation is Rs. 2063 crore with an outstanding credit of Rs. 99 crore. The final reports have been submitted to the Adjudicating Authority, respective RoC and to the IBBI in respect of 83 corporate persons. The Adjudicating Authority has passed orders for dissolution of 33 corporate persons. The quarter-wise details of the liquidation proceedings as on 28th February, 2019, is given in Table 2 below:

Table 2: Quarter-wise details of Voluntary Liquidation proceedings

(Amount in Rs. crore)

Quarter	No. Corporate Persons	Paid up Capital	Assets	Outstanding Credit	No. of Final Reports Submitted	No. of Dissolution Orders Passed
Apr-Jun, 2017	13	179	40	9	-	-
Jul-Sept, 2017	38	195	340	8	-	-
Oct-Dec, 2017	56	67	180	14	4	1
Jan-Mar, 2018	66	354	220	8	6	1
Apr-Jun, 2018	41	992	333	39	21	3
July-Sep, 2018	55	31	36	9	7	5
Oct-Dec., 2018	31	62	18	1	29	12
Jan-Feb, 2019	57	13	7	2	21	15
Total	357	2063	1243	99	83	33

10. On the basis of the information available with the IBBI, a total of 211 IPs are working as liquidators for the corporate persons under the Code. Of the 300 corporate persons undergoing voluntary liquidation, 181 belongs to the services sector, followed by manufacture & trading (64), infrastructure (31) and transport (24). Most of these corporate persons are small entities. 209 of them have paid up equity capital of less than Rs.1 crore. Only 26 of them have paid-up capital exceeding Rs.5 crore.

11. Out of 357 cases, in 83 cases final reports have been received. The timeline for the remaining 274 proceedings as on 28th February 2019, is given in Table 3 below:

Table 3: Status of Voluntary Liquidation Proceedings

Timeline of Liquidations	Number of Liquidations
Ongoing	274
> 360 days	76
> 270 days ≤ 360 days	46

$> 180 \text{ days} \leq 270 \text{ days}$	45
$> 90 \text{ days} \leq 180 \text{ days}$	49
$\leq 90 \text{ days}$	58