VOLUNTARY WINDING UP

- As per Insolvency and Bankruptcy Code, 2016

The Provisions of Voluntary Liquidation of Corporate persons have been notified by the Central Government with effect from 1st April, 2016. Further the Insolvency and Bankruptcy Board of India has notified Corporate Voluntary Liquidation process Regulations i.e. Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 vide Notification No. IBBI/2016-17/GN/REG010 dated 30th March, 2017.

1. As per Section 59 of the Insolvency and Bankruptcy Code, 2016, 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.
2. As per Section 59(2) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 3(1) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, corporate person (registered as company) shall file:
    a. **a declaration** from majority of the directors of the company **verified by an affidavit** stating:
        - 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 from the proceeds of assets to be sold in the voluntary liquidation; and
        - the company is not being liquidated to defraud any person;
        - each debt of the company as on that date and that the company will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation. (Regulation 3(4) of IBBI (Voluntary Liquidation Process) Regulations, 2017)

    b. **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.

    c. **a report of the valuation of the assets of the company**, if any prepared by a registered valuer.

3. As per Section 59(3)(c) a **Special Resolution** shall be passed by the Members in the General Meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional as liquidator. *(**Ordinary Resolution** in case company liquidates after expiry of fixed duration specified in Articles or occurrence of any event which articles may provide, as the case may be, and appointment of an insolvency professional as liquidator.)*

4. The Resolution (Special/ Ordinary) shall be passed in General Meeting within Four weeks of making Declaration.

5. According to the provisions of Regulation 5(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Resolution passed under Section 59(3) ('c) shall contain the terms and conditions of the appointment of the liquidator, including the remuneration payable to him.

6. An insolvency professional shall not be appointed by a company if he is not eligible under Regulation 6 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

7. Where the company owes any debt to any person, **creditors representing two-thirds** in **value** of the debt of the company shall approve the resolution (Special/ Ordinary) passed within seven days of such resolution.

8. The company shall notify the Registrar of Companies and the Insolvency and Bankruptcy Board about the resolution to liquidate the company **within seven days of such resolution** or the subsequent approval by the creditors, as the case may be.

9. Effect of passing of Resolution:
    - Subject to the approval of creditors if any, as per Section 59(4) the Voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.
    - The company 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. However the corporate person shall continue to exist until it is dissolved under section 59(8). (Regulation 4 of IBBI (Voluntary Liquidation Process) Regulations, 2017)

10. A liquidator may engage professionals, (*who is not his relative*, *a related party of the corporate person or has served as an auditor to the corporate person at any time during the five years preceding the liquidation commencement date*), to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

11. Pursuant to provisions of Regulation 14 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator shall make a public Announcement in Form A of Schedule I to the said Regulations within 5 days of his appointment. The announcement shall be published
    a. in **one English and one regional language newspaper with wide circulation** at the **location of the registered office and principal office, if any,** of the corporate person and any other location where in the opinion of the liquidator, the corporate person conducts material business operations;

b. on the website, if any, of the corporate person; and
c. on the website, if any, designated by the Board for this purpose.

12. The public Announcement shall call upon stakeholders to submit their claims as on the liquidation commencement date; and provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date.

13. The liquidator shall submit a Preliminary Report to the company **within forty five days** from the liquidation commencement date, detailing:
    a. the capital structure of the company;
    b. the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the company;
    c. Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof; and
    d. the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

14. Where the books of account of the company are incomplete on the liquidation commencement date, the liquidator shall have them completed and brought up-to-date, with all convenient speed. The liquidator shall maintain all the registers and books, as may be applicable and specified in Regulation 10 of IBBI (Voluntary Liquidation Process) Regulations, 2017, in relation to the liquidation of the corporate debtor.

15. A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

16. The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be, as per section 40 of the Code. Further, a creditor may appeal to the NCLT against the decision of the liquidator as per section 42 of the Code.

17. Pursuant to provisions of Regulation 30 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator shall prepare list of stakeholders on the basis of proofs of claims submitted and accepted within **45 days from the last date for receipt of claims**.

18. The liquidator shall open a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person. The money in the credit of the bank account shall not be used except in accordance with section 53(1) of the Code.

19. The liquidator shall endeavor to complete liquidation process within **12 months** from passing of resolution for winding up.

20. In case liquidation process continues for more than twelve months, the liquidator shall hold a meeting of the shareholders of the company within fifteen days from the end of the twelve months from the liquidation commencement date, and at the end every succeeding twelve months till dissolution of the company and shall present Annual Status Report pursuant to Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017.

21. On completion of the liquidation process pursuant to Regulation 37 of IBBI (Voluntary Liquidation Process) Regulations, 2017 and shall send to the Registrar and the Insolvency and Bankruptcy Board. The liquidator shall submit the Final Report to the NCLT along with the application under section 59(7) of the Code for the dissolution of the Company and the Company shall be dissolved from the date of that order.

22. A copy of an order under shall be filed with Registrar of Companies within fourteen days from the date of such order.

23. The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 of IBBI (Voluntary Liquidation Process) Regulations, 2017 for **at least eight years** after the dissolution of the corporate person, either with himself or with an information utility.