

WINDING UP AND DISSOLUTION OF LLP

24.1 INTRODUCTION

LLP is a body corporate and an artificial person which is created by a legal process called 'Incorporation' and its existence comes to an end by another legal process called 'Dissolution'. On the dissolution of LLP, its name is struck off from the records of ROC and the fact is published in the official Gazette.

24.2 RULES FOR WINDING UP AND DISSOLUTION OF LLP

1. According to Sec. 65, the Central Government may make rules for the provisions in relation to winding up and dissolution of LLPs.
2. Section 67 of the LLP Act, 2008 confers the powers on the Central Government to direct that any of the provisions of the Companies Act, 1956 similar or with modifications specified in the notification shall apply to any LLP. The Central Government issued notification *vide* GSR 6(E), dated 6th January, 2010, directing that certain sections of the Companies Act, 1956 shall apply to winding up of LLPs with modifications specified in the notification.
3. The Central Government has also notified the "Limited Liability Partnership (Winding up and Dissolution) Rules, 2012" *vide* notification No. [F.No. 1/7/2012-CL-V] dated 10/07/2012. The Annexures to

the Rules also contain the forms to be filed and prescribed fees to be paid by the LLP in various circumstances.

24.3 KEY DEFINITIONS

LLP Liquidator. “LLP liquidator” means a liquidator appointed in connection with voluntary winding up of LLP from the panel maintained by the Central Government.

Officer. “Officer” includes any designated partner, partner employee of the LLP and any person in accordance with whose directions or instructions the partners of the LLP have been accustomed to act.

Tribunal. “Tribunal” means the National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956 (1 of 1956) [Sec. 2(1)(U)]. Provided that until the tribunal is constituted under the aforementioned Act, the word “Tribunal” shall be substituted with the words “High Court”.

Registrar. “Registrar” means a Registrar, or an additional, or joint, a deputy or an assistant registrar, having the duty of registering companies under the Companies Act, 1956 (1 of 1956) [Sec. 2(1)(S)].

24.4 MEANING OF WINDING UP

Winding up is a process, where all the assets of the business are disposed of by the LLP liquidator to meet the liabilities of the LLP and surplus if any, is distributed amongst the partners of LLP.

24.5 WINDING UP vs. DISSOLUTION

<i>Basis</i>	<i>Winding up</i>	<i>Dissolution</i>
1. <i>Meaning</i>	Winding up is the process, which brings an end to the life of LLP and creditors are paid off out of the proceeds realized from the sale of assets.	Dissolution is the last stage of liquidation. After many legal compliances the liquidator applies to the court for dissolution order of LLP and then the LLP is dissolved
2. <i>Legal Entity</i>	Winding up is a long process. After, winding up and prior to dissolution the legal existence of the LLP continues and it can be sued by others in a court of law.	On dissolution, LLP ceases to exist and its name is struck off from the records of ROC and the fact is notified in the official gazette.

24.6 MODES OF WINDING UP OF LLP [SEC.63]

Limited Liability Partnership may be wound up in the following ways:

- I. Voluntary Winding up
- II. Insolvency and Bankruptcy Code (IBC), 2016: Though this code provides steps for restructuring and revival of Corporate Debtor (LLP) yet under certain circumstances NCLT can pass order for liquidation of LLP. Therefore, it is included under the modes of winding up.
- III. Compulsory winding up by the Tribunal.

I. VOLUNTARY WINDING UP

Chapter V of part II of the Insolvency and Bankruptcy Code (IBC), 2016 provides for the various provisions for liquidation of corporate persons. According to sec. 59(1) of the code, a corporate person who intends to liquidate itself voluntarily and meets the conditions and procedural requirements as prescribed by IBBI may initiate voluntary liquidation procedure under the provisions of Chapter V of Part II of the IBC, 2016.

The various provisions of secs. 35-53 of the Chapter III and Chapter IV shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be required. It further provides that if the affairs of the corporate persons have been completely wound up and its assets completely liquidated, the liquidator is required to make an application to Adjudicating Authority, *i.e.*, NCLT for dissolution of such corporate person. The NCLT is the Adjudicating Authority who is Competent to Declare the Corporate Person as dissolved after due liquidation and distribution of its assets.

DEFINITION OF CORPORATE PERSONS

Section 3(7) of the Insolvency and Bankruptcy Code, 2016 defines and includes Corporate Persons as a Company Registered under the Companies Act, 2013 includes companies incorporated under previous company law and a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008.

However, it excludes entities who are financial service providers.

Note: The term 'Corporate person' has been used for Limited Liability Partnership in this chapter.

Voluntary Liquidation Regulations, 2017 issued by IBBI w.e.f. 1st April, 2017

Insolvency and Bankruptcy Board of India (IBBI). It is the most important institutional arrangement for the new insolvency and bankruptcy regime. It was established **on 1st October, 2016** in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. It was constituted as a technical committee under the IBBI Regulations, 2017.

Pre-requisites for Voluntary Liquidation as Stipulated by IBC, 2016

The following conditions are pre-requisites to be satisfied by a corporate person who wishes to opt for voluntary liquidation:

- (i) The corporate person must be **solvent**.
- (ii) A declaration by majority of the designated partners affirming that the corporate person is in a position **to pay all its debts in full from the proceeds of the assets to be sold in liquidation**.
- (iii) The voluntary liquidation is not undertaken **to defraud any person**.

STEPS INVOLVED IN THE PROCESS OF VOLUNTARY LIQUIDATION**1. Commencement of Liquidation**

- (a) **Obtaining declaration of solvency (DOS) [Sec. 59(3) of the Code].**
A declaration of solvency duly verified by an affidavit has to be obtained from majority of designated partners of corporate person.
- (b) **Declaration to be accompanied with documents [Sec. 59(3) of the Code].** DoS shall be accompanied by:
 - (i) audited financial statements and record of business operations of the corporate person **for the previous two years or for the period since its incorporation, whichever is later**.
 - (ii) a report of the valuation of assets of the corporate person, if any, prepared by a registered valuer.
- (c) **Passing of resolution [Sec. 59(3)(c) of the Code].** A resolution shall be passed by majority of the partners of corporate person for voluntary liquidation and appointing an insolvency professional to act as liquidator **within 4 weeks of obtaining the declaration**.
- (d) **Approval of voluntary winding up by the creditors [Proviso to Sec. 59(3) of the Code].**

In case the LLP owes debt to any person, the creditors **representing 2/3rd in value of the debt** of the corporate person **shall approve the**

resolution passed under **Sec. (3)(c) of the Code within 7 days of such resolution.**

- (e) **Notification to the Registrar and IBBI.** The corporate person shall notify the Registrar and IBBI about the resolution to liquidate itself **within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.**
- (f) **Commencement of liquidation proceedings.** The liquidation proceedings of corporate person shall be deemed to have commenced from the date of passing of the resolution, subject to the creditors' approval.

Effect of Liquidation

- ◆ **Carrying on of Business.** The corporate person shall cease to carry on its business from the liquidation commencement date except if required for the beneficial winding up of its business.
- ◆ **Continuance of its Existence.** The corporate person shall continue to exist until it is dissolved.

2. Appointment and Remuneration of Liquidator.

- (i) An insolvency professional to be appointed as liquidator should satisfy the **eligibility conditions laid down under Regulation 6.**
- (ii) The resolution passed under **regulation 3(2)(c) or under section 59(3)(c)**, as the case may be, shall contain **the terms and conditions of the appointment of the liquidator, including the remuneration payable to him.**
- (iii) The remuneration payable to the liquidator shall form **part of the liquidation cost.**

Reporting. The liquidator shall prepare and submit-

- (a) Preliminary Report;
- (b) Annual Status Report;
- (c) Minutes of consultations with stakeholders; and
- (d) Final Report

in the manner specified under the Regulations.

3. Public Announcement by the Liquidator (Regulation 14 of the Voluntary Liquidation Regulation).

- (i) **Form and time of announcement.** The liquidator shall make a public announcement in **Form A of Schedule I within 5 days of his appointment.**

- (ii) **Contents of announcement.** The announcement shall invite the stakeholders to submit their claims due to the corporate person **within 30 days from the liquidation commencement date.**
- (iii) **Mode of publishing of announcement.** 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;
 - (b) On the website, if any, of the corporate person; and
 - (c) On the website, if any, designated by IBBI for this purpose.

4. Verification of Claims.

Chapter V of VL Regulations provides for the manner of submission of claims by creditors including workmen and employees and secured creditors), determination of amount of claims, foreign currency claims, verification of claims etc.

According to Section 40 of the Code, The liquidator shall verify the claims submitted **within 30 days from the last date for receipt of claims** and may either admit or reject the claim, wholly or partially, as the case may be.

5. Realization of Assets.

- (i) **Manner of sale.** It may be noted that VL Regulations allow the liquidator to value and sell the assets of the corporate person in the manner and mode approved by the corporate person.
- (ii) **Recovery of monies due:** The liquidator shall make an effort to recover and realize all assets and dues to the corporate person in a time-bound manner keeping in mind the interest of the stakeholders.
- (iii) **Realization of unpaid capital contribution.** The liquidator shall realize the unpaid capital contribution from the partners who have not yet paid .

6. Deposit and Distribution of Proceeds of Liquidation (Regulation 35 of Liquidation Regulation).

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 and deposit all monies received on behalf of corporate person.

The liquidator shall distribute the proceeds from realization **within 6 months from the receipt of the amount to the stakeholders.** The proceeds shall be distributed **after deducting the liquidation cost therefrom.**