

HOW TO LIQUIDATE A LIMITED LIABILITY COMPANY IN INDIA

The safest and conclusive way to exit /close the company

The objective of seeking closure of a company is to end the corporate life of a company registered under Companies Act. The closure is/might be required due to several reasons, like: completion of the objective, policy changes, unviable businesses/operations, voluntary closing of the business, etc. This also saves one from the unnecessary compliances and the rigors of corporate governance.

The formal closure is obtained through dissolution of the company which must be arrived at after running through a set of processes and procedures as laid out in IBC (Insolvency and Bankruptcy Code 2016). With the notification of IBC in 2016, the option of members voluntary winding option under Companies Act, 2013 is no more available. All such cases need to go through the Voluntary Liquidation (VL) process as laid out in IBC.

Regulation 4 of Voluntary Liquidation Regulations by IBBI states effects of Liquidation as follows

“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.”

As per IBC **Dissolution** is a stage where the assets of the corporate debtor have been completely liquidated and distribution of surplus made, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

Different Routes of Dissolution:

1. **Voluntary Liquidation under IBC 2016**
2. Liquidation under IBC due to failed CIRP
3. Winding up under Companies Act 2013 (Chapter XX)
4. Strike Off names of companies from ROC Companies Act 2013 (Chapter XVIII).

Hence, dissolution marks the culmination of the liquidation of the corporate entity and is the last mandatory step.

A normal Liquidation is different from the Voluntary Liquidation, as VL gets initiated by the Management/Shareholders and then the process is as per laid-out norms. The pre-requisite for a VL is assured solvency, whereas the normal Liquidation of a corporate entity (in Indian context) cannot be initiated directly but is a result of a failed CIRP (corporate insolvency resolution process), where a fair chance has been given for a resolution/revival of the corporate entity, an entity which is faced with an insolvency phase.

VL gets initiated by the Management/Shareholders. Insolvency Professional is appointed as the Liquidator. He takes over the process as laid-out under IBC. Management is expected to assist him in the closure of operations and the related process. Involvement of NCLT is the minimum. Normally only the preliminary and a final report is all that is required to be submitted by the liquidator to NCLT. Claims are sought by the liquidator and assets are sold to pay off all the liabilities. (The pre-requisite is the undertaking that the VL is not being initiated to defraud any stakeholder and is for legitimate cause and there is no intent to not pay any legit dues whether known or getting discovered through claims submission process).

Often, there is a comparison between Strike Off and Voluntary Liquidation and a distinction is attempted though the table below:

Basis	Voluntary Liquidation	Strike Off
Purpose	Dissolution of any company to end its existence	Fast track exit mode for Defunct Companies. Companies who haven't commenced business or a dormant company who has not obtained status of Dormant are most suitable
Eligibility	The provisions are applicable to all companies	Some Companies are restricted as per Companies Act 2013
Approach/Process	More robust approach as the claims/liabilities are invited from all the Creditors/Stakeholders to pay them as per law	No such provision of calling claims. Hence the process is not conclusive, and company can be restored in next 20 years
Creditors Position post procedure	Creditors must file claims and the disposal of liabilities. Liabilities not claimed during the liquidation proceedings shall be deemed extinguished post liquidation process	Position of creditors of the company does not materially affect, because they may enforce their claims against every director, secretaries and treasurers, manager, or any other officer of company and against every member of the company.

Finality of Closure Process	The Company gets dissolved and can't be restored back for any recovery	Companies dissolved can be restored within 20 years from the date of publication of the notice intimating that the name of the company has been struck off
Conclusion	The process is open for any company registered. Especially for companies where earlier there have been operations, assets are available for distribution and liabilities need to be settled (ensuring adequacy of assets)	The process is open for Defunct companies or the companies not in operation for at least two years. No Assets or Liability to settle

After completing the process as laid out, the liquidator submits the final report to NCLT informing about the completion of the process and requesting for the dissolution order, which then is submitted to ROC (Registrar of Companies) which would then strike off the name of the corporate entity from its records, after which the company would cease to exist.

Therefore, Voluntary Liquidation under IBC has provided an easy exit & a time bound process for corporates who are in a solvent stage or can pay their debts and it also creates a balance between debtors and creditors.

India Law Offices LLP

D-19 (GF), South Extension – I, New Delhi – 110049 India

+91-11-24622216, 24622218, 24622248

office@indialawoffices.com