

Queens College of Arts and Science for Women

Punalkulam , Near Thanjaur.

DEPARTMENT OF COMMERCE

Subject :Company law

Topic : Winding up

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Winding Up

Winding up is the process of dissolving a company. While winding up, a company ceases to do business as usual. Its sole purpose is to sell off stock, pay off creditors, and distribute any remaining assets to partners or shareholders.

The term is used primarily in Great Britain, where it is synonymous with liquidation.

Consequences of Winding Up

The most important consequences of the winding up of a company are as follows –

As Regards the Company Itself

- Winding up doesn't take away the existence of the company completely.
- The company continues to exist as a corporate entity till its dissolution.
- All the ongoing business of the company is administered by the liquidator during the phase of liquidation.

As Regards the Shareholders

- Contributors – a new statutory liability comes into existence.
- Every transaction of share during the liquefaction done without the approval of the liquidator is termed void.

As Regards the Creditors

- The creditors cannot file a case against the company except with the consent of the court.
- If the creditors already have decrees, they cannot proceed with the execution.
- They must explain their claims and justify their claims to the liquidator.

As Regards the Management

- With the appointment of the liquidator, all the powers of the directors, chief executives and other officers tend to cease.
- Only the powers to give notice of resolution and the power of appointment of the liquidator upon winding up of the company are given to the members.

As Regards the Disposition of the Company's Property

All the dispositions of the company's properties are void if the dispositions are not approved by the court or the liquidator.

Procedure for Winding Up of a Company

- A special resolution must be passed in the company in the context of winding up and the consent of 3/4th of its members is required for the winding up to be carried out by the court.
- A list of the total assets must be prepared in order to confirm that the company is no more able to pay its debts.
- A list of the creditors must be prepared.
- In the context of any defaults in payments, the creditors of a company are required to make a decision for filing a petition in the court of law.
- Advocates must be engaged to prepare and file the petition.

Voluntary Winding Up

A company may be wound up voluntarily under the following circumstances –

- An ordinary resolution is passed in the general meeting of the company on the context of winding up –
- If a special resolution is passed by the members of the company for the voluntary liquidation of the company.
- A minimum notice of 21 clear days must be given in order to convene a general meeting.
- However, with the consent of the members, a general meeting can be convened with a shorter notice.
- A voluntary winding up is commenced just after the above mentioned resolution has been passed.

- The notice for the beginning of the winding up of a company must be made in an official gazette, i.e., by applying to the registrar of companies within 14 days of commencement of the liquidation.
- Again, the notice of the winding up of the company must be published in a newspaper in the place where the registered office of the company is situated.
- The company becomes unable to conduct any commercial business activities after the commencement of the winding up.
- However, business can be conducted for the benefit of the company's winding up process, i.e., paying debts to the company's creditors, etc.
- The corporate state and its corporate power continue to remain in existence until the company is finally dissolved.
- Further, there two kinds of voluntary winding up –
 - Members voluntary winding up
 - Creditors voluntary winding up
- The rules for both kinds of winding up are the same.
- The Companies Act however provides some specific criteria for these two types of winding up.

Members' Voluntary Winding Up

This type of winding up is carried out when the company is solvent and is able to pay its liabilities totally. The important aspects of members' voluntary winding up are as follows –

Declaration of Solvency

- For the winding up of a company, it is needed for the directors to conduct a meeting, where the majority of the directors make a declaration approved by an affidavit that they have made a full assessment of the company and the company is able to pay all its debts within three years of the winding up of the company.
- It is necessary for such a declaration to be made at least 5 weeks before the resolution to become effective.
- It should be necessarily delivered to the registrar's office.

Appointment and Remuneration of Liquidators

The company, in a general meeting, must exercise the following things & minus;

- Appointment of liquidators for the purpose of winding up of the company as and when the company is about to be wound up and for the distribution of the assets of the company
- Fixing an adequate remuneration to be paid to the liquidators. This fixed remuneration cannot be changed in any circumstances. The liquidator does not take charge of his office unless the remuneration is fixed.

Board's Power to Cease

- During the course of liquidation, all the powers of the directors and managers are ceased.
- However, the power to give notices and the power to make appointments to the registrar is not ceased.
- However, the powers of the directors may continue to exist upon the sanction of their powers by the shareholders or the liquidator.

Power of Liquidator to Accept Shares as Consideration as Sale of Property of the Company –

- The liquidator can accept shares, policies or take interests to consider the sale of the company's belongings to another company.
- He may do so with an aim to distribute the same amount of members of the transferor company, provided –
 - A special resolution is passed in the company for this act to be effective.
 - He buys the interest of any dissenting member at a price to be determined by an agreement or arbitrarily.

Duty of Liquidator to Call Creditors' Meeting in Case of Insolvency

If the liquidator, for any reason, realizes that the company is on the verge of insolvency, i.e., thinks that the company will be unable to pay its debts and liabilities within the limited time as specified by the declaration of insolvency, he must summon a meeting of the creditors where the statement of all the assets and liabilities is laid before them.

Duty of the Liquidator to Inform the Income Tax Officer

- Upon the appointment of a liquidator, the income tax office must be informed of the appointment of the liquidator.
- This must be done within 30 days of the appointment of the liquidator.
- The tax assessment of the company is to be carried out.

Duty of the Liquidator to Call General Meeting at the End of Each Year

- In case the process of winding up takes more than one year, the liquidator must call for general meetings at the end of each year.
- The meetings should be held within three months from the end of each year or as specified by the central government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

Final Meeting and Dissolution

When the affairs of the company are fully finished, the liquidator must do the following things –

- Make a report on how the process of winding up progressed, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and provide justification of the steps he has taken for the successful winding up of the company.
- Send a copy of the report to the registrar's office and meet the registrar to return the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that that the liquidation went as per the members of the company's interest.

Dissolution of the Company

- Bringing an end to the life of a company is termed as dissolution.
- No property can be held by a dissolved company.
- The company cannot be sued by the court after liquidation.
- If any property of the company still remains after the dissolution of the company, the property will be taken over by the government immediately.

Creditors' Voluntary Winding Up

Creditors' voluntary liquidation is a procedure in which the company's directors choose to voluntarily bring the business to an end by appointing a liquidator (who must be a licensed insolvency practitioner) to liquidate all its assets. The important provisions of the creditors' voluntary winding up are as follows –

Meeting of the Creditors

- A creditors' meeting must be called up within two days of the day when the resolution for winding up of the company, as proposed by the creditors, is passed.
- A notice of the creditors' meeting along with the notice of the general meeting of the company must be delivered to all the creditors of the company.
- A full-fledged report on the company's affairs, the list of the creditors of the company and the estimated amount of claims made by the creditors should be presented by the directors before the creditors of the company.

Notice of Resolution to Be Given to the Registrar –

When a resolution of winding up of a company, as proposed by the creditors, is passed, a notice of the resolution must be delivered at the registrar's office within 10 days from the day when the resolution is passed.

Appointment of the Liquidator

- A liquidator for the purpose of the winding up of the company may be nominated by the creditors of a company at the creditors' meeting.
- However, if there are different persons nominated at the general meetings of the company and the creditors meeting of the company, then the person nominated by the creditors is appointed as the liquidator of the company.

Appointment of the Inspection Committee

If the creditors wish, they may appoint an inspection committee for watching over the entire process of winding up of the company.

Remuneration of the Liquidator

- The creditors fix the remuneration of the liquidator.
- If the creditors fail to fix the remuneration of the liquidator, the remuneration shall be fixed by the tribunal.
- No liquidator shall join unless a respectable remuneration is fixed.
- Once fixed, the remuneration cannot be changed.

Power of the Liquidator

- The liquidator enjoys all the powers as vested on a director.
- Further the liquidator enjoys all the powers as vested on a liquidator in case of members' voluntary winding up according to section 494 of the Companies Act, 1956.

Duty of the Liquidator to Call General Meeting at the End of Each Year

- In case the process of winding up takes more than a year, the liquidator must call for general meetings and creditors' meetings at the end of each year.
- The meetings should be held within three months from the end of each year or as specified by the Central Government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

Final Meeting and Dissolution

When the affairs of the company are fully finished, the liquidator must do the following things

–

- Make a report on how the process of winding up went, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and give certain explanation about the justification of the steps he has taken for the successful winding up of the company.

- Send a copy of the report to the registrar's office and meet the registrar to make a return of the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that the liquidation went as per the members of the company's interest.

Dissolution of the Company

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