



DISSOLUTION OF A COMPANY

The Malta Business Registry

Contents

Dissolution of a Company	2
Members' Voluntary Winding Up	2
Declaration of Solvency	2
Declaration of Solvency – No Reasonable Grounds for Opinion.....	2
Procedure in the case of a Solvent Winding Up.....	2
The Liquidator.....	3
Powers of a Liquidator	3
Forms required.....	3
Liquidator's Statement with respect of pending Winding Up – Form L (4).....	4
Winding Up	4
Creditor's Voluntary Winding Up.....	4
Forms to be filed when the company is placed into creditors voluntary winding up:.....	5
Liquidator's Statement with respect of pending Winding Up – Form L (4).....	5
Winding up.....	5

Dissolution of a Company

Members' Voluntary Winding Up

A Members' Voluntary Winding Up takes place after an extraordinary resolution is passed by the members to put the company in Dissolution. The Dissolution, that is the decision of the company to start the liquidation process (Winding Up), triggers the Winding Up of the company. In a Members' Voluntary Winding Up, the liquidation takes place under the control of a Liquidator appointed by the shareholders.

Declaration of Solvency

In the case of a Members' Voluntary Winding Up, a Declaration of Solvency (Form B2), which must be signed by the majority of the Directors, must be filed for registration. This Declaration of Solvency is a very important statement in which the majority of the Directors declare that they have made a full inquiry into the affairs of the company, and that they have formed the opinion that the company will be able to pay off its liabilities in full within the period specified in the Declaration. As per Article 268 (1) of the Companies, Act this period shall not exceed twelve months. This declaration should be made not earlier than one month from the resolution taken to dissolve the company. The Declaration of Solvency should also contain a statement of the company's assets and liabilities made up to a date not earlier than the date of the declaration by more than three (3) months as per Article 268 (2) of the Companies Act.

Declaration of Solvency – No Reasonable Grounds for Opinion

The law places safeguards aimed at ensuring that the Declaration of Solvency is made in good faith and given its due importance. In fact, if the Winding Up starts off as a solvent Winding Up through the appointment of a liquidator by the company, in view of the opinion by the Directors that the company is solvent, and it later emerges that the liabilities of the company will not be settled within the period stated in the Declaration of Solvency, then it may be presumed, unless the contrary is proved, that the Directors did not have reasonable grounds for opinion. In other words, it would be presumed that the declaration was wrongly made, and such an act would be a criminal offence punishable with up to three (3) years imprisonment and a fine of up to €46,587.47 as per Article 268 (4) of the Companies Act.

Procedure in the case of a Solvent Winding Up

The first effective step in a Voluntary Winding Up is the appointment of a liquidator. A company may be dissolved by an extraordinary resolution, and that same resolution may appoint the liquidator as per Article 270 of the Companies Act. The appointment of a liquidator by the Company is only possible if the Directors file a Declaration of Solvency. Otherwise, the liquidator may be appointed either through a meeting of the Creditors in a Creditors' Voluntary Winding Up (Art 279 (1) of the Companies Act), or by the Court (Civil Court (Commercial Section)). Article 305 of the Companies Act, stipulates who is qualified to act as a liquidator. A liquidator must be an individual who

is an advocate, certified public accountant or certified public accountant and auditor. Once the liquidator is appointed, he/she must notify his/her acceptance to the Registrar of Companies and file the relative form.

The Liquidator

Following a decision for the Dissolution and Winding Up of a company, the powers of the Directors are shifted upon the liquidator who takes control over the entire company and its representation with a view to Winding Up. During the Winding Up process the focus of the company shifts to settling the debts due. The liquidator would proceed to draw up an exhaustive list of the assets and liabilities. He has the authority to carry on the business of company for its beneficial Winding Up, and in doing so to institute or defend any action or other legal proceedings in the name of the company. The main task of a liquidator would be to liquidate the assets of the company, pay the Creditors, if necessary, having regard to the ranking in terms of the applicable law, and distribute any proceeds to the shareholders according to their shareholding.

Powers of a Liquidator

In the case of a Voluntary Winding Up, with the sanction of an extraordinary resolution the liquidator will have the power to (Art 288 of the Companies Act):

- **Pay Creditors according to their ranking at law;**
- **Make compromises with Creditors; and**
- **Make calls on contributories.**

When the liquidator, at any time during the Winding Up process becomes aware that company will not be able to pay its debts within the period stated in the Declaration of Solvency by the Directors, he/she must summon a meeting of the Creditors as per Article 272 (1) of the Companies Act and in this case the procedure becomes that of a Creditors' Voluntary Winding Up.

Forms required

For a company to be placed in voluntary dissolution the following forms needs to be filed for registration:

- **Notice of resolution for dissolution and consequential winding up – Form B (1) together with a EUR 10 publication fee**
- **Declaration of Solvency – Form B (2) – together with a statement of assets and liabilities**
- **Notice of appointment of Liquidator - Form L**

Liquidator's Statement with respect of pending Winding Up – Form L (4)

If the Winding Up is not concluded within 12 months from the Dissolution date, the liquidator shall as per Article 273 of the Companies Act, file a statement showing the proceedings and position of Winding Up Act. Subsequently the said statement is to be at intervals of six months.

Winding Up

As soon as the affairs of the company are wound up, the liquidator will render an account of the Winding Up process and draw up a Scheme of Distribution. These accounts are audited and all documents (the accounts of the Winding Up the Scheme of Distribution and the auditor's report) will be laid before the General Meeting of the company as per Article 274 of the Companies Act.

These are then sent to the Registrar for registration. As soon as these are registered there will be a three-month period from the date of the publication on the website maintained by the Registrar as per Article 401 (e) of the Companies Act that the formalities for the company to be struck off have been satisfied. During the said three-month period Creditors may bring an action before the Civil Court (Commercial Section) to defer the striking-off of the company. If no such action is brought, then the company will be struck off the Register in terms of Article 275 (1) of the Companies Act.

Creditor's Voluntary Winding Up

A Voluntary Winding Up in which a Declaration of Solvency has not been made is to be considered as an Insolvency Proceeding and is referred to as a Creditors' Voluntary Winding Up as per Article 268 (5) of the Companies Act. One should clarify that although it is referred to as a 'Creditors' Voluntary Winding Up', it is not the Creditors who initiate the Winding Up process. A Creditors' Voluntary Winding Up may be initiated by the shareholders through a resolution of the Company as per Article 278 of the Companies, Act or by the liquidator in a Members' Voluntary Winding Up if it turns out during the course of the liquidation that the company will not be able to pay its debts within the period stated in the Declaration of Solvency.

In a Creditors' Voluntary Winding up, it is the Creditors who nominate and appoint the liquidator. However, in those cases where the creditors fail to nominate a liquidator during the meeting of creditors called for such a purpose, the person nominated by the Company would become liquidator as per Article 279 (1) of the Companies Act. If the liquidator is not nominated by either the Creditors or the company, article 279 (2) of the Companies Act, stipulates that an application for the appointment of a liquidator shall be filed in Court by any Director of the company within fourteen days, and the appointment will be made by the Court.

Except for the appointment of Liquidator, the procedure in a Creditors' Voluntary Winding Up is the same as that of a Members' Voluntary Winding Up. In the case of a Creditors' Voluntary Winding Up the company would however be insolvent, and

therefore there will not be enough assets to satisfy all the debts. This brings about another difference, that is the ranking of creditors. The main purpose of the liquidation process, irrelevant of the type of Winding Up procedure, is to settle the debts of the company. If there are insufficient assets to settle all the debts, as is the case with insolvent liquidation, then the debts are settled in accordance with the ranking in terms of any preference granted at law.

Forms to be filed when the company is placed into creditors voluntary winding up:

Notice of resolution for dissolution and consequential winding up – Form B (1) together with a EUR 10 publication fee

Notice of appointment of Liquidator - Form L

Liquidator's Statement with respect of pending Winding Up – Form L (4)

If the Winding Up is not concluded within 12 months from the Dissolution date, the liquidator shall as per Article 273 of the Companies Act, file a statement showing the proceedings and position of Winding Up Act. Subsequently the said statement is to be at intervals of six months.

Winding up

As soon as the affairs of the company are wound up, the liquidator will render an account of the Winding Up process and draw up a Scheme of Distribution. These accounts must be audited, and all documents will be laid before the General Meeting of the company and a meeting of the Creditors as per Article 274 of the Companies Act. Once approved, these documents are then filed for registration and there will be a three-month period from the date of the publication on the website maintained by the Registrar in terms of Article 401 (e) of the Companies Act stating that the formalities for the company to be struck off have been satisfied.

Within such three-month period any Creditors may bring an action before the Civil Court (Commercial Section) to defer the striking-off of the company as per Article 275 (1) of the Companies Act. If no such action is brought, then the company will be struck off.

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