



GUIDANCE NOTE 12

Voluntary Liquidation

The liquidation or winding up (the terms have the same meaning) of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members.

A liquidator is appointed and he or she takes control of the company, collects its assets, pays its debts and finally distributes the surplus, if any, among the members in accordance with their rights. This circular deals with voluntary liquidations under Part X of the Companies Act.

List of Documents to be filed with the Registrar:

- Notice to the Registrar of the Special Resolution to wind up (within 30 days of resolution- however, please note that the Declaration of Solvency must be filed within 15 days of said resolution) [section 206]
- Statutory Declaration of Solvency (within 15 days of the resolution) [section 362 (3)]
- Notice of appointment of the voluntary liquidator: to be signed by the liquidator who accepts the appointment (within 14 days of appointment) [section 376 (1) (b)]

Appointment of Voluntary Liquidation

A company is put into voluntary liquidation by the appointment of a voluntary liquidator by resolution of the company. A company may not appoint a voluntary liquidator if an application to appoint a liquidator has been made under the Insolvency Act, or if a liquidator has already been appointed under the Insolvency Act. It is important to note that the fact that a voluntary winding up has commenced does not prevent the court from making an order for a compulsory liquidation.

Requirements allowing a company to be put in voluntary liquidation

- The company must be solvent.
- The company must be in good standing with the Registrar. This means that the company must be up to date with the filing of all of its annual returns and the returns of directors, etc.

If the company is not in good standing the Registrar will not be able to give effect to the voluntary liquidation as he is not able to ascertain if the appointment of the directors swearing the declaration of solvency is still valid.

Statutory declaration of Solvency

In order to appoint a voluntary liquidator, the majority of the directors of the company must, following a board meeting make a statutory declaration that, having made full enquiries into the affairs of the company, they have formed the opinion that the company will be able to pay its debts in full within a specified period not exceeding twelve months. The declaration of solvency must be delivered to the Registrar within 15 days from the date of the resolution.

The declaration must be made:-

- (a) within the 5 weeks immediately preceding the date of the passing of the resolution for the appointment of a voluntary liquidator, or on the said date but before the passing of the resolution;
and
- (b) must embody a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

The statutory declaration must be signed by all or a majority of the directors and signed before a Commissioner for Oaths, Notary Public or Justice of the Peace.

It is a serious offence for a director to make a declaration of solvency without having reasonable grounds for the opinion that the company would be able to pay its debts in full

Notice of Appointment and Consent in Writing

The person to be appointed as voluntary liquidator must be given notice of his appointment and must give his consent to such appointment in writing. The voluntary liquidator must, within 14 days of his appointment, file a notice with the Registrar of his appointment.

Creditors Voluntary Liquidation (see our circular on Insolvency)

If the directors of a company are unable to make a declaration of solvency they may make a financial report to the creditors and the creditors have the choice of appointing a liquidator under the Insolvency Act.

Liability of Members and former Members

The provisions of sections 184 to 197 of the Insolvency Act relating to the limited liability of members of a company going into liquidation apply to members of a company going into voluntary liquidation.

ACTION TO BE TAKEN BY LIQUIDATOR

A voluntary liquidator must keep the Registrar informed of the progress of the liquidation. He must file with the Registrar any court orders arising from the liquidation. A court order for a stay of liquidation must be filed immediately [section 378(3)]. If he resigns, he must send notice of his resignation to the Registrar [section 382(2)]. A court order terminating the voluntary liquidation must be filed within 10 days [section 396(6)]. Failure to do so is a serious offence.

As soon as the affairs of the company are fully wound up the liquidator must prepare a statement. He must call a general meeting of the company by advertising in the Gazette giving one month's notice of such meeting.

Documents to be sent to the Registrar by the Liquidator

- I. Copy of the notice in the Gazette.
2. Within seven days of the meeting the liquidator must send to the Registrar the following TWO documents:-
 - (a) Copy of the Accounts
 - (b) Return of the final winding up meeting signed by the liquidator.

£17.50 is payable for each document filed.

Final Liquidation of the company by Notice in the Gazette placed by the Registrar

On receiving the account and return referred to above, the Registrar will register them and, on the expiry of 3 months from the registration, the Registrar will publish a notice in the Gazette pursuant to Section 397 giving effect to the dissolution.

Compulsory Liquidations

These come under the Insolvency Act (see our circular on Insolvency).

Payment Method

UK clearing cheques should be crossed and made payable to Companies House (Gibraltar) Limited.

Guidance only

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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