

LIQUIDATION OF A PRIVATE LIMITED COMPANY IN CYPRUS

The winding-up of a private company registered in Cyprus may commence voluntarily – by the company or its creditors – or may be compulsory following a court order issued pursuant to a winding-up petition. Irrespective of any provisions to the contrary in its Articles of Association, the Cyprus registered company retains its legal personality and powers until its dissolution which succeeds its liquidation.

Voluntary Liquidation

The voluntary liquidation of a company may occur in any of the following cases:

- A circumstance defined in the company's Articles of Association as triggering the dissolution of the company materialises and the members in a general meeting adopt a resolution permitting liquidation.
- The members decide by special resolution that the company will be wound up.
- The members decide by extraordinary resolution that the company, due to its liabilities, is no longer able to continue its operations and it is advisable that it be wound up.

Whether the company's liquidation is considered a voluntary liquidation by members or by creditors depends on the company's solvency. The two types of voluntary liquidation have parallels, with their main difference being that where the company to be wound-up is insolvent, its creditors become involved, with the power to determine important matters such as the appointment of the Liquidator, among others.

Liquidation of a Solvent Company – Voluntary Liquidation by Members

The majority of the company's directors swear and submit to the Registrar of Companies a Statutory Declaration of Solvency (**SDS**) within the 5 weeks preceding the adoption of the liquidation resolution. The SDS is made to the effect that the directors have made a full inquiry into the affairs of the company and are satisfied that it will be able to pay its debts in full within 12 months of the commencement of its liquidation, and includes a statement of the company's assets and liabilities as at the latest practicable date.

Once the SDS is made and submitted to the Registrar of Companies, the members adopt a shareholders' resolution seeking the voluntary liquidation and appointing a Liquidator. The liquidation of the company commences with the adoption of the winding-up resolution. A copy of the resolution is delivered to the Registrar of Companies within 15 days of its adoption and is in turn registered by the Registrar and published in the Official Gazette. Once appointed, the Liquidator publishes their appointment in the Official Gazette and sends a relevant notice to the Registrar for registration purposes.

The Liquidator proceeds to all necessary actions and transactions to fully wind up the affairs of the company. Once the liquidation is completed, the Liquidator convenes the Final Shareholders' Meeting, a month's notice for which is published in the Official Gazette. There, the Liquidator presents an account of the liquidation, offering any explanation or answers the members may require. Within one week of the Final Shareholders' Meeting, the Liquidator submits to the Registrar a copy of the accounts presented to the shareholders as well as a report of the meeting, which includes the meeting's date. The Registrar then registers the accounts and the report, and the company is considered dissolved after 2 months from the said registration.

Liquidation of an Insolvent Company - Voluntary Liquidation by Creditors

Where it is the intention of the members of an insolvent company that it be liquidated and the relevant Shareholders' Meeting is called to adopt a resolution to that end, the company must also call a Creditors' Meeting on the same or following day as the Shareholders' Meeting. The notices for the Creditors' Meeting must be sent out via post simultaneously with the notices for the Shareholders' Meeting. The notice for the Creditors' Meeting is also published once in the Official Gazette and once in at least two local newspapers.

During the Creditors' Meeting, the company's creditors are presented with a complete report on the company's statement of affairs, the list of company creditors, and their calculated amount of demands as against the company. The shareholders and creditors in the respective meetings nominate persons to act as liquidator of the company.¹ The creditors may also nominate a maximum of five persons to be appointed by the company to act as a supervisory committee overseeing the liquidation. The supervisory committee (or where none such is appointed, the creditors) determines the remuneration of the Liquidator. Once appointed, the Liquidator publishes their appointment in the Official Gazette and sends a relevant notice to the Registrar for registration purposes.

The Liquidator proceeds to all necessary actions and transactions to fully wind up the affairs of the company. Once the liquidation is complete, the Liquidator convenes the Final Shareholders' Meeting and the Final Creditors' Meeting, a month's notices for which are published in the Official Gazette. In the said meetings, the Liquidator presents an account of the liquidation, offering any explanation or answers the members and creditors may require. Within one week of the Final Shareholders' Meeting or the Final Creditors' Meeting, depending on which is later, the Liquidator submits to the Registrar a copy of the accounts presented to the members and creditors as well as a report of the meeting, which includes the

¹ Where different persons are nominated, the person nominated by the creditors shall be Liquidator. However, the shareholders have a 7-day window to file a petition to the Court for an order to the effect that another person act as Liquidator together or instead of the person nominated by the creditors.

meetings' dates. The Registrar registers the accounts and the report and, after two months from the date of the said registration have passed, the company is considered dissolved.

Compulsory Liquidation

The compulsory liquidation of a company occurs by court order following a winding-up petition, which may be filed on any of the following grounds:

- The company decided by special resolution that it be wound up by the Court.
- The company failed to deliver to the Registrar the statutory report or the convention of the statutory meeting.
- The company failed to commence its activities within one year from its incorporation or the company suspends its activities for more than one year.
- The company is unable to pay its debts.²
- The Court is of opinion that it is fair and equitable that the company be dissolved.

Before filing a winding-up petition and supporting affidavit, the petitioner must make a payment of €500 to the Registrar of Companies, proof of which must be attached to the petition at filing. Where the petition is successful, a Winding-Up Order is issued and served to the Registrar of Companies who in turn publishes the order in the Official Gazette. From the date of publication, any creditors of the company have 35 days to file a Proof of Debt Affidavit,³ which serves to prove that a person should be included in the company's pool of creditors. Following this, a Liquidator is appointed who proceeds to wind up the assets of the company. The Liquidator prepares statements of transactions and payments on a six-monthly basis, which are submitted to the Registrar.

Once the winding-up is complete, the Liquidator must file a petition requesting an order for the dissolution of the company. Once such an order is issued, the company is considered dissolved. Finally, the Liquidator must deliver the said order to the Registrar for registration within 14 days of its issuance.

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² This is the most common ground for a winding-up petition in Cyprus.

³ The Proof of Debt Affidavit must specify which part of the debt is secured, if any.