

LIQUIDATION OF LIMITED LIABILITY COMPANY IN MALAYSIA

The liquidation of limited liability companies in Malaysia is comprehensively laid out in the Companies Act 2016 (“**Act**”).

(A) Types of liquidation of limited liability companies

There are three methods of dissolution, namely:

- 1) Voluntary winding up (either by members or creditors);
- 2) Compulsory winding up (by court); and
- 3) Striking off by the Registrar.

(B) Procedure and/or requirement for dissolution of company

1. Voluntary winding up

If a company is solvent, it may be wound up by the shareholders. If a company is insolvent, it may be wound up by its creditors.

A company may be voluntarily wound up -

- (a) By passing a resolution in a general meeting; or
- (b) By passing a special resolution if the company so resolves.

The company is then required to lodge a copy of the resolution with the Registrar within 7 days from the passing of the resolution and give notice of the resolution in one widely circulated newspaper in the national language (Malay) and one in English language within 10 days after the passing of the resolution.

Difference between members’ voluntary winding up (“**MVWU**”) and creditors voluntary winding up (“**CVWU**”)

| MVWU | CVWU |
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| Effected when the company is solvent, and the liquidator is appointed by the members at the members’ meeting. | Effected when the company is insolvent, and the liquidator is appointed by the creditors at the creditors meeting. |
| Company’s directors are required to make a declaration of solvency of the company that the company will be able to pay its debts in full within | Declaration of solvency of the company is not made. |

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| the period of 12 months after the commencement of winding up. | |
| Decision to commence process of winding up rests with the company (directors and shareholders). | Decision to commence process of winding up rests with the company (directors and shareholders). |
| | Creditors will have the power to decide the appointment of the liquidator of the company in order to protect their interest. |

2. Winding up by court (also known as Compulsory Winding Up)

The process begins with the presentation of a petition in court.

The petition may be commenced by –

- (a) The company itself;
- (b) Any creditor;
- (c) A contributory or any person who is the person representative of a deceased contributory or the trustee in bankruptcy or the Director General of the Insolvency of the estate of a bankrupt contributory;
- (d) The liquidator;
- (e) The Minister of Domestic Trade and Consumer Affairs;
- (f) The Central Bank of Malaysia;
- (g) Registrar; or
- (h) The Malaysia Deposit Insurance Corporation.

A company may be ordered the winding up if –

- (a) The company has by special resolution resolved that the company is to be wound up by the Court;
- (b) The company defaults in lodging the statutory declaration under subsection 190(3);
- (c) The company does not commence business within a year from its incorporation or suspends its business for a whole year;
- (d) The company has no member;

- (e) The company is unable to pay its debts;
- (f) The directors have acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members;
- (g) When the period, if any, fixed for the duration of the company by the constitution expires or the event, if any, occurs on the occurrence of which the constitution provide that the company is to be dissolved;
- (h) The Court is of the opinion that it is just and equitable that the company be wound up;
- (i) The company has held a licence under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, and that the licence has been revoked or surrendered;
- (j) The company has carried on a licensed business without being duly licensed or the company has accepted, received or taken deposits in Malaysia, in contravention of the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be;
- (k) The company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order, or morality in Malaysia; or
- (l) The Minister has made a declaration under section 590 for investigation of affairs of company.

3. Striking off

The Registrar of Companies may strike off a company either on his own motion or through the application by a director, member, or liquidator of a company to the Companies Commission of Malaysia.

The Registrar may strike off a company if it is satisfied that –

- (a) The company is not carrying on business or is not in operation;
- (b) The company has contravened the Act;
- (c) The company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia;
- (d) in any case where the company is being wound up and the Registrar has reasonable cause to believe that-
 - i. no liquidator is acting;
 - ii. the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or

- iii. the affairs of the company have been fully wound up under a winding up by the Court and there are no assets or that the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company.

(C) Claim against wound up company

The claim against a wound-up company is subject to any leftover assets of the company and the type of debt (secured or unsecured). Secured creditors are entitled to realize their security regardless of the winding up process.

Unsecured creditors are required to submit proof of debt to the liquidator by way of a sworn affidavit verifying and specifying the debt. The said proof of debt may then be accepted and admitted by the liquidator.

The unsecured creditors will be paid in accordance with the preferential priority, ranked from costs and expenses of winding up, wages and salary, workers' compensation, remuneration, contributions and lastly federal tax.

(D) Liquidators

In Malaysia, the liquidator could be the Director-General of Insolvency, the government official designated to be in charge of the administration of bankruptcy and winding up matters in Malaysia.

Alternatively, a private liquidator could be appointed.

Mainly, a liquidator's duty is to take control of all the company's assets, sell off the assets, and then distribute the proceeds. The liquidator's other duties are:

- (a) To investigate the affairs and assets of a wound-up company;
- (b) To investigate the conduct of company directors and other related persons;
- (c) To investigate claims made by creditors and third parties; and
- (d) To collect and realize the company's assets to meet its liabilities.

The detailed powers and duties of a liquidator are explicitly listed out in the Act – Eleventh Schedule for voluntary winding up and Twelfth Schedule for winding up by court.

(E) How can I tell if a company is in liquidation?

A winding up search may be conducted via the Insolvency Department. Each search costs RM10.00.

(F) Timing and costs

The process of dissolution differs according to the mode of dissolution. Voluntary winding up (either MVWU or CVWU) incurs lower costs and has a shorter time frame in comparison to winding up by the court. Regarding a winding up by the court, costs are relatively higher as it involves the litigation process. Said costs and time taken may vary according to the complexity of the matter, and whether it is a contested matter.

A liquidator begins by taking possession of the company's assets. Subsequently, the liquidator must realize or liquidate the assets concerned. This will allow the liquidator to raise funds to pay any valid claims which may exist against the company. The liquidator will then distribute the proceeds of the sale among the company's creditors, and if there are any excess, to each member.

For enquiries, please feel free to contact us as follows. Our team is always readily to serve you.

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