

Insolvency

MEMORANDUM ON VOLUNTARY AND COURT LIQUIDATION

In law and business, liquidation is the process in which a company is brought to an end, and its assets and property are sold and redistributed. Liquidation is also sometimes referred to as winding-up or dissolution, although dissolution may technically refer to the last stage of the liquidation. The process of liquidation will ultimately lead to the termination of the company as a legal entity.

The procedures to be undertaken in liquidation may be summarised as follows:

- a. The passing of a special resolution, or the procurement of an order by the Court, that the company be wound up;
- b. The appointment of liquidator(s);
- c. The converting, by the liquidator, of the company's assets into cash, the calling in of any uncalled capital and the payment of the company's creditors in order of priority;
- d. The distribution to members of any surplus funds after payment of all creditors in order of priority; and
- e. The dissolution of the company.

Types of liquidation:

1. **Members' or Creditors' Voluntary Liquidation:**

The members or creditors may choose to wind up the company voluntarily. The process of a voluntary winding up is started by calling a meeting of the company to pass a special resolution to wind up a company.

In the case of a Members' voluntary liquidation, the company must be solvent to meet its financial obligations and the directors of the company are required to execute a statutory declaration that the company is able to pay its debts in full within 12 months after the commencement of the liquidation. The proceeds from the realisation of assets in a members' voluntary liquidation will be utilised to pay for the costs and expenses of the winding up, the company's debts, and the balance thereafter will be distributed among the members of the company.

On the other hand, a creditor's voluntary liquidation ("CVL") is designed to allow an insolvent company to close in a voluntary manner. It is therefore applicable to a situation where the company is insolvent (i.e. the value of its liabilities has exceeded its assets) and is therefore unable to continue as a going concern. In such a situation, the creditors can resolve that by reason of its liabilities, the company should not continue its business. The liquidation will proceed with a meeting of creditors to be called in which the directors must report on the financial affairs of the company. A committee of inspection will also be appointed (if necessary) at the creditors' meeting to represent the creditors interest in the winding up of the affairs of the company.

The proceeds from the realisation of assets in a creditors' voluntary liquidation will be utilised to pay for the costs and expenses of the winding up before satisfying the creditors' claims in the manner and order prescribed by law.

2. **Court Liquidation:**

A winding up in the Court usually arose when a creditor has initiated legal proceedings for the recovery of debts due by a company. Upon obtaining a judgment against the company, if the debt remains unpaid, the creditors may present a petition in Court for the company to be wound up.

In a petition to wind up a company, the petitioning creditor is required to present the grounds (such as the company is insolvent and unable to pay debts which are due) upon which the company would be wound up by way of a winding up application. Upon the order being granted by the Court, the company will be placed under compulsory liquidation and in this instance a liquidator or the Official Assignee will take control of the liquidation to resolve the affairs of the company.

In addition to the above, there are other legitimate grounds in which the company may be placed under compulsory liquidation by the Court, and they are:

- a. The company itself.
- b. The substratum where the company was originally established to engaged in is lost or no longer relevant;
- c. There is a case of minority oppression and the minority shareholders are unable to resolve such matters amicably.
- d. There is a deadlock in the management of the company;
- e. Where a shareholder has been excluded from management in breach of an understanding;
- f. It is just and equitable to wind up the company.

3. **Upon the commencement of a winding up, the following shall apply:**

The business of the company shall cease, except so far as the liquidator thinks it's necessary for the beneficial interest of the company. The liquidator has no power to carry on the business with a view to resuscitating the company or making profits and shall only carry on the business principally to enable the business to be wound down in an orderly manner.

- a. The membership or shareholding of the company is frozen once winding up commences.
- b. The directors and officers of the company are under a duty to assist and co-operate with the liquidator.
- c. Where the company has either brought or sold property or any substantial assets to a person who was at the time of the transaction a director of the company for cash consideration and the transaction occurred within 2 years before the commencement of the winding up, the company may through it liquidator claw back any amount by which the transaction was overvalued or undervalued.
- d. Where the company has gone into liquidation within 6 months of the creation of a floating charge, that charge is void except to cover the amount of cash advanced to the company at the time of creation or subsequently, together with interest at 5% per annum.

4. **The work of a Liquidator**

In law, a liquidator is the officer appointed when a company goes into liquidation. He has to manage the following responsibilities before putting the company into dissolution:

- a. Investigate the affairs of the company as well as the conduct of its directors and other related persons;
- b. Recover and realise the company's assets at the best possible price in a manner that is beneficial and advantageous to the company;
- c. Adjudicate the claims of all creditors and to ensure an equitable distribution of the company's assets.

5. **Priority to secured Creditors**

Secured creditors usually are accorded with priority in the distribution process. Once the secured creditors have been paid from the assets pledged to them, the remainder of the assets, if any, will be distributed among the preferred creditors in an order of priority as follows:

- a. Costs and expenses of the winding up.
- b. Wages and salaries of employees up to the limit of S\$7,500 or 5 months' salary (whichever is lower).
- c. Central provident fund contributions.
- d. Outstanding vacation leave owed to the employees; and
- e. Outstanding taxes owed to Inland Revenue Authority of Singapore.

If you wish to understand more on the topics of Memorandum on Voluntary And Court Liquidation

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