



When Companies No Longer Serve Their Intended Purpose, Why Still Keep Them?

Voluntary Liquidation

The process of bringing an end to a company is known as winding up/liquidation.

Voluntary winding up/liquidation is a formal winding up process initiated by the director(s) and shareholder(s) of the company. This process does not involve the Court.

Company may be wound up voluntarily when:

- the company ceases to serve its intended purpose to exist.
- dispute amongst directors and/or members/shareholders.
- pursuant to provisions stipulated in the company's constitution.

In this article, we explore the 2 modes of voluntary winding up/liquidation in Malaysia – Members' Voluntary Winding Up/Liquidation ("MVL") and Creditors' Voluntary Winding Up/Liquidation ("CVL").

MVL

MVL is an efficient way to wind up/liquidate a solvent company (i.e. realization from all assets are sufficient to repay all liabilities). To initiate the process, majority of

the directors will have to execute and lodge the Declaration of Solvency ("DOS") with the Companies Commission of Malaysia ("CCM"). The DOS is a written declaration from the directors which states that an inquiry into the affairs of the company has been made AND at a meeting of the directors formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up/liquidation. After which, a meeting of the members/shareholders will be held. At this meeting, the members/shareholders will pass a resolution to wind up/liquidate the company and to appoint a Liquidator to facilitate the liquidation administration. MVL will commence on the date of the passing of the said resolution.

During the MVL administration, the Liquidator will carry out his/her duties which include taking control of the assets, realization of assets, settlement of creditors, to obtain necessary clearances from statutory bodies and lastly, to distribute surplus funds/or even assets directly (if any) back to the members/shareholders. Thereafter, the Liquidator will lodge to CCM the necessary documents and 3 months after the lodgment, the company will be dissolved.

CVL

In the event if the company is insolvent but wishes to avoid a compulsory winding up/liquidation initiated by the creditors, the directors and members/shareholders may consider CVL.

CVL allows the company to be wound up/liquidated voluntarily whilst being insolvent (i.e. company is unable to pay off all its debts). Similar to MVL, directors and shareholders will initiate the process and nominate a Liquidator. However, at the creditor's meeting, the creditors have the right to either agree to the person nominated by the members/shareholders or to nominate their own candidate to act as Liquidator.

Upon appointment, the Liquidator will carry out his/her duties, which amongst others may also include the realization of assets and distributions to creditors. However, in view that the company is insolvent, the distribution to creditors will most likely be on a pro-rated basis.

The advantage of a CVL as compared to compulsory winding up/liquidation is that the company may nominate their own Liquidator (subject to the approval from creditors) and therefore, making the entire process of bringing an end to the company more efficient and cost effective.

Should you have any queries or require more information, please do not hesitate to contact us.



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