

Voluntary winding up of a company in Uganda

The winding-up of a company in Uganda is governed by Section 268 of the Ugandan Companies Act, 2012.

Winding up is the process of dissolving a business by selling off its assets and satisfying the creditors from the proceeds of the sale. A company may wind up for different reasons amongst which are insolvency, upon satisfaction of its objects under its memorandum and articles of association.

A company may by special resolution resolve to be wound up voluntarily. A voluntary winding up of a company shall be taken to commence at the time of the passing of the resolution. The resolution for voluntary winding up shall be registered with the registrar and a copy sent to the official receiver within seven days from the date of passing the resolution.

The voluntary winding up may be performed as follows:

1. Member's voluntary liquidation – this is for a solvent company (can pay its debts) initiated by the company members.
2. Creditors' voluntary liquidation – this is for an insolvent company (unable to pay its debts) initiated by members of the company after meeting the creditors of the company.

Process of members voluntary winding up of a company

A members' voluntary winding up is possible only when the company is solvent and is able to pay its debts in full. In this case, it is not necessary for the members to consult the creditors or to call their meeting. A Declaration of Solvency is prepared by the directors.

Declaration of solvency

The Declaration of Solvency is an important document in the members' voluntary winding up. The declaration must be made in a meeting of the Board of Directors. It should be made by a majority of the directors and certified by an affidavit.

The declaration must be accompanied by a statement of assets and liabilities up to the date of declaration. A copy of the Auditor's Report on the Profit and Loss Account and on the Balance Sheet from the last accounting date to a date ending with the latest practicable date immediately before the date of making the declaration also attached to it.

The declaration should be made and filed with the Registrar at least five weeks immediately before the date on which it is proposed to pass the resolution relating to the winding up. Otherwise, the declaration will not be effective.

Procedure for A Members' Voluntary Winding Up

The following procedure should be adopted in case of Members' Voluntary Winding up.

1. Holding of the general meeting

After filing the Declaration of Solvency, the Directors should arrange to convene a meeting of the company and a resolution should be passed to this effect.

2. Appointment of liquidators

A resolution should also be passed in the same meeting appointing one or more liquidators. The members should also fix the remuneration of the liquidator.

3. Notice to the Registrar

The company should give a notice of appointment of the liquidator to the Registrar within 10 days from the date of appointment. The liquidator should also inform the Registrar about his appointment within 30 days from the date of his appointment and should also publish the same in the Official Gazette.

4. Powers of the Board etc.

As soon as the liquidator is appointed, all the powers of the Board of Directors or Managing Directors, or Whole Time Directors or Manager shall come to an end. However, the liquidator or the members may allow them to continue for the beneficial winding up of the company.

5. Reconstruction in winding up

Generally, the liquidator shall take charge of all the assets of the company, convert them into cash and pay the money first to the creditors and then to the members, if any surplus is left. But sometimes, instead of selling the property of the company for cash, he may sell the assets of the company for shares in another company.

6. Holding of the General Meeting at the end of the First Year

Where the process of liquidation continues for more than one year, the liquidator must call for a general meeting at the end of the first year and also at the end of each subsequent years. He must submit before the meeting, an account of his acts and the progress of winding up during the year.

7. Final meeting of the members

As soon as the affairs of the company are fully wound up, the liquidator should call for a meeting of the members by giving an advertisement in the Official Gazette. The notice must be given at least one month before the date of the meeting. It should specify the time, date and plan of the meeting. The liquidator should submit before the meeting an account of the winding up showing:

- a) how the winding-up has been conducted; and
- b) how the company's property has been disposed of.

8. Notice to the Registrar and official receiver

The liquidator, within one week after the date of the meeting, should send a copy of the account along with a return of the meeting, to the Registrar of Companies and also to the official liquidator attached to the concerned High Court.

9. Duty to call for the creditors' meeting

If, in the opinion of the liquidator, the company will not be able to pay its debts in full, within the period specified in the Declaration of Solvency, the Liquidator should immediately call for a meeting of the creditors of the company. He should submit a statement of affairs of the company before the meeting. Thereafter, the winding up shall cease to be a members' voluntary winding up but will proceed in accordance with the provisions applicable to the creditors' voluntary winding up.

Process of creditors' voluntary liquidation

This is for an insolvent company (unable to pay its debts) initiated by members of the company after meeting the creditors of the company.

Completion of liquidation

The liquidation of a company shall be complete when the liquidator delivers to the official receiver a final report and final accounts of the liquidation and a statement indicating that;

1. All known assets have been disclaimed, realized or distributed;
2. All proceeds of realization have been distributed; and
3. In the opinion of the liquidator, the company should be removed from the register.

On delivering to the official receiver the documents above, the liquidator ceases to hold office.



Role of the liquidator

The fundamental duties of a liquidator under Section 99 of the Insolvency Act are to take in a reasonable and expeditious manner, all steps necessary to:

1. Collect;
2. Realize as advantageously as reasonably possible; and
3. Distribute The assets or the proceeds of the assets of the company.

The liquidator,

- Gives notice of his appointment in the gazette and newspaper of wide circulation in Uganda. **Form 12 Insolvency Regulations**
- Files a statement of affairs of the company. **Form 20 Insolvency Regulations.**
- Files reports in relation to the liquidation process and gives public notice of availability of the reports in a newspaper of wide circulation and delivers copies to the Official Receiver.
- Sells and distributes the assets or the proceeds of the assets of the company to the creditors.
- Registers his or her interest in all land and other assets belonging to the company.
- Keeps company money separate from other money held by or under the control of the liquidator.
- Keeps full accounts and other records of all transactions relating to the liquidation.
- Retains the accounts and records of the liquidation and of the company for not less than six years after the liquidation ends.
- Permits those accounts and records and the accounts and records of the company, to be inspected.
- Holds meetings with the members of the company.
- Settles legal disputes or outstanding contracts.
- Gets the company struck off from the register.

Liquidator's preliminary report

The following is included in the liquidator's preliminary report.

1. The state of the company's affairs,
2. Proposals for conducting the liquidation
3. The estimated date of its completion
4. The right of any creditor or shareholder to require the liquidator to call a creditors' meeting

Liquidator's interim reports

1. The conduct of the liquidation during the preceding six months period.
2. The liquidator's further proposals for the completion of the liquidation.

Liquidator's final report

1. The liquidator shall prepare an account of the liquidation showing how the liquidation was conducted and how the property of the company was disposed of.
2. Final accounts and statements.

Effects of liquidation

1. A company shall from the commencement of voluntary liquidation, cease to carry on business, except so far as may be required for the beneficial liquidation of the company.
2. The corporate status and powers of the company shall, notwithstanding anything contrary in its articles, continue until dissolved.
3. Any transfers of shares, not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the members of the company, made after the commencement of the voluntary liquidation is void.

Implication on directors

- When a liquidator is appointed, the directors no longer control the affairs of the company except if it is permitted by court. In addition, they cannot act on behalf of the company.
- If you are a director, you must disclose fully and truthfully to the liquidator all the property of the company and details of the disposal of any property by the company including property disposed of in the ordinary course of business. You must also deliver all property of the company in or under your custody or control to the liquidator.
- Appear to the liquidator for questioning if and when he sees fit.

Caveat

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