

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN



Guide on Winding up / Dissolution of Companies

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AIMS AND OBJECTIVES

This booklet is a simple guide to winding up procedures and should be read with the relevant legislation i.e. the Companies Ordinance, 1984 (as amended) (hereinafter called “the Ordinance”) and the Companies (Court) Rules, 1997 (hereinafter called “the Rules”). It summarises steps and provides information and procedure that apply to all types of winding up.

Please remember that if your company is considering for winding up, you should seek appropriate professional advice.

INTRODUCTORY REMARKS

The term ‘winding up’ of a company may be defined as the proceedings by which a company is dissolved (i.e. the life of a company is put to an end). Thus, the winding up is the process of putting an end to the life of the company. And during this process, the assets of the company are disposed of, the debts of the company are paid off out of the realized assets or from the contributories and if any surplus is left, it is distributed among the members in proportion to their shareholding in the company. The winding up of the company is also called the ‘liquidation’ of the company. The process of winding up begins after the Court passes the order for winding up or a resolution is passed for voluntary winding up. The company is dissolved after completion of the winding up proceedings. On the dissolution, the company ceases to exist. So, the legal procedure by which the existence of an incorporated company is brought to an end is known as winding up.

1. LIQUIDATOR

A person appointed to carry out the winding up of a company is called liquidator. If the winding up is through Court, the term used for such person is official liquidator. The duties of liquidator include to get in and realise the property of the company, to pay its debts, and to distribute the surplus (if any) among the members. The official liquidator acts under the supervision of the Court, through a recognized reporting system.

The following are the general powers of liquidator(s):-

1. To institute or defend any suit, action, prosecution or other legal proceeding, civil or criminal on behalf of the company.
2. To carry on the business of the company so far as may be necessary for the beneficial to it.
3. To pay to the creditors.
4. To make any compromise or arrangement with creditors.
5. To compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts.
6. To sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer to any person or to sell the same in parcels.

7. To do all acts and to execute all deeds, receipts and other documents in the name and on behalf of the company and for that purpose to use in the company's seal when necessary.
8. To prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate and to receive dividends as a separate debt due from the bankrupt or insolvent in the bankruptcy.
9. To draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
10. To raise on the security of the assets of the company any money.

2. Consequences of winding up

Some important consequences of winding up of company are:

2.1 As regards the company itself: winding up does not mean that the company has ceased to exist. The company exists as a corporate entity with all the rights of such entity, with only change that its management and administration is to be carried on through liquidator / liquidators till the final dissolution of the company.

2.2 As regards the shareholders: A new statutory liability as contributories comes into existence. Every transfer of shares or alteration in the status of a shareholder, after the winding up has commenced by the order of the Court, shall unless approved by the liquidator, be void.

2.3 As regards the creditors:

- i. They cannot file or continue suits against the company, except with the leave of the Court.
- ii. They cannot proceed with the execution, if they have obtained decrees already.
- iii. They must lodge their claim and prove their debt before the liquidator.

2.4 As regards the management, on appointment of liquidator, all the powers of the directors, chief executive and other officers, shall cease, except for the purpose of giving notice of resolution to wind up and appointment of liquidator and filing of consent of liquidator etc.

2.5 As regards the disposition of company's property, all such dispositions are void unless with the leave of the Court or the liquidator.

3. Modes of winding up:

The winding up of a company may be either-

- (i) by the Court; or
- (ii) voluntary; or
- (iii) subject to the supervision of the Court.

3.1 Winding up of the company by the Court: (i)

The winding up of a company by an order of the Court is called the compulsory winding up.

Section 305 of the Ordinance envisages the following circumstances, under which a company may be wound up by the Court on the petition submitted to it:-

- (a) if the company has, by special resolution, resolved that the company be wound up by the Court;
- (b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) if the number of members is reduced, in the case of private company, below two or, below three in case of public company and below seven in case of listed company.;
- (e) if the company is unable to pay its debts;
- (f) if the company is-
 - (i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
 - (ii) carrying on business not authorised by the memorandum;
 - (iii) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders;
 - (iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or
 - (v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the Court or the registrar or the Commission given in the exercise of powers under this Ordinance;
- (g) if, being a listed company, it ceases to be such company;
- (h) if the Court is of opinion that it is just and equitable that the company should be wound up; or
 - (i) Complete deadlock in the management of the company.
 - (ii) Failure of company's main object.
 - (iii) Recurring losses.
 - (iv) Aggressive or oppressive policy of majority shareholders.
 - (v) Incorporation of company for fraudulent or illegal purpose.
 - (vi) Public interest.
- (i) if the company ceases to have a member.

3.1.1 Procedure for winding up of company and filing of petition before respective High Court:

1. To pass Special Resolution by 3/4th majority of the members of the company that the company be wound up by the Court in case if the company itself intend to file a petition and to file the Special Resolution on Form 26 with the registrar.
2. To prepare a list of the assets to ascertain that the company is unable to pay its debts.
3. To prepare a list of the creditors
4. In case of defaults in payments the creditor or creditors to make a decision for the filing of the winding up petition.
5. In case if the Commission or Registrar or a person authorised by the Commission intend to file a petition, they should not file a petition, for winding up of the company, unless an investigation into the affairs of the company has revealed that it was formed for any fraudulent or unlawful purpose or that it is carrying on a business not authorised by its memorandum or that its business is being conducted in a manner oppressive to any of its management has been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members.
6. To engage advocates for the preparation and filing of the petition.

3.1.2 Who is competent to file petition for winding up in the Court?

Petition may be presented by any one of the following:

1. The company may itself by passing a special resolution
2. Creditor or Creditors.
3. Any contributory or contributories
4. Registrar of Companies
5. Securities and Exchange Commission of Pakistan or by a person authorised by the Commission

3.1.3 Check List filing of petition before respective High Court :

1.	Have you gone through “General Heading” provided under rules.	Rule 4 of the Rules
2.	Whether the petition is prepared / drafted on and in accordance with the Rules.	Rule 75 of the Rules
3.	Have the petitions / written statements / affidavits and other proceedings are being presented to the Court is fairly and legibly written, type written, cyclostyled etc. and in accordance with the format described under the Rules.	Rule 5 of the Rules
4.	Have the language of the said documents stated at column 3 are in language of the Court?	Rule 6 of the Rules

3.1.4 Documents to be annexed with the petition

1. Petition for winding up to be filed on form prescribed under the Companies Rules, (On Form 24 (General Form) (Form 25 – petition by creditor) Form 26 (petition by company) Rule 75 read with rule 4 of the Rules
2. Affidavit verifying the petition on Form 1 Rule 16 read with rule 4 of the Rules

3. Copy of special resolution in case if the company itself intend to file petition Section 172 of the Ordinance
4. Copies of the agreements and other documents on the basis of which creditors intend to file a winding up petition will be annexed with the petition
5. All other supporting documents on the basis of which the petitioner rely as an evidence

3.2. Voluntary winding up of members of the company (ii (a))

A company can be wound up voluntary (a) on expiration of the period fixed for the duration of the company by its Articles of Association or on occurrence of event leading to dissolution of the company as provided in the Memorandum and Articles of Association and company has to pass a special resolution in general meeting for its wound up voluntarily within five weeks of filing of declaration of solvency, and (b) on passing of the special resolution that the company be wound up voluntarily. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up.

The company ceases to carry out business just on commencement of winding up. However, it can carry on its activities and business for beneficial winding up of the company.

3.2.1 PROCEDURE FOR VOLUNTARY WINDING UP

The following steps are to be taken for Member's voluntary winding up under the Provisions of the Ordinance, and the Companies Rules.

Step 1. Where it is proposed to wind up a company voluntarily, its directors make a declaration of solvency on Form 107 prescribed under Rule 269 of the Rules duly supported by an auditors report and make a decision in their meeting that the proposal to this effect may be submitted to the shareholders. They, then, call a general meeting (Annual or Extra Ordinary) of the members (Section 362 of the Ordinance)

Step 2. The company, on the recommendations of directors, decides that the company be wound up voluntarily and passes a Special Resolution, in general meeting (Annual or Extra Ordinary) appoints a liquidator and fixes his remuneration. On the appointment of liquidator, the Board of directors ceases to exist. (Sections 358 and 364 of the Ordinance)

Step 3. Notice of resolution shall be notified in official Gazette within 10 days and also published in the newspapers simultaneously. A copy of it is to be filed with registrar also. (Section 361 of the Ordinance)

Step 4. Notice of appointment or change of liquidator is to be given to registrar by the company alongwith his consent within 10 days of the event. (Section 366 of the Ordinance)

Step 5. Every liquidator shall, within fourteen days of his appointment, publish in the official Gazette, and deliver to the registrar for registration, a notice of his appointment under section 389 of the Ordinance on Form 110 prescribed under Rule 271 of the Rules.

Step 6. If liquidator feels that full claims of the creditors cannot be met, he must call a meeting of creditors and place before them a statement of assets and liabilities. (Section 368 of the Ordinance)

Step 7. A return of convening the creditors meeting together with the notice of meeting etc. shall be filed by the liquidator with the registrar, within 10 days of the date of meeting. (Section 368 of the Ordinance)

Step 8. If the winding up continues beyond one year, the liquidator should summon a general meeting at the end of each year and make an application to the Court seeking extension of time. (Section 387(5) of the Ordinance)

Step 9. A return of convening of each general meeting together with a copy of the notice, accounts statement and minutes of meeting should be filed with the registrar within 10 days of the date of meeting. (Section 369 of the Ordinance)

Step 10. As soon as affairs of the company are fully wound up, the liquidator shall make a report and account of winding up, call a final meeting of members, notice of convening of final meeting on Form 111 prescribed under Rule 279 of the Rules before which the report / accounts shall be placed. (Section 370 of the Ordinance)

Step 11. A notice of such meeting shall be published in the Gazette and newspapers at least 10 days before the date of meeting. (Section 370 of the Ordinance).

Step 12. Within a week after the meeting, the liquidator shall send to the registrar a copy of the report and accounts on Form 112 prescribed under Rule 279 of the Rules. (Section 370 of the Ordinance)

3.2.2. DOCUMENTS REQUIRED FOR VOLUNTARILY WINDING UP BY MEMBERS –

- Special Resolution on Form-26 (prescribed under the Companies (General Provisions and Forms) Rules, 1985 for voluntary winding up.
- Declaration of Solvency on Form 107 under the Rules.
- Affidavit by Directors of the company including Chief Executive verifying the attached auditor's report, profit and loss account, balance sheet, statement of assets and liabilities prepared from the date of closing of last accounts till the latest practicable date, immediately before the making of declaration.
- Consent of liquidator.
- A copy of Notice of resolution passed for winding up the company voluntarily and published in the Official Gazette.
- A copy of Notice for appointment of liquidator and published in the Official Gazette.
- A copy of Preliminary report prepared by the liquidator.
- Final report and accounts of the company prepared by liquidator presented in General meeting of shareholders after finalization of winding up.

- Notice of final meeting.
- Return containing final report and accounts alongwith minutes of meeting to be filed with the concerned Company Registration Office.

3.3. CREDITOR'S VOLUNTARY WINDING UP OF THE COMPANY (ii (b))

A procedure has been laid down under the provisions of the Ordinance whereby the company can also be voluntary wound up by creditors. For this purpose, the company shall call a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held a general meeting of the company at which the resolution of voluntary winding up to be proposed.

3.3.1. PROCEDURE FOR CREDITOR'S VOLUNTARY WINDING UP

Step 1. First of all, the company passes a special resolution in the general meeting of the members of the company for which following steps are to taken:

- Board of Directors approves the agenda of the general meeting especially the draft special resolution for winding up of the company.
- Notice of the general meeting alongwith copy of the draft special resolution is given to the members at least 21 days before the general meeting.
- Special resolution is passed by 3/4th majority of the members of the company and the members appoint a person to be liquidator of the company.
- Special resolution on Form 26 is filed with the registrar.

Step 2. Meeting of creditors is called at 21 days notice, (simultaneously with sending of the notices of the general meeting of the company) the notice of the meeting of the creditors to be send by post to the creditors, besides, the notice of the said meeting to be advertised in the official Gazette and the newspaper circulated in the Province and the creditors pass a resolution of voluntary winding up of the company. The creditors also appoint liquidator in that meeting. If the creditors and the company nomina te different persons, than person nominated by the creditors shall be liquidator.

Step 3. Notice of the resolution passed at the creditor's meeting shall be given by the company to the registrar alongwith consent of the liquidator within ten days of the passing of the resolution.

The company may either at the meeting at which resolution for voluntary winding up is passed or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons. Provided that the creditors may, if they think fit, resolve that all or any of the person so appointed by the company ought not to be member of the committee of inspection.

Step 4. The liquidator should, with all convenient speed, realise the assets, prepare lists of creditors, admit proof, settle list of contributories, make such calls as may be necessary, etc. accordingly as the nature of the case may require, pay secured creditors, pay the costs including the liquidator's own remuneration, pay preferential claims, and after meeting all the claims of creditors, and after adjusting all claims and rights, distribute the surplus on *pro rata* basis.

Step 5. In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up and lay before the meetings an audited account of receipts and payments and acts and dealings and of the conduct of winding up during the preceding year together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings and position of liquidation and forward by post to every creditor and contributory a copy of the account and statement together with the auditors' report and notice of the meeting at least ten days before the meeting required to be held.

Step 6. The liquidator prepares the accounts, gets them audited and also presents a final report to the creditors. The steps at this stage are as under:

- The liquidator prepares a final report and accounts of the winding up, showing how the winding up has been conducted and the property of the company have been disposed of.
- Accounts are duly audited by the auditor appointed for the purpose.
- The notice of meeting is sent by post to each contributory of the company and creditor at least ten days before the meeting. The account with a copy of the auditor's report is also enclosed with the notice.
- The notice of the meeting specifying the time, place and object of the meeting is published at least ten days before the date of the meeting in the official Gazette and in at least one newspaper.
- Within one week after the meeting, the liquidator is required to send to the registrar a copy of his report and account, and make a return to him of the holding of the meeting alongwith the minutes of the meeting.
- If a quorum is not present at the meeting, the liquidator makes a return stating that the meeting was duly summoned and that no quorum was present thereat. The return is filed with the registrar and considered as presented in the meeting.
- The registrar, on receiving the report, account and the return, is required to register them after their scrutiny.
- On the expiration of three months from the registration of final report, accounts and minutes, the company is deemed to be dissolved.

3.4. Winding up of the company subject to the supervision of the Court. (iii)

When a company has passed a resolution for voluntary winding up, the Court may of its own motion or on the application of any person entitled to apply to the Court for winding up a company, make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and other legal proceedings, be deemed to be a petition for winding up by the Court.

The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, but subject to the provisions which would have been applicable had the company been wound up by the Court.
