

Chris Johnson Associates Ltd.

Chartered Accountants & Insolvency Practitioners

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This guide provides general information for creditors and shareholders of insolvent companies. Any queries may be addressed to Chris Johnson of Chris Johnson Associates Ltd.

Guide To Compulsory Liquidation Of Companies In The Cayman Islands

Introduction

The principal legislation for companies winding up is contained in the Companies Law (2007 Revision) and Winding-up Rules. The Law does not distinguish between a members voluntary liquidation and a creditors voluntary liquidation as it does in other countries such as the United Kingdom.

The main objectives of the companies winding-up are:

- To ensure that all the company's affairs have been dealt with properly.
- To have the company dissolved.
- Modes of winding-up include:
 - Voluntary winding-up
 - Compulsory winding-up by the Grand Court of the Cayman Islands

There is no Official Receiver's Office in the Cayman Islands as it does in the UK and consequently all official liquidators are accountants drawn from the local accounting firms. In certain circumstances a Joint Official Liquidator residing overseas may be appointed by the Court.

Winding-up Petition

A limited company may be wound up by the Court in the circumstances set out in the Companies Law. The more common ones are:

- The company is unable to pay a debt of \$100 or above;
- The court is of the opinion that it is "just and equitable" that the company should be wound up.
- The company has by special resolution resolved that the company be wound up by the Court.

A creditor, a shareholder or the company itself can file a winding-up petition against the company.



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A lawyer is normally instructed by the petitioner to prepare and file the winding-up petition.

Effects of Compulsory Winding-Up

Once a winding-up petition is filed in the Court, the winding-up of the company shall be deemed to commence at the time of the filing of the petition for winding-up.

After the commencement of winding-up:

- Any disposition of the property of the company, including any transfer of shares or alteration in the status of the shareholders of the company, unless the Court orders otherwise, is void.
- The company or any creditor or shareholder may apply to the Court to stay or restrain any pending action or proceeding against the company.

If the petitioner believes that the assets of the company are in jeopardy, he may apply to the Court, after the filing of the winding-up petition, for the appointment of a provisional liquidator to safeguard the assets of the company prior to the hearing of the petition.

If a provisional liquidator is appointed prior to the hearing of the winding-up petition, the Court will appoint him to be the liquidator when making the winding up order.

Duties of Directors of a Wound-up Company

On the appointment of a liquidator or the making of the winding-up order, the powers of the directors of the company will cease. The directors must then:

- Deliver to the liquidator the company's assets, books and records and seal.
- Attend the office of the liquidator for interview to provide information of the company's assets and dealings.
- Submit a sworn statement of affairs of the company a document (similar to a balance sheet of a company).
- Attend meetings of creditors and contributories when notified by the provisional liquidator or liquidators.
- Continue to co-operate with the liquidator until the liquidation is concluded.
- Notify the liquidator of any change in address.

Directors who fail to perform their duties such as those mentioned above as well as failure to keep and preserve books and records of the company and, failure to prepare and submit



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the statement of affairs, etc. may be prosecuted.

Rights of Creditors and Contributories

After the making of the winding-up order, creditors must complete a Proof of Debt Form in order to substantiate any debt contracted by the company and must submit them to the liquidator, together with any documentary evidence

Any creditor or contributory may request the liquidator to summon general meetings of creditors and contributories subject to the relevant winding-up provisions in the Companies Law (2007 Revision) and Winding Up Rules.

If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court for the reversion or modification of such act or decision.

Distribution of Dividend

If, after deduction of all fees and expenses, there are funds remaining in the estate of the company, the liquidator will distribute this sum to creditors whose claims have been admitted.

Release of Liquidators and Dissolution of Company

Once all the assets of the company have been realized, investigation completed and a final dividend, if any, has been paid, the liquidator will send notices, together with a summary of his receipts and payments in the liquidation, to the creditors and contributories of the company of his intention to apply to the Court for his release as liquidator and for the dissolution of the company.

Examination and Prosecution of Directors and Officers

Under section 169 of the Companies Law (2007 Revision) where, in the course of the winding up of any company under this law it appears that any past or present director, manager, official or other liquidator or any officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer and compel him to repay



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any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

Winding up Subject to the Supervision of the Court

Under section 154 of the Companies Law (2007 Revision) where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up, subject to any restriction imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes (including the staying of actions, suits and other proceedings) be deemed to be an order of the Court for winding up the company by the Court, and shall confer on the Court full authority to make calls or to enforce calls made by the liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in any provision of this law empowering the Court, to direct any act or thing to be done to or in favor of the official liquidators, the expression 'official liquidators' shall be construed as meaning the liquidators conducting the winding up subject to the supervision of the Court.

Examination of Parties by Court

Under section 128 of the Companies Law (2007 Revision) the Court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to Exclude Creditors

Under section 121 of the Companies Law (2007 Revision) the Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court may have Regard to Wishes of Creditors



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Under section 152 of the Companies Law (2007 Revision) the Court, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of any liquidator and in all other matters relating to the winding up subject to supervision, may have regard to the wishes of such of the creditors or contributories as proven to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court; and regard shall be had, as respects creditors, to the value of the debts due to each creditor, and as respects contributories, to the number of votes conferred on each contributory by the regulations of the company.

