

Chris Johnson Associates Ltd.

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Guide To Voluntary Liquidation Of Companies In The Cayman Islands

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

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.

Circumstances in which company may be wound up voluntarily



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- Under section 132 of the Companies Law (2007 Revision) a company may be wound up voluntarily:
- when the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company has, by resolution of its members, adopted a resolution requiring the company to be wound up voluntarily; or
- if the company has passed a special resolution requiring the company to be wound up voluntarily.

Commencement of Voluntary Winding Up

Under section 133 of the Companies Law (2007 Revision) a voluntary winding up and dissolution is to be taken to have commenced:

- at the time of the passing of the resolution referred to in paragraph (a) or (b) of section 132, authorizing the winding up; or
- where the articles of association of a company provide that:
- on the termination of any period; or
- the happening of any event,

The company shall be wound up and dissolved on the termination of that period or the happening of that event.

Where the winding up and dissolution has commenced by virtue of paragraph (b) of subsection (1), the person, if any, designated by resolution of the members passed prior to such commencement, failing whom the person, if any, designated in the articles of association shall, upon such commencement and without further action, become the liquidator, failing which the directors at the time of such commencement shall, upon such commencement and without further action, become the liquidators, failing which section 144 shall apply.

Where a person has without further action become the liquidator pursuant to section 133(2), paragraphs (c) and (d) of section 136 have no application.

Consequences of Voluntary Winding Up

Under section 136 of the Companies Law (2007 Revision). The following consequences



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shall ensue upon the voluntary winding up of a company:

subject to paragraph (b), the property of the company shall be applied in satisfaction of its liabilities 'pari-passu' and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company

the collection in and application of the property of the company referred to in paragraph (a) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors, to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any rights of set-off or netting of claims between the company and any persons, whether conferred by agreement or law, and subject to any agreement between the company and any persons to waive or limit the same

liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property

the company, by resolution of its members, shall appoint such person or persons as it thinks fit to be liquidator or liquidators and may fix the remuneration to be paid to him or them

if one liquidator only is appointed, all provisions herein contained in reference to several liquidators shall apply to him

upon the appointment of liquidators all the powers of the directors shall cease, except insofar as the company, by resolution of its members or the liquidators, may sanction the continuance of such powers

when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two

the liquidators may without the sanction of the Court exercise any powers by this law conferred on the official liquidators

the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company and any list so settled shall be prima facie evidence of the liability of the persons named therein to be contributories

the liquidators may, at any time after the passing of the resolution for winding up the



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company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums that the liquidators think necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions thereof; and

the liquidators shall pay the debts of the company and shall adjust the rights of the contributories amongst themselves

