

Liquidation of Cyprus Companies

THE MULTI FAMILY OFFICE

A company's life can be terminated by striking off the Company from the Companies Register through a purely administrative procedure, or through a voluntary liquidation or following a court order of winding up.

1. Striking off the Register

A company may, on a written application signed by the Directors and addressed to the Registrar of Companies, be struck off the Companies Register. A basic requirement is to submit a confirmation that the company has no outstanding liabilities.

The liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

A company which has been struck off the Register may be reinstated on application by a potential creditor within a period of twenty years from the publication in the Official Gazette of the Republic of the striking off. If a company or any member or creditor feels aggrieved by the company having been struck off the Register, the court on an application made by the company or member or creditor, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the Register, order the name of the company to be restored to the Register. Upon a copy of the order being served to the Registrar for registration of the company, the company shall be deemed to have continued in existence as if its name had not been struck off. Tax liability goes back twelve years and the company documents of the company must be stored for tax purposes for at least seven years.

2. Voluntary Liquidation

Two types of voluntary liquidation exist: Members' voluntary liquidation and creditors' voluntary liquidation. The main difference between the two procedures is that in the first case the members (shareholders) have control of the procedure and in the second case the creditors will have control of the procedure.

2.1. Members' voluntary liquidation

This procedure is provided for in the Companies Law Cap. 113. Before deciding to liquidate the company, the directors must consider if the winding up can be a member's liquidation instead of a creditors' liquidation.

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If the liquidation will be a Members' voluntary liquidation, then the majority of the directors at a meeting of the directors should make a statutory declaration to the effect that they have made a full inquiry into the company's affairs, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up.

Such declaration shall have no effect unless:

- It is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar of Companies for registration before that date, and
- It embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

2.1.1 The procedure starts with a special resolution of the shareholders, unless something different is provided for in the Articles of Association of the company. A special resolution must obtain at least a 75% majority in order to be adopted. The company must then give, within 14 days from passing the resolution, notice by advertisement in the Official Gazette of the Republic.

2.1.2 Any director of a company making such a declaration without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period not exceeding two years or to a fine not exceeding one thousand five hundred pounds or to both such imprisonment and fine; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

2.1.3 If the liquidator believes that the company will not be able to meet its liabilities and pay off all its debts within the period provided for in the law, a creditors meeting must be called. The liquidator must supply the creditors with full information. From the date of the meeting onwards, the winding up is converted from a members' voluntary liquidation to a creditors' voluntary liquidation.

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2.1.4 When the company is fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a General Meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

- (a) The meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.
- (b) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding twenty five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore, mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

- (c) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

- (d) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding twenty five pounds for every day during which the defaults continues.

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- (e) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding two hundred fifty pounds.

2.2 Creditors' Voluntary Liquidation:

In this case, the company shall cause 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 the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

2.2.1 The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

2.2.2 The directors of the company shall

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid;

and

- (b) appoint one of their number to preside at the said meeting.

2.2.3 It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

2.2.4 When a company has passed a resolution for its voluntary winding up, the court may issue an order that the voluntary winding up will continue subject to the supervision of the court, and any creditors, contributories, or any others interested in the company may be at liberty to apply to the court, on such terms and conditions as the court thinks fair.

2.2.5 A petition for the voluntary winding up of a company which is subject to the supervision of the court will be considered to be a petition for the winding up of the company by the court and a winding up subject to the supervision of the court will be a winding up by the court.

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3. Liquidation by the Court

3.1. A Company may be wound up by a court order in the following circumstances:

3.1.1. The company has by special resolution resolved that it be wound up by the court;

3.1.2. Default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

3.1.3. The company does not commence its business within a year from its incorporation or suspends its business for a whole year;

3.1.4. The company is unable to pay its debts; and

3.1.5. The court is of opinion that it is just and equitable that the company should be wound up.

3.2 A company shall be deemed to be unable to pay its debts

3.2.1 If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred pounds has served in the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

3.2.2 if execution or other process issued on a judgement, decree or order to any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

3.2.3 if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

3.3. Transfer of Assets may be void

In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of

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the members of the company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

3.4 The persons eligible to file a petition requesting the winding up of a company are the company itself, the official Receiver who can present a petition even after a voluntary winding up application has started, a contributory, and a creditor.

3.5 If a winding up order is made, the first step to be taken will be to appoint a liquidator to whom, as in all types of winding up, the administration of the company's affairs and property will pass.

3.6 The functions of the liquidator in a winding up by the court are the same as those in a voluntary winding up, to secure that the assets of the company are got in, realized, and distributed to the company's creditors and, if there is a surplus, it is distributed to the persons entitled to it. In a winding up by the court, the liquidator will often require the sanction of the court before entering into transactions as he will be acting as an officer of the court.

3.7 A liquidator may be appointed before a final order is made, for at any time after the presentation of a winding up petition the court may appoint a provisional liquidator, normally the Official receiver who is a public officer. Not only will an official receiver normally be the provisional liquidator, but he will generally be the initial liquidator and will often remain so unless and until another liquidator is appointed.

4. Committee of Inspection

In a creditors' voluntary winding up by the court, the creditors may decide at their first or a subsequent meeting to establish a Committee of Inspection and, in the case of a creditors' winding up, they may appoint not more than five members. If they proceed to appoint the five members, the company in the general meeting also may appoint five members.

The functions of a Committee of Inspection are, inter alia, to give the liquidator the opportunity of consulting the creditors and the members without having to convene formal creditors' and company meetings and provide additional means whereby the creditors and members can question the liquidator. The directors of the company must prepare a statement of the company's affairs, verified by affidavit, which must be presented at the creditors' meeting.

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5. Effect of Winding Up:

The issue of the winding up order has the following effects:

- 5.1 All actions against the company are automatically stayed, and they cannot proceed without the necessary leave of the competent court;
- 5.2 The company ceases to carry on business except with a view to a beneficial winding up;
- 5.3 The powers of the directors cease; and
- 5.4 Employees of the company are automatically dismissed, though the liquidator may reemploy some of them until the winding up is completed.

6. Shareholders' Liability

If the shareholders have not paid up to the company the capital corresponding to the shares received, they will be liable during the liquidation procedure to pay all the amounts due for receiving the shares. This liability exists for the shareholders both in voluntary liquidations or compulsory liquidation through court. However, this liability is limited to the value of the shares held in the company which is being liquidated and it does not exist if the shareholders have paid the capital to the company before the liquidation proceedings start.

7. Whether it is a compulsory or voluntary liquidation, the court can restore the company to the Register within two years, if for example, further assets are discovered which should be distributed to creditors.

8. Time Considerations

Except for the strict statutory time limits mentioned hereabove, it is very difficult to give a precise estimation of the time necessary to complete any of the procedures described hereabove. Indeed, the liquidation of a company having many different and important assets and several hundreds of employees will for sure be more complicated and time taking than a small company with no employees and with assets limited, for example, to a bank account.

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ABOUT BKMS

With over a decade worth of experience and a prominent network of international clients, BKMS has established a reputation that speaks for itself. BKMS is covering a broad spectrum of industries, taking into account the required accounting treatment and tax implications as well as the challenging international regulatory framework. Client Trust and loyalty are the very fundament of every commitment undertaken by BKMS. Adherence to a strict policy of professionalism therefore results in continuously successful developments.

MULTI FAMILY OFFICE SERVICES

Administrative Services

Tax Planning

Wealth Planning

Corporate Consulting

Legal Services

BKMS Limited

201 Strovolos Avenue
Off. 201-202, 2nd Floor
2049 Nicosia, Cyprus

Tel. +357 – 22 265 360

Fax. +357 – 22 265 361

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