

MEMORANDUM ON VOLUNTARY AND COURT WINDING UP IN SINGAPORE

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Winding up is essentially the procedure by which the business of the company is put to an end and its assets collected and realised. The resulting proceeds are then used to pay the costs and expenses of the winding up, the company's debts, and any balance thereafter is distributed among the members of the company. Winding up ultimately results in the termination of the company as a legal entity.

The process of winding up may be summarised as follows:

1. the passing of a special resolution, or the making of an order by the Court, that the company be wound up;
2. the appointment of a liquidator;
3. the converting, by the liquidator, of the company's assets into cash, the calling in of any uncalled capital and the payment of the company's creditors in order of priority;
4. the distribution to members of any surplus after payment of all creditors in order of priority; and
5. the dissolution of the company.

There are 2 types of winding up:

1. members' or creditors' voluntary winding up; and
2. winding up by the Court

Voluntary Winding Up

The members or creditors of a company may choose to wind up the company voluntarily. The process of a voluntary winding up is begun by calling a meeting of the company to pass a special resolution for winding up. Such a meeting may be called when the company believes that by reason of its liabilities, it is unable to continue its business. In a members' voluntary winding up, the company is solvent while in a creditors' voluntary winding up, the company is usually insolvent.

If the directors make a declaration that the company is able to pay its debts in full within 12 months after the commencement of the winding up, the winding up proceeds as a **members' voluntary winding up**.

There will be a **creditors' voluntary winding up** if the company is not solvent and the creditors resolve that by reason of its liabilities, it should not carry on.

Court Winding Up

A winding up by the Court is initiated by the presentation of a petition by a person who is entitled by the Companies Act to do so. Such persons would include the company itself and a creditor of the company.

The grounds on which it is sought to wind up the company must be stated in the petition supported by an affidavit. The grounds upon which a winding up petition may be presented would include:

1. the company has by special resolution resolved that it be wound up by the Court;



2. a default has been made by the company in lodging the statutory report or in holding the statutory meeting;
3. the company is unable to pay its debts; or
4. the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members.

In addition, the Companies Act contains a “catch all” provision which permits the Court to wind up the company on “just and equitable” grounds. Examples would include:

1. where the substratum of the company has been lost;
2. where there is a deadlock in the management of the company;
3. where a shareholder has been excluded from management in breach of an understanding; and
4. where in a joint venture, one partner manages the company as if he were the sole owner, in disregard of the existence of the other partner.

The most common ground is that the company is unable to pay its debts as they fall due (i.e. the company is insolvent). A company is deemed to be insolvent and unable to pay its debts:

1. if the company is indebted in a sum exceeding S\$10,000 and the creditor serves on the company’s registered office a statutory demand giving the company 3 weeks’ notice to pay the debt; or
2. if execution or other process issued on a judgement, decree or order of any Court in favour of a creditor of a company is returned unsatisfied in whole or in part.

Consequences of Winding Up

Upon the commencement of winding up proceedings, the following consequences shall apply:

1. The business of the company ceases from the commencement of the winding up, except so far as the liquidator thinks is necessary for the beneficial winding up of the company. In such an event, every invoice, order for goods or business letter issued by the company must have the words “in liquidation” added after the name of the company. The liquidator has no power to carry on business with a view to resuscitating the company or making profits. The liquidator shall carry on the business of the company principally to enable the business to be sold off as a going concern.
2. A transfer of shares may be carried out only with the sanction of the liquidator. In effect, the membership of the company is frozen once winding up commences.
3. The directors and certain other officers of the company are under a duty to assist and co-operate with the liquidator.



4. Where the company has either bought property from or sold property to a person who was at the time of the transaction a director of the company for cash consideration and the transaction occurred within 2 years before the commencement of the winding up, the company may recover any amount by which the property was overvalued or undervalued.
5. Where the company has gone into liquidation within 6 months of the creation of a floating charge, that charge is void except to cover the amount of cash advanced to the company at the time of creation or subsequently, together with interest at 5% per annum.

The liquidator(s) appointed upon the winding up of the company to manage the affairs of the company for the purpose of the liquidation shall:

1. investigate the affairs and assets of the company as well as the conduct of its directors and other related persons;
2. recover and realise the company's assets at the best possible price and in a manner that is to the best advantage to the company; and
3. adjudicate the claims of all creditors and to ensure an equitable distribution of the company's assets.

Distribution of Assets

The company's property is to be applied in satisfaction of its liabilities upon winding up, and the surplus distributed among the members according to their rights and interests in the company. Secured creditors need not prove for their debts but can realise their security and obtain full satisfaction. Once the secured creditors have been paid out of the assets that comprise their securities, the remainder of the assets, if any, will be distributed among the preferred creditors. The order of priority is as follows :

1. Costs and expenses of the winding up.
2. Wages and salaries of the employees of the company.
3. Retrenchment benefit or ex-gratia payment (if any) due to the employees of the company.
4. Compensation for injuries suffered in the course of employment under the *Workmen's Compensation Act (Cap 354)*.
5. Provident fund contributions payable in the "12 months next before, on or after the commencement of the winding up" under any written law or under any approved scheme of superannuation or retirement benefits.
6. Remuneration payable in respect of vacation leave accrued before or after the commencement of the winding up.
7. All taxes assessed before the commencement of the winding up or before the time fixed for the proving of debts has expired.

Any residue remaining after payment of the creditors is divisible among the members in accordance with the company's Memorandum and Articles of Association.

