

# Guidance Note

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Voluntary Winding Up of a Company

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### Circumstances in which a company may be wound up voluntarily

132. Subject to section 200(3), a company may be wound up voluntarily –
- a) 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
  - b) if the company has passed a special resolution requiring the company to be wound up voluntarily.



### Commencement of voluntary winding up

- 133.
- 1) A voluntary winding up and dissolution is to be taken to have commenced-
    - (a) at the time of the passing of the resolution referred to in paragraph (a) or (b) of section 132, authorising the winding up; or
    - (b) where the articles of association of a company provide that-
      - (i) on the termination of any period; or
      - (ii) 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.
  - 2) 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.
  - 3) 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.
134. When a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidator or any alteration in the status of the members of the company taking place after the

commencement of such winding up shall be void, but its corporate state and all its corporate powers shall, (whether otherwise provided by its regulations or not) continue until the affairs of the company are wound up.

## Effect of voluntary winding up on status of company

135. There shall be published in the Gazette notice of –
- (a) any resolution referred to in paragraph (a) or (b) of section 132 or authorising the winding up of a company; or
  - (b) the commencement of the winding up and dissolution of a company pursuant to paragraph (b) of section 133(1) or section 200, but failure so to publish the same shall not prejudice the validity of the commencement of the winding up and dissolution.

## Consequences of voluntary winding up

136. The following consequences shall ensue upon the voluntary winding up of a company-
- (a) 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;
  - (b) 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;
  - (c) liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property;
  - (d) 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;
  - (e) if one liquidator only is appointed, all provisions herein contained in reference to several liquidators shall apply to him;
  - (f) 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;
  - (g) when several liquidators are appointed, every power hereby given may be



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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;

- (h) the liquidators may without the sanction of the Court exercise any powers by this Law conferred on the official liquidators;
- (i) 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;
- (j) the liquidators may, at any time after the passing of the resolution for winding up the 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
- (k) the liquidators shall pay the debts of the company and shall adjust the rights of the contributories amongst themselves.

## Effect of winding up on share capital of company limited by guarantee

137. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

## Power of company to delegate authority to appoint liquidators

138. A company about to be or in the course of being wound up voluntarily may, by a special resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and of filling any vacancies among the liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.



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## Arrangement, when binding on creditor

139. Any arrangement entered into between a company about to be wound up voluntarily and its creditors shall be, subject to the right of appeal under section 139, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by seventy-five per cent in number and value of the creditors.

## Right of creditor or contributory to appeal

140. Any creditor or contributory or a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon amend, vary or confirm the arrangement as it thinks just.

## Liquidators or contributories in voluntary winding up may apply to Court

141. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, in respect of the enforcing of calls or of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or may make such other decree on such application as the Court thinks just.

## Liquidators may call general meetings

142. Where a company is being wound up voluntarily, the liquidators may, from time to time during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding up has been conducted during the preceding year.

143. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement with its creditors, fill such vacancy, and a general meeting for the purpose of filling such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

## Power to appoint liquidators

144. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; and the Court may, on due cause shown, remove any



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liquidator and appoint another liquidator to act in the matter of a voluntary winding up.

## Liquidators' account on conclusion of winding up

145. As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators, and the meeting shall be called by Public Notice or otherwise as the Registrar may direct, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least before the meeting.

## Liquidators to report meeting to Registrar

146. The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved, and if the liquidators make default in making such return to the Registrar, they shall incur a penalty of ten dollars for every day during which such default continues.

## Costs of voluntary liquidation

147. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

## Saving of rights of creditors

148. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

149. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.



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## Guidance

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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