

Collas Crill explains... Winding up a solvent Jersey company

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Jersey is a popular place to establish an asset holding company because the **Law** is modern, flexible and modelled on English companies legislation.

The **Law** has a simple procedure, called a summary winding up, to dissolve a solvent Jersey company once it is no longer needed. This guide looks at the key things you need to know about carrying out a summary winding up.

Words in bold text are defined at the end of this guide.

Company must be solvent

A company may only be placed in a summary winding up if it is solvent. This means that the company must be able to pay its debts as they fall due.

Conduct of summary winding up

The **Law** does not require a company to appoint a liquidator to carry out its summary winding up. However, as mentioned below, if they wish to do so, the shareholders may appoint a liquidator by **special resolution** once the company's summary winding up has started.

Where the affairs of a company are relatively straight forward, the directors will normally carry out its summary winding up. If, however, a company's affairs are more complicated, a liquidator will normally be appointed.

Steps

The steps to carry out a summary winding up are as follows.

- Each director of the company must sign a solvency statement (the **First Solvency Statement**) which states that, having made full enquiry into the company's affairs, the director is satisfied that:
 - the company has no assets and no liabilities;
 - the company has assets and no liabilities;
 - the company will be able to discharge its liabilities in full within six months after the start of its summary winding up;
 - the company has liabilities that will fall due more than six months after the start of its summary winding up that it will be able to discharge in full as they fall due; or
 - both of the two preceding paragraphs apply to the company.

- The shareholders must pass a **special resolution** to wind up the company by way of summary winding up within 28 days of the First Solvency Statement being signed by the directors.
- If the shareholders wish to do so, once the company's summary winding up has started, the shareholders may pass a **special resolution** to appoint a liquidator.
- Within 21 days of the date on which the **special resolution** to wind up the company is passed, the company must deliver to the registrar of companies:
 - a copy of the **special resolution** to wind up the company;
 - (if applicable) a copy of the **special resolution** to appoint a liquidator; and
 - the original First Solvency Statement.
- The registrar of companies will register the First Solvency Statement.
- If the company has:
 - no assets or liabilities, the company will be dissolved upon registration of the First Solvency Statement; or
 - assets and liabilities or assets and no liabilities, after the First Solvency Statement has been registered:
 - the directors or (if appointed) the liquidator must:
 - discharge in full the company's liabilities (if any) within six months of the start of the summary winding up; and
 - distribute the company's assets to its shareholders;
 - each director or (if appointed) the liquidator must sign a statement (the **Second Solvency Statement**) which states that, having made full enquiry into the company's affairs, the director or liquidator is satisfied that the company has no assets and no liabilities; and
 - the original Second Solvency Statement must be delivered to the registrar of companies and, upon registration, the company will be dissolved.

Start

The summary winding up of a company starts once the **special resolution** to wind up the company is passed.

Effect

Once a company's summary winding up starts:

- its corporate status and capacity continues until it is dissolved on completion of its summary winding up;
- its powers may only be exercised for the purposes of realising its assets, discharging its liabilities and distributing its assets;
- every invoice, order for goods or services or business letter issued by it or (if appointed) the liquidator must state that the company is in summary winding up; and
- (if a liquidator is appointed) the directors cease to be authorised to exercise their powers and those powers may only be exercised by the liquidator.

Timing

A company's summary winding up can generally be completed relatively quickly. If it has:

- no assets or liabilities, its summary winding up can be completed within a few days; and
- assets and no liabilities or assets and liabilities and it is able to quickly distribute any assets and discharge any liabilities, its summary winding up can be completed in as little as two to four weeks.

Liquidator

Eligibility for appointment

If a liquidator is to be appointed, the liquidator must be a natural person. If the company is a **public company**, the liquidator must:

- be a member of an **recognised professional body**;
- not be subject to a disqualification order under the **Law**; and
- not be a director, a secretary or an employee of:
 - the company or any of its subsidiaries; or
 - any of holding company of the company or any subsidiary of that holding company.

The appointment of a person as liquidator who does not satisfy these criteria is void.

Remuneration

A liquidator may be paid any remuneration:

- agreed between the liquidator and the company prior to the liquidator's appointment;
- approved by the shareholders; or
- approved by the Jersey court.

Effect of insolvency

If, after the start of a company's summary winding up, the:

- directors form; or
- (if appointed) the liquidator forms,

the opinion that it has liabilities that it will be unable to discharge within six months of the start of its summary winding up or (if they fall due after that date) as they fall due:

- the directors or liquidator must call a meeting of its creditors to be held in Jersey not more than 14 days after notice of the meeting was served; and
- from the date of the creditors' meeting, the summary winding up becomes a creditors' winding up.

If a summary winding up has started and the assets of the company are subsequently declared *en désastre* (ie the company is declared insolvent by the Jersey court):

- the summary winding up automatically ends; and
- if a liquidator was appointed, the liquidator automatically ceases to hold office.

Offences

Solvency statements

It is an offence for:

- a director to sign and deliver to the registrar of companies a First Solvency Statement; or
- a director or liquidator to sign and deliver to the registrar of companies a Second Solvency Statement,

without having reasonable grounds for making the statement.

A person who commits either offence is liable, on conviction, to imprisonment for up to two years, a fine or both.

Ineligible liquidator

A person who acts as liquidator, but is ineligible to do so, commits an offence and is liable, on conviction, to imprisonment for up to two years, a fine or both.

Notification company in liquidation

If an invoice, an order for goods or services or a business letter issued after the start of the company's summary winding up does not state that the company is in liquidation, the company and each director or (if appointed) any liquidator who is in default is guilty of an offence.

A person who commits this offence is liable, on conviction, to a fine.

Failure to call creditors' meeting

If a director or (if appointed) the liquidator fails to call a meeting of creditors after forming the opinion that the company will be unable to discharge its liabilities, the director or liquidator commits an offence.

A person who commits this offence is liable, on conviction, to imprisonment for up to two years, a fine or both.

Terms used

Law means the Companies (Jersey) Law 1991.

public company means a company which states in its memorandum of association that it is a public company.

recognised professional body means the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in Ireland.

special resolution means a resolution that is required to be passed as a special resolution by a majority of two thirds (or any higher majority specified in the company's articles of association) of shareholders who (being entitled to do so) vote at a meeting of the company of which not less than 14 days' notice has been given.

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