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Winding up a solvent Jersey company

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Jersey is a popular place to establish an companies because the Companies (Jersey) Law 1991 (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 to winding up a solvent Jersey company looks at the key things you need to know about carrying out a summary winding up in the jurisdiction.

Company must be solvent

A Jersey 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 in Jersey

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 commenced. A special resolution means a resolution that is required to be passed 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

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 to carrying out a summary winding up

The steps to carry out a summary winding up in Jersey 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 has liabilities that it will be able to discharge in full as they fall due.

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- 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 commenced, 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 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;
  - assets and no liabilities, after the First Solvency Statement has been registered the company must distribute the assets to the shareholders;
  - assets and liabilities, the company must:
    - discharge in full the company's liabilities as they fall due; and
    - distribute the company's assets to its shareholders. Assets may be distributed before all liabilities have been discharged in full only if the directors reasonably believe that the company is able to pay the remaining liabilities as they fall due.
- Except where the company has been dissolved upon registration of the First Solvency Statement:
  - each director or (if appointed) the liquidator must sign a further 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 Second Solvency Statement must be delivered to the registrar of companies and, upon registration, the company will be dissolved.

Commencement

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

Effect

Once a company's summary winding up in Jersey commences:

- 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;

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- 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 competed 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, the timing of the summary winding up will depend upon how quickly the company can distribute those assets and discharge any liabilities.

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 (a company which states in its memorandum of association that it is a public company) the liquidator must:

- be a member of an recognised professional body (meaning 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;
- 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 commencement of a company's summary winding up, the:

- directors form; or

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- (if appointed) the liquidator forms,

the opinion that it has liabilities that it will be unable to discharge 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 commenced 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 commencement 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.

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

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COLLAS CRILL

For more information please contact:



Nick Ward

Partner (Advocate) | Director | Jersey

t: +44 (0) 1534 601686 | **e:** nick.ward@collascrill.com



Kate Anderson

Partner (Advocate) | Jersey

t: +44 (0) 1534 601679 | **e:** kate.anderson@collascrill.com



Alexander Price

Group Partner, Collas Crill Group LLP*^ | Jersey

t: +44 (0) 1534 601707 | **e:** alexander.price@collascrill.com



Matt Gilley

Partner (Advocate) | Jersey

t: +44 (0) 1534 601691 | **e:** matthew.gilley@collascrill.com

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