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Collas Crill explains: Winding up a solvent Guernsey company

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This is part of a series of guides in which we examine areas of Guernsey law that frequently arise in practice. Further guides will be released weekly; click here to subscribe to receive these by email.

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

A Guernsey company can be wound up voluntarily if, either:

- the duration period of the company, (if fixed by the company's **M&A**) expires, or any specific event under which the company is to be dissolved (as set out in the M&A) occurs, , and, in either case, an ordinary resolution is passed that the company be wound up; or
- a special resolution is passed by the company at any time to wind it up voluntarily.

Option 2 above is by far the more common in Guernsey.

Steps

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

- The shareholders must pass a **special resolution** to wind up the company voluntarily unless the company's M&A allow the winding up of the company through its shareholders passing an **ordinary resolution**.
- Within 30 days of passing the resolution approving the voluntary winding up of the company, the company must deliver a copy of the resolution to the **Registrar**. The Registrar will then give public notice of the voluntary winding up (by publishing the proposed dissolution of the company on its website).
- Once the company's voluntary winding up has started, the shareholders must pass an ordinary resolution to appoint a liquidator and fix his or her remuneration.
- As soon as the company's affairs are fully wound up, the appointed liquidator must prepare an account of the winding up and call a general meeting of the company.
- After the final meeting prior to dissolution, the liquidator must give notice to the Registrar of the holding of the meeting.
- The Registrar must publish – usually on the Guernsey Registry website – the fact of this final meeting and that the company is to be dissolved in such manner and for such period as s/he thinks fit.
- The company is dissolved three months from the date the Registrar publishes the notice.

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Effect

From the commencement of a voluntary winding up, the company will be guilty of an offence if it carries on business except when it may be beneficial for the winding up of the company. Apart from this, the corporate state and powers of the company remain until dissolution.

Upon the appointment of a liquidator, the powers of the directors cease, except where the company (by ordinary resolution) or the liquidator sanctions that their powers can continue.

Liquidator

Eligibility for appointment

There is no strict requirement for a licensed insolvency practitioner to be appointed and usually an experienced professional is appointed by the company.

Powers of the liquidator

The liquidator shall –

- realise the company's assets and discharge the company's liabilities; and
- having done so, distribute any surplus among the members according to their respective entitlements (paying consideration to the M&A, preferential share classes, etc.).

A liquidator may exercise all powers which may be given to him by the Court.

Calling of general meetings by liquidators

If the winding up takes a year or longer, the liquidator must call a general meeting of the company on each anniversary of the commencement of the voluntary winding up. At this meeting, the liquidator should account for his acts and dealings and of the conduct of the wnding up during the preceding year.

The liquidator can call a general meeting of the company at any other time.

Final meeting

At the final meeting, the liquidator must state whether in the course of the winding up of the company:

- it appears that any past or present officer of the company or any other person involved in the promotion, formation or management of the company has:
- appropriated or otherwise misapplied any of the company's assets;
- has become personally liable for any of the company's debts or liabilities; or
- has otherwise been guilty of any misfeasance or breach of fiduciary duty in relation to the company.

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- any business of the company had been carried out with the intention to defraud creditors; or
- it appears that the directors have carried out wrongful trading.

The liquidator will give an account of the winding up with an explanation.

The members of the company may then by ordinary resolution grant the liquidator his release.

Delegation of company's powers to creditors

A company that is being voluntarily wound up can delegate to creditors the Company's powers to appoint a liquidator or to enter into any arrangement regarding the liquidator's powers by passing a special resolution of the company and by 75% in number and value of the creditors.

Within 21 days of the completion date of the above arrangement, a creditor or shareholder of the company may apply to Court for an order for that arrangement to be set aside.

Any act carried out by the creditors under these delegated powers has effect as if carried out by the company.

Role of the Court

The Court may appoint a liquidator if the company does not. The Court may also remove a liquidator from office and appoint a replacement.

A member of a company may apply to the Court for directions concerning any aspect of the winding up and, upon such an application, the Court may order as it sees fit.

Even if a resolution for the voluntary winding up of the company is passed, the Court may order a compulsory winding up if an application for a compulsory winding up is made to the Court.

Expenses of voluntary winding up

All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

Terms used

Law - the Companies (Guernsey) Law, 2008 (as amended)

M&A - a company's memorandum and articles of incorporation

Ordinary resolution - a shareholder resolution passed by a majority of 50%

Registrar - the Guernsey Registrar of Companies

Special resolution - a shareholder resolution that is required to be passed as a special resolution by a majority of not less than 75%

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We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

About this guide

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