

Grounds for Winding-Up an Isle of Man Company

What is "winding-up"?

Winding-up is the term used to describe the process of dissolving a company and distributing its assets amongst creditors and shareholders as appropriate. The law on corporate winding-up is expansive and, in the Isle of Man (and hereinafter "company" should be read as meaning an Isle of Man registered company), companies can be wound-up for a variety of reasons including where the company's shareholders have deemed its purpose fulfilled, it is deemed 'just and equitable' by a court to wind-up a company or where the company in question has or is about enter into insolvency.

A company may be wound-up:

- (a) By the Court (often referred to as a 'compulsory' winding-up);
- (b) Voluntarily (either by a company's members or its creditors); or
- (c) Under the supervision of the Court.

Winding-up is a statutory mechanism and all three of the above methods arise pursuant to the Companies Act 1931 (the "1931 Act"). The relevant sections of the 1931 Act apply to companies registered under either the 1931 Act or the Companies Act 2006 (the "2006 Act"), pursuant to section 182 of the 2006 Act.

Winding-up by the Court

The Court may wind-up a company where:

- the members have resolved by special resolution to apply for the same;
- it is a public company that has not complied with the requirements for commencement of business;
- the company does not commence business a year from incorporation (or suspends business for a year);
- the number of shareholders (save in the case of a private company limited by shares/guarantee) drops below two;
- the company is unable to pay its debts; or
- the court is of the opinion that it is just and equitable to wind the company up.

For creditors of a company, the key ground upon which a claim for winding up is likely to be made is that the company is unable to pay its debts. It is deemed so unable to pay where it fails to respond to a statutory demand, execution on a judgment is issued and goes unsatisfied or the Court is satisfied it is unable to pay debts.

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The Court shall provisionally appoint a liquidator (usually nominated by the claimant) and the liquidator shall then undertake the liquidation process with the powers either afforded to them by statute or, where required, with the permission of the Court. This will begin with the first meetings of the creditors and contributories of the company, which shall confirm the appointment of the liquidator and may also resolve to appoint a committee of inspection ("COI"), made up of the company's creditors, which will oversee the liquidator's conduct of the liquidation.

Voluntary Winding-Up

There are two key methods of a voluntary winding-up; by a company's members (members voluntary liquidation or an "MVL") or by its creditors (creditors' voluntary liquidation or a "CVL").

The key difference between these approaches is that an MVL requires the company to be solvent at the point of the resolution to wind it up; meaning that it is in a position to pay its debts as they fall due within 12 months following the MVL. An MVL is normally utilised at the point that the members of a company simply wish to bring its business to an end and to distribute any assets therein.

A CVL on the other hand is generally utilised where a company identifies that it is about to become or is insolvent. A resolution to wind-up a company by CVL will involve meetings and resolutions of both the shareholders and creditors of the company in question.

Again, following either an MVL or CVL, resolutions are tabled and passed to nominate a liquidator who shall proceed to administer the affairs of the company and to collect its assets, before distributing them. As with a winding-up by the court, this may include the appointment of a COI.

Winding-up under Court supervision

If a resolution has been passed for the voluntary winding-up of a company, the Court may make an order (on an application) that the winding-up is to continue subject to the Court's supervision and with such liberty for creditors, contributories or others to apply to the Court as the Court thinks just.

A winding-up subject to the supervision of the Court is, for the purposes of the sections of the 1931 Act that deal with the powers of a liquidator in a winding-up by the Court, treated as such (save where a supervision order is made over a CVL that has a COI appointed. Then the COI may exercise certain authority). It also empowers the Court with the ability to appoint an additional liquidator if required. Otherwise however, a winding-up under the supervision of the Court is treated as a voluntary winding-up.

Please note that this briefing does not constitute legal advice but is provided as non-reliance guidance only.

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Our litigation team has significant experience in advising and assisting on insolvency matters. If you would like further information or assistance, please contact Robert Colquitt, Tara Cubbon-Wood, [Charles Williams](#) or any member of our team.

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