This page provides an introduction to the procedure for the voluntary and compulsory liquidation of domestic companies under the Companies Act of 1994. It is not intended to serve as a definitive guide and should be read together with the Act.

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What is liquidation?

Liquidation or winding-up is the procedure by which a company ceases its existence. There are two types of liquidation: voluntary liquidation and compulsory liquidation.

What is voluntary liquidation?

Voluntary liquidation is where steps are taken by either the company's members (Members' Voluntary Liquidation) or its creditors (Creditors' Voluntary Liquidation) to have it dissolved without the aid of the Court.

When does voluntary liquidation start?

Voluntary liquidation starts with the passing of a resolution to wind-up the company: s.429.

How is a Members' Voluntary Liquidation initiated?

The following steps must be taken to start a Members' Voluntary Liquidation:

- A majority of the directors of the company must make a statutory declaration in support of the liquidation, stating that the directors have made a full inquiry into the affairs of the company and are of the opinion that it will be able to pay its debts in full, within 12 months from the start

of the winding-up. The declaration must include a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

- The declaration must be made within 5 weeks before the passage of a special resolution for winding-up.
- The company must give its shareholders, creditors, contributories, directors and any auditor of the company at least 7 days (but not more than 30 days) notice (s.111(1), s.433(3)) of the convening of a meeting of the company to consider passing a special resolution that the company wind-up: s.427(1(a).
- The company must send a copy of the statutory declaration of solvency to the Registrar before the shareholders pass the special resolution for winding-up: s.432 (2) (a).
- Within 14 days after the passing of the resolution, the company must advertise the resolution in the Gazette and notify the Registrar of Companies of the resolution in writing: s. 428(1)
- The Company must appoint a liquidator: s.433.

How is a Creditors' Voluntary Liquidation initiated?

The following steps must be taken to start a Creditors' Voluntary Liquidation:

- The company must give its shareholders, directors and any auditor of the company at least 7 days (but not more than 30 days) notice (s.111(1)) of the convening of a meeting of the company to consider passing an ordinary resolution that the company is unable to pay its debts and should therefore be wound-up: s.427(1)(b)
- If the resolution is passed, within 14 days after the passing of the resolution, the company must advertise the resolution in the Gazette and notify the Registrar of Companies of the resolution in writing: s.428(1)
- A meeting of the company's creditors must be held either on the day on which a resolution as to insolvency is to be considered by the shareholders or on the following day: s.440 (1). This meeting must be notified at the same time that the meeting of the shareholders is notified.

- The directors must prepare a statement of affairs for consideration at the meeting of creditors and must appoint a director to attend and preside over the meeting. The statement of affairs must be accompanied by a list of the creditors of the company and the estimated amount of their claims: s.440 (3) (a).
- The company and its creditors will nominate a liquidator at their respective meetings. In the event that there are different nominees, the person nominated by the creditors becomes the liquidator (s.441 (1)), however, any director, member/shareholder or creditor of the company may apply to the Court for an order directing that the company's nominee shall be liquidator either instead of or jointly with the liquidator appointed by the creditors, or that some other person be appointed as liquidator.

Can a Members' Voluntary Liquidation be converted into a Creditors' Voluntary Liquidation?

Yes. If the liquidator in a Members' Voluntary Liquidation finds that the company will not be able to pay its debts in full within 12 months of the start of liquidation, he or she must call a meeting of the creditors. A statement of the assets and liabilities of the company must be put before the meeting and unless the creditors resolve otherwise, the liquidation becomes a Creditors' Voluntary Liquidation from the date of the meeting: s.436. It should be noted that in the event, that the company's debts have not been paid in full within 12 months of the start of a members' voluntary liquidation, it will be presumed, until the contrary is shown, that the directors making the declaration of solvency did not have reasonable grounds for their belief: s.432(5). This is an offence for which each director is liable on summary conviction to a fine of $2,000.00: s.533.

What is the role of a liquidator?

The liquidator is appointed to wind up the company's affairs. The liquidator does this by paying the company's debts, realising its assets and distributing the assets among creditors. If any assets remain after satisfaction of creditors, the liquidator will distribute them among the members of the company.

Is there any person who cannot act as a liquidator?

A company or an un-discharged bankrupt is not qualified for appointment as liquidator and if appointed is guilty of an offence: s.472.

What marks the start of compulsory liquidation?

The presentation of a winding-up petition generally marks the start of compulsory liquidation, however, where a voluntary liquidation is brought under the supervision of the Court, the original date of commencement of voluntary liquidation will be retained unless the Court finds that there are grounds for directing otherwise: s.384(1).

What does compulsory liquidation entail?

Application must be made to the High Court by petition, by either the company, a creditor or contributory (i.e., any person liable to contribute to the assets in the event of it being wound-up), a trustee in bankruptcy or personal representative of a creditor or contributory or any other interested person s.379(1). Additional conditions apply in the case of contributories and contingent or prospective creditors: s.379 (2).If the petition is successful, the company must send the winding-up order to the Registrar immediately and it will be placed on the company's file as a matter of public record: s.385 (1).Unless the Court orders otherwise, the Official Receiver attached to the Court for bankruptcy purposes becomes the Provisional Liquidator of a

company when a winding-up order is made against it: s. 388. The Court however has the power to appoint some other fit person as Provisional Liquidator: s.392. One or more directors and the secretary of the company concerned are required to submit a statement of the company's affairs to the Official Receiver within 14 days of the winding-up order, or in a case where a Provisional Liquidator has been appointed, within 14 days of the date of such appointment: s.389The Official Receiver or other Provisional Liquidator will investigate and report to the Court on the amount of the company's capital, the estimated amount of its liabilities and assets, the causes of its failure and whether there should be further inquiry into its affairs: s.390. The Official Receiver must summon separate meetings of the creditors and contributories of the company for the purpose of determining whether an application is to be made to the Court to appoint a liquidator in his place. If the meeting determines that a new liquidator should be appointed, the Court may either give effect to the determination of the meeting or make such appointment as it considers fit: s. 393(c). Where the creditors and contributories do not apply for a different liquidator, the Official Receiver will be the liquidator of the company: s.393 (d). Also, if the chosen liquidator ceases to act, the Official Receiver will again become the liquidator of the company: s.393 (e). A liquidator appointed by the Court in place of the Official Receiver is not authorised to act as liquidator until he has notified the Registrar of Companies of his appointment and given security in such manner as the Court may direct: s.393(1). In addition, he is required to relay relevant information to the Official Receiver and must allow him access to the records of the company: s.393 (2) When the Registrar receives notice from the Liquidator or Official Receiver that winding-up is complete, the Registrar is required to have a report prepared on the liquidator's accounts and on considering the report and any objection by any interested person either grant or withhold the release of the liquidator. An order of the Registrar releasing the liquidator discharges him from all liability in respect of acts done in the course of the liquidation: s. 404.

Can a voluntary liquidation become a compulsory liquidation?

Yes, but the Court will not make an order for the winding-up of a company that has started voluntary liquidation, unless it is satisfied that the interests of creditor or contributories will be prejudiced by a voluntary liquidation: s. 379(3), s.455.

What is the effect of the winding-up order on potential actions against the company?

An order for winding up operates in favour of all the creditors and contributories of a company and once the winding up order has been made, the company cannot be sued without the permission of the Court: s. 386.

Is the Registrar authorised to monitor the conduct of the liquidators acting in a Court -ordered winding-up?

Yes. The liquidator of a company that is being wound up by the Court is required to send the Registrar of Companies verified accounts of his receipts and payments as liquidator, not less than twice a year. When the account has been audited, a copy of the audited account will be kept by the Registrar and one will be delivered to the Court. If a liquidator fails to comply with any of his statutory duties, the Registrar may inquire into the matter. The Registrar may apply to the Court to examine a liquidator or any other person on oath concerning a compulsory winding up and may also direct an investigation of the books which the liquidator is required to keep: s.403.

Do creditors and contributories have a say in how liquidation proceeds?

Yes. Where a company is insolvent, its creditors and contributories can direct certain aspects of the liquidation process. In a compulsory liquidation, they may apply to the Court for the appointment of a Committee of Inspection, consisting of creditors and contributories or their agents in agreed proportions, to act along with the liquidator: s.405(1). The approval of the Committee or the Court is required if the liquidator wishes to carry on any business that is beneficial to the winding-up of the company, to bring or defend any action in the name of the company, to pay or enter arrangements with creditors or to compromise, take security for or discharge claims and liabilities: ss.398(1). The liquidator must also ascertain the wishes of the committee and must have regard to its directions in the administration of the company's assets and the distribution of those assets among creditors: s.399. In a creditors' voluntary winding up, the creditors of the company may appoint a Committee of Inspection made up of a maximum of 5 members. the approval of the Committee or the Court is required before the liquidator can accept any shares or interest in another company as consideration for property of the dissolving company.In both scenarios, the Committee of Inspection is required to meet at least once a month: s.406 (2).

Who bears the cost of winding up?

The costs of voluntary winding-up, including the fees of the liquidator, are payable out of the company's assets in priority to all other claims: s.454. In the case of compulsory winding up, where the company's assets are insufficient to satisfy its liabilities, the Court may make an order for the payment out of the assets of the costs of winding-up in such order of priority as it thinks fit: s.419.

Can a company be dissolved other than by liquidation?

Yes. If the Registrar of Companies has reason to believe that a company is not in operation its name may be struck off the register and dissolved without going through liquidation: s.483. A company may also be struck off for failing to comply with the statutory requirements: s.511. Striking off proceedings are however not an alternative to liquidation.

Does a liquidator have to give notice of his appointment?

Within 21 days after appointment, the liquidator must publish notice of his appointment in the Gazette and in one newspaper and deliver notice of his appointment to the Registrar of Companies: s. 451(1).

Does a company have to notify persons that it is in liquidation?

Yes. Where a company is being wound up, every invoice, business letter or document issued by or on behalf of the company must contain a statement that the company is in liquidation: s.473.

What is the effect of a voluntary winding-up on the business and status of a company?

A. Once voluntary winding up is underway, a company must cease to carry on business except so far as the liquidator considers necessary for its beneficial winding up. On the appointment of a liquidator, the powers of the directors cease, except in so far as the shareholders or the liquidator sanctions: s.433 (5). The company's corporate status and powers however continue until it is dissolved: s.430.

What happens after the affairs of the company are fully wound-up?

After the affairs of the company are fully wound-up, the liquidator must prepare an account showing how the winding up has been conducted and how the property of the company has been disposed of and must have this account audited: s.438(1), s.447(1). The liquidator must call a meeting of the company to present the account. The meeting must be called by advertisement in the Gazette and one newspaper specifying the time, place and object of meeting. Notice of the meeting must be published at least 1 month before the date of the meeting: s.447 (2). Within 1 week after the meeting, the Liquidator must make a return of the holding of the meeting and of its date and lodge a copy of the audited account with the Registrar of Companies: s.438 (3, s.447 (3). If there is no quorum present at the meeting, the liquidator must make a return that the meeting was duly summoned and that no quorum was present: s.438 (4), s.447 (4). The audited account and the return of the holding of the meeting will be registered by the Registrar of Companies.

At what point is the company dissolved?

Unless the Court makes an Order deferring dissolution, a company undergoing voluntary liquidation is deemed to be dissolved at the expiration of 3 months from the registration of the return of its final meeting: s.438(5), s.447(5).

What is 'compulsory liquidation'?

Compulsory liquidation is when a company is wound up by order of the Court.

When is compulsory liquidation an option?

A company may be wound up by order of the Court in any of the following circumstances:

- if it resolves by special resolution that it be wound up by the Court.
- if it does not commence business within a year from incorporation.
- if it is unable to pay its debts.
- if an inspector appointed to investigate a company under s.519 reports that he is of the opinion that the company cannot pay its debts and should be wound-up or that it is in the interests of the public or the shareholders that it be wound-up.
- if the Court considers it just and equitable that a company be wound-up.

When is a company considered to be unable to pay its debts?

A company is regarded as unable to pay its debts in any of the following circumstances:

- If a creditor who is owed more than $5,000.00 presents a written demand to the company requiring payment and the company fails to pay, secure or agree a settlement of the debt to the creditor's reasonable satisfaction: s.378(1)(a).
- If the execution of a judgment or order of the Court in favour of a creditor of the company is returned unsatisfied: s. 378 (1) (b).
- If it is proved to the satisfaction of the Court that the company is unable to pay it debts as they become due: s.378 (1) (c).
- If it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities, taking into account contingent and prospective liabilities: s.378(2).

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A. External Companies: Registration and Compliance This page offers general information on the registration and maintenance of an external company under the Companies Act, No. 8 of 1994 of the laws of Saint Vincent and the Grenadines. For additional information on external companies, the Companies Act should be consulted.Click on the expandable & retractable Questions for the Answers.

What is an external company?

An external company is any firm or other body of persons, whether incorporated or not, formed under the laws of a country other than St. Vincent and the Grenadines.Why must an external company be registered? The registration of an external company creates a legal presence within St.Vincent and the Grenadines, validates all legitimate operations of the company within the State and subjects the company to certain regulatory requirements of the Companies Act.

What constitutes the carrying on of business by an external company?

An external company is considered to be carrying on business in St. Vincent and the Grenadines in either of the following circumstances:The business of the company is regularly transacted from an office in the state established for that purpose.The company establishes or uses a share transfer or share registration office in the state; The company owns, possess or uses assets situated in the state for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from its assets, property gained directly or indirectly, profit or gain whether realised in the state or not; It holds title to any land in St. Vincent and the Grenadines or has an interest in any such land..

When is an external company required to register?

An external company is required to register locally before it commences business in St. Vincent and the Grenadines.

What documents must be filed when seeking registration as an external company?

In order to become registered as an external company in St. Vincent and the Grenadines an Application for Registration in Form 21 must be files with the Registrar.

The application must be accompanied by the following:

- Request for Name Search and Reservation in Form 26;
- Statutory Declaration of a Director of the company verifying the particulars set out in the application form;
- Statutory Declaration of an Attorney-at-law confirming compliance with section 344;
- Power of Attorney and Consent to act as Attorney in Form 23 empowering some person resident in St. Vincent and the Grenadines to act as attorney of the company for the purpose of receiving service of process in all suits and proceedings in St. Vincent and the Grenadines and all lawful notices;
- A notarised copy of each of the corporate instruments of the company;
- The prescribed fees. With the exception of the corporate instruments, all of the above documents are to be field in duplicate original. In the case of the corporate instruments, photocopies of the notarised instruments should accompany the certified copies. The Power of Attorney attracts stamp duty $30.00, which should be affixed in revenue stamps to one original of the instrument and each of the statutory declaration, where made locally, attract stamp duty of $5.00.
- What information is contained in the application for registration of an external company?
- Form 21 is required to contain the following particulars;
- The name of the company
- The jurisdiction within which the company was incorporated;
- The date if its incorporation
- The manner in which it was incorporated;
- Particulars of its corporate instruments
- The period, if any, fixed by its corporate instruments for the duration of the company;
- The extent, if any, to which the liability of the shareholders or manners of the company is limited;
- The business that the company will carry on in St. Vincent and the Grenadines;
- The authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any;
- The full address of the registered or head office of the company in its jurisdiction of formation;
- The full address of the principal office of the company in St. Vincent and the Grenadines; and
- The full names, residential addresses and private occupation of the directors of the company.

How are the filings submitted by external companies processed?

Following receipt of the application for registration and supporting documents and the prescribed filing fee of $3,000.00, a 'formal examination' of the documents will be conducted to

ensure that all required documents have been submitted and that the documents on file meet the formal requirements of the Companies Regulation, S.R.O. 22 of 1996. This is followed by a 'substantive examination' to ensure that the application complies with the legal requirements of the Companies Act. Where the application is in order, a number is assigned to the company and a Certificate of Registration is issued in duplication original. The forms and documents comprising the application are then registered. Processing is generally completed within 2 to 3 working days after filing if there are no deficiencies in the application. Following registration, one set of documents is returned to the applicant. The other set is retained and forms part of the public records maintained by the office.

In order to ensure that an external company is not confused with any entity registered locally prior to the external company's application for registration, external companies are subject to the provisions of the Companies Act on the approval of corporate names (s.359). In cases of conflict, it may be necessary for an external company to change its name before it can be registered locally (s.341).

What are comes of the matters that often cause delay in the registration of an external company?

Matters that commonly delay registration of a company include:

- Failure to date or sign documents
- Failure to have declarations witnessed by a Notary Public or appropriate official
- Submission of uncertified corporate instruments
- Failure to state the full residential addresses of the directors (Form 21)
- Failure to state a street address location as the principal local office address of the company
- Absence of a Request for Name Search and Name Reservation (Form 26)
- No Stamp duty affixed to Power of Attorney (Form 23).
- What are the consequences of failure to register?
- An external company that commences business in the State without registering under the Companies Act is liable to a penalty of $350.00 per day for every day on which it carries on business in the absence of registration. This penalty operates as a first charge on the assets of the company and may be sued for and recovered by the Registrar of Companies.
- An unregistered external company is also affected by a statutory disability and cannot maintain any action, suit or other proceeding in any court in St.Vincent and the Grenadines (s.357 (1)). This incapacity applies to any contract made in whole or in part within St.Vincent and the Grenadines in the course of or in connection with the carrying on of any undertaking by the company. The incapacity of the company is removed upon registration under the Companies Act. Once the incapacity is removed, the company may maintain an action suit or other proceedings in respect of any contract, whether or not made before the date of

registration.