

PROCEDURE TO PUT A COMPANY INTO MEMBER'S VOLUNTARY WINDING UP.

STEP 1: Convene a Board Meeting to transact the following business:

- (a) Make sure that the company can pay its debts in full within a period of three years if put into liquidation.
- (b) Declaration in Form No. 149 under Rule 313 of the Companies (Court) Rules, 1959, and verified by an affidavit, by the Directors sworn before a Judicial Magistrate on non-judicial stamp paper of Rs. 20/-.
- (c) Declaration will be accompanied by:
 - i) The audited Balance Sheet and Profit & Loss Account commencing from the date of last audited balance sheet and profit and loss account and ending with the latest practicable date before the date of declaration.
 - ii) A statement of the company's assets and liabilities as at that date; and
 - iii) A copy of the report of the auditors of the company on the above two documents.
- (d) Approve at the meeting the draft resolution for Member's Voluntary Winding up and for appointing Liquidator and fix remuneration and also fix the date, time, place of the general meeting.

Page | 1

STEP 2: Copies of item (b) and (c) to be filed and registered with the Registrar at least 5 weeks before the General Meeting.

STEP 3: Issue notice for the general meeting proposing a Special Resolution, with suitable Explanatory Statement.

STEP 4: Hold the General Meeting and pass the Special Resolution for winding up. The winding up commences from the time of passing the resolution.

STEP 5: Within ten days of passing of the resolution, file notice with the ROC for the appointment of the liquidator after paying the requisite fee.

STEP 6: Submit to the liquidator a statement on the company's affairs in Form No.57 in duplicate, duly verified by affidavit in Form No. 58 within twenty-one days of the commencement of winding up.

STEP 7: File the Special Resolution passed for winding up with Explanatory statement with the ROC within 30 days of its passing in Form No .23 with requisite fee.

:: 2 ::

STEP 8: Within 14 days of passing the resolution for voluntary winding up, give notice of the resolution by advertisement in the Official Gazette and also in some newspaper circulating both in English and in Tamil, in the district where the registered office of the company is situated.

Page | 2

STEP 9: Simultaneously to Step 8, the Liquidator to publish in the Official Gazette the Notice of his appointment in Form No. 151 of Company Court Rules and file with Registrar the Notice of his Appointment in form 152 of Company Court Rules.

STEP 10: Simultaneously to Step 8, Liquidator to give notice of his appointment to the concerned Income-tax Officer under Section 178 of IT Act, 1961. No prescribed format for this intimation. Letter would be sufficient.

STEP 11: If the liquidator is of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration of solvency, or if the period stated in the declaration of solvency has expired without the debts being paid in full, the liquidator has to summon a meeting of the creditors, and table before the meeting a statement of the assets and liabilities of the company in Form No. 150 of the Companies (Court) Rules, 1959.

STEP 12: Where the winding up process continues for more than a year, Liquidator should call a general meeting within 3 months from the end of every year from the date of commencement of winding up, and table before the meeting an account of his acts and dealings along with statement in form No 153 of the Companies (Court) Rules, which should be duly verified in Form 154 of the Company Court Rules.

STEP 13: If Step 11 is applicable, the Liquidator to call a meeting of creditors also within 3 months from the end of the year.

STEP 14: The Liquidator to file statements in the prescribed manner together with the Audit Report in the prescribed format, with the concerned Registrar of Companies twice in every year, if the liquidation is NOT completed within one year from the commencement of the winding up.

STEP 15: Complete the winding up by realising all assets and paying off all liabilities and returning share capital and surplus, if any. **The provisions of sections 426, to 432, 487, 491, 494, 511, 511A, 512, 517 to 520, 528 to 549 and 553 and those of rules from Nos. 124 to 134 and Nos: 312 to 361 of the Companies (Court) Rules 1959 should also be noted in this respect.**

:: 3 ::

STEP 16: As soon as the affairs of the company are fully wound-up, liquidator to prepare his account of the winding up in Form No. 156 of the Companies (Court) Rules 1959 and get the same audited. The audit report should be in the format suggested by ICAI for this purpose.

Page | 3

STEP 17: Liquidator to call the final General Meeting by giving notice stating the time, place and object of the meeting, in Form No. 155 of the Companies (Court) Rules, 1959 by advertisement in the official Gazette. The Notice in the Gazette to be given not less than one month before the meeting. In addition, the notice should also be published in some newspaper circulating in the district where the registered office of the company is situated.

STEP 18: At the meeting, place the accounts prepared under Step 16.

STEP 19: At the meeting also pass a special resolution for disposal of the books and papers of the company when the affairs of the company are completely wound up and it is about to be dissolved.

STEP 20: Within a week of the final meeting held under Step 17, file the copy of the account with the ROC as well as with the Official Liquidator (OL) and also file a return with both in Form No. 157 of the Companies (Court) Rules 1959. If a quorum is not present at the meeting, file the return in form no. 158 of the Companies (Court) Rules, 1959.

STEP 21: File the Special Resolution with the ROC, within 30 days of passing in Form No. 23 after paying the requisite fee.

SUBSEQUENT COURSE OF ACTION FROM THE ROC AND OL

1. The Registrar of Companies, on receiving the account and the return shall forthwith register them.
2. The OL on receiving the account and the return would make a scrutiny of the books and papers of the Company to ascertain as to whether the affairs of the Company has not been carried on in a manner prejudicial to the interest of its members or public, and makes a report to the concerned High Court. From the date of the submission of the report to the concerned High Court the company is deemed to be dissolved.

Should you need any assistance, please do get in touch with us.

seshwar@eshwars.com
