THE LAW OF COMPANY LIQUIDATION pdf

1: Winding up in Kenya | Company Liquidation | Dissolution

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Financial instability or any other reason Definition of Bankruptcy Bankruptcy is a situation in which an individual or entity becomes Bankrupt. The person or company is not able to repay the outstanding debts owed by him. It is the last stage of insolvency, and a petition is filed in the court by the debtor or by any creditor. In this procedure, the personal property of the insolvent is discharged by the court by authorizing a person commonly known as official assignee. The official assignee distributes the amount received from the private property among the various creditors on the basis of their interest. After the discharge of secured and unsecured debts of the person adjudicated as bankrupt, then he is given a fresh start by the court. Definition of Liquidation The process in which the legal status of the company is completely terminated is known as liquidation. The liquidation is also known as winding up of the company. The shareholders or creditors often lead it and a petition is filed in the court for winding up the organization. In this process, the assets of the company are sold out to pay off the claims and the accounts are settled finally. For such purposes, a liquidator is appointed by the court for dissolving the firm. The residual amount left after discharging creditors are distributed among the shareholders of the entity. In this, the future operations of the company are put to an end, so it is entirely closed, and no further dealings are done in the name of the company. Key Differences Between Bankruptcy and Liquidation The points given below are substantial so far as the difference between bankruptcy and liquidation: Liquidation is limited to the company only, whereas the Bankruptcy is not limited to the company, here persons can also become bankrupt. The bankruptcy can be done voluntarily petition by the person or company itself or involuntarily petition filed by creditors , but the liquidation can be done voluntarily petition filed by shareholders or compulsorily petition filed by the creditors. The significant difference between the two is that Bankruptcy arises out of financial crises or insolvency, but Liquidation can be due to financial instability or due to some other reason. Similarities Sale out of assets and payment of liabilities. Order of the court. Debts are more than assets. Conclusion Bankruptcy and Liquidation both are the worst kind of situation that can ever happen. However, in Bankruptcy, a new start is given to the person declared bankrupt, but there are no chances of the new start in case of liquidation. As the liquidation is limited to companies only, it is not necessary that every company which is liquidated is bankrupt. As there are many instances where the company is financially sound, but still it is liquidated because its shareholders have so resolved.

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2: Steps Of Company Liquidation

McPherson's Law of Company Liquidation provides subscribers with the main points of relevant cases and puts them into context in this challenging and dynamic area of the law. Further developments to the online service has been the introduction of a "Breaking News" feature, which publishes current news including topical discussion papers.

It includes guidance for creditors, employees and directors of a company in compulsory liquidation. Because the IR apply to all insolvency proceedings in England and Wales, irrespective of when those proceedings started, this note replaces earlier versions of this note. Relevant transitional provisions are explained in Practice note, Insolvency England and Wales Rules What is compulsory liquidation? The procedure is started by the filing or "presenting" of a petition at court. A judge then decides at a court hearing whether it is appropriate to make a winding up order. The most common reason for a winding up order is that the company is insolvent. At the end of the liquidation, the company is dissolved. How does a company go into compulsory liquidation? The process starts when a winding up petition is presented at court. The presentation of a winding up petition has serious consequences for a company see Practice note, Responding to a winding up petition: What are the consequences of a winding up petition? The petitioner is often a creditor of the company. However the company itself, its directors and various other categories of people can seek to have a company put into compulsory liquidation section , IA The most common ground for winding up a company is that it is unable to pay its debts. An order may be made on other grounds, as set out in section 1 of the IA The petitioner serves a copy of the petition on the company, and must, in due course, give notice of the petition in the London Gazette. There will then be a hearing in court at which the company has an opportunity to oppose the petition. The judge may make a winding-up order, or may dismiss or adjourn the petition. For a step-by-step guide on the procedure for putting a company into compulsory liquidation, see Practice note: The liquidator When a winding-up order has been made, the Official Receiver is initially appointed as liquidator section , IA More than one liquidator can be appointed to act jointly. What does the liquidator do? A liquidator has wide-reaching powers to assist him in fulfilling his function. Such powers include bringing legal proceedings in the name of the company, carrying on the business of the company and paying debts. See Schedule 4 to the IA Who pays the liquidator? For more information, see Practice note, How are assets distributed to creditors in corporate insolvency procedures?: Professional fees and expenses of the insolvent estate. What does compulsory liquidation mean for a creditor of the company? Claims by unsecured creditors are paid on a pari passu basis. As an unsecured creditor, you may receive a dividend paid pro rata at the end of the liquidation and possibly also an interim dividend. In some cases, the dividend to unsecured creditors will be just a few pence in the pound, and it may be nothing at all. If you have the benefit of security, you are entitled to be paid from the proceeds of sale of the secured assets, subject to certain exceptions. For more detail, see Practice note, How are assets distributed to creditors in corporate insolvency procedures? As a creditor, you will be invited to provide the liquidator with details of your claim your proof of debt. The liquidator will then assess all the proofs of debt. He may either accept a claim in whole or part or reject it. There is an automatic stay of legal proceedings against the company or its assets section , IA If you wish to bring or pursue legal proceedings against the company, you must first apply to court for permission. If your claim is for monetary relief only, you are unlikely to be granted permission; generally only claims that have a proprietary nature are allowed to continue. The stay does not extend to the enforcement of security or the forfeiture of a lease. For more detail, see Practice note, Litigation and insolvency: You are entitled to receive reports on the progress of the liquidation from the liquidator rule 7. You may also form a liquidation committee with at least two other creditors, to help the liquidator fulfil his functions section , IA and rule See Practice note, Compulsory liquidation: What does compulsory liquidation mean for an employee of the company? All employees of a company are automatically dismissed if a winding-up order is made. As a former employee, you may be entitled to a redundancy payment, and may have a claim for damages on the grounds of For more information, see Practice notes, Overview of the employment aspects of insolvency and Claiming against an insolvent employer. What does compulsory liquidation mean for a director of the

company? When a company goes into compulsory liquidation, the powers of its directors cease and they are automatically dismissed from office Measures Brothers Ltd v Measures [] 2 Ch If the liquidator believes that the conditions for disqualification are satisfied, he will report that to the Secretary of State sections 7 and with effect for liquidations starting on or after 6 April 7A , Company Directors Disqualification Act For more information, see Practice note, Insolvency and considerations for directors. What can a creditor do if he thinks the liquidator is doing a bad job? Where can I get more information?

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3: Liquidation Law and Legal Definition | USLegal, Inc.

Steps Of Company Liquidation Background Definition of Liquidation according to Kamus Besar Bahasa Indonesia is "the winding up of Company as a legal entities that includes the payment of obligation to all creditors and distribution of remaining assets to the shareholders (Company) ".

Winding up under the supervision of the court. This may occur in the following circumstances: The power of the court in such a case is discretionary. However, the court may instead of making a winding up order, direct the statutory report to be delivered or that a meeting shall be held. The court exercises power in this case only if the company has no intention of carrying on its business or if it is not possible for it to carry on its business. Where the suspension of business is temporary or can be satisfactorily accounted for, the court will refuse to make an order. If a company has not begun to carry on its business within a year from its incorporation, or suspends its business for a whole year, the court will not wind up if: There are good reasons for the delay, that is, the suspension of business is satisfactorily accounted for and appears to be due to temporary causes. Middleborough Assembly Rooms Company A company suspended its business for more than 10 years due to depression in trade. A shareholder presented a petition for the winding up of the company a year later. The company intended to continue its operations when trade prospects improved. The petition was dismissed. This is an area in the company where corporation veil is lifted. Execution or other process in favor of the creditors of a company is returned unsatisfied in whole or in part. If it is proved to the satisfaction of the court that the company is unable to pay its debts. The court will not prove whether assets exceed liabilities, rather whether the company is unable to meet its current demands. This clause gives the court very wide powers to order winding whenever the court considers it just and equitable to do. Where it is impossible to carry on the business of the company except at a loss. Where the company has engaged in illegal business. Where the object for which the company is formed is impossible of further pursuit. Where the minority is being disregarded or oppressed. Where there is lack of confidence in directors. Where the company has been conceived and brought forth in fraud. Just and Equitable clause The court must be over-cautious before admitting a petition for winding up on the just and equitable clause. It should be allowed as a last resort. Just and equitable clause depends upon the facts of each case. The court may order winding up under this clause when: Before the court makes a winding up order under this, the court should consider the interest of shareholders as well as creditors. The substratum of a company disappears when: Majority shareholders filed a petition for winding up but minority shareholders opposed this and desired to carry on business. It was held that it was just and equitable that the company be would up. German Date Coffee Company The object clause of the German Date Coffee Company stated that it was formed for a German patent which would be granted for making a partial substitute for coffee from dates and for acquisition of incidental there and also other inventions for similar purposes. The German patent was never granted but the company did acquire and work on a Swedish patent and carried on business at Hamburg where substitute for coffee was made from the dates, but not under the protection of a patent. A petition was filed by two shareholders that the main object could not be achieved, and therefore it was just and equitable that the company should be wound up. Where the company is totally unable to pay off creditors and there is increasing burden of interest and deteriorating state of management and control of business owing to sharp differences between shareholders, the court will order winding up. Her reasons were as follows: When she suggested transferring her shareholding, she was out voted. This business collapsed because Mugo influenced the government to withdraw the mining license as a way of revenging against the Greek directors. American Pioneer Leather Company There were only three directors and shareholders in a private company. One of them left the country and the remaining two quarreled among themselves and as a result there was a complete deadlock. It was held that it was just and equitable that the company be wound up. They were restrained by a court injunction from using the name Brinsmead on the ground of fraud. A petition for compulsory winding up of the company was presented. Held that the company was formed to carry out fraud and, therefore, it was just and equitable to be wound up. Who may Petition for Compulsory Winding Up? The following persons can file a petition: The directors have no powers to present a

petition for winding up. The court may either order the petition or stand over until the validity of the debt can be determined, or may dismiss a petition. It however includes all persons who at the date: A receiver is not under any obligation to discharge debts even though incurred after the date of his appointment, unless he exceeded his authority or expressly accepted or agreed a personal liability. They are left to settle their affairs without going to the court. They may, however, apply to the court for any directions, if and when necessary. A company may be wound up voluntarily when: If the company for whatever reason, has passed a special resolution to wind up voluntarily. The declaration shall be made by majority of directors at a meeting of the Board that they have made a full inquiry into the affairs of the company and that having done so, they are of the opinion that: That it will be able to pay debts in full within 12 months from the date of commencement of the winding up. It is a solemn declaration of solvency made by a director that the company is solvent and able to pay all its debts in full within a period of 12 months. It is presumed that the company is insolvent. In such a case, a company must call a meeting of creditors on the same day or the following day after the meeting, at which resolution for winding up is to be made or proposed. The directors must lay before the creditors the position of the company. The liquidator will continue to exercise all powers subject to the restrictions laid down by the courts. A petition for the winding up of the company subject to the supervision of the courts may be presented by any person entitled for the compulsory winding up, but before the court refuses or makes a supervision order, they must call a meeting for ascertaining the wishes of creditors and contributories. The court will usually be called to supervise a voluntary winding up if there is a substantial dispute between the company and creditors, especially where they disagree over the appointment of a liquidator. Distinction between Voluntary winding up and Compulsory Winding up. Declaration of solvency is a must in members whereas it is not necessary in creditors winding up. These expenses rank in priority to other claims. If assets are insufficient to satisfy all the liabilities, the courts may make any order as to the payment of those costs and charges as they deem fit. The following preferential creditors must be paid in priority: All government rent not more than one year. Wages and salaries of any servant for services rendered during four months proceeding relevant period not exceeding Sh.

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4: How to liquidate a company

Liquidation is the process in law and business by which a company is brought to an end in the United Kingdom, Republic of Ireland and United States. The assets and property of the company are redistributed.

The company may be liquidated for the following reasons: If the specified period of the company has elapsed or the work has been completed and the partners have continued to carry out the type of work for which the company is composed, the contract shall extend for one year under the same conditions2. A creditor of one of the partners may object to such extension and its objection shall result in the suspension of its effect. In case of loss of half the capital of the company, the directors are required to submit to the General Assembly an order for dissolution of the Company. If the loss entails the decrease of the capital below the limit prescribed by the executive regulation, any interested party may demand the dissolution of the company. The status of the company under liquidation The company may be liquidated by a decision of the shareholders or a court order, in both cases there are specific properties of the company under liquidation: Every company after its dissolution is considered to be in a state of liquidation and the liquidation should take place in compliance with the terms of the present law unless its statutes or act prescribes other terms. The company shall conserve, during the period of its liquidation its moral personality within the extent required by the proceedings of liquidation. The term "under liquidation" is to be added to the title of the company, and its organs will remain standing during the period of liquidation, but its powers will be confined to the affairs which are not in the competence of the liquidators. The appointment of a liquidator The General Assembly will nominate one or more liquidators and fix their remunerations. The nomination of the liquidator will be from the shareholders, partners or others. In case a sentence is issued ordering the dissolution or invalidity of the status of the company, the Court shall indicate the mode of liquidation and will nominate the liquidator and fix his remuneration. No protest against third parties on the nomination of the liquidator or the mode of liquidation except starting from the date of publicity in the Commercial Register. The Role of the liquidator The liquidator shall fulfill all the duties requisite for the liquidation, and in particular: Paying off all the debts on the company. Sale of the assets of the company whether moveable or immovable properties, by public auction or in any other manner unless it is indicated in the document of nomination of the liquidator that the sale should be effected in a specific manner. Representing the Company in front of the Courts and acceptance of compromise. The liquidator, directly after his nomination and in agreement with the board of administration or the directors, shall make a stocktaking of all the assets and liabilities of the company and draw a detailed list of them and a budget to be subscribed by the liquidator, and the directors or the administrative board members. The board of administration or the directors shall present their account to the liquidator and shall deliver to him the funds of the company and its books and vouchers. The liquidator shall hold a register for record of the works regarding the liquidation, and the holding of this register will be in compliance with the provisions of the law on commercial registers. The liquidator shall excite all what is needful for conservation of the funds and rights of the company. Nevertheless the partners should not be claimed the remainder of their parts except if the works of liquidation necessitate this, subject to observance of equality among them. The liquidator shall deposit the amounts he collects, in a bank to the account of the company under liquidation, this deposit shall be within 24 hours from the time of reception. The liquidator is not allowed to start on new business except if they are requisite for previous affairs. If he conducts new works not needed by the liquidation, he shall be responsible in these works on all his assets and if the liquidators are numerous, their responsibility will be a joint one. The liquidator is not allowed to sell the assets of the company in block except by a permission of the General Assembly or partners as the case may be. The revocation of the liquidator The revocation of the liquidator should be affected according to the procedure of his nomination. The Court may, at the demand of a shareholder or partner and for plausible reasons, decide the revocation of the liquidator. Every decision or sentence revoking the liquidator should comprise the nomination of another in his place. The revocation of the liquidator will be published in the Commercial register and in the Companies magazine, and it will not be opposable to third parties except from the date of publicity in the

Commercial Register. Specialist advice should be sought about your specific circumstances.

THE LAW OF COMPANY LIQUIDATION pdf

5: Liquidation of Companies | Accounting

The liquidation of companies in Egypt is governed by the Egyptian Companies Law. No. / 1, the law governs all the aspects of the companies' liquidation including the reasons of liquidation, status of the company under liquidation, the appointment of the liquidator, responsibilities of the liquidator and revocation of the liquidator.

Liquidation Liquidation Law and Legal Definition Liquidation is the selling of the assets of a business, paying bills and dividing the remainder among shareholders, partners or other investors. A business need not be insolvent to liquidate. Upon liquidation of certain business, such as a bank, a bond may be required to be posted to assure the proper distribution of assets to creditors. A receiver may be appointed to oversee such distribution of assets. In this case, a receiver may be required to file a final statement accounting for the distributed and remaining business assets and expenses of liquidation in order to receive a final settlement order from the receivership court. Additional Definitions Liquidation and Liquidation Values Liquidation means turning fixed assets into liquid assets, namely into cash. Thus an owner selling his or her business for cash as a going concern is technically liquidating itâ€”but in usual parlance the term is applied only to a situation where a business is closed and all of its assets are sold. This may happen voluntarily or involuntarily; the owner may simply decide to stop doing business, puts a "Closed" sign on the shop or a message to that effect on his or her answering service, and proceeds to sell everything; alternatively the owner finds him- or herself forced into liquidation to pay off a foreclosed loan or, alternatively, assets are insufficient to cover debt and Chapter 7 bankruptcy liquidation is necessary. It is a truism of business that a going concern is always worth more than its parts. There is no particular magic involved in this valuation. The assets of a running business include its clients and their purchases. Machinery, equipment, shelving, and communications systems arranged complexly for a purpose are more valuable as a group than taken individually. The assets of a business may fetch as little as 20 cents on the dollar, possibly even less, all depending on the nature of the business and its inventory. A jewelry shop, the assets of which are mostly unsold diamonds and gold, will do much better than a machine shop with most tools 30 years old or older. A liquidation tends to be a painful time in business life. Many liquidations follow months, occasionally years of anxiety and agony as a business gradually fails, and liquidation is still painful. It is, furthermore, as painful for a manager liquidating a subsidiary or a division for a large company as for an owner liquidating his or her business. While it is happening, those involved do not appreciate that they will gain valuable experience from the processâ€”as people no less than as business persons. And to liquidate a business effectively is itself a business skill. It can be done well or poorly. The earlier the owner realizes that liquidation cannot be avoided, the more resources will be present to liquidate with least pain. Human nature and reason tend to conflict in such situations, as owners hang on for dear life in the face of clearest evidence and lottery-like odds. Almost always the tantalizing possibility of being saved is out there in the form of a big bid, a potential buyer, or some hoped-for event. Setting clear, hard deadlines and proceeding in a business-like manner toward a closing is the best policy. A business liquidating voluntarily and in an orderly fashion will almost always discover that its creditors, customers, and vendors will be cooperative. The sense of control will remain. If in the midst of such a process the miraculous turn-around event actually takes place, reversing course will also be easier. Preparations Once a decision to liquidate has been reached, the business needs to be closed, employees discharged, and company assets must be secured and inventoried. In larger operations, the owner will require help in managing the liquidation. Therefore selecting one or more trusted employees to participate in the process is essential before lay-offs are announced and implemented as rapidly as possible. Effective actions in good time are important. Business closures sometimes produce unusual behavior in employees; they may feel cheated; the atmosphere of a free-for-all sometimes develops and caution is indicated to avoid wholesale theft and sabotage. Arrangements must be made to have locks changed and valuable goods safely stored. This is sometimes difficult to do and requires early arrangements. Vendors and customers must be notified after the layoffs are accomplished. This, too, will require early planning. Finally, the owner should take his or her own inventory before third parties become involved. Participants People entering the twilight zone of liquidation

will discover it is populated by an entire industry little suspected to exist. There are professional appraisal firms whose routine business it is to value business assets. They appraise all manner of inventories and equipment daily and have an enormous depth of expertise. The owner facing such an appraisal, however, must brace him- or herself because prices named will seem extraordinarily low. If an experienced firm has been engaged, it will not be low-balling the assets but accurately valuing them in the current market. Alongside appraisers are liquidators specializing in selling inventory and equipment; a variety of selling techniques are used, including auctions. Unusual venues may be common. For example, all the inventory may be moved to an empty warehouse and laid out for a sale that might extend over several days. Some liquidators have added Internet outlets to their marketing and therefore a photographer may be taking digital shots of selected items as part of inventory. The owner usually can and sometimes does set aside equipment to be held indefinitely or for sale by him- or herself. By the nature of their contacts, owners may have ideal clients for certain kinds of equipment. The owner can then assign the remainder to a specialist who will sell everything else and dispose as waste or scrap what cannot be moved. However distressed the owner might beâ€”and the distress will be much greater if liquidation is forced by a foreclosureâ€”he or she should refrain from letting things "get ugly. Such situations can lead to further legal action and ultimately to much higher costs. Voluntary liquidations take two forms. The best of these takes place when the owner decides to go out of business while still solvent and able, after liquidation, to pay off all outstanding debt. The second form involves an agreement with one or more creditors to liquidate but without a formal process. In the latter case, which tends to be rather rare, the owner will work in close cooperation with one or more agents of creditors, all parties endeavoring to get the highest possible yield for all assets. This will be possible only if the decision is reached early enough, i. Sales may have been slipping; profits may have disappeared; but if there is still "life" in the business, it may well be possible to sell itâ€”and at a price higher than liquidation will guarantee. For details on selling a business, see the entry Selling a Business in this volume. Many options are available. For a failing business the route most likely to be successful will involve letting the new owner pay off the acquisition price over timeâ€”with the current owner continuing to share the risk with the new owner up to a point.

THE LAW OF COMPANY LIQUIDATION pdf

6: Liquidation and Dissolution of a Private Limited Company

The company may carry on business only for the limited purpose of completing the liquidation process. The powers of the company directors come to an end when a liquidator is appointed. A liquidation order operates as a notice of dismissal to all of the company's employees.

In this article we will discuss about: Meaning of Liquidation 2. Liquidation and Insolvency 3. Consequences of Winding Up. And an administrator, called a Liquidator, is appointed and he takes control of the Company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights. It is created by law. Therefore, the law alone can dissolve it. This fact may also be published in the official gazette. Liquidation of a Company, which is also called winding up of a Company, may be defined as the process through which the affairs of the Company are stopped for the purpose of liquidation, for which an officer, called liquidator, is appointed to take charge of the assets and liabilities of the Company. His duties are to realize the assets, discharge the liabilities and distribute the surplus, if any, to the members of the Company. Liquidation is different from insolvency. Liquidation resembles insolvency in the respect that in both cases the assets are realised, proceeds applied to discharge the liabilities and surplus, if any, is distributed to members â€" proprietors or partners. A person is said to be an insolvent when his liabilities exceed his assets or has committed an act of insolvency, and against whom an order of adjudication is passed by a competent court. It is not necessary that a Company should be liquidated although it may be in insolvent circumstances and further it may sometimes become necessary to liquidate even a solvent Company. Insolvency of a person is governed by the Insolvency Act whereas liquidation of a Company is governed by the Companies Act. Proceedings under the Insolvency Acts are known as insolvency proceedings, whereas proceedings for the winding up of a Company are known as liquidation proceedings. An Official Receiver or Official Assignee is appointed in case of insolvency and Liquidator is appointed in case of liquidation. An order of discharge entitles the person, who was declared insolvent, to start a business afresh. In case of Companies, there is no question of starting the business by the same Company as the liquidation puts an end to the Company once and for all. Consequences of Winding Up: The consequences of winding up may be discussed under the following heads: An official designated as liquidator will take over the administration of the Company. In case of compulsory winding up, the official liquidator, attached to the High Court, functions as liquidator of the Company. The powers of the Board of Directors will terminate and will now vest in the liquidator. No suit or other legal proceedings can be proceeded with against the Company except with permission of the court. The order for winding up has the effect of a notice of discharge to the employees of the company, except where the business of the company is continued by the order of the court. A shareholder is liable to pay the full amount up to the face value of the shares held by him. Not only the present members but past members are also liable in the event of winding up of the company. The liabilities of present member is the amount remaining unpaid on the shares held by him while a past member can be called upon to pay if the contributions made by the present members are not adequate. A Company, whether solvent or insolvent, can be wound up under the Act. In case of solvent company, all claims of its creditors when proved are fully met. In case of insolvent company, the rules under the Law of Insolvency shall apply.

THE LAW OF COMPANY LIQUIDATION pdf

7: Liquidation Of Entities In Egypt - Corporate/Commercial Law - Egypt

Liquidation of a Company, which is also called winding up of a Company, may be defined as the process through which the affairs of the Company are stopped for the purpose of liquidation, for which an officer, called liquidator, is appointed to take charge of the assets and liabilities of the Company.

First, a liquidator is appointed, either by the shareholders or the court. The liquidator represents the interests of all creditors. After these steps have been carried out, the company is formally dissolved. What are the different types of liquidation? The law classifies liquidations into two types: Liquidations are also classified according to whether the company is solvent or insolvent. Solvent and insolvent liquidations If the company is insolvent, this means it is unable to pay its debts as they fall due. In this situation there is potential conflict between creditors those to whom money is owed , as there will be insufficient assets for all creditors to be paid in full. In addition, a number of rules exist to prevent one or more creditors from gaining an unfair advantage. It is not necessary to make any application to the court for this; however, the liquidator may apply to the court for directions and the court has power to remove a liquidator. Voluntary liquidation may be in one of two forms, depending on whether or not the company is solvent. If the company is solvent the shareholders can supervise the liquidation. However, if the company is insolvent, the creditors may take control of the liquidation process by applying to the court. The court will require proof of solvency or insolvency to determine this matter. Compulsory liquidation by court order Compulsory liquidation of a company requires obtaining a court order. This process starts with an application to the court alleging that one or more of the required grounds exist. The application may be brought by the company or a majority of its directors, or by the Registrar of Companies, or by a creditor. Applications by creditors are by far the most important and common. Applications may be brought on a number of grounds, the most important being that the company is unable to pay its debts. There are a number of factors that the court will take into account when deciding whether or not to make a compulsory liquidation order. The court has a discretion as to whether or not to make the order. The procedure for liquidation Broadly speaking, the liquidation process is as follows: A liquidator is appointed, either by the company shareholders passing a resolution voluntary liquidation or by the Court making an order compulsory liquidation. The liquidator collects the assets of the company including uncalled capital; that is, amounts unpaid on shares and pays the creditors in order of priority. The liquidator distributes any surplus funds to the shareholders. The company is then formally dissolved. What are the consequences of liquidating a company? The main consequences of the company being liquidated are as follows: The company no longer has the power to dispose of its property. The company may carry on business only for the limited purpose of completing the liquidation process. The powers of the company directors come to an end when a liquidator is appointed. Note, however, that if an employee is on a fixed-term contract and is required under this contract to be given a period of notice, then a liquidation order will breach this and the employee will be entitled to damages. When an application is made for a court-ordered liquidation, the court may stay or restrain any proceedings against the company as the court sees fit. When a liquidator is appointed, no person can begin or continue legal proceedings against the company or in relation to its property, unless the liquidator agrees or the court permits it. This is strictly enforced by the Courts. Any secured creditors have the first right to the assets and are usually paid out before there is a distribution. After this is paid out, any remaining debts are paid in the following order of priority: HowToLaw has partnered with JustAnswer.

8: What does the Liquidation of a Company Involve? - Company Debt

Liquidation is a process to distribute the assets of a company to pay off its debt and liabilities. This process occurs as part of the winding up of a company. It is during liquidation that creditors should be most concerned about the debt owed to them.

Simon Renshaw on 05 November Liquidation of a Company: Overview Liquidation refers to the procedure in which a limited company is brought to a close by an appointed Insolvency Practitioner Liquidator. The company is struck-off the registrar of companies and this is known as dissolution, which is the final stage of the liquidation process. What are the Different Types of Liquidation? There are two voluntary liquidation procedures and one compulsory procedure. The voluntary procedures, which are initiated by the shareholders and directors are explained in more detail below and the compulsory procedure, which is usually initiated by creditors like HMRC via a court order, is also covered. This procedure enables directors to write off unsecured limited company debts that are not personally guaranteed. Directors may see voluntary liquidation as a welcome and safe exit from a stressful situation; whilst addressing all of the creditors, appropriately. Although it should be seen as a last resort, liquidating a company via this route can be considered a rational decision and it may not necessarily mean the end of business. An MVL may be considered if you have a solvent company that you want to close as part of your business plan and reduce taxation. Your company may have outlived its purpose and be heading towards a natural end of trading, or you may wish to extract the value of cash and assets from the company in a tax efficient manner. For an MVL, the directors must sign a declaration stating that there are no remaining creditors. Compulsory Liquidation Compulsory liquidations are usually initiated by a creditor that is looking to force a company into closure via a court order application. The process is usually instigated with a winding up petition and once it is heard at court, it can become a winding up order. This procedure is often used to wind up your business as a last resort by disgruntled creditors after failed negotiations over missed payments. This insolvency procedure is usually handled by the Official Receiver, or an appointed Insolvency Practitioner. Therefore, this is not a voluntary process for directors. The conduct of the directors is reported back to the Secretary of State at the end of the liquidation proceedings and failure to cooperate with the Official Receiver can have serious repercussions. If you cannot pay the creditor and do not act immediately the situation can escalate quickly. Do not ignore any threat in the form of a winding up petition, as the intention is to forcefully liquidate your company. The Liquidation Process in 5 Steps The details of the process when voluntarily liquidating a limited company depend largely on the type of liquidation that is chosen. However, the five basic steps below are included within all of the procedures: An Insolvency Practitioner is appointed as Liquidator. If there are any creditors they are then paid in order of priority. Surplus cash is distributed to the shareholders. The company is finally dissolved and struck-off the registrar of companies Companies House. How Long Does it Take? There is no set time-frame to liquidate a limited company and with several variables dependent on each case, it is challenging to give an accurate time-frame without sufficient information. However, once engaged, the Insolvency Practitioners will act immediately and the company can be placed into liquidation within a two-to-three week period if sufficient information is provided, promptly. The liquidator will remain in office until all of their responsibilities have been addressed. Once the decision is taken to liquidate, the time-frame can be fairly rapid, with the company in liquidation within around 14 days. What are the Time-Frames for Compulsory liquidation? Prior to compulsory liquidation, the following stages follow these time-frames: Application for a Winding up Petition Hearing â€" After the 21 day statutory demand, the creditor now has the right to apply for a Winding up Petition hearing. These can take up to 2 weeks, depending on how busy the court is. Winding up Hearing â€" There is a legal requirement to give a company 14 days written notice of a winding up hearing. The Role of a Liquidator An appointed licensed Insolvency Practitioner Liquidator is required for liquidation and they have several duties in their position. These professionals have the responsibility to act as an impartial, third-party to oversee the process from beginning to end, after their appointment. The role of a liquidator encompasses various responsibilities which include, but are not limited to: What are the Potential Consequences for Directors? The

most important thing for directors to realise when liquidating a company is that their responsibilities undergo a marked shift if the company becomes insolvent. Once insolvent, the directors must prove they have acted in the best interests of the creditors. To avoid the threat of personal liability, it is important that directors act responsibly and take professional advice, immediately. Directors should be aware that once an Insolvency Practitioner is appointed, they will have a responsibility to investigate the actions of company directors during the period preceding the liquidation. Where this is not the case, the director becomes open to charges of wrongful or fraudulent trading. If this can be proven, the director may become personally liable for some or all of the company debts. Both of these terms refer to liquidating a limited company; either because the company has cash-flow problems, or because there are cash and assets, such as property, that the directors and shareholders would like to extract. Bankruptcy is only relevant to an individual, partner, or sole trader and not a limited company. You can read more about who gets paid and in what order , including how employees are addressed. Alternative Options for Insolvent Companies When you are considering liquidating a company due to financial problems, take the time to compare all of the available options. There are other courses of action that may be available to companies in financial difficulty, so consider exploring these before you decide to close the company via liquidation. You may find that options such as a Company Voluntary Arrangement CVA or Administration will provide a viable way for the company to carry on trading. Insolvency procedures such as CVAs and Administration can be useful ways of restructuring a private company and would also require a licensed insolvency practitioner to supervise the process, professionally. One example of a benefit could be after an Administrator has been engaged and appointed they can apply for a moratorium to be implemented. This may give the business some breathing space and protection from further legal action taken by creditors. The business can then address its assets, liabilities and employees to help guide the company towards a state of recovery. Free, Confidential Liquidation Advice For free confidential advice on liquidating a private company and help with your current situation, please contact us on and enquire about our services. More articles on Liquidation.

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Liquidation of a Company: Overview. Liquidation refers to the procedure in which a limited company is brought to a close by an appointed Insolvency Practitioner (Liquidator).

Liquidation and Dissolution of a Private Limited Company: Legal Procedural Requirements Ladda Phenphol Corporate Services Department, September Sections through of the Civil and Commercial Code of Thailand are the applicable provisions in the event of voluntary liquidation and dissolution of a private limited company in Thailand by its shareholders. In accordance with the provisions, the company shall proceed in the following order. Hold the first General Meeting of the shareholders to adopt a special resolution to liquidate and dissolve the company. A liquidator and an auditor shall be appointed by the meeting for such purpose. Hold the second General Meeting of the shareholders to confirm the special resolution adopted in the first meeting. The second meeting must be held not less than fourteen days and not more than six weeks from the date of the first meeting, unless a longer notice period is required by the Articles of Association of the company. Place two successive advertisements in a local newspaper announcing the liquidation of the company to alert creditors if any so they can make a claim for debts owed to them by the company. Send to all creditors a letter by registered mail requesting them to file a claim for debts owed to them by the company. The appointed auditor must prepare and certify the financial statements Balance Sheet and Accounts as of the date of dissolution. Submit a report of the liquidator every three months to the Ministry of Commerce. This obligation shall continue until completion of the liquidation process. Once the liquidator has cleared the assets and liabilities and has called on debtors for payment of debts to the company, the liquidator must call a final meeting of the shareholders to approve the final liquidation of the company. The minutes of the meeting shall be submitted to the Ministry of Commerce within fourteen days from the date of the meeting. Submit application to the Thai Revenue Department for liquidation of the company and return the original Value Added Tax Certificate and original Tax Identification Card in the name of the company. Once the Revenue Department grants approval, the liquidator shall notify and submit a copy of such approval to the Ministry of Commerce in order to obtain final approval from the Ministry. In practice, the Ministry does not keep the books of accounts. Instead, it asks the liquidator to keep the books and notify the Registrar of such fact by letter. The liquidation process takes approximately one to two years to complete, depending on the number of years the company had been in operation and whether its books were properly maintained and tax returns filed as required by law. We appreciate Thailand divorce lawyer support of the Thailand Law Journal. For any submissions, comments, or questions, e-mail the Thailand Law Forum at: Please read our Disclaimer.

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