

Winding up of a Company

What Is Winding Up?

Winding up is the liquidation of Company's assets which are collected and sold in order to pay the debts incurred. When the company winding up takes place firstly the debts, expenses and costs are paid away and distributed among the shareholders.

Once the Company is liquidated it is formally dissolved and the Company ceases to exist. Winding up is the legal mechanism to shut down a company and cease all the activities that are carried on. After the Company winding up the existence of the Company comes to an end and the assets are monitored so that the stakeholders' interest is not hampered.

A Private Limited Company is an artificial legal person and requires various compliances. If the company fails to maintain these compliances, there are fines and penalties or even disqualification of the Directors from further incorporating a Company. It is always better to wind up a company that has become inactive or where there are no transactions.

The shareholders of the Company can initiate the winding up of the company anytime. If there are secured or unsecured creditors or employees on roll, then all the dues need to be settled. After settling the dues, it is necessary to close all the Company bank accounts. The GST registration must also be surrendered in case of Company winding up. Once all the registrations are surrendered, the winding up application petition can be filed with the Ministry of Corporate Affairs.

Types of Company winding up

What are the different ways in which an individual can wind up a Company?

A company can be wound up in two different ways-

1. Voluntary winding up of a Company
2. Compulsory winding up of a company

1. Voluntary Winding up of a Company

The Winding up of a Company can be done voluntarily by the members of the Company, if:

- > The company passes a special resolution for winding up the Company.

- > The Company in general meeting passes a resolution which requires a company to wind up voluntarily as a result of the expiry of the period of its duration, any as per the Articles of Association or on the occurrence of any event in respect of which the articles of association provide that the company should be dissolved.

Procedure for Voluntary winding up of a Company

- Convene a board meeting with the Directors in which a resolution should be passed with a declaration by the directors that they have made an enquiry in the affairs of the Company and the company no debts or the Company will pay from the precedes of the assets sold in the voluntary wind up of the company.
- Notices should be issued in writing to call for the general meeting of the Company proposing the resolutions, with a suitable explanatory statement.
- Pass the ordinary resolution for winding up of the Company in the generally meeting by ordinary majority or special resolution by 3/4 majority. The Winding up of the Company shall commence from the date of passing the resolution.
- A meeting of the creditors should be conducted on the same day or the next day of passing the resolution regarding winding up. If the 2/3rd value of the creditors are of the opinion that it is in interest of all parties to windup the Company, the Company can wound up voluntarily.
- Within 10 days of passing the resolution for company winding up, a notice for appointment of liquidator must be filed with the registrar.
- Within 30 days of the general meeting for the winding up the certified copies of the ordinary or special resolution passed in the general meeting for the winding up of the Company.
- The affairs of the company need to be wind up and prepare the liquidators account of the Winding up account and to get it audited.
- Call for the final General meeting of the Company.
- A special resolution should be passed for the disposal of the books and the papers of the company when the affairs of the company are completely wound up and it is about to be dissolved.
- Within two weeks of the general meeting of the Company, file a copy of the accounts and file and the application to the tribunal for passing an order for the dissolution of the company.
- The tribunal shall pass an order dissolving the company within 60 days of receiving the application.
- The company liquidator is required to file a copy of the order with the registrar.
- The registrar will then on receiving the copy of the order passed by the Tribunal then publish a notice in the official gazette that the Company is dissolved.

2. Compulsory winding up of a Private Limited Company

Tribunal is responsible for this kind of wind up of Companies.

Here are the reasons for the same:

- > Unpaid debts of a Company
- > When a special resolution is passed for winding up
- > An unlawful act by a company or the management of the Company
- > If the company is involved in fraudulent acts or misconduct
- > If the annual returns or financial statements are not filed for five consecutive years with the ROC
- > The Tribunal is of the view that the company should windup.

Procedure for compulsory winding up of a Company

Step:1 Is to File a petition to the tribunal along with the statement of the affairs of the Company that is to wind up.

Step:2 The tribunal will either accept or reject the petition if the person other than company files a petition then the tribunal may ask the company to file objection. it goes along with the statement of affairs within 30 days.

Step:3 Liquidator needs to be appointed by the tribunal for the winding up process. The liquidator carries out the function of assisting and monitoring the liquidation proceedings.

Step:4 Liquidator is supposed to prepare a draft report for approval. when the draft report gets approved he shall submit the final report to the tribunal for passing the winding up order.

Step:5 It is necessary of the liquidator to forward a copy to the ROC within 30 days, if he fails to do so then he will get a penalty.

Step:6 If the ROC finds the draft satisfactory he then approves the winding up of the Company and the name of the Company is struck from the register of Companies.

Step:7 ROC sends notice for Publication in the official gazette of India

Top reasons why companies wind up

What are the top reasons why Companies windup?

A private Limited Company is a legal entity established under the Companies Act. Therefore, a company is required to maintain the regular compliances throughout the life cycle.

The process of winding up is for a Company that is not active and avoid the compliance responsibilities.

A company can also be closed by filing an application with the ministry of corporate finances in about 3 to 6 months. This process can happen online entirely. The process for closing a company is fast and easy if done through Indiafilings.

If a company doesn't file the compliances on time incurs fine and penalty including debarring the Directors from starting another Company. In that way it is better to windup a company that is inactive and avoid the potential fines or liability in future.

Dissolution of Company

The Dissolution of a company may take place in two ways.

First in which the company is transferred to another company under the scheme of reconstruction or amalgamation. In such a case, the transfer of the company will be dissolved by an order of the Tribunal without it being wound up.

In the second scenario, the company shall undergo a winding-up process where the assets of the company shall be realized and proceeds shall be used to pay its liabilities. Once the debts have been settled, the remaining amount, if any, shall be distributed amongst the stakeholders, and Tribunal shall pass the order of dissolution of the company and strike its name off the register of the Registrar of the Companies.

Process of Winding up and Dissolution of Company

The winding-up of a company is judged by the Tribunal and the procedure for winding up of a company in India is purely a judicial function. There is a liquidator who carries off and administers the winding-up process. After winding up, the dissolution process takes place.

The dissolution of a company is recorded by the registrar of companies. This is a purely administrative function and does not involve any role for the liquidator. Dissolution is a necessary step following the winding up of a company.

Difference between Winding up and Dissolution of Company

Particulars	Winding-up	Dissolution
Meaning	Winding up means appointing a liquidator to sell off the assets of the company, divide the proceeds among creditors, and file to the NCLT for dissolution.	Dissolution means to dissolve the company completely. Any further operations cannot be done in the company name.
Process	Winding up is one of the methods through which the dissolution of a company is carried on.	Dissolution is the end process/result of winding up and getting the name struck off from the Register of Companies.
Existence of Company	The legal entity of the company continues and exists at the commencement and during the winding-up	The dissolution of the company brings an end to its legal entity status.
Continuation of Business	A company can be allowed to continue its business during the winding-up process if it is required for the beneficial winding up of the company.	The company ceases to exist upon its dissolution.
Moderator	The liquidator carries out the process of winding up.	The NCLT passes the order of dissolution.
Activities Included	Filing of winding up resolution or petition, the appointment of the liquidator, receiving declarations, preparation of reports, disclosures to ROC, and filing for dissolution to the NCLT.	Filing of resolutions, declarations, and other required documents to the NCLT to pass dissolution order.