



## CLOSING DOWN YOUR COMPANY? – VOLUNTARY WINDING UP UNDER CAMA 2020.

**C**losing down your company is legally known as winding up. Winding-up is

a process where a company formally dissolves its business and statutorily goes into extinction. The purpose of a winding-up process is for a company to cease doing business as usual, sell off its assets, pay off creditors (where applicable) and distribute the remainder of its assets, if any, to its partners or shareholders.

It is pertinent to make a clear distinction between Winding-up and Bankruptcy. Winding up a business is not the same as bankruptcy, although it is usually an end result of bankruptcy. Winding up is when a business liquidates and permanently ceases operations, while bankruptcy may allow a company to start again.

Bankruptcy is a legal proceeding that involves creditors attempting to gain access to a company's assets so that they can be liquidated to pay off debts. Although there are various types of bankruptcy, the proceedings can help a company emerge as a new entity that is debt-free.

### WHAT LAW DO I NEED TO COMPLY WITH?

Winding-up is a legal process regulated by corporate laws. Winding-up is primarily governed by the Companies and Allied Matters Act and for the purpose of this article, we shall focus on the regulations and guidance provided under the CAMA 2020.

## ARE THERE OTHER TYPES OF WINDING UP?

There are two broad types of Winding-up proceedings in Nigeria:

Compulsory Winding-up

Voluntary Winding-up

Focus will essentially be on Voluntary Winding-up as provided for under the Companies Allied Matters Act 2020.

## WHAT IS VOLUNTARY WINDING UP?

As the name implies, this is a self-imposed winding-up and dissolution of the company following the decision and approval of its shareholders for the company to discontinue operations. It is the winding up of a company initiated by a special resolution of the company rather than by a petition to the court.

A company's shareholders or partners may trigger a voluntary winding up, usually by the passage of a resolution. If the company is insolvent, the shareholders may trigger a winding-up to avoid bankruptcy and, in some cases, personal liability for the company's debts. Even if it is solvent, the shareholders may feel their objectives have been met, and that it is time to cease operations and distribute company assets.

According to **Section 620 of the CAMA 2020**, a company can be voluntarily wound up in two circumstances:

- a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in a general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company at its general meeting makes a decision on its own and resolves by a special resolution that the company be wound up.

## WHAT IS THE PROCEDURE FOR VOLUNTARY WINDING UP IN NIGERIA?

**Section 625 (1 - 4) CAMA 2020** provides two ways in which a company can be voluntarily wound up and they include:

Members Voluntary Winding-up

Creditors Voluntary Winding-up

### **Members Voluntary Winding-up**

This is a process where the director(s) of the company makes a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding 12 months from the commencement of the winding up exercise.

### **Creditors Voluntary Winding-up**

A creditors' voluntary winding up is the winding up of a company by a special resolution of the shareholders under the scrutiny of the company's creditors in order to pay its debts. This occurs when the company is insolvent.

### **WHAT IS THE PROCEDURE FOR MEMBERS' VOLUNTARY WINDING-UP?**

The procedure for Voluntary Winding-up are as provided in the Companies and Allied Matters 2020. It includes the following steps:

1. **Declaration of solvency** – A company must declare its solvency. This is a requirement for member's voluntary winding up. For the declaration of solvency to be effective under CAMA, it must be made within five (5) weeks immediately preceding the date of the passing of the resolution for voluntary winding-up and must be delivered to the Corporate Affairs Commission for registration. It must also embody a statement of the company's assets and liabilities as at the latest date before the making of the declaration.
2. **Special resolution** – A general meeting of the members of the company shall be called to pass a special resolution that the company be wound up. The Resolution is to be signed by two Directors or a Director and the Company Secretary. The Resolution is to be filed at the Corporate Affairs Commission (CAC) within 35 days of filing a Statutory Declaration of Solvency (SDS).

3. **Notice of special resolution to the Corporate Affairs Commission** – Within 14 days after its passing, such notice of special resolution calling for Voluntary winding-up of the affairs of the Company shall be made public by advertisement in the Federal Government Gazette or two national daily newspapers and the company shall deliver such notice to the Commission.
4. **Appointment of a Liquidator** – At the general meeting, members shall also pass a special resolution appointing a liquidator. Once a liquidator is appointed, the directors will cease to act.
5. **Notice of appointment of liquidator to the Corporate Affairs Commission** – The Liquidator appointed by the company shall within 14 days of such appointment cause to be published a notice of appointment of liquidator in the Federal Government Gazette or in two national daily newspapers and shall serve a notice of appointment of liquidator on the Commission for registration.
6. **Liquidator shall call a meeting each year** – In the event of the winding-up continuing for more than one (1) year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each subsequent year and shall lay before the meeting an account of the conduct of the winding up. These meetings shall be called to notice by publishing them in the official gazette and in some newspapers printed in Nigeria.
7. **Final meeting** – As soon as the affairs of the company are fully wound-up, the liquidator shall prepare an account of the winding-up, showing how the winding-up has been conducted and thereupon the liquidator shall call a general meeting of the company for the purpose of laying the account before the meeting. A copy of the accounts/returns of the meeting shall be sent to the Corporate Affairs Commission (CAC) within 7days of the meetings for registration.
8. **Dissolution** – The Commission on receiving the account and, in respect of the meeting of the creditors and the company shall register them, and on the expiration of three (3) months from the registration, thereof, the company shall be deemed to be dissolved.

## WHAT IS THE PROCEDURE FOR CREDITORS VOLUNTARY WINDING UP?

1. Both the Company and its Creditors would hold separate meetings to propose a winding up of the company. In this case, the company must call the meeting of the creditors on the same day or the next day after the meeting of the Company at which the resolution of winding up shall be proposed.
2. The Company shall cause a notice of the meeting of creditors to be published once in the Federal Government Gazette and at least once in two national daily newspaper distributed in the area where the Company has its registered address or principal place of business.
3. At least 14 days before the creditors meeting is held, the directors of the Company shall forward to each Creditor of the Company a statement of the position of the Company affairs containing, particulars of the Company's assets, debts and liabilities, list of creditors, and estimated amount of such Creditor's claims.
4. The Directors shall appoint one director who shall be present and preside at the meeting of the Creditors and who shall ensure that the statement above is laid before the creditors at the meeting.
5. The Creditors and the Company at their respective meetings may nominate a person to be the liquidator of the winding up process. However, the person nominated by the Creditors will be the liquidator if different persons were nominated at the two meetings. Meanwhile, any director, member, or creditor may apply to the court to order otherwise.
6. The Creditors at their meeting may, if they think fit, appoint a committee of inspection of not more than 5 persons. The Company may also appoint not more than 5 persons to the committee but the Creditors may reject such persons so appointed by the Company.
7. The liquidator shall within 14 days of his appointment publish notice of such appointment in the Federal government gazette or 2 daily newspapers and shall deliver same to the commission for registration.
8. The liquidator shall make publications of notice of the final meeting and the account of the liquidation is laid before and approved by the meeting. And

after this meeting, the liquidator must within 7 days send a copy of the accounts and return holding of the meeting to the Corporate Affairs Commission.

9. The company is subsequently deemed dissolved after 3 months of the registration of the accounts and return to the commission. However, the Court upon an application by the liquidator, member, or creditor can defer the date, which the dissolution is to take effect.

## **WHAT ARE THE EFFECTS OF (VOLUNTARY) WINDING UP ON A COMPANY?**

There are legal implications of the voluntary winding up of a company. The following legal implications shall ensue as the process of the voluntary winding up of a company is perfected:

1. The company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof. Provided that the corporate state and powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.
2. Upon the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.
3. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.
4. Upon the commencement of the winding-up process, a company can no longer pursue business as usual. The only action it may attempt is to complete the liquidation and distribute its assets. At the end of the process, the company will be dissolved and will cease to exist.
5. The property of the company shall be applied towards the satisfaction of its liabilities, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

## CONCLUSION

The voluntary winding-up of a company is a decision that is collectively taken by the company in general meeting, to cease operations and dissolve the company. This consequently leads to the distribution of the company's assets for the benefits of the creditors and members of the company. The Companies Allied Matters Act provides stipulations and guidance on how to effectively achieve this.

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