

Types of winding up

Voluntary:	By the Court:
Voluntary	Compulsory
Winding up	Winding up
By agreement of members or creditors	Ordered by court

Voluntary Winding up

Section 290 Companies Act
A company may be wound up voluntarily —
when the period fixed for the duration of the company by the M&A /constitution expires and a resolution requiring the company to be wound up voluntarily is passed if the company so resolves by special resolution.
A company shall —
(a) within 7 days after the passing of a resolution for voluntary winding up, lodge a copy of the resolution with the Registrar; and
(b) within 10 days after the passing of the resolution, give notice of the resolution in one or more newspapers circulating in Singapore.
Section 293 Companies Act - Procedure
The majority of the directors shall, before sending out notices of meeting at which the resolution for WUP is proposed,

Voluntary Winding up (cont)

Make inquiry into the affairs of the company
Call a Board Meeting
Form the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.
Make a declaration of solvency
General meeting called to pass special resolution for voluntary winding up

Insolvency: Inability to pay debt

Section 254(2) Companies Act
A company shall be deemed to be unable to pay its debts if —
(a) creditor has served on the company a statutory demand for a sum exceeding \$10,000 and the company has, for 3 weeks thereafter, neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor
(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

Insolvency: Inability to pay debt (cont)

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Inability to pay debt: Statutory Demand

Must be served at the company's registered address or it will be ineffective.
Written demand must be under the hand of the creditor or authorised agent
Identify the basis on which debt arose
Debt must exceed \$10,000
Due and payable.
Amount /existence of debt not disputed
Usual letter of demand with special notice to warn the company has 3 weeks to pay the sum or to secure or compound the debt to the reasonable satisfaction of the creditor
Failing which a WUP application may be commenced against the company

Inability to pay debt: Statutory Demand (cont)

Failure to meet Statutory Demand does not give rise to irrefutable presumption that company cannot pay debt if debt is genuinely disputed or company has cross claim

Compulsory Winding up

Who can present a winding up application against the company?
The company, A creditor of the company, Minister, Judicial Manager, Liquidator

Grounds for Compulsory Winding Up

- (a) the company has passed a special resolution to that effect
- (b) the company defaults in lodging the statutory report or in holding the statutory meeting
- (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year
- (d) the company has no member
- (e) the company is unable to pay its debts
- (f) the directors have acted in affairs of company in their own interest rather than in interest of members as a whole or the directors have acted in a manner which appears to be unfair or unjust to other members



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Grounds for Compulsory Winding Up (cont)

(g) Inspector appointed has reported that he is of opinion that the company cannot pay its debts and should be wound up or that it is in the interest of public or shareholders or of creditors that the company should be wound up

(h) when the period, if any, fixed for the duration of the company by the M&A / constitution expires or the event, if any, happens on the occurrence of which the memorandum or articles provide that the company is to be dissolved

(i) the Court is of opinion that it is just and equitable that the company be wound up

(j) the company has held a licence under any written law relating to banking, and that licence has been revoked or has expired and has not been renewed

(k) the company is carrying on or has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking

(l) the company has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling

(m) the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest

(e) is the most common one

Creditor's winding up application procedure

1. Conduct a winding up search on the company
2. Prepare Winding Up Application (Originating Summons)
3. Prepare Affidavit verifying Winding Up Application – filed within 4 days after Application is presented.
4. Deposit \$5,200 with the Official Receiver to cover the fees and expenses of liquidator/Official Receiver
5. Serve winding up application and supporting affidavit on Company, Official Receiver and Liquidator
6. Prepare Affidavit of Service of Application
7. Advertise Winding Up Application – in the Gazette, one English local daily newspaper and one Chinese local daily newspaper or such other newspaper as the Court may direct – at least 7 clear days before hearing
8. File Memorandum of Advertisement
9. File Consent to Act (if proposed liquidator is not Official Receiver)

Creditor's winding up application procedure (cont)

10. Prepare Memorandum that provisions of Winding Up Rules have been complied with for attendance before Registrar:
 - (a) publication in Gazette and advertisement of winding-up application
 - (b) affidavit supporting winding up application and affidavit of service have been filed
 - (c) consent of liquidator obtained and filed
 - (d) provisions of CWU Rules complied with
 - (e) prescribed sum deposited with Official receiver.
11. File List of persons intending to appear
12. Hearing of Compulsory Winding Up Application in open court

Section 257 Companies Act
On the hearing of the winding up application, the Court may-

- (a) direct that any notices be given or any steps be taken;
- (b) dispense with any notices or steps required;
- (c) direct that oral evidence be taken;
- (d) direct a speedy hearing or trial of the winding up application or any issue or matter;
- (e) allow the winding up application to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court thinks fit.

Time of Commencement of Winding up

Section 255 Companies Act
Where a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.
In any other case the winding up shall be deemed to have commenced at the time of the making of the application for the winding up.

After Winding up (Procedure)

1. Extract Winding Up Order
2. Notify liquidator immediately in Form 10 CWU Rules (Rule 34(1) CWU Rules)
3. Deliver Order to liquidator, with statement that requirements of Section 262(2) CA have been complied with.
4. Serve Order on the company (Section 262(2) CA & Rule 34(2) CWU Rules)
5. Lodge Order with ACRA within 7 days of order (Section 262(1) CA)
6. Lodge Order with Official Receiver (Section 262(2) CA)
7. Advertise Winding Up Order – in Gazette, one English newspaper within 14 days of order (Rule 34(1) CWU Rules) in Form 11 CWU Rules



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Administration of Winding Up

Within 14 days after date of winding up order, a statement of affairs of the company must be made out by the company in the prescribed manner and submitted to the Official Receiver/liquidator – Section 270(1) CA

OR/Liquidator will cause a copy of the statement to be lodged with ACRA within 7 days after its receipt

Effect of Winding Up

Stay of legal proceedings commenced before winding up order

After winding up commences, no legal action may be commenced without the leave of Court

Liquidators empowered to carry on business of the company so far as necessary for the beneficial winding up of the company



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