

A summary of the procedure to be followed in order to wind up a solvent Bermuda company (**Members' Voluntary Liquidation**) is set forth in section 2 below.

A Members' Voluntary Liquidation assumes that all of the investments of the company have been realised prior to the company entering into liquidation. If there is any possibility that the company may hold any unrealised assets at the time of entering into liquidation then full details of the same should be provided, together with proposals as to how to deal with these assets and consideration will then be given as to whether to refer this liquidation to an accounting firm.

## **1 INITIAL STEPS**

The following steps need to be completed before the liquidation can be commenced:

### **1.1 Instruction Letter**

A letter of instruction must be supplied to BeesMont Law from the shareholders or beneficial owners dealing with the matters set forth below. A sample letter is attached for assistance as Annexure A. These matters are:

- (i) An instruction that the company should be wound up and a request for the Directors to place the company into Members' Voluntary Liquidation;
- (ii) The location of all of the company's records and the address to which any records of the company should be sent for retention at the conclusion of the liquidation. Please note that our internal policy requires the minute book is retained for 10 years and all other records for 7 years after the company is dissolved. BeesMont Law will require confirmation in writing that the records will be so retained and an undertaking that the person receiving the records will be responsible for any payment or shipping charges incurred.
- (iii) Accounts (either audited or unaudited) as of a recent date (i.e. no more than 3 months old) which reflect that the company is solvent and on which both the required Declaration of Solvency (see section 2.2 below) and liquidation can be based. In addition there should be written confirmation that there have been no material changes in the financial position of the company since the date of the financial statements to the date of writing. If the accounts are unaudited, the Liquidator will require an indemnity to be executed. A full breakdown of all assets and liabilities/accrued expenses reflected on the balance sheet should also be included.

- (iv) Proxies from the registered shareholders, one for a Special General Meeting and one for a Final General Meeting (both undated) which include a provision allowing for the consent to, and waiver of, notice; these proxies will be dated and used as appropriate, unless instructions are received from the shareholders to the contrary.
- (v) Confirmation that to the best of the shareholders' knowledge and belief there is no litigation pending against the company and there are no outstanding third party claims at the present time or any charges registered against any of the company's assets. If there are any service agreements in respect of the company then they should be terminated as soon as practicable in accordance with their respective terms and confirmation of this termination sent to BeesMont Law, together with supporting documentation evidencing proper termination.
- (vi) Confirmation of whether or not the company was previously listed on any stock exchange. If so, then BeesMont Law will need to receive written confirmation with supporting documentation to show that the company has been delisted.
- (vii) A deed of indemnity from the beneficial owners (in the form of Annexure B). If the proposed indemnitor is a company then please also send a copy of the beneficial owner's most recent financial statements. If the indemnitor is an individual then BeesMont Law will consider the adequacy of the indemnity on a case by case basis.
- (viii) Instructions for disposing of any remaining assets of the company including, if applicable, details of the shareholders bank accounts to which funds should be transferred. Please also supply details of any non-cash assets (including intellectual property).
- (ix) Names, addresses of all bank accounts, account numbers, contact names & telephone and email details.
- (x) Return of the company's share certificates, for cancellation at the conclusion of the liquidation.

## 1.2 Corporate Documents

The documents set forth below must also be supplied to us:

- (i) Minute Book of the company
- (ii) Register of Shareholders
- (iii) Register of Directors & Officers
- (iv) Seal
- (v) Evidence of the payment of the current Annual Government Fee

## 1.3 Fees

These will be charged on a time spent basis at the normal hourly rates of the professional involved. The liquidator will be remunerated for all work reasonably and properly carried out in the winding up of the company, together with reasonable out-of-pocket expenses and proper disbursements incurred in connection with the liquidation.

The minimum liquidation fee is \$7000 plus a minimum of \$600 for disbursements; the actual cost may vary depending upon the complexity and length of the liquidation. The time it takes to wind up each company varies, but it is usually between 8 to 12 weeks. A retainer of \$7600 must be paid prior to commencement of a Members' Voluntary Liquidation.

## 2 PROCEDURE TO FOLLOW IN THE CASE OF A MEMBERS' VOLUNTARY LIQUIDATION

The procedure for the winding up of a Bermuda company by way of a Members' Voluntary Liquidation is as follows:

### 2.1 Directors' Meeting

Upon completion of the "*Initial Steps*", a meeting of the board of directors of the company should be held to:

- (i) consider a recommendation that the company be placed in liquidation;
- (ii) resign the overseas Directors and Officers, if appropriate;
- (iii) convene a Special General Meeting (**SGM**) to pass a resolution to wind up the company and to appoint a liquidator. Alternatively, this can be held by way of written resolutions and references to SGM include the same; and
- (iv) approve the Declaration of Solvency (see section 2.2 below).

### 2.2 Filing of a Declaration of Solvency (Declaration)

The Declaration is an affidavit sworn by the Directors which states that they have made a full enquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts within a period of 12 months) must include a statement of total assets and liabilities as at the most recent practicable date (see section 1.1(iii) above). The Declaration will include a statement of the company's assets and liabilities as at the most recent practicable date (i.e. substantially reflecting the company's present financial position). The Declaration can be made in counterparts.

The Declaration must be filed with the Registrar of Companies (**RoC**) prior to the date of the SGM and the SGM must be held within 5 weeks of making the Declaration and not less than 24 hours after the filing of the Declaration. **N.B.** If the Declaration is not filed in time then the procedure for winding up the company will be more onerous as it will become a Creditors' Voluntary Liquidation. The creditors of the company will have greater control over the process and it will also be more expensive and take considerably longer in order to comply with the provisions of the Companies Act 1981, as amended. In addition, any member of BeesMont Law who has been appointed liquidator, will resign and a suitable independent replacement will need to be found.

BeesMont Law will arrange for the Declaration to be filed with the RoC once it receives a duly sworn Declaration from the Directors.

## 2.3 Special General Meeting (SGM)

Following the board meeting, notice of the SGM convening the same or written resolutions will be sent to the shareholders of the company. The purpose of the SGM will be for the shareholders to pass the following resolutions (**Liquidation Resolutions**):

- (i) approving the Directors recommendation to place the company into a Members' Voluntary Liquidation; and
- (ii) appointing a liquidator and approving the liquidator's fee.

## 2.4 Filing of Notices

The following Notices must be sent:

### 1. To the Appointed Newspapers:

Within 21 days of the SGM having been held (and the Liquidation Resolutions having been passed) the following notices will be sent by BeesMont Law to the Bermuda Press for publication:

- (i) Notice of the passing of the resolution to place the company into Members Voluntary Liquidation.
- (ii) Notice from the liquidator pertaining to his appointment.
- (iii) Notice to Creditors to submit claims – see section 2.5 below.
- (iv) Notice of Final General Meeting (**FGM**) (which must be given one month before the meeting is held).

### 2. To the RoC:

Copies of the notices in 2.4A(i) to (iii) (inclusive) above are also sent to the RoC, once they have been published.

In addition, following the SGM, letters should be sent to the company's accountants/auditors and any applicable banks advising them the company has entered into a Members' Voluntary Liquidation.

## 2.5 Settlement of Debts

The liquidator will publish, in an appointed newspaper, notice to creditors that they should submit any proof of debts. This will usually be published at the same time as notice of the winding up resolution is published (see 2.4A above). If the liquidator is aware of other creditors who are outside Bermuda, or that there may be creditors outside Bermuda but details and addresses are unavailable, then consideration should be given to advertising more widely, and in particular in the principal place where the company conducted its business. After expiry of the period by which creditors must submit their claims (which typically must be not less than 14 days from the date of the notice to creditors) the liquidator will arrange for the settlement of all of the company's outstanding liabilities, if any.

## 2.6 Remaining Assets

After settlement of the company's debts, if any, the liquidator will distribute all remaining assets, including capital to the shareholders in such proportion as is provided for under the company's Bye-laws. The distribution can include an assignment of any rights to receipt of assets which may be due to the company.

## 2.7 Final General Meeting (FGM)

The FGM, which requires one month's notice in an appointed newspaper (see section 2.4 above), concludes the winding-up process. At the FGM, the liquidator's account of the winding up is received and resolutions are passed determining the manner in which the books and records of the company are to be disposed of and that the company shall be dissolved. The company is dissolved as at that date.

## 2.8 Notice of Dissolution

Within one week after the FGM is held the liquidator must notify the RoC that the company has been dissolved. The RoC will record that fact and the date of the dissolution (i.e. the date of the FGM) in the appropriate register. Subsequently a certificate of dissolution will be issued by the RoC (usually between 3 to 6 weeks after the FGM).

If a quorum is not present at the FGM, the company may be dissolved on the date for which the FGM was summoned upon the liquidator's notification to the RoC of the lack of quorum.

## 3 SPECIAL CONSIDERATIONS FOR LIMITED DURATION COMPANIES

A limited duration company (**LDC**) is a company which provides in its Memorandum of Association for the automatic liquidation of the company upon the expiration of a specified period

or the occurrence of a specified event (either being a "**Dissolution Event**"). As such, the SGM will only be concerned with the appointment of a liquidator. Furthermore, upon the happening of a Dissolution Event, a LDC will be deemed to have commenced its winding-up.

Therefore, given that (as outlined in section 2.2 above) unless a Declaration is filed prior to the Commencement of the winding-up, the company will enter into a Creditors' Voluntary Liquidation, it is important that the Declaration be sworn before the occurrence of a Dissolution Event.

## 4 PRIVATE ACT

The above is based on the winding up provisions of the Companies Act 1981, as amended. These provisions may be varied or excluded by a company's Private Act. If the company proposed to be wound up is subject to Private Act legislation, please inform BeesMont Law so that we can advise accordingly.



For more specific advice on liquidations in Bermuda, we invite you to contact:

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At BeesMont Law we strive to provide the highest standard of legal service for our clients through our responsive, thorough and innovative approach. We have a friendly and dynamic team who are approachable and sensitive to the commercial and practical needs of our clients, for whom we seek to provide tailored solutions.

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