

## LIQUIDATION OF COMPANIES : STEP BY STEP GUIDE

Liquidation is the process of winding up a business following an event of insolvency. Insolvency is defined as the inability of a company to pay its debts of one hundred thousand shillings (Kshs. 100,000) or more. Once a company is in liquidation, a liquidator is appointed to realize the company's assets and make a distribution to creditors. On appointment of a liquidator, all the powers of directors cease and the affairs of the company as well as its assets are vested in the liquidator. The Court has the power to appoint or remove a liquidator.

Liquidation proceedings may be commenced either voluntarily or through Court. Within 7 days of commencement of these proceedings, a notice of appointment of a liquidator is lodged with both the Official Receiver and the Registrar of Companies. The liquidation process commences when a Liquidation Order is made or a resolution for liquidation is passed. Liquidation proceedings operate in favour of all the creditors.

### There are three types of liquidation under the Insolvency Act, 2015 i.e.:

- i. Members' Voluntary Liquidation (MVL) – initiated by shareholders of the company when they pass a special resolution to liquidate the company and appoint a liquidator
- ii. Creditors' Voluntary Liquidation (CVL) – initiated by a resolution of the creditors of a company to appoint a liquidator, passed at a meeting convened by the company
- iii. Liquidation by Court – initiated by lodging a Liquidation Petition at the High Court for issuance of a Liquidation Order against a company.

#### Appointment of the liquidator

Once a liquidator is appointed, the company ceases to carry on its business, except in so far as may be necessary for its beneficial liquidation; but it retains its corporate status and powers.

1

Proceedings against the company may be instituted or continued only with approval from the court, liquidation committee (if any) or liquidator.

The company cannot dispose property except through the Liquidator.

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#### Lodging/publication of the notice of appointment of liquidator

A notice of the resolution/order is published in the Kenya Gazette and a newspaper of nation-wide circulation in Kenya.

#### Filing of Statement of Affairs by members of the company

Members of the company are required to: Prepare Statement of Affairs relation to the company and provide all necessary information to aid the liquidation process

3

.Assist the liquidator in tracing and collecting the assets of the company

4

#### Filing of claims by creditors

(Section 77 Insolvency Act, Part II, Rule 5(3)(b) Insolvency (General) Regulations 2015 )

#### Convening of first and subsequent meetings of creditors

For purposes of decision-making, proposals at creditors meetings are approved or reject by voting by creditors who have filed proof of debt forms.

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The decision of the majority in value carries the day. Each class of creditors vote as a group i.e. as preferential, secured and unsecured creditors.

6

#### Declaration of dividends and distribution to creditors

The distribution is done in accordance to the 2nd Schedule of the Insolvency Act

#### Dissolution of the company

Upon completing the liquidation of the company's affairs, the liquidator shall prepare an account of the liquidation showing how it has been conducted and how the company's property has been disposed.

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Thereafter, an application is to be made to the Registrar of Companies for dissolution of the company and strike off of its name from the Companies Register.

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#### Strike off of the company from the Companies Register

The liquidator shall also lodge the account of liquidation to the Official Receiver and the Registrar of Companies.