

D P VIPRA COLLEGE BILASPUR CG

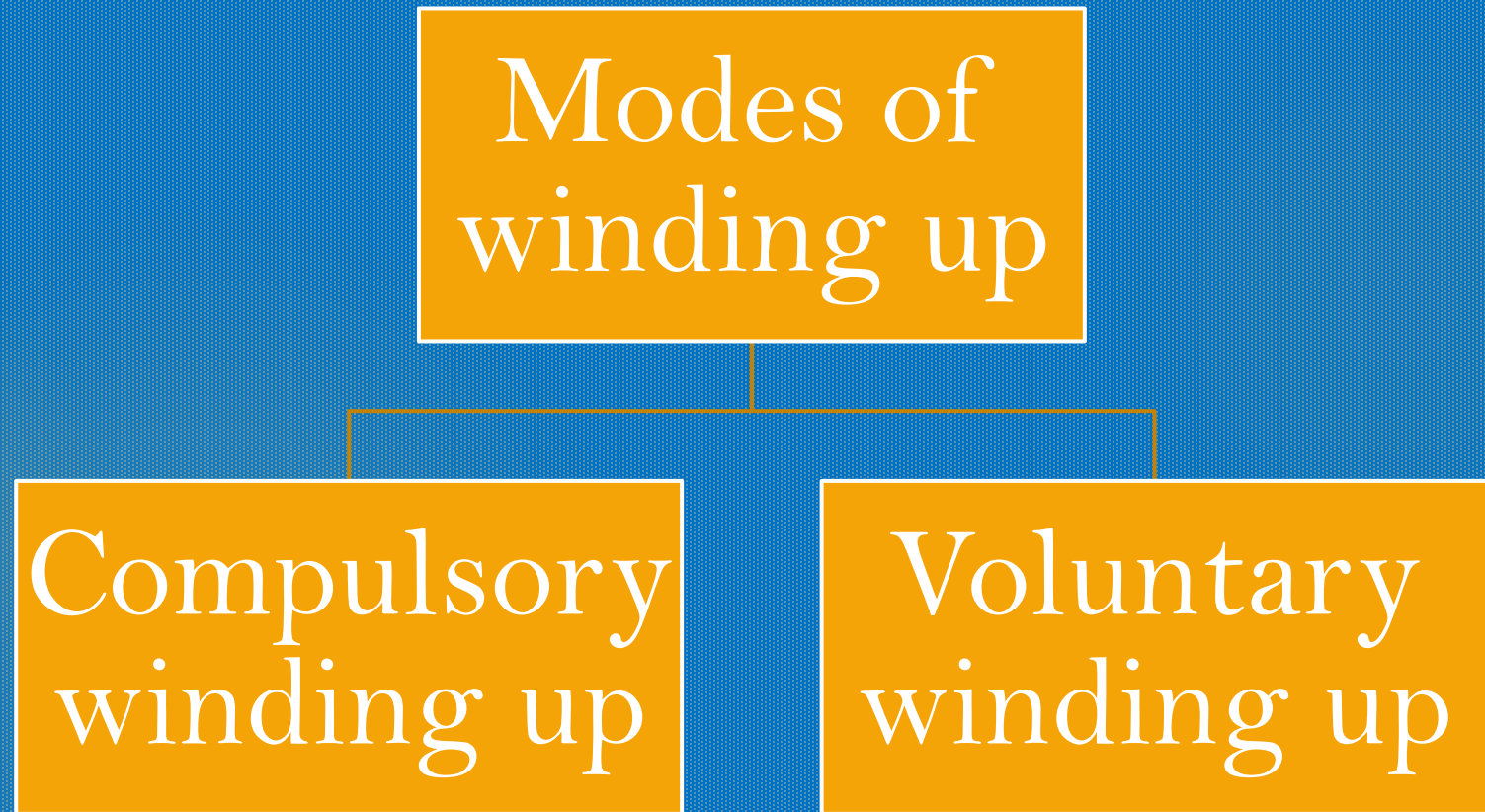


DEPARTMENT OF COMMERCE

WINDING UP OF A COMPANY

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Modes of winding up



Compulsory winding up

▶ A compulsory winding up can be ordered only by the Tribunal.

▶ **Grounds for compulsory winding up**

1. Inability to pay debts:

- a) Failure to pay on demand: Only when the debt amount is exceeding Rs. 1,00,000 and 21 days has been passed from the demand notice.
- b) Unsatisfied decreed debt: fully or partly failure to return money in case a decree/ order of Court or Tribunal has been passed.
- c) Proving inability to pay debts or commercial insolvency: In case company is unable to prove its ability to pay out debt out of its assets within a reasonable time; the company may be considered as commercial insolvent.

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2. On receiving of the petition of winding up
3. In case, company acted against the interests of the sovereignty and integrity of India
4. In case of a sick company
5. If the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding 5 consecutive financial years.
6. If it is in the opinion that it is just and equitable that company should be wound up: Just and equitable is a matter of fact and decided upon the circumstances of each case. The Tribunal takes decision of winding up under this cause only after considering all stakeholder's interest.

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Reasons for winding up on account of 'Just and Equitable':

- a. Deadlock in management:** Deadlock in management is a situation where directors and shareholders cannot agree at board or at shareholder level. As in the case of **Yenidje Tobacco Co Ltd.**, there were two shareholders cum directors in a private co. with equal voting rights and they have lost their trust and confidence on each other. Thus, there was a complete situation of deadlock hence, company was ordered to be wound up.
- b. Loss of substratum:** Substratum of a company is its foundation or objective for which it was formed. In two situation we can say that a company shall be deemed to lost its substratum:
 - i. Where the subject matter or basis of survival of company is lost.
 - ii. On failure of main objective

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- c. **Losses:** Due to heavy losses, the company is not capable to carry on with its operations.
- d. **Oppression of minority:** If directors found to misuse their power to oppress minor shareholders.
- e. **Fraudulent purposes:** If the company is found with illegal objectives.
- f. **Public interest:** If company's operations are as against public interest, the Tribunal may order for winding up.
- g. **Failure to pay dividend:** Non-payment of dividend may also be a ground of wind-up.
- h. **Bubble company:** A fly-by-night company or a company which have no business may also under consideration.

Persons entitled to file petition with Tribunal

- 1.The company itself:** By passing special resolution by its members.
- 2.Creditor/s:** Creditors means here present and prospective creditors (with prior permission); includes secured creditors, debenture holders, and trustees for the debenture holders
- 3. Contributory/ies:** allowed to file petition only when; he is a original owner of the shares, he has been registered holder of the shares for at least 6 months out of the 18 months immediately before the commencement of the winding up, the shares have devolved to him through the death of the former holder. Following conditions need to be fulfilled: he is holder of fully paid-up shares; no asset with co.; no asset left after settling down its liabilities.
- 4. Joint petition:** A joint petition can be filed by the company, creditor/s, or/and contributory/ies.

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5. **The Registrar:** In following cases ROC with prior sanction of CG may file petition against the company:
 - a. In case, company acted against the interests of the sovereignty and integrity of India
 - b. If the company is found with illegal objectives.
 - c. . If the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding 5 consecutive financial years.
 - d. Inability to pay debts
6. **Person authorized by CG:** CG may appoint any person to file petition for wind up on its behalf.
7. **CG/SG:** In case, company acted against the interests of the sovereignty and integrity of country, the security of the state, friendly relation with foreign states, public orders etc.; CG/SG may file petition to the Tribunal.

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5. **Filing objection and Statement of affairs:** Company may file an objection along with its statement of affairs.
6. **Appointment of company liquidator:** On making order of winding up, the Tribunal shall appoint a company liquidator/ official liquidator/ a liquidator from CG panel/ re-appoint provisional liquidator for the conduct of the proceedings .
7. **Intimation of Company Liquidator and Registrar:** After appointment of company liquidator a formal intimation has to sent to ROC and company liquidator himself with in 7 days from the date of appointment.
8. **Endorsement in Records of company and Notification in Gazette and to Stock Exchange:** ROC shall have to notify in its official Gazette and also intimate to stock exchange/s (in case of listed co.).

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9. **Winding up committee and its report:** Within three weeks from the order, official liquidator may apply to the Tribunal for constitution of winding up committee to assist and monitor the progress of liquidation process.
10. **Appointment of Advisory Committee:** The Tribunal may appoint an advisory committee in support and advise for liquidation process.

Consequences of Winding up Order by Tribunal

1. **Intimation to company liquidator and registrar:** (within 7 days from passing of order)
2. **ROC to perform certain duties:** (notifications)
3. **Stay of suits/claims etc. on winding up order:** All the pending cases will transfer to the Tribunal for adjudication

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4. **Directors to submit books of accounts to the liquidator:** (with in 30 days from such order)
5. **Custody of company's properties to company liquidator:** (company liquidator take all necessary actions in protection and preservation of the properties)
6. **Deemed notice of discharge of officers, employees etc.:** (co. is not deemed to be carry on if it is carried up by liquidators)
7. **Board powers come to an end**
8. **Monthly report by liquidator:** monthly report shall have to file till the time of final draft along with the minutes of the meetings of the winding up committees.
9. **Order to operate in favor of all creditors and contributories**
10. **Effect on creditors when co. is solvent** (all claims are subject to contingency or may sound only in damages)

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11. **Effect on creditors when co. is insolvent** : Follow the provisions and rules of insolvency Act.
12. **Disposal of property, transfer of shares and alteration of status of members shall be void:** (unless otherwise Tribunal orders)
13. **Certain attachments, executions etc. to be void**
14. **Inspection of books and papers by creditors and contributories:** The tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with the prescribed rules.



THANK YOU