

Newsletter:

Dissolution of a Company in Myanmar under Insolvency Law

In Brief

Prior to 2020, the dissolution of companies in Myanmar was governed by the Myanmar Companies Law (2017). However, a significant shift occurred with the enactment of the Insolvency Law in 2020, which introduced a modernized legal framework for corporate winding-up procedures.

Under Section 418 of the Insolvency Law, the process of winding up applies not only to companies but also to partnerships and both incorporated and unincorporated Micro, Small, and Medium Enterprises (MSMEs). This comprehensive legal reform effectively transferred the authority over dissolution matters from the Companies Law to the Insolvency Law—with the notable exception of financial institutions, which remain governed by separate legislation.

Key Takeaways

A. Winding up a company

Under the Insolvency Law of Myanmar (2020)¹, a registered company may be dissolved under the following circumstances:

1. **Voluntary Winding Up by Ordinary Resolution** – If an event specified in the company's constitution occurs, or if the fixed duration of the company (as outlined in its constitution) has expired, the company may pass an ordinary resolution at a general meeting to voluntarily wind up.
2. **Voluntary Winding Up by Special Resolution** – A company may also choose to voluntarily wind up at any time by passing a special resolution at a duly convened meeting of its members.
3. **Entry into Rehabilitation** – A company may be subject to dissolution upon entering a rehabilitation process under the Insolvency Law, depending on the outcome of the rehabilitation proceedings.

B. Types of winding up a company

There are primarily two methods to wind up a company:

1. **Voluntarily Winding Up** – There are two classifications of winding up under voluntarily winding up of a company; voluntary winding up members of a company and voluntary winding up by creditor.
 - 1) **Voluntary Winding Up by Members of the Company** – In a members' voluntary winding up under the Insolvency Law (2020), the directors of the company play a pivotal role. A majority of the directors must make a statutory declaration of solvency, affirming that, after a full investigation into the company's affairs, they believe the company will be able to pay its debts, including interest, in full within one year from the commencement of the winding-up process.² To be valid, this declaration must:
 - ◆ Be made within three weeks prior to the date of the resolution for voluntary winding up.
 - ◆ Be based on a thorough examination of the company's financial condition.
 - ◆ Be accompanied by a statement of assets and liabilities, which must be prepared and issued before the date the declaration is made.
 - ◆ Be submitted to the Registration Officer along with a notice of the appointment of the liquidator.

Author



Tanadee Pantumkomon
Partner
Tanadee.P@ilawasia.com



Moe Myint Yan Aung
Associate
ilawmyanmar@ilawasia.com

Contact

ILAW MYANMAR CO., LTD.
Myanmar Centre Business Suites,
F10, F11, F12, Myanmar Centre Tower 2,
192 Kaba Aye Pagoda Road,
Bahan Township, Yangon Myanmar.
Tel: +95 9 694485971
Email: ilawmyanmar@ilawasia.com

About us

ILAW MYANMAR CO., LTD. ("The Firm") was incorporated under the Myanmar Companies Act 1914 on 19 June 2018 as a Private Company Limited by Shares and company registration number is 100752719. The firm located in Yangon and was founded by Somphob Rodboon. The firm is a branch office of its parent company, ILAWASIA CO., LTD., which has been based in Bangkok, Thailand for over a decade.

The firm is in well placed to provide professional advisory services primarily in domestic and international disputes which include civil cases, criminal cases, international trade, money laundering case, debt collection service, and any legal issues appropriate for any business transactions.

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In the case of a public company or a wholly-owned subsidiary of a public company, the declaration must also be supported by an auditor's report, which substantiates the financial position stated in the declaration.

2) Voluntary Winding Up by Creditors

If the directors do not make the statutory declaration of solvency, the company is deemed to be undertaking a creditors' voluntary winding up.³

In this scenario, the company must:

- ◆ Issue a notice of a creditors' meeting at least five business days prior to the meeting.
- ◆ Ensure that the creditors' meeting is held on the same date as the company's general meeting to pass the winding-up resolution.
- ◆ Include in the notice a statement that a list of the company's creditors, with their names and addresses, is available for inspection at the liquidator's office.⁴

During the creditors' meeting:

- ◆ One of the company's directors must act as the Chairperson.
- ◆ The directors are required to present a statement of the company's affairs, prepared in accordance with the prescribed format under the Insolvency Rules, which provides a clear picture of the company's financial situation.⁵

2. Winding Up by Court Order⁶

Under the Insolvency Law (2020), a company may be wound up by an order of the court under several circumstances. This process, commonly known as compulsory winding up, may be initiated when the court determines that one or more of the following grounds are met:

- a. Voluntary Application by the Company – A company may petition the court for dissolution by passing a special resolution to that effect.
- b. Failure to Commence or Sustain Business – The company has failed to commence business within one year of its incorporation or has suspended business operations for a continuous period of one year.
- c. Insolvency – The company is unable to pay its debts, and thus deemed insolvent under the law.
- d. Just and Equitable Grounds – The court is satisfied that, for any reason, it is just and equitable to wind up the company.
- e. Public Interest Grounds – The court is convinced that there are valid grounds in the public interest for dissolution, such as:
 - ◆ The company has no directors;
 - ◆ The company is operating with the intent to defraud creditors or other parties; or
 - ◆ The company is engaged in unlawful or improper business conduct.

1) Who May Petition the Court?

An application for compulsory winding up may be submitted by:

- ◆ A director or board of directors;
- ◆ A creditor;
- ◆ A contributory (a person liable to contribute to the company's assets upon winding up);
- ◆ The registrar.

2) Presumption of Insolvency

The court may presume a company to be insolvent if it fails to pay a debt exceeding 10 million Kyats within 21 days after the due date, despite having received a formal written demand in the prescribed form as set out in the -

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Insolvency Rules. If the company fails to pay, secure, or otherwise reach a satisfactory arrangement with the creditor, this is treated as strong evidence of insolvency.

C. Roles and Responsibilities of a Liquidator or Insolvency Practitioner under the Insolvency Law (2020)

In all types of company winding-up procedures in Myanmar—whether voluntary or compulsory—the liquidator plays a pivotal role in managing the dissolution process. The number and manner of appointment of liquidators may vary depending on the method of winding up.

1. Appointment of a Liquidator

- 1) Voluntary Winding Up: In both members' and creditors' voluntary winding up, one or more liquidators may be appointed. Upon appointment, a formal notice of appointment must be submitted to the registrar in accordance with the Insolvency Rules.
- 2) Compulsory Winding Up: The court may appoint a provisional liquidator before issuing a final winding-up order. The court will determine the scope of duties, powers, and remuneration of the provisional liquidator.

Once a winding-up order is passed, the court shall appoint:

- ◆ An Insolvency Practitioner nominated by the petitioner; or
- ◆ An Official Receiver if no nominee is provided

According to the Insolvency Law and related Notifications, an insolvency practitioner must:

- ◆ Hold a valid Insolvency Practitioner Certificate issued by the Myanmar Insolvency Practitioners' Regulatory Council.
- ◆ Be registered with the Directorate of Investment and Company Administration (DICA).
- ◆ Be either an Advocate (lawyer) or a Public Practice Accountant with a minimum of 10 years' professional experience.

2. Authority and Duties of the Liquidator

Upon commencement of the liquidation process:

- 1) All powers of the directors' cease, except those expressly permitted by the liquidator.
- 2) All company assets and property to which the company is entitled shall come under the custody or control of the liquidator.
- 3) The liquidator has the authority to:
 - ◆ Sell or otherwise dispose of all or part of the company's assets.
 - ◆ Void share transfers unless approved by or transferred to the liquidator.
 - ◆ Execute documents, including deeds and receipts, on behalf of the company.
 - ◆ Use the company seal, if required.
 - ◆ Continue to operate the business temporarily, if deemed necessary for effective administration or maximizing asset realization.

3. Reporting Obligations

If the liquidation is not completed within one year, the liquidator is required to submit an annual progress report detailing the status and developments of the liquidation process.

Upon completion of the winding up:

- ◆ The liquidator must convene a final meeting of creditors or members.
- ◆ At the meeting, the liquidator must present a comprehensive report explaining how the liquidation was conducted and how the company's assets were dealt with.

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- ◆ Within seven days of the meeting, the liquidator must file a copy of the final accounts and meeting minutes with the registrar.

Upon completion of the winding up:

- ◆ If three months pass without objection and the registrar completes the registration process, the company is officially considered dissolved.

Conclusion

Winding up under Myanmar Insolvency Law and Rules 2020 provides a clear legal framework for dissolving companies through voluntary or court processes. The law ensures fair treatment of creditors and assign key responsibilities to liquidators for managing assets and liabilities. Its structured approach supports transparency, accountability and alignment with international insolvency standards.

References

- ¹ Section 147 of The Insolvency Law (2020)
- ² Section 151(a) of The Insolvency Law (2020)
- ³ Section 148 of The Insolvency Law (2020)
- ⁴ Section 156 of The Insolvency Law (2020)
- ⁵ Section 157 of The Insolvency Law (2020)
- ⁶ Section 145(b) of The Insolvency Law (2020)