

Introduction

The Companies and Allied Matters Act (“**CAMA**”) 2020 provides various options for deregistration/ liquidating companies. Some of the options include Voluntary Striking Off (“**VSO**”), Member’s Voluntary Liquidation (“**MVL**”) and Creditor’s Voluntary Liquidation. Key considerations for the choice of liquidation include cost and ease of completion. This publication highlights some practical issues for consideration before proposing or embarking on MVL.

1. What is a MVL?

MVL is a type of liquidation where the shareholders of a solvent company decide to wind up the affairs of the company.

2. How is the MVL different from a Voluntary Striking Off?

A VSO is a procedure where a company’s name is struck off the Companies Register on the ground that the company did not commence business and has no undischarged obligations.

Once a company has conducted business in Nigeria, it can only exit or wind up its affairs through the winding up/liquidation process.

3. What are the conditions for triggering an MVL?

- a. **Statutory Declaration of Solvency:-** The directors must make a declaration confirming that the company will be able to settle its debts in full within 12 months of the shareholders’ resolution to wind up the company.
- b. **Special resolution:-** The shareholders must pass a special resolution to wind up the company.



4. What important steps should the shareholders/directors take before an MVL?

Some of the key steps/action prior to putting a company in liquidation include:

- a. **Compliance:-** The company must be up to date with its annual returns and other compliance obligations required at the Corporate Affairs Commission (“**CAC**”) and other relevant regulators, including the Federal Inland Revenue Service.
- b. **Liability to creditors:-** Prior to passing the resolution to wind up, the company must review its liabilities to creditors; creditors include tax authorities. Where there are ongoing audits, the company should take steps to expedite closing the audits. Alternatively, a tax health check should be conducted to determine any potential liability and execute a remediation strategy.
- c. **Pending litigation/dispute resolution:-** Claims by and against the company should be reviewed. If possible, cases should be concluded by out of court settlement/consent judgement. Otherwise, the directors must consider whether the contingent liabilities will impact the company’s solvent status.
- d. **Disposal of Assets:-** A liquidating company would need to dispose of all of its assets. Where these assets are sold at a value higher than the initial cost of the asset, it would give rise to the possibility of Capital Gains Tax. The gain is taxed at 10% of the excess of the sales proceeds after deducting the cost of acquiring the assets and associated selling costs permitted by law. Other applicable tax implications include the application of withholding tax on distributions to shareholders during liquidation.

5. When does an MVL commence?

An MVL commences when the shareholders' pass the resolution to wind up the company; the date of commencement of liquidation is the date the special resolution was passed.

6. Can a company in liquidation continue trading?

Yes, a company in liquidation can continue trading but under the supervision of the liquidator. Where a company in liquidation continues to trade, the liquidator must maintain a separate account for any trading conducted during the liquidation period.

7. Can the directors and liquidator act concurrently?

Unless the shareholder(s) or liquidator authorises the directors to exercise powers in that capacity, the powers of the directors cease on the appointment of the liquidator.

8. What are the powers/responsibilities of the liquidator?

The liquidator can bring or defend actions in the name and on behalf of the company, carry on the business of the company, make calls on the company's debtors, pay debts. The liquidator needs the approval of the shareholders to undertake any of the following:

- a. pay a class of creditors in full; and
- b. make compromises or arrangements with creditors.

9. When is a company under an MVL dissolved?

A company is deemed dissolved three months from the date CAC communicates its approval of the liquidator's Final Accounts.

10. Can a creditor make claims after dissolution?

All claims against the company become extinguished upon the company's dissolution.



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