

Closing of a Private Limited Company

1. Parties involved:

- Company
- Directors
- Professionals like CA, CS, Advocate
- Company Liquidator
- Tribunal
- Registrar of Companies (RoC)

2. Procedure for Closing of a Company:

1. Selling of Company

Selling off a private company is similar to voluntary winding up. It involves transfer of majority shareholding and transfer of responsibility to the new owners. It discharges the Directors of their stocks and responsibilities

2. Compulsory Winding Up

On account of unlawful act, fraudulent action or contributing in such activities is grounds for compulsory winding up by the Tribunal.

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Steps involved are:

- Filing a petition by Company, Trade creditors of the company, Any contributory or contributors to the company or all three or Central or State govt or by the Registrar of Companies in Form WIN1 or WIN2 and to be submitted in triplicate.
- Application to be accompanied by an affidavit verifying the petition in Form WIN3.
- Statement of Affairs of the Company:
All documents to be audited by a practicing CA with an unqualified opinion. Statement of Affairs to be submitted in Form WIN 4 in duplicate.
- Statement of Affairs to be verified by an affidavit in Form WIN 5.
- Advertisement of Petition in a daily in both Regional language and English for at least 14 days. The advertisement to be carried out under Form WIN 6
- Tribunal hears the petition and may appoint a Provisional Liquidator. The order of appointing Provisional liquidator will be in Form WIN 8.
- The order of winding up shall be in Form WIN 11 containing:
Duty to submit audited books of account up to date of order.
Provide date, time and place for Company Liquidator.
- Company Liquidator takes into custody all assets and documents of assets and the books and papers of the company.
- Liquidator shall submit a report to the Tribunal within 60 days of the winding up order.
- After the affairs of the company are wound up, Liquidator applies to the Tribunal for Dissolution of company.
- If the tribunal finds the application reasonable, then it passes the order for dissolution within 60 days of receiving the application and the company shall be dissolved accordingly.
- Company Liquidator shall within 30 days of the date of the order, forward a copy of the order to the registrar.
- The Registrar will issue a notice to the Official Gazette stating that the company is dissolved.

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3. Voluntary Winding Up:

Voluntary winding up happens under two circumstances:

- Company passes a resolution in General Meeting after expiry of duration for which it is formed or on when an event mentioned in Articles of Association happens.
- Company passes Special Resolution (approval of 3/4th shareholders) for voluntary winding up of the company.

Steps involved:

- The company passes a resolution in the General Meeting and majority of Directors agree for winding up.
- Consent of Trade Creditors approving that they don't have any obligation if the company gets wound up.
- The company makes a Declaration of Solvency that shows the company's credibility. It must be accepted by the Trade Creditors of the company.
- Appointment of Liquidator to carry out the winding up proceeding and prepare a report of the Winding up on the assets, properties, debts etc. to be laid out before the General Meeting of the company. In the General Meeting, the report is approved and resolution for dissolution of the company is passed.

A copy of the Final accounts of the company and Resolutions is sent to RoC by the Company liquidator.

- The Company Liquidator also applies to the Tribunal for an order of dissolution of the company. Within 60 days of the application, the Tribunal shall pass an order of dissolution if satisfied with the winding up. The copy of the Final order to be filed with the RoC.

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4. Defunct Company Winding up

Defunct Company is a company that has gained the status of a Dormant Company. There is a fast-track procedure in the case of such companies.

To qualify for this the company

- Must have no asset and no liability,
- has not commenced any Business activity after its incorporation
- Has not been carrying out any business activity since the last one year prior to making an application under FTE (Fast Track Exit Scheme).

Companies that are not eligible for Strike off:

As per the Companies Law, a company will be ineligible for strike off under the following circumstances:

- Company incorporated after 2nd November, 2018, but it has not filed 20A.
- One year has not been completed since incorporation.
- For an ongoing company i.e., having business transactions in the last 1-2 years.
- DIN are deactivated.
- Any director is disqualified.
- Company has already received notice from the ROC of strike off.
- Any ongoing litigation is pending.

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Documents required:

- Consent of the Creditors of the company
- Indemnity Bond duly notarized by all directors (in Form STK 3)
- A certified statement of liabilities by a Chartered Accountant comprising of all assets and liabilities of the companies
- An affidavit by all directors of the company in Form STK 4
- CTC of Special Resolution duly signed by every director of the company
- Digital Signature of the Directors
- PAN and Aadhaar card of directors
- Consent Letter and Affidavit of its Director
- A statement concerning any pending litigation with respect to the company
- No Objection Certificate (NOC) from Regulatory Authority

Procedure:

- Online application is filed in form STK 2 for Strike off to RoC.
- RoC issues public notice in Form STK5/Form STK 6 and publishes it in Official Gazette, English and Regional language newspaper and on MCA's website.
- Same notice to be posted on the Company's website also.
- If no objection received after 30 days of intimidation, then RoC issues notice about Dissolution in the Official Gazette and places it on official website of MCA (Ministry of Corporate affairs) in Form STK 7

Approved By

Reetika Siddharth Upadhyay

(Founder UFAS)



Note: This working is as per our research and it cannot be considered as complete data. There can be modification in the contents of this working from time to time as and when required.

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