

Liquidation solutions in Cyprus and the BVI

This guide identifies the types of voluntary liquidation and outlines the procedure to take in both the British Virgin Islands and Cyprus. It also sets out the duties of a liquidator in the winding-up process.

Cyprus voluntary winding up- two types:

- Members voluntary winding up - a Declaration of Solvency (statement of assets and liabilities) is made prior to the resolution for winding up. This is a solvent liquidation
- Creditors voluntary winding up - there is no Declaration of Solvency and it is an insolvent liquidation

Cyprus members winding up process:

- Company must be in good standing
- Preparation of financial statements-submitted to the Registrar of Companies for stamping and signature
- Declaration of solvency-submitted to the Registrar of Companies
- Statement of assets and liabilities
- Special resolution – published in the Gazette
- Appropriate forms completed (HE43, HE41 or HE42)
- Liquidator appointment (publish in Gazette and deliver to the Registrar of Companies)
- Application to Tax Commissioner (and other authorities) for Tax Clearance Certificates
- Liquidator distributes all assets (if any) and Liquidator convenes final meeting (published in Gazette) statement submitted to Registrar of Companies

Cyprus members winding up timeframe:

- The voluntary members winding up of a company may take approximately 6 to 8 months. This varies from case-to-case depending on various aspects, e.g. collection of required documents for submission to Registrar, Tax Authorities etc.

The primary duties of a liquidator in Cyprus

- Take possession of, and protect assets
- Look into the affairs of the company and ascertain whether any misfeasance, fraudulent preference or breach of trust by officers
- Identify all contributories and creditors
- Have disputes adjudicated upon
- Realise assets and apply proceeds in payment of debts and liabilities (including taxes)
- Pay claims/proof of debts (not necessary in involuntary winding up)
- Distribute surplus assets amongst contributories and adjust their rights
- Great care must be taken to correctly assess the financial and legal status of the Company so as to decide what type of voluntary liquidation is appropriate for it under the given circumstances prior to proceeding - solvent or insolvent liquidation?

The BVI liquidation process for a voluntary solvent liquidation

- The company must be in good standing
- Directors and members resolve to liquidate the company and appoint a liquidator
- Company must prepare a plan of liquidation. This requires the company to identify one or more liquidators. The company and members must then formally approve the liquidation plan
- The directors must adopt a solvency declaration that the company can meet its debts as they fall due and that its assets exceed its liabilities and prepare a statement of assets and liabilities
- Once appointed, the voluntary liquidator must advertise the commencement of the liquidation. Broadly this provides for advertising locally (in the BVI) and in the company's principal place of business (if that is outside of the BVI) or (if the company has no principal place of business) where the liquidator believes such advertising is most likely to come to the attention of the company's creditors
- Liquidator distributes the surplus assets (if any)
- Upon completion of the liquidation, the liquidator will make filings and publish a notice confirming that the liquidation is complete. The Registrar will then strike the company off the Register of Companies and issue a Certificate of Dissolution. The date of dissolution is significant since after this date, the company no longer exists and the company can no longer incur liabilities or sue or be sued

The primary duties of a liquidator in the BVI

- Take possession of, protect and realise all of the company's assets
- Identify all creditors or claimants
- Pay and discharge all of the company's obligations and liabilities
- Distribute surplus assets to the members
- Prepare statements of account and, if required by the plan of liquidation, send it to all of the members

BVI solvent voluntary liquidation timeframe

- In most cases, a voluntary liquidation can be completed within 60 days of the date on which each voluntary liquidator is appointed

Requirements to act as BVI liquidator

- a) has liquidation experience of not less than 2 years;
- b) has professional competence to liquidate the specific company concerned;
- c) is able to demonstrate that he or she
 - (i) holds an insolvency practitioner's licence issued by the Commission pursuant to the Insolvency Act; or
 - (ii) has an appropriate professional qualification (such as in law or accountancy) and experience of providing legal or financial advice or support to companies in the financial services sector; and
- d) is fully conversant with relevant financial services legislation connected to the business of the company to be liquidated, including the Financial Services Commission Act and BVI Business Companies Act.

The following individuals are disqualified from being appointed, or acting, as the voluntary liquidator of a company:

- a) a disqualified person or an individual subject to an equivalent disqualification under the laws of a country outside the Virgin Islands;
- b) a restricted person or an individual subject to an equivalent restriction under the laws of a country outside the Virgin Islands;
- c) a minor;
- d) an undischarged bankrupt;

- e) an individual who is, or at any time in the previous two years has been, a director of the company or an affiliated company;
- f) an individual who acts, or at any time in the previous two years has acted, in a senior management position in relation to the company or an affiliated company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company or an affiliated company;
- g) an individual who is a close family member of an individual specified in paragraph (e) or (f); and
- h) an individual who is not resident in the Virgin Islands.

Why Harneys?

- 'One stop shop' – ability to provide both full legal and corporate/ fiduciary services
- Oldest and largest law firm and fiduciary provider in the BVI, works very closely with the BVI government
- Harneys Cyprus is the only multi-jurisdictional law firm on the island with its own fiduciary provider (Harneys Fiduciary)
- Highly skilled and easily accessible lawyers to provide assistance in any legal matters during the liquidation process
- We can act as insolvency practitioners / liquidators even if Harneys is not the registered agent of the entity
- Speed, responsiveness -advising on complex, multinational matters and acting in some of the largest litigation matters



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