



**Astana Financial Services Authority  
MANUAL  
Going to liquidation within the AIFC  
Insolvency Rules and Regulations**

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## **Introduction**

In general, liquidation of a corporate entity is a process that applies to companies (or) corporate entities to wind up their affairs. In the AIFC Insolvency Regulations, the process of liquidation is referred to as winding-up or a voluntary arrangement. So, in this document, the terms of liquidation or voluntary arrangement are used in the relevant places to refer to the processes of voluntary or compulsory winding-up as defined in the AIFC Insolvency Regulations. At the end of successful completion of the winding-up process, the corporate entity (hereinafter referred to as “the company”) ceases to exist. Liquidation in finance and economics is defined by Investopedia.com as the process of bringing a business to an end and distributing its assets to claimants. It is an event that usually occurs when a company is insolvent, meaning it cannot pay its obligations when they are due. As company operations end, the remaining assets are used to pay creditors and shareholders, based on the priority of their claims. Cambridge dictionary defines winding-up as the process of closing a business that is not successful and has debts that it cannot manage to repay. The Liquidation is a process or a company going into liquidation is defined in schedule 3 of the AIFC Insolvency Regulations. In simple English, it is the process through which an operating company is shut down and its existence comes to an end. This often happens when the companies are unable to pay its creditors and hence need to sell off its assets to pay of them. Though in another version this could be a voluntary act as well where law ensures that all the debts of a company into existence is paid before it is closed or shut down. The purpose of liquidation is to ensure that all aspects of the company's affairs have been dealt with and all its net assets realised, net of all its liabilities.

In Accounting parlance, liquidation refers to the process of selling (or) disposing all the assets of a company, with the aim of generating cash to pay off the company's creditors, or anyone the company owes money. When this has been done, the liquidator will apply to have the company removed from the register at the relevant authority for incorporating that company. In the case of companies incorporated in the AIFC, Astana Financial Services Authority (AFSA) would be the relevant authority for registering or incorporating the companies.

There are two types of winding up or liquidations, as referred in this manual: Compulsory Liquidation and Voluntary Liquidation.

\* If a provision of this Manual is inconsistent with a provision of Insolvency Rules or Insolvency Regulations, the provision of the Insolvency Rules and Insolvency Regulations prevails. However, a provision must not be treated as inconsistent with another provision merely because the provisions deal with the same matter if each provision can be obeyed without contravening the other.



## **Compulsory liquidation**

### Introduction

Compulsory liquidation or "winding up" is a court-enforced procedure under which the assets of a company are realised and distributed to the company's creditors and other stakeholders depending on the creditor hierarchy. Creditor hierarchy would be decided by the liquidators after confirming all the claims received and assessing the terms and covenants of all the debts, liabilities and the obligations from which the claims have resulted. The determination of the creditor hierarchy and prioritise the payment of the various liabilities owed to creditors must be carried out in compliance with the AIFC Preferential Creditor Rules 2019. The AIFC Preferential Creditor Rules 2019 have been adopted pursuant to Section 66(2) of the AIFC Insolvency Regulations which mandate adoption of rules for designating certain types of claims on a company as preferential debts and to prescribing any priorities for their payment and as to the ranking of other claims.

The process starts when a petition for winding-up is presented at the AIFC court. According to sections 51 & 52 of the AIFC Insolvency Regulations, a petition for winding up of a company may be presented to the Court by any of the following parties:

- (a) The company, which is the subject of the petition for winding-up;
- (b) The directors of the company, which is the subject of the petition for winding-up;
- (c) any creditor or creditors (including any contingent or prospective creditor or creditors);
- (d) the AIFC Authority, if it considers that it is in the interests of the AIFC that the Company should be wound up.

The most common ground for a petition for winding up a company is that it is unable to pay off its debts or any other obligations.

A judge of the AIFC Court will then decide whether it is appropriate to make a winding-up order, according to section 49 of the AIFC Insolvency Regulations. A winding-up petition is a serious statement of intent by a petitioner to shut down a company due to unpaid debts. It is the strongest action a petitioner can take against a company and is often the natural next step in the debt chasing process after a statutory demand for payment has gone unheeded. It is not necessarily a fault of the company's board of directors that this situation has arisen, but simply a series of unfortunate circumstances which impair the ability of the company to generate adequate cashflows to pay its liabilities, leading to a failure to honour / repay its liabilities as they fall due. At the end of the liquidation process, the company is dissolved.



### Implications of a petition for winding-up the Court

A petition for winding up any AIFC company may be presented to the AIFC Court by a petitioner, who is permitted to do so under Rule 5.3.1 of the AIFC Insolvency Rules. For winding up petitions made under section 51 of the AIFC Insolvency Regulations, the AFSA may be a petitioner if the Company is an Authorised Person, pursuant to rule 5.3.2 of the AIFC Insolvency Rules. A copy of the petition must be served on the Company, if the company is not a petitioner under rule 5.3.3 of the AIFC Insolvency Rules. According to rule 5.3.4 of the AIFC Insolvency Rules, the petitioner must serve a copy of the winding up petition on the AFSA, if the company is an Authorised Person and the AFSA is not a petitioner. Once a petition has been issued and served on a company, the AIFC court will set a date for the hearing, and a decision will be made on whether to grant a winding-up order.

At the hearing, the petitioner, creditors, the company and its shareholders all have the right to be heard, and the AIFC court may also choose to hear anyone with an interest in the company's property, consistent with section 12 of the AIFC Court rules.

The court can then either:

- dismiss the petition
- adjourn the hearing
- make a winding-up order
- make an interim order
- make any other order it thinks fit.

If a winding-up order is issued, the Official Receiver (OR) or another liquidator will be appointed to forcibly wind up the company, and liquidate its assets for the benefit of your creditors. They will also investigate the conduct of directors in the time preceding insolvency, sometimes for up to three years before the insolvency date. All company assets will be professionally valued with a view to selling them at a liquidation auction, and the proceeds distributed equitably between creditor groups. The company is then removed from the AIFC Register of Companies and will cease to exist.

### Winding- up Process

Creditors filing for a winding-up petition must follow a specific process when filing a winding up petition, failing which the document may be deemed as invalid. The company, which is the subject of the winding-up petition can always challenge its legality if the correct procedures have not been carried out. So, it is worthwhile for that company to seek and obtain professional advice to check the legality of the petition filed.

Furthermore, any court will not have the jurisdiction to grant a winding up order for the default of a particular debt or claim, so the creditor must also present their petition for winding-up at the correct



(or) appropriate court for the jurisdiction for the claim or debts which the company has defaulted to pay or meet. The appropriate court may be determined according to the provisions of the contract or legal documentation evidencing the liability or debt concerned and the jurisdiction referred in those contracts or documentation for resolution of any issues or claims relating to that liability or debt. The following detailed procedure provides an idea of the various steps involved along with the timelines involved for a typical winding-up process. Although a winding-up process may be triggered and led by a claimant other than a creditor of a company, this process refers to a creditor for simplicity of reference. The same process can be used for any other type of claimant on the company.

1. A creditor(s) makes several unsuccessful attempts to recover their debt and issues a 21-day statutory demand for payment, as defined in Rule 5.2 of the AIFC Insolvency Rules
2. If this statutory demand remains unpaid, and the creditor does not see credible prospects of agreeing to a repayment plan, the creditor may hire a legal counsel to complete the petition for winding up order of the debtor company
3. The petition is filed with the AIFC Court in (Form 1.01) along with an affidavit (Form 1.02) as specified in Rule 5.3 of the AIFC Insolvency Rules.
4. A copy of the petition (sealed by the AIFC Court) must be served on the company according to Rule 5.3.3 of the AIFC Insolvency Rules, at its registered office immediately following its filing in the AIFC Court. If it is not possible to serve the petition at the registered office of the Company, the petition should be served at the company's last main place of business, or on a company director or company secretary.
5. If the Company is an Authorised Person licensed by the AFSA and the petitioner for winding up is not the AFSA, the petitioner must serve a copy of the petition on the AFSA, within one business day after its filing in the AIFC Court. This is to comply with Rule 5.3.4 of the AIFC Insolvency Rules.
6. Within one business day of the service of the petition on the Company, the petitioner must file an affidavit at the AIFC court, confirming the service of the petition (Form 1.04/1.05).
7. A date for the court hearing is set by the AIFC Court, usually 8-10 weeks following the filing of the petition for winding up.
8. In accordance with Rule 5.4 of the AIFC Insolvency Rules, the petitioner for the winding up order must advertise notice of the presentation of the petition (Form 1.06) in the newspaper the petitioner considers most appropriate for ensuring that the presentation of the petition comes to the notice of the Company's creditors and members, within 7 (seven) business days after the petition is served on the company. However, such an advertisement must be made at least 7 (seven) working days before the hearing scheduled at the AIFC court. This is required to enable



other interested parties to inform the petitioner that they wish to attend the hearing, and whether they wish to support or oppose the petition.

9. At least 5(five) days before the hearing, the petitioner must also file at the AIFC court a certificate of compliance with the rules relating to service and advertisement (Form 1.07), along with a copy of the advertisement in the official registry or AIFC court register.
10. If the company wishes to oppose the petition, it must file its affidavit in opposition at least 7 (seven) days before the date fixed for the hearing, in accordance with the Rule 5.3.6 of the AIFC Insolvency Rules.
11. In accordance with the sections 53 & 54 of the AIFC Insolvency Regulations, upon the publication of the advertisement in the newspaper about the filing of the petition for the winding up and/or in the AIFC court website, banks and other agencies handling the financial assets and cash accounts of the company are required to take all steps to ensure that any assets or properties of the company at their institution, are not disposed of or attached by any party, effectively preventing any further trade without express permission from the AIFC court.
12. If no action is taken by the company, the AIFC Court will proceed with the scheduled hearing and consider the issue of the winding up order. AIFC Court issuing the winding-up order will put the liquidation process out of the control of the company.
13. In the event of the AIFC Court deciding to issue a winding up order for the Company, the AIFC Court must, as soon as possible, provide a notice of the issue of the winding up order to the Company, the petitioner for the winding up order, the AFSA (if AFSA is involved in the petition) and any other person involved in the petition or its hearing, according to Rule 5.5.1 of the AIFC Insolvency Rules. In such an instance, the AIFC Court must also publish a notice of the issue of the winding up order according to Rule 5.5.2 of the AIFC Insolvency Rules, in a newspaper the AIFC Court considers most appropriate for ensuring that the information is available for the Company's creditors, members and contributories.

#### Appointment of Liquidator

If a winding-up order is issued by the AIFC Court based on the petition as described in the in previous section, the AIFC Court must, in pursuance of section 57 of the AIFC Insolvency Regulations, appoint a Person as the Liquidator of the company, as defined in AIFC Insolvency Regulations. This appointment must be made in the order issued by the AIFC Court. The Liquidator may either perform the liquidation of the company or can call the creditors and other contributories to nominate a Person to perform the liquidation of the company. The company's creditors and contributories may appoint another individual, being a insolvency practitioner registered under the AIFC Insolvency Regulations, to act as liquidator. More than one liquidator can be appointed to act jointly.



In the event of a Person being appointed as a Liquidator of the Company by a meeting of its creditors or its contributories, the chair of such a meeting must certify the appointment along with the date of certification endorsed on such a certificate, according to rules 5.31.1 and 5.31.2 of the AIFC Insolvency Rules. The chair of the meeting must provide this certificate to the Liquidator and must file a copy of it in the AIFC Court, according to Rule 5.31.3 of the AIFC Insolvency Rules.

In the event of the creditors and contributories appointing two different Persons as their Liquidators, section 57 of the AIFC Insolvency Regulations also allows any creditor, shareholder or any other contributory to apply to the AIFC Court, within 7 days of such nomination, for an order seeking to:

- Appoint the liquidator nominated by the contributories as the Liquidator of the company; or
- appoint both the Liquidators (those appointed by the creditors and the contributories) to operate jointly; or
- appoint a third Person as the Liquidator instead of the Persons appointed by the creditors and contributories of the company.

The Registrar of Company has no role in the process of appointing a Liquidator nor in the process of removal of a Liquidator from their office.

Once appointed, the Liquidator will act as an officer of the AIFC court. On receiving the Liquidator's certificate of appointment, give notice of appointment in the newspaper that the Liquidator most appropriate for ensuring that it comes to the notice of the Company's creditors and members, pursuant to Rule 5.31.4 of the AIFC Insolvency Rules. Liquidator also must notify Registrar of Companies of the Liquidator's appointment according to Rule 5.31.6 of the AIFC Insolvency Rules. As such, he or she has a duty to act fairly and impartially. A liquidator's function is to ensure that the assets of the company are collected or otherwise secured, realised and the proceeds are distributed to the company's creditors and, if there is a surplus, to the persons entitled to it. This is enunciated in section 60 of the AIFC Insolvency Regulations.

Powers of Liquidator:

The Liquidator has powers including powers to bring or defend any legal proceedings that relate to the assets and property vested in the Liquidator or those that are necessary to complete the liquidation process, carrying on the business of the company, recover its assets and paying debts.

Subject to the provisions of the AIFC Insolvency Regulations and AIFC Insolvency Rules and subject to compliance with the procedures of the AIFC Court, Liquidator appointed in the winding up of a company has the powers set out in Schedule 2 of AIFC Insolvency Regulations. The detailed supplementary powers of a Liquidator as specified in the AIFC Insolvency rules are broadly enumerated as follows:





- 1) summon a Person to be examined before the Court about the affairs of the Company – for example summon the statutory auditor of the company who audited the accounts of the company;
- 2) inspect books and records of the Company. For example, the financial accounts of the company, the tax records and the bank records of the company, as illustrated in rule 5.7.1 of the AIFC Insolvency Rules;
- 3) direct an officer of the Company to deliver to the Liquidator all books and records in the officer's possession that relate to the Company. This is further illustrated in rule 5.7 of the AIFC Insolvency Rules – for example, direct the Chief Financial Officer of the company to submit all the account books and bank statements of the company available at his control;
- 4) Direct an officer of the Company to inform the Liquidator of the whereabouts of books or records that relate to the Company, in furtherance of the rule 5.7 of the AIFC Insolvency Rules;
- 5) direct an officer of the Company to give the Liquidator the information about the Company's business, property, affairs and financial circumstances that the Liquidator requires, as in the form of a statement of affairs specified in rule 5.6.2 of the AIFC Insolvency Rules;
- 6) direct an officer of the Company to attend on the Liquidator to provide the books or records, information, or other assistance, that the Liquidator may reasonably require.

**Duties of Liquidator:**

A liquidator is expected to perform duties equitably and impartially according to the AIFC Insolvency Regulations and Rules. Some of the duties are enumerated below:

- (i) If the Company's assets or liabilities include excluded property, the Liquidator must comply with any requirements applying to the Company under the AIFC Personal Property Regulations, or any AFSA Rules, in relation to the Excluded Property as defined in Rule 4.2 of schedule 4 of the AIFC Insolvency Rules. This includes client assets and client monies held by an investment intermediary.
- (ii) Without limiting section (i) above, the Liquidator must comply with any instruction made under section 37 of the AIFC Personal Property Regulations. This essentially means that the Liquidator must respect the rights of all account holders in the event of liquidating an investment intermediary, in regard to investments and other assets to the credit of the account holders commonly referred to as client assets. The account holder may instruct the transfer of investment assets or other monies to any other company or institution and such an instruction is enforceable against a Liquidator.
- (iii) If, under section 57(1) (Choice of Liquidator by Court or meetings of creditors and contributories) of the AIFC Insolvency Regulations, the Liquidator decides to call meetings of the Company's creditors and contributories to nominate a Person to be liquidator of the Company, the liquidator must call a meeting of the creditors and contributories within four months from the date of issue



of winding up Order by the AIFC court, in accordance with rule 5.10.1 of the AIFC Insolvency Rules,.

- (iv) Must keep proper books and cause entries or minutes to be made of all proceedings at meetings.
- (v) Must, at least twice in each year, present to the court an account of the receipts and payments as liquidator
- (vi) Should realise the assets and distribute the proceeds among all claimants and the creditors according to the order of priority applicable and the surplus, if any, among the contributories according to their rights, in accordance with rule 5.44.2 of the AIFC Insolvency Rules.
- (vii) If a Company is being wound up, every invoice, order for goods or services, or business letter, issued by or on behalf of the Company or a Liquidator of the Company, and on or in which the Company's name appears, must contain a statement that the Company is being wound up.
- (viii) Must, as and when directed by the liquidation committee (but not more often than once in any 2 month period), send a written report to every member of the committee setting out the position generally of the progress of the winding up, and matters arising in connection with it to which the Liquidator considers the committee's attention should be drawn, following rule 5.41.1 of the AIFC Insolvency Rules. In the absence of directions by the liquidation committee, the Liquidator must send the members of the committee a report not less often than once in every six month period, following rule 5.41.2 of the AIFC Insolvency Rules.

The liquidator is also expected to investigate director conduct and conduct of senior management staff including but not limited to accusations of misconduct, wrongful trading or other serious allegations in relation to the running of the company

#### Liquidator Remuneration

The liquidator's fees are paid as an expense of the winding up, out of the company's assets, after secured creditors holding fixed charge security have been paid; but in priority to preferential creditors and creditors who either have no security or have floating charge security over the company's assets. The liquidator's fees must be determined either on the basis of a specified percentage of the value realized from the assets of the company (or) the amount distributed or as a combination of both; or by reference to the time spent by the Liquidator and Liquidator's employees in attending to the needs of the winding up process. This is specified in Rule 5.33.2 of the AIFC Insolvency Rules.

Here, assets realised mean the amount collected from the realisation of fixed assets, current assets and other assets, other than fictitious assets. The cash and bank balance should not be included in total assets for the calculation of remuneration. But in the question, if the cash and bank balance are given in the list of assets initially identified as belonging to the company and available for realisation, then cash and bank balance should be included in the total assets for the calculation of remuneration. In the case of collateral securities deposited against secured creditors, if nothing is mentioned in the



question, the total assets should include the full amount of collateral securities for the computation of remuneration. But if the securities are realized by creditors and only the surplus sent to the liquidator, then total assets should include only surplus amount realized from collateral securities.

It is for the liquidation committee (if there is one) or a creditors meeting (if there is not a liquidation committee) to determine whether the remuneration is to be fixed under above referred sub-rules 5.33.2 (a) or (b) and, if it is to be fixed under sub-rule 5.33.2 (a), to determine any percentage to be applied for sub-rule 5.33.2 (a). If no remuneration is fixed, the Liquidator is entitled to receive remuneration for the Liquidator's services as Liquidator of an amount equal to 5% of the value of the assets realised plus 2.5% of the amounts distributed, as specified in the rule 5.33.4 of the AIFC Insolvency Regulations.

#### Compulsory Liquidation for Creditors

As an unsecured creditor, one may receive a dividend paid pro rata at the end of the liquidation (and possibly also an interim dividend), out of the proceeds of realization of all assets collected by the Liquidator after paying for expenses and prior claims according to the claimant or creditor hierarchy. In some cases, the dividend to unsecured creditors will be just a fraction of the percentage entitled, and it may be nothing at all.

If a creditor has the benefit of a security subject to perfection of security interest as defined in Rule 2.8 of the AIFC Security Rules and parts 4 & 5 of the AIFC Security Regulations, the creditor is entitled to be paid from the proceeds of sale of the secured assets, subject to certain exceptions. As a creditor, one will be invited to provide the liquidator with details of his/her/its claim (proof of debt). The liquidator will then assess all the proofs of debt. He may either accept a claim in whole or part or reject it.

There is an automatic stay of legal proceedings against the company or its assets. If anyone wishes to bring or pursue legal proceedings against the company, they must first apply to court for permission. If the claim is for monetary relief only, there is unlikely to be granted permission; generally, only claims that have a proprietary nature are allowed to continue. The stay does not extend to the enforcement of security or the forfeiture of a lease.

Creditors are entitled to receive reports on the progress of the liquidation from the liquidator. They may also form a liquidation committee with at least two other creditors, to help the liquidator fulfil their functions

#### Compulsory liquidation – implications for an employee

All employees of a company are automatically dismissed if a winding-up order is issued by the AIFC Court. In such an event, a former employee (after issue of winding up order) may be entitled to a



redundancy payment or other post-termination benefits, which may result in that employee having a claim for damages on any grounds. All payments due to the employee of the Company in pursuance of AIFC Employment Regulations including in particular the end-of-service gratuity payable according to section 64 of the AIFC Employment Regulations are to be included as claims in the liquidation proceedings. The AIFC employment Regulations do not provide any specific priority for the payment of claims to employees in the claimant or creditor hierarchy of the AIFC Insolvency Regulations or Rules. The priority of the payments to employees in the indicative hierarchy ladder is provided in paragraph 2.12 later in this manual, though the exact priority of payments to employees may only be decided by the Liquidator taking into consideration the provisions of the AIFC Insolvency Rules and Regulations as well as the AIFC Preferential Creditor Rules as well as the terms and covenants of all the liabilities and claims of the Company involved.

#### Compulsory liquidation for a director

When a company goes into compulsory liquidation, the powers of its directors' cease, and they are automatically dismissed from office. A former director of a company that is being wound up may be required to assist the liquidator and to provide a statement of the company's assets and liabilities. For example, the Liquidator may direct the former director of the Company to provide the statement of affairs as defined in Rule 5.6 of the AIFC Insolvency Rules. Upon reviewing the various aspects of the operation of the company and the availability and value of its assets to satisfy the various claims, if the liquidator deems the performance of the Directors as not meeting the standards of fitness and propriety that is expected of them, the Liquidator may report that to the AIFC Registrar of Companies and to the AFSA for further action.

#### Creditors right to challenge / remove the Liquidator

Creditors may be able to challenge the level of the liquidator's remuneration. According to the process outlined in Rule 5.34.2, any creditor or a group of creditors holding claims of the value amounting to at least 25 % of the total realisable assets of the Company, may apply to the AIFC Court for an order reducing the remuneration of the Liquidator on the grounds that the remuneration is excessive considering all relevant factors. If the AIFC Court considers the application and finds the remuneration of the Liquidator to be excessive, it must make an order fixing the remuneration at a reduced amount or rate. Unless the court orders otherwise, the costs of this application to reduce the remuneration of the Liquidator must be paid by the applicant and must not be paid out of the assets of the Company, as per rule 5.34.4 of the AIFC Insolvency rules.

In extreme cases, and where it is in the interests of the liquidation, a liquidator may be removed from office. Replacing a liquidator is contingent on the demonstration of such an action being in the best interests of a company in compulsory liquidation, which will be considered and decided by the AIFC



Court while issuing the order referred in the previous paragraph. It is also possible for creditors to pursue liquidators for misfeasance.

The liquidator may only be removed from office, in accordance with Art 65 of the AIFC Insolvency Regulations,

- (a) by an order of the AIFC Court; or
- (b) by general meeting of the Company called specially for this purpose in the case of a Voluntary Winding Up by members; or
- (c) by a general meeting of the company's creditors called specially for this purpose for Creditors Voluntary Winding Up.

The creditors or the shareholders or the contributories of the Company as the case may be, may apply to the AIFC Court for the order seeking the removal of the Liquidator. Alternatively, they may organize a general meeting of the Company's creditors and try to pass a resolution removing the Liquidator.

Order of Realisation and Payment by the Liquidator:

- 1) The following amounts are realised by the liquidator:
  - a) From the Debtors of the Company,
  - b) From sale proceeds of the assets of the Company,
  - c) The surplus amount from fully secured creditors and
  - d) By making calls for the amount remaining unpaid on the shares.

An insolvent company is at a shortfall of cash even after liquidation of company assets to pay off its creditors, in such a scenario, there could be conflict of interest amongst the creditors because of insufficient assets to pay all the creditors in full. Hence the AIFC Insolvency Regulations and Rules attempt to maintain the equality amongst the creditors belonging to the same level of priority or hierarchy and follow a transparent process to liquidate the assets of the company to be distributed equally amongst the creditors as per the size of their claim.

- 2) Payments should be made by liquidator in the following order, subject to the provisions of rule 5.45 of the AIFC Insolvency Rules and section 66 and section 100 of the AIFC Insolvency Regulations:
  - (i) Employee's dues
  - (ii) Debts due to secured creditors

The secured creditors need not prove their claims against the Company. The secured creditors may realise their securities and satisfy the debts. If a secured creditor realises their security interest, they may claim for the balance of the liabilities, after deducting the amount realised in accordance with rule



5.23.1 of the AIFC Insolvency Rules. If the secured creditors feel that their securities may not realise a sufficient amount, they may relinquish the securities held by them and prove their whole debt before the liquidator, as if it were unsecured pursuant to rule 5.23.2 of the AIFC Insolvency Rules.

- (iii) Wages and dues of staff & employees.
- (iv) Legal Expenses: All legal expenses are met out of the cash realized.
- (v) Remuneration of the Liquidator
- (vi) Expenses and cost of winding up.
- (vii) Payment to preferential creditors.
- (viii) Payment to debenture holders and creditors who have floating charge on the assets of the Company.
- (ix) Debts and liabilities owed to unsecured or ordinary creditors.
- (x) Dues to the Government and dues owed to a secured creditor who has realized security interest but the proceeds are insufficient to meet the debts
- (xi) Payment to members or contributories in accordance with rule 5.49 of the AIFC Insolvency Rules .
- (xii) Residuary debts and dues
- (xiii) Preference shareholders
- (xiv) Equity Shareholders or partners

Regarding members, if any of them has paid in excess of the amount of call made on him, that will be returned to him first and then the preference shareholders are given and thereafter, if any, surplus is left, that will be distributed among the equity shareholders. Any surplus still left, will also go to the Equity shareholders unless the preference shares are the participating preference shares as per the terms of the issue.



## **1 Voluntary liquidation**

Voluntary liquidation is a self-imposed wind-up and dissolution of a company that has been approved by a simple majority of its own shareholders. Such a decision will happen once a company's board decides that the company has no reason to continue operating.

### **1.1 Members' voluntary liquidation**

This is when the shareholders of a company decide to put it into liquidation and there are enough assets to pay all the debts. A members' voluntary liquidation can only take place if the company is solvent.

The directors must make a formal declaration of solvency, which must:

- be made by a simple majority of its board directors on a date no more than five weeks prior to the passing of the resolution for voluntary winding up (section 31 of the AIFC Insolvency Regulations)
- be filed at AIFC Registrar of Companies (or) the AFSA
- state that the directors have made a full inquiry into the company's affairs and are of the opinion that the company can pay its debts and interest within a maximum of 12 months
- include an up-to-date statement of the company's assets and liabilities

The shareholders must hold a general meeting of the company that passes a resolution for:

- (i) voluntary winding up
- (ii) appointing one or more liquidators of the company

The shareholders must not pass a resolution for winding up, unless:

- the company cannot continue its business because of its liabilities and that it is advisable to be wound up; or
- the articles of association of the company provide for it to be dissolved at a certain time, or under specific circumstances
- the company resolves that it should be wound up voluntarily.

In a members' voluntary liquidation, the liquidator must hold a meeting of the company each year and provide details of his or her actions and dealings, and of the conduct of the winding up in the preceding year.

In voluntary liquidation proceedings, the company's directors must, pursuant to rules 5.6 to 5.8 of the AIFC Insolvency Rules:



- provide information about the company's affairs to the liquidator and attend interviews with the liquidator as and when reasonably required
- look after and hand over the company's assets to the liquidator, together with all its books, records, bank statements, insurance policies and other papers relating to its assets and liabilities

The Liquidator prepares a Statement of Affairs, which is intended to show a company's position prior to liquidation. It details the company's assets and liabilities as well as any fixed or floating charges that are secured against company assets (Form 1.08)

Liquidation ends when the company is dissolved after the final general meeting of the members held by the liquidator. The duration of the liquidation process will depend on the circumstances of the individual case (e.g. the nature of the assets involved), but once the process has been completed the company will be dissolved and cease to exist. If it later turns out that the company is not solvent, the liquidator will call a meeting of creditors and the liquidation becomes a creditors' voluntary liquidation.

## 1.2 Creditors' voluntary liquidation

This is when the shareholders of the company decide to put the company into liquidation, but there aren't enough assets to pay the creditors in full i.e. the company is insolvent. The liquidation begins from the time the resolution to wind up is passed. If the majority of directors do not make a declaration of solvency (according to section 31 (1) of the AIFC Insolvency Regulations, or the company is insolvent, the shareholders can still vote for a voluntary liquidation. This type of liquidation is called a creditors' voluntary liquidation.

To vote for a voluntary liquidation, the shareholders must:

- hold a general meeting of the company
- pass a resolution for voluntary winding up (as for members' voluntary liquidation)

The company can nominate an authorised insolvency practitioner as liquidator. It must also call a meeting of creditors (usually on the same day as the shareholders' meeting) at which they receive details of its financial affairs. The creditors can nominate a liquidator and their nomination.

The liquidator takes control of the company's affairs and all powers of the directors' cease, in accordance with section 32 (2) of the AIFC Insolvency Regulations.

The Liquidator prepares a Statement of Affairs, which is intended to show a company's position prior to liquidation. It details the company's assets and liabilities as well as any fixed or floating charges that are secured against company assets (Form 1.09)





The liquidator disposes of all the company's assets and, after paying the costs and expenses of the liquidation, distributes any remaining money to the creditors.

In a creditors' voluntary liquidation, the liquidator has to hold annual creditors' meetings for every year in compliance with section 42 of the AIFC Insolvency Regulations. In this meeting, the liquidator must also provide the meetings an account of the various actions and measures taken and the conduct of the liquidation process during the preceding year. The liquidator also has a duty to make a report to the Ministry of Justice of Republic of Kazakhstan or to the Registrar as the case may be regarding the conduct of the company's director. As soon as the affairs of the company are fully wound up, the liquidator will hold final meetings of the company and its creditors.