



DISSOLVING A COMPANY: WHAT DOES IT MEAN AND HOW IS IT DONE?

Ajay Maraj

Many countries around the world continue to grapple with the effects of the Covid-19 pandemic, which has brought more than its fair share of challenges, Trinidad and Tobago ("T&T") being no exception. Private limited liability companies operating within the jurisdiction have faced continuous operational challenges which threaten the viability of some companies. These operational challenges have resulted in the closure or dissolution of numerous private limited liability companies in T&T.

This Article will briefly explore the circumstances and methods by which private limited liability companies in T&T may be dissolved.

WHY ARE COMPANIES DISSOLVED?

The reason for winding-up or dissolving a company can typically be due to the company being unable to pay its debts. Dissolutions can also occur due to shareholders' desire for the company to cease carrying on business and for its assets, after payment of all liabilities, to be distributed among the shareholders.

During the winding up process, the assets of the company are realized, the debts paid, and the surplus of the realized assets (if any) are distributed to the shareholder(s) of the company in proportion of their shareholding.

The reason for dissolving a company will inform the method by which the Company may be dissolved.

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HOW ARE COMPANIES DISSOLVED?

The Companies Act of T&T Chap. 81:01 (the 'Companies Act') provides for two overarching modes of dissolution or winding up, namely:

- Winding Up by the Court (i.e. Compulsory Winding Up); and
- Voluntary Winding Up.

WINDING UP BY THE COURT

A company may only be wound up by the Court in certain circumstances and upon the requisite petition being made. Under the Companies Act, a company may be wound up by the Court if:

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) the company does not commence its business within a year from its incorporation, or suspends its business for an entire year;
- (c) the company is unable to pay its debts;
- (d) an inspector has reported that he is of the opinion:
 - (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or
- (e) the Court is of the opinion that it is just and equitable that the company should be wound up.

For the purpose of a compulsory winding up, a company is deemed to be unable to pay its debts if:

- following the demand from a creditor, the company is unable to or neglects to pay a debt exceeding the sum of \$5,000 within 3 weeks or to secure or compound the debt to the reasonable satisfaction of the creditor;
- the execution (or other process) issued on a judgement of any Court in favour of a creditor of the company is returned unsatisfied – whether in whole or in part; or