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## Voluntary Liquidation of a Solvent BVI Company

The BVI Business Companies Act, 2004 (as amended) ("BVI BC Act"), states that a company may only be put into voluntary liquidation if it has:-

- No liabilities; or
- If it is able to pay its debt as they fall due.<sup>1</sup>

If the decision is taken to formally wind up a company, it is recommended that the directors, where appropriate, take all practical steps to simplify the Company's asset and liability position before liquidation is commenced, the most obvious being to pay all creditors in full. This simplifies and speeds up the liquidation process.

When liquidating a company, of which Nerine is the registered agent, it is possible for the company to appoint a liquidator of its choice, should they be eligible, in accordance with the provisions of the BVI BC Act<sup>2</sup> and the BVI Business Companies Regulations, 2012 ("Regulations")<sup>3</sup>.

A liquidator does not have to be a BVI resident, but cannot be:-

- A disqualified person (under section 260(4) of the Insolvency Act, 2003)
- A restricted person (under section 409 of the Insolvency Act, 2003)
- A minor (under 18 years old)
- An un-discharged bankrupt
- An individual who is, or at any time in the previous two years has been, a director or acted in a senior management position (having functions or responsibilities in relation to the financial management) of the company or an affiliated company
- An individual who is a close family member of an individual who is or was a director or senior manager as specified above

Please note that should a liquidator be required, Nerine is able to provide this service at an additional cost and with the provision of full due diligence and up to date financial information.

Please see the following step by step guide in order to commence a voluntary liquidation of a solvent BVI Company with Nerine;

### 1. Liquidation Plan

The first step in commencing a voluntary liquidation is the completion of Directors' and Members' resolutions approving a Liquidation Plan<sup>4</sup>.

The liquidation plan must specify:-

- The reason for liquidation of a Company
- Estimated time required to complete the liquidation
- Whether the liquidator is authorised to carry on the Company's business if he determines that to do so would be in the best

interests of the Company's creditors or shareholders.

- The names and addresses of each individual to be appointed liquidator, and the remuneration proposed to be paid to each. It should be emphasised that only individuals can be appointed
- Whether the liquidator is required to send all the Company's shareholders a statement of account prepared or cause to be prepared by the liquidator in respect of his actions or transactions.

A voluntary liquidator may be appointed by a resolution of Directors or Members<sup>5</sup>. However it is advisable that resolutions from both Directors and Members be passed in this regard. Prior to this appointment, the Liquidator must first provide written consent to the Company.

## 2. Declaration of Solvency

Once the Liquidation Plan has been approved by the Directors, the next requirement is a Declaration of Solvency stating that, in the Directors' opinion, the Company is solvent, and will be able to discharge, pay or provide for its debts as they fall due. This document is signed by the Directors, and should be accompanied by a Statement of Assets and Liabilities (a draft of which can be provided).

## 3. Liquidator Filings

Once the Liquidator has been appointed the Company should provide written notice of appointment to the Liquidator. The Liquidator must then within fourteen (14) days of the date of their appointment, file with the Registry of Corporate Affairs:-

- Notice of their appointment (signed by the liquidator); and
- The Declaration of Solvency, or extract complying with the Regulations; and
- A copy of the Liquidation Plan

The date of the filing of the Notice of Appointment of the Liquidator is the official date for the commencement of liquidation.

\*As the liquidation process is time sensitive, we suggest that the above documents are all provided to Nerine undated. This would prevent any delays in filling the documentation at the Registry of Corporate Affairs.

Once the above has been received, Nerine will then arrange for the documents to be filed with the BVI Registrar or Corporate Affairs, and the liquidation process will have officially commenced. Registry stamped copies of the above documents will be received, and returned as soon as possible.

## 4. Publication of Liquidation

In accordance with the BVI BC Act<sup>6</sup> and the Regulations<sup>7</sup>, within thirty (30) days of the commencement of the liquidation, the liquidator's appointment, confirming the details of the liquidation, must be published:-

- In the Virgin Islands Official Gazette; and
- In a local BVI newspaper; and

In at least one issue of a newspaper circulating in the place outside the Virgin Islands in which its place of business, or if it has more than one, its principal place of business, is situated (if none or unknown then as the liquidator see fit);

## 5. Disposal of Assets and Liabilities

It will then be the duty of the liquidator to ensure that the Company has disposed of all assets and liabilities of the Company in accordance the BVI BC Act<sup>8</sup>.

## 6. Liquidators Report

In accordance with the BVI BC Act<sup>9</sup> once all assets and liabilities have been disposed of, the liquidator is to then sign a final report confirming that the liquidation process has been fully completed. This report is then filed with the Registry, at which point the Registrar will issue a Certificate of Dissolution and strike the Company off the Register of Companies<sup>13</sup>. It is worth noting however that the company will appear indefinitely on the Register of Companies as dissolved.

## 7. Publication of Strike Off

The final step for the liquidator is the publication in the Virgin Islands Official Gazette and a local BVI newspaper of a notice that the Company has been struck off the Register of Companies and dissolved in accordance with the BVI BC Act<sup>10</sup>. The liquidation will then be finished and no further action will be required.

## Liquidation Liability

Please note that it is possible for former creditors, shareholders and liquidators of a company to apply to the Court to restore the Company following its dissolution, usually within seven years of such date<sup>11</sup>. If additional assets owned by the Company come to light after the completion of its dissolution, it may be possible for them to be distributed in the normal manner subsequent to a Court sanctioned restoration of the Company, as per Section 218 of the BVI BC Act<sup>12</sup>.

## Liquidation Documents

The following pro-forma documents can be provided by Nerine, which have been prepared in accordance with the Business Companies Act, 2004 (as amended) ("BVI BC Act");

- 1) Consent to act as Liquidator
- 2) Liquidation Plan with;
  - a) Board Meeting Minutes or;
  - b) Directors Resolution and;
  - c) Members Resolution
- 3) Declaration of Solvency with;
  - a) Board Meeting Minutes or;
  - b) Directors Resolution
- 4) Notice of Appointment of Liquidator to;
  - a) The Liquidator
  - b) The BVI Registry
- 5) Liquidators Report

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<sup>1</sup> Section 197

<sup>2</sup> Section 199

<sup>3</sup> Section 19

<sup>4</sup> Section 198

<sup>5</sup> Section 199

<sup>6</sup> Section 204(1)(b)

<sup>7</sup> Section 22

<sup>8</sup> Section 206

<sup>9</sup> Section 208

<sup>10</sup> Section 208(3)

<sup>11</sup> Depending on the date of dissolution

<sup>12</sup> Section 218

<sup>13</sup> Section 208(1)(a)