

# Summary winding up under the Companies (Jersey) Law 1991

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A summary winding up is the procedure used to wind up a solvent Jersey company under the Companies (Jersey) Law 1991 (the **1991 Law**).

This guide examines the procedure for carrying out a summary winding up.

## Steps

The steps necessary to carry out a summary winding up are as follows:

- each director of the company must sign a statement of solvency (the **First Statement**) which states that, having made full enquiry into the company's affairs, the director is satisfied that:
  - the company has no assets and no liabilities;
  - the company has assets and no liabilities;
  - the company will be able to discharge its liabilities in full within six months after the commencement of the winding up;
  - the company has liabilities that will fall due more than six months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
  - both of the two preceding points apply to the company;
- the company must pass a **special resolution** to wind up the company by way of summary winding up within 28 days of the First Statement being signed by the directors. Under the 1991 Law, a special resolution is a resolution that is required to be passed as such by a majority of two thirds (or such higher majority as may be specified in the company's articles of association) of members who (being entitled to do so) vote at a meeting of the company of which not less than 14 days' notice has been duly given;
- if the members wish to do so, on or after the commencement of the summary winding up, they may pass a special resolution to appoint a liquidator;
- within 21 days of the date on which the special resolution to wind up the company is passed, a copy of each of the special resolution (and, if applicable, the special resolution to appoint a liquidator) and the First Statement must be delivered to the registrar of companies who will register the First Statement;
- if the company has no assets and no liabilities, the company will be dissolved upon registration of the First Statement; or
- if the company has assets and liabilities or assets and no liabilities, after the First Statement has been registered:
  - the directors or (if appointed) the liquidator must discharge the company's liabilities (if any) in full and distribute the company's assets to its members;
  - each director or (if appointed) the liquidator must sign a statement (the **Second Statement**) which states that, having made full enquiry into the company's affairs, the director or the liquidator is satisfied that the company has no assets and no liabilities; and
  - a copy of the Second Statement must be delivered to the registrar of companies and, upon registration, the company will be dissolved.

## Effect of commencement of summary winding up

A summary winding up commences upon the passing of the special resolution to wind up the company. Once the winding up has commenced:

- the corporate state and capacity of the company continues until it is dissolved on completion of the winding up;
- the powers of the company may only be exercised for the purposes of realising its assets, discharging its liabilities and distributing its assets; and
- every invoice, order for goods or services or business letter issued by or on behalf of the company or (if applicable) the liquidator must contain a statement that the company is in liquidation.

If a liquidator is appointed, the directors cease to be authorised to exercise their powers in respect of the company and those powers may only be exercised by the liquidator.

## Appointment of liquidator

The 1991 Law does not require a liquidator to be appointed to carry out a summary winding up. However, as mentioned above, if they wish to do so, the members may appoint a liquidator by special resolution on or after the commencement of the summary winding up.

Where the affairs of the company are relatively straight forward, for example, because the company is a holding company with few assets or liabilities, it will typically be the case that the directors will conduct the summary winding up and a liquidator will not be appointed. Where, however, the affairs of the company are more complicated, a liquidator will normally be appointed.

To be eligible to be appointed as a liquidator, the potential appointee must be a natural person, and if the company is a public company, must, among other things:

- not be a director, the secretary or an employee of the company or one of its subsidiaries or holding companies; and
- be a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Scotland, the Association of Chartered Certified Accountants or the Chartered Accountants of Ireland.

An appointment of a person who does not satisfy these criteria is void.

A liquidator is entitled to be paid such remuneration as is agreed between the liquidator and the company prior to the liquidator's appointment, as is approved by the company in a general meeting or as is approved by the court.

## Effect of insolvency

If, after the commencement of a summary winding up, the directors form, or (if appointed) the liquidator forms, the opinion that the company has liabilities that it will be unable to discharge within six months of the commencement of the winding up or, if they fall due after that date, as they fall due, the directors or liquidator must call a meeting of the company's creditors to be held in Jersey. From the date of the creditors' meeting, the winding up becomes a creditors' winding up. For more information about a creditors' winding up, refer to our guide entitled '[Liquidating an insolvent Jersey company](#)'.

If a summary winding up has commenced and the assets of the company are subsequently declared *en désastre* (ie the company is declared insolvent by a court), the summary winding up automatically terminates and, if a liquidator was appointed, the liquidator automatically ceases to hold office.

## Offences

### First and Second Statements

It is an offence for:

- a director to sign and deliver to the registrar of companies a First Statement; or
- a director or liquidator to sign and deliver to the registrar of companies a Second Statement, without having reasonable grounds for the statement made in it.

A person who commits either offence is liable, upon conviction, to imprisonment for up to two years, a fine or both.

### **Notification company in liquidation**

If an invoice, an order for goods or services or a business letter issued after the commencement of the summary winding up does not contain a statement that the company is in liquidation, the company and every officer who is in default is guilty of an offence. A person who commits this offence is liable, upon conviction, to a fine.

### **Contacts**

A full list of contacts specialising in corporate law can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2022 MOURANT OZANNES ALL RIGHTS RESERVED