

A close-up photograph of a wooden gavel resting on a wooden block. The gavel is positioned diagonally, with its head resting on the block. The background is a warm, yellowish-orange gradient.

**WINDING UP**

## DEFINITION

- The existence of a company can be terminated by means of winding up.

The process of which the company is dissolved is known as winding up of a company.

The winding up of a company is a proceeding in which the co business is closed down sell off it's asset and the creditor are paid. the balance of asset are distributed to the members



# Winding Up & Dissolution

Generally, the terms 'winding up' and 'dissolution' used to mean the same thing, but according to Companies Act, these two terms are quite different by their legal procedures. The differences between them are as below:

Points	Winding Up	Dissolution
Main Feature	The first stage and involves realising of assets, paying off liabilities & distribution of surplus if any.	The second stage in which a company is finally dissolved.
Proceedings	Carried out by the liquidator appointed by the company/court.	Order can be issued only by the court.
Liquidator's Duties	Liquidators represents the company.	Liquidator can not represent company.
Debt	Creditors can prove their debts.	Creditors cant prove their debts.

COMPULSORY WINDING UP

VOLUNTARY WINDING UP

WINDING UP UNDER THE  
SUPERVISION OF THE COURT

MEMBERS

CREDITORS



## MODES OF WINDING UP

2. if the company is unable to pay its debts.
3. the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.
4. When the period fixed for duration of the co by memorandum or articles expires OR the event if any occur on the occurrence of which the memorandum or articles provide that the co is to be dissolved.



## MODES OF WINDING UP

5. The court is of opinion that it is just and equitable that the co should be wound up.
6. The company has been used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order morality.
7. The company is used or act against the security of the nation.
8. If the company ceases to have a member.

# Who may apply in court for winding up

- Section 245 provides that an application for winding up can be made by a creditor, the company or contributory who has held the shares for at least six months in the eighteen months preceding the commencement of the winding up. The registrar may also apply with the consent of the government if it appears so necessary from a perusal of the financial condition of the company as disclosed in the balance sheet.

- According to section 241 says about circumstances in which company may be wound up by court. A company may be wound up by the court if the company has by special resolution resolved that the company be wound up by the court:
- -If default is made in filling the statutory report or in holding the statutory meeting.
- -If the company is unable to pay it's debts.
- -If the court is of opinion that it is just and equitable to wind up the company.



- Section 242 explains when a company will be deemed to be unable to pay its debts. These will be if a creditor to whom the company is indebted for a sum and the company neglects to pay the sum for three weeks or if execution or other process issued on a decree or order of any court in favor of a creditor of company is returned unsatisfied in whole or in part or if it is proved to satisfaction of court that the company is unable to pay its debts and court shall take into account the contingent and prospective liabilities of company.

- When a winding up order has been made or provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.



# VOLUNTARY WINDING UP

## VOLUNTARY WINDING UP OF A COMPANY:

Voluntary winding up means winding up by the members or creditors of a company without interference of the court.

## RESOLUTIONS FOR WINDING OF A COMPANY:

The resolution may be of two types:

a. Ordinary resolution

b. Special resolution



# TYPES OF VOLUNTARY WINDING UP

- **TYPES OF VOLUNTARY WINDING UP:**
- A voluntary winding-up may be :
  - (a) a members' voluntary winding-up
  - (b) a creditors' voluntary winding-up



- Section 298-305 applies to Creditors' Voluntary Winding up. The company shall call a meeting of creditors on the day or the day following the day on which the resolution for voluntarily winding up the company is to be passed and shall cause the notice of the said meeting of the creditors to be sent to the creditors along with the notice of the general meeting in which the winding up is proposed. The director of the company shall cause a full statement of the position of the company and the estimated amount of their claim to be laid before the meeting of creditors to be held and appoint one of their members to present at the said meeting.

The creditors may appoint their choice for appointment as liquidator and in that case he shall have preference over any nominee of the company for appointment as liquidator. The liquidator's remuneration is to be fixed by the creditors or the committee of inspection. In every voluntary winding up it's the duty of the liquidator to pay the debts of the company and adjust the right of the contributors among themselves.

- Section 316-321 provide for winding up subject to supervision of court. When a company has by special or extraordinary resolved to wind up voluntarily the court may make an order that the voluntary winding up shall continue but subject to supervision of court and such terms as the court thinks just. Where an order is made for winding up subject to supervision, the liquidator may, subject to any restriction imposed by the court, exercise all the powers as if the company was being wound up altogether voluntarily.