

UNDERSTANDING THE LIQUIDATION PROCESS

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LEGAL FRAMEWORK

- **The Companies Act 61 of 1973 & Act of 2008**
- **Close Corporations Act**
- **Insolvency Act**
- **Case Law**
- **Regulations**
- **Notices**



WHY ARE COMPANIES LIQUIDATED?

Insolvency and Financial Obligations

- Liquidation happens when liabilities exceed assets, when a company unable to meet its financial obligations.
- The legal test of insolvency is whether the debtor's liabilities, fairly estimated, exceed his assets, fairly valued (*Venter v Volkscas Ltd* 1973 (3) SA 175 (T) 179; *Ex parte Harmse* 2005 (1) SA 323 (N) 325). Inability to pay debts is, at most, merely evidence of insolvency.

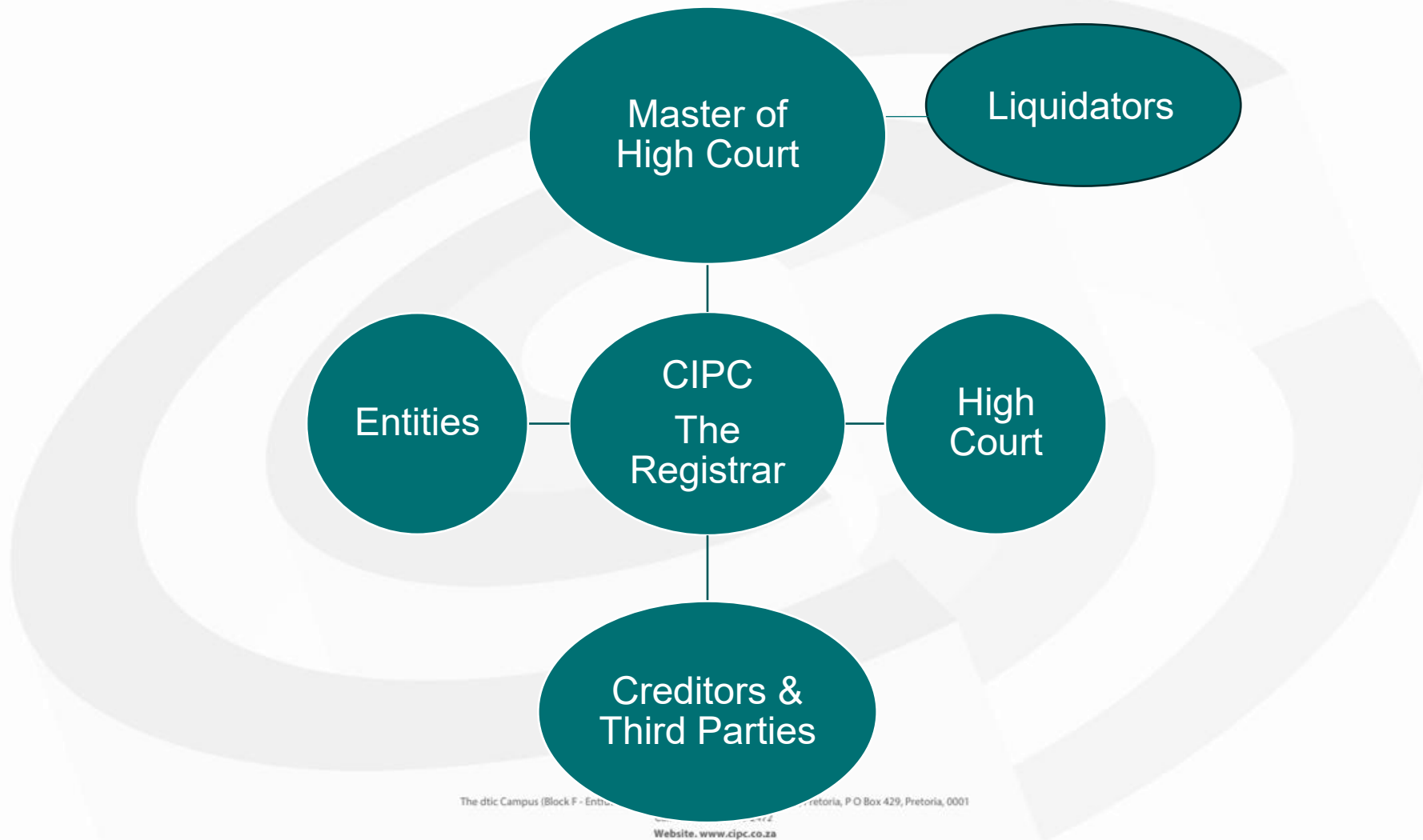
THE PURPOSE OF LIQUIDATION

1. To ensure that whatever assets the debtor has are liquidated and distributed among all its creditors in accordance with a predetermined (and fair) order of preference.
- The law of insolvency exists primarily for the benefit of creditors (cf *Ex parte Pillay; Mayet v Pillay* 1955 (2) SA 309 (N) 311)

WHO CAN FILE FOR LIQUIDATION OF A COMPANY?

1. The Directors and Shareholders of the company through a special resolution.
2. The Creditors of the company
3. Business Rescue Practitioner after business rescue cannot be substantially implemented.

Understanding Liquidation



ROLES IN LIQUIDATION



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CIPC'S ROLE IN LIQUIDATION

- CIPC administers liquidation filings
- Updates company status, and coordinates with the Master of the High Court.
- On record CIPC has the following documents COR40.1, CM26, CM100, JM11 and court orders.
- Thereafter, CIPC forwards copies of the application to the Master High Court for liquidator appointment and administration.

ROLE OF THE MASTER OF HIGH COURT

- The Master oversees the liquidation process; appoints liquidators.
- The liquidators are responsible for managing asset sales and creditor meetings.
- The Master maintains detailed liquidation records to ensure accountability and transparency throughout the process. Documents such as Liquidation and distribution accounts and details of liquidators.

MODES OF WINDING UP COMPANY



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MODES OF WINDING UP COMPANY

Section 343 of 1973 Act, a company may be wound up

- a) By a Court Order
- b) Voluntary
- c) A Voluntary-Up of a company may be –
 - ✓ A Creditors Voluntary winding up
 - ✓ Members voluntary winding up

VOLUNTARY LIQUIDATION

- A voluntary winding-up is initiated by a special resolution of the shareholders.
- Decided internally by the company or authorized directors, shareholders, usually more straightforward.
- **COR40.1**
- **CM26 special resolution & CM100**

COMPULSORY LIQUIDATION

- Initiated by creditors via a High Court application when a company is insolvent and unable to pay debts.
- Creditors will have to prove that the company is insolvent.
- **Court Order**

DIFFERENCE BETWEEN SOLVENT AND INSOLVENT COMPANY



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WINDING UP SOLVENT COMPANIES

Section 79 & 71 OF 2008

- Winding up a solvent company occurs when the company has assets and liabilities.
- This means that a company's liabilities are not exceeding its liabilities.
- The decision to dissolve can be taken by creditors (Court Order Application), special resolution by the shareholders.

CIPC receives COR40.1 for solvent liquidation.

OR

Section 81 Court Order (Provisional Liquidation & Final Liquidation Order)

FILING REQUIREMENTS FOR COR40.1 (Solvent Company)

- Completed COR40.1
- R250 in your customer account and quote your customer code
- Signed special resolution
- Section 80(3) security certificate issued by the Master of High Court confirming that security has been paid (JM12).
- Certificate in terms of section 80(3) (ii) by the company auditor stating that the company appears to have no debts.
- Certified ID Copies of directors.
- Certified ID copy of the filer.

Example of COR40.1

Form CoR 40.1

About this Notice

- This notice is issued in terms section 80 of the Companies Act, 2008, and Regulation 40 (1) of the Companies Regulations, 2011.
- The fee for filing this Notice is R250.

Contacting the Commission

The Companies and Intellectual
Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice of Special Resolution to Wind-up Solvent Company

Date: _____

Customer Code: _____

Concerning:

(Name and Registration Number of Company)

Name: _____

Registration number: _____

On _____, (insert date) the shareholders of the above named company adopted a special resolution to voluntarily wind up in terms of section 80 of the Companies Act, 2008.

In terms of section 80 (1), the winding up the company is to be carried out by -

The company.

The creditors of the company.

If the winding up is to be carried out by the company, in support of this Notice, the company has attached a copy of the consent of the master, as required by section 80 (3).

Name and Title of person signing on behalf of the Company:

Authorised Signature:

WINDING UP INSOLVENT COMPANIES

- Insolvent companies have liabilities that exceeding assets and are wound up via voluntary or court-ordered liquidation.
- **CIPC** when an insolvent company is wind up, receive a **CM100** and **CM26**, adopted in terms of **s349 Act of 1973**.
- **An insolvent company can also be wind up through a court order in terms of section 344 of the Companies Act 61 of 1973.**

Filing Requirements for CM26 & CM100 (Insolvent Company)

- Completed CM26
- Signed minutes & Special resolution.
- Completed CM100. (Commissioned by a commissioner of Oath)
- R80 in your customer account and quote your customer code
- Certified ID Copies of directors.
- Certified ID copy of the filer.
- Compliance with Notice 35 of 2024

Example of CM26

| | | |
|--|---|---|
| Client Ref: <input type="text"/> | REPUBLIC OF SOUTH AFRICA COMPANIES ACT, 1973 | Form CM 26 |
| Special resolution (Section 200) (To be lodged in duplicate) | | <input type="text" value="R30"/> |
| Registration No. Of Company <input type="text"/> | | |
| Name of company <input type="text"/> | | |
| Date notice given to members <input type="text"/> | | |
| Date resolution passed <input type="text"/> | | |
| Special resolution passed in terms of section <input type="text"/> of the Act*paragraph <input type="text"/> of the memorandum*article <input type="text"/> of the articles. | | |
| Copy of notice convening meeting attached. Consent to waive period of notice of meeting (CM 25) attached*not attached. | | |
| CONTENTS OF RESOLUTION (Use reverse side if necessary) | | |
| RESOLVED: <input type="text"/> | | |
| <input type="text"/> | | |
| <input type="text"/> | | |
| <input type="text"/> | | |
| <input type="text"/> | | |
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| <input type="text"/> | | |
| <input type="text"/> | | |
| <input type="text"/> | | |
| <i>Rubber stamp of company, if any, or of secretaries.</i> | | |
| Date <input type="text"/> | Signature <input type="text"/> | Director/Secretary/Manager |
| | | Name (in block capitals) <input type="text"/> |
| * Delete whichever not applicable. | | |
| Herewith copy of special resolution as registered. | | To be completed by company |
| Registration No. of Company <input type="text"/> | | <input type="text" value="Special resolution registered this day"/> |
| Name of Company: <input type="text"/> | | <input type="text" value="Registrar of Companies"/> |
| <input type="text"/> | | |
| <input type="text"/> | | |

THE COMPANIES ACT, 1973

Annexure CM100

Master's Reference No. _____

STATEMENT OF AFFAIRS

(Section three hundred and sixty three of the Act.)

Name of company _____

Date of winding-up order _____

Name and address of liquidator _____

Statement of affairs on the _____ day of _____ 20 _____ the date of the winding-up order

Example of
CM100



**LEGAL CONSEQUENCES
DURING LIQUIDATION**

LEGAL CONSEQUENCES

Legal Authority Shift

- Upon voluntary liquidation, directors lose all powers, and the liquidator gains full control over company affairs.

Director Resignation Restriction

- Directors cannot resign or act during liquidation to ensure neutral management and avoid conflicts of interest.
- If they happen to resign and it is found that they are guilty they will be held liable.

LEGAL CONSEQUENCES

- In terms of s354, The Court may stay or set aside winding up, at any time after commencement of a winding up after receiving an application of any liquidator , creditor or member.
- N.B The only way to reverse a liquidation status at CIPC it through a court order.

DURATION AND DISSOLUTION

- Liquidation process can take up to six months to two years, ending with a certificate issued for dissolution.



JM11 CERTIFICATE OF COMPLETION

JM11 CERTIFICATE OF COMPLETION ISSUED BY THE MASTER OF HIGH COURT IN TERMS OF SECTION 419 (1) Companies Act and 66 of the Close Corporations Act

- When the Liquidator has finalized the Liquidations process (Liquidation and Distribution Account is finalized) all creditors were paid.
- The Master of High Court will issue a certificate of Completion JM11, showing that the liquidation or wind-up was successful .
- CIPC will receive the JM11 then we change the status of the company **from Voluntary Liquidation (06) to Dissolved (14)**.
- At this point, the company ceases to exist.

COMMON ERRORS & CHALLENGES



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CM100 & CM26 FILLINGS

- Entities are filing liquidation applications that are not in compliance with Notice 35 of 2024, these include:
 - Filing liquidation application where insolvency is not proven, no assets, properties and liabilities.
 - Lodging incomplete forms.
 - Submitting documents that are not clear.

CM100 & CM26 FILLINGS

- Submitting documents that are not commissioned or certified.
- The Masters office is often frustrated by liquidation application where there are no assets and it creates an administrative burden to the master.
- The Master will not be able to appoint a liquidator if the statement of affairs is not properly completed.

CM100 & CM26 FILLINGS

- **N.B** When contemplating liquidation directors and shareholders should do an assessment how the liquidation will be funded, how the costs and securities of liquidation will be covered, and what assets or properties are available to support the process.
- These aspects are generally expected to be considered by company directors when liquidation is contemplated.

TIPS

- CM100 is only applicable to insolvent liquidation and therefore if insolvency cannot be indicated on CM100, then consider filing COR40.1 or other ways of dissolving the entity such as voluntary deregistration.
- When submitting court orders related liquidation please quote your customer code so that you can get communication related to that filing.
- Ensure that there are enough funds in your customer code when filing CM100 & CM26 (R80) and COR40.1 (R250)

TIPS

- Court Order are free of charge no amount will be debited for a court order.
- Liquidation application are only processed through our mailbox, therefore applications and documents should be sent to Liquidations@cipc.co.za



THANK YOU



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