**An outline of winding-up of companies in Nigeria**

**Introduction**

Companies are formed for many reasons, with the intent that they flourish, be profitable and by staying as a going concern, able to generate returns on investment for the shareholders, continue to be an employer of labour, taxpayer to government, responsible corporate citizen contributing to worthy causes, and service provider meeting the needs of its customers. However, at some point, due to varying circumstances, it might become necessary to terminate the life of a company, dissolving its business via winding-up.  Winding-up could become necessary when a business is no longer making profit; when competition is wearing down a business; the owner is no longer interested in operating the business; or arising from the business' inability to pay its debts, etc.

Winding up of a company can be described as a decision which is imposed or agreed on to bring an end to the company’s corporate existence. In winding up, the company’s assets will be distributed for the benefits of the **creditors** and members of the company.

Winding-up in Nigeria is primarily governed by the following laws including Companies and Allied Matters Act 2020 (CAMA), Winding-Up Rules 2001 (WR), Federal High Court (Civil Procedure) Rules 2019, Federal High Court (Amendment) Act, 2005, Companies’ Regulation 2021, etc. Sectoral requirements may also apply in some instances; for example, a bank to be wound up may have recourse to the provisions of Banks and Other Financial Institutions Act (BOFIA) and so also an insurance company may refer to the Insurance Act.

The period which the winding up of a company might take would be determined by a combination of factors — the size of its asset and liabilities, the scope of its commercial activities, and the complexity of its business operations, etc.

**Types of company winding-up**

Section 564 (1) of CAMA provides for the various ways a company can be wound up, i.e., by order of court; voluntary winding-up; and winding-up by supervision of court.

1. **By order of court**

In term of section 570 of CAMA and by inference from section 251 of the Constitution of Nigeria, 1999, the Federal High Court has the jurisdiction to wind up a company in certain circumstances which include: inability to pay its debt (as defined under section 572 of CAMA),[[1]](#footnote-1) where the number of the members of the company reduced below 2 in the case of companies with more than one shareholder, failure to hold statutory meeting or delivering of statutory report and where in the opinion of the court, it is just and equitable that the company should be wound-up.[[2]](#footnote-2)

An application for winding up should be by petition to the court, and it can be made by any of the following:[[3]](#footnote-3)

1. The company or a director
2. A creditor (including their trustees or personal representatives).
3. An official receiver.
4. A contributory[[4]](#footnote-4) (including their trustees or personal representatives)
5. The corporate affairs commission
6. A receiver, if authorised by the instrument under which he was appointed.
7. By all or any of the parties, together or separately.

The petition is to contain a concise statement of the nature of the claim made and the relief sought and attached to the petition is an affidavit of non-multiplicity of action on the same subject matter. The petition is to be served not less than 7 days before the day fixed for hearing of the petition.

This mode of winding up is deemed to commence at the time when the winding up petition is presented to the court. However, this does not extend to situations where a resolution of the company has been passed for voluntary winding up. In such instances, the winding up is deemed to have commenced upon the passing of the resolution.[[5]](#footnote-5) Upon hearing the petition, the court may either dismiss it, adjourn the hearing conditionally or unconditionally or make an interim order or any other order it deems fit. The court shall however, not refuse to make a winding up order on the ground solely that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

When a winding up order is made, a copy of the said order shall be forwarded by the company (or any other prescribed entity) to the Corporate Affairs Commission (CAC) which shall make a minute of the winding up in its books which it maintains in relations to that company.

**2. Voluntary winding-up**

This is provided for in section 620 of CAMA. Voluntary winding-up is a self-imposed liquidation process approved by the shareholders to terminate the life of a company. This can be in two forms, either as a members’ voluntary winding-up or creditors voluntary winding-up. These two are briefly discussed below.

1. ***Members’ voluntary winding-up***

Members of a solvent company by a special resolution may decide to end the business and realise the assets of the business, in order to distribute the proceeds amongst members. Section 625 CAMA provides that the directors may within five (5) weeks of passing the resolution for winding-up submit to the CAC for registration, a statutory declaration of solvency, stating that the business is solvent and can repay its creditors within twelve (12) months.

The procedure for members’ voluntary winding-up of a company is as follows:[[6]](#footnote-6)

1. The company at a general meeting passes a special resolution requiring the company to be wound up voluntarily. At the meeting the company would appoint one or more liquidators for the process. The appointed liquidator may be a corporate lawyer or a professional, such as an accountant with the good knowledge of the winding up laws and procedures.
2. The company must thereafter cease to carry out business after the resolution for winding up has been passed, and the powers of the directors’ ceased upon the appointment of the liquidator unless the company in a general meeting or the liquidator allows the continuance of it.
3. Within 14 days of passing the resolution, the company shall give notice of the special resolution passed to the CAC and also advertise it in official gazette or two national daily newspapers.
4. A statutory declaration of solvency must be made by the directors or majority of the directors and submitted to the CAC for registration within 5 weeks immediately preceding the date of passing the special resolution for the winding up of the company.
5. Where the process of winding up last more than a year, the liquidator is to hold a general meeting of the company at the end of each year or at the convenient date within three (3) months from the end of the year. The notice of the meeting should be published in an official gazette and in 2 (two) newspapers printed in Nigeria.
6. The liquidator shall hold the final meeting of the company upon liquidation to render accounts and showing how the winding up procedure was carried out and a copy of same is to be sent to the Corporate Affairs Commission within seven (7) days of the meeting for registration.
7. The liquidator is to preserve all books, records and documentations of the company relating to his activities as a liquidator for the period of five (5) years before destroying it, subject to the consent of the CAC.
8. The liquidator is required to send to the CAC for registration within twenty-eight (28) days after the meeting, copies of the account and a statement of holding of the meetings and its dates.
9. The liquidator shall finally apply for a dissolution order and send same to the Corporate Affairs Commission. The company will be deemed dissolved after three (3) months of the registration of the accounts and returns with the Corporate Affairs Commission.
10. ***Creditors Voluntary Winding-up***

This is where the directors of an insolvent company voluntarily decide to liquidate its assets in order to pay its debts. It usually arises when the liabilities of a company exceed its assets and it is unable to pay its creditors, thus it cannot carry on its business. Creditors of the company would then take charge of the liquidation process. Here, the company's creditors nominate a person to be a liquidator on behalf of the company. The procedure for creditors’ voluntary winding up of a company can be summarised as follows:[[7]](#footnote-7)

1. The company and its creditors would hold separate meetings to propose the winding up of the company. The meeting of the creditors shall hold on the same day or the day after the meeting of the company.
2. The notice of meeting of the creditors shall be published once in a federal government gazette and at least two (2) daily newspapers circulating in the district where the registered office or the principal place of business of the company is.
3. At their respective meetings, the company and the creditors shall nominate a liquidator for the purpose of winding up the affairs of the company. In the event that different persons are nominated at the separate meetings, the person nominated by the creditors at their meeting will be the liquidator.
4. Upon appointment of the liquidator, all the powers of the directors shall cease except there is a committee of inspection. See Adamu Gbedu v Joseph Itie and Ors.[[8]](#footnote-8)
5. A committee of inspection consisting of not more than 5 (five) persons may be appointed by the creditors and the company at their respective meetings. However, the creditors have the discretion to reject such persons so appointed by the company.
6. Where the process of winding up last more than a year, the liquidator is to hold a general meeting of the company at the end of each year or at the convenient date within three (3) months from the end of the year.
7. As soon as the affairs of the company is wound up, the liquidator shall prepare an account of the winding up to be laid before and approved by the final meeting.
8. The liquidator shall within seven (7) days of the meeting send a copy of the account and return holding of the meeting to the Corporate Affairs Commission.
9. The company is deemed to be dissolved after three (3) months of the registration of the accounts and return to the Corporate Affairs Commission.

**Winding-up by Supervision of the Court**

This is provided for in terms of chapter 23 of CAMA. It occurs when the company passes a resolution to voluntarily wind up itself and petitions the court to supervise the winding up process. The processes involved in the voluntary winding up of a company shall also apply, except that the court shall have the liberty to appoint an additional liquidator.

***Liquidator and his duties***

A liquidator is appointed either by the shareholders, or by creditors of a company through an application to the Court. He is appointed to run the affairs of a company being wound-up, by ensuring all company’s debts are settled (if any) and surplus proceeds distributed accordingly. In ***CBCL (Nig) Ltd v. Okoli,*[[9]](#footnote-9)** the Court held that

*Tthe legal effect of appointing a liquidator in accordance with CAMA* *is that the liquidator assumes the right to act as an agent of the company for the purposes of dealing with the assets and liabilities in receivership. The liquidator can also bring or defend, an action on behalf of the company yet the company does not lose its legal personality or tittle to its goods.*

In addition, section 588 of CAMA provides that a liquidator is responsible to bring or defend any legal proceeding in the name and on behalf of a company; appoint a legal practitioner or any relevant professional to assists in the performance of its duties; run the business in so far as its benefits the winding-up; and meet up with creditors and potential/ future claims owners again the company for compromise or arrangements that may render the company liable amongst many others.

***The legal status of a company being wound up***

A company being wound up maintains its legal personality, and only loses its personality when fully wound up - ***CBCL (Nig) Ltd v. Okoli.*** Thus, initiating a winding-up process or appointing a liquidator does not in itself result in the death of the company. In ***Progress Bank (Nig) Plc v. O.K. Contact Point Ltd,[[10]](#footnote-10)*** the Respondent wrongfully presumed that a company under liquidation is dead. There was also nothing before the Court of Appeal (CA) to show that the Applicant had been dissolved. The CA held that by the provision ***CAMA 1990,*** actions or proceedings against a wound-up company, where a liquidator has been appointed, is maintainable with the leave of court***.*** Thus, a company in liquidation can sue and maintain an action in court but no action can be brought against it, except with leave of court.

A party intending to commence an action against a company for which a Provisional Liquidator has been appointed or a winding-up order made, must seek and obtain prior leave of court.

**References**

Titilade Adelekun Ilesanmi “Nigeria: Understanding Winding-Up In Nigeria: Frequently Asked Questions (FAQs)” <https://www.mondaq.com/nigeria/shareholders/939768/understanding-winding-up-in-nigeria-frequently-asked-questions-faqs>

Akintunde Emiola *Nigerian Company Law* (2nd Ed. Emiola Publishers, 2007).

# Procedure for winding up of companies in Nigeria under CAMA 2020 <https://trustedadvisorslaw.com/procedure-for-winding-up-of-companies-in-nigeria-under-cama-2020/>

# CAMA, 2020

1. The relevant amount of indebtedness in section 272 of CAMA 2020 is N200,000. [↑](#footnote-ref-1)
2. CAMA, s. 571. [↑](#footnote-ref-2)
3. CAMA, s. 573 (1). [↑](#footnote-ref-3)
4. A contributory means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up. [↑](#footnote-ref-4)
5. CAMA, s. 578. [↑](#footnote-ref-5)
6. See generally, CAMA, ss. 620-633. [↑](#footnote-ref-6)
7. See generally, CAMA ss. 634-641. [↑](#footnote-ref-7)
8. (2020) 3 NWLR [Pt. 1710] 104 S.C. [↑](#footnote-ref-8)
9. [2009] 5 NWLR (Pt. 1135) 446 at 461, Paras F-G. [↑](#footnote-ref-9)
10. [2008] 1 NWLR (pt. 1069) p. 514.
 [↑](#footnote-ref-10)