

# TNY Legal Bangladesh Newsletter

Issued 2022/11/15 No.6

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### Introduction

前号に引き続き、会社法における清算に関する規定をご紹介致します。

本ニュースレターの受信者の皆様にとって関心のある テーマやトピックのご要望がございましたら、 fsaori@tny-legal.comまでご連絡頂けますと幸いです。

# 会社法における清算(2)

Newsletter No.5 では、会社法に基づく裁判所による清算についてご紹介しました。本号では、任意清算および裁判所監督による清算についてご紹介いたします。

#### (2) 任意清算

以下のいずれかの場合に、会社は任意清算をすることができます。

- (a) 定款に定められた会社の存続期間が満了した場合、会社の清算について基本定款で定めた事象が発生 した場合、または会社に対して任意的に清算すべきことを要求する決議を株主総会において当該会社 が承認した場合
- (b) 会社が任意清算される旨の特殊決議を決議した場合
- (c) 債務が原因で会社が事業を継続することができず、清算することが賢明である旨が特別決議により決定した場合

#### 株主による任意清算と債権者による任意清算

任意清算が提案された場合、取締役は、会社の事務を調査し、清算手続が開始された日から3年以内に会社の債務を完全に支払う事ができるとの意見を形成し、宣誓しなければなりません(290条(1))。上記手続きに従った場合の清算手続は、会社法において「株主による任意清算」として扱われ、そうでない場合は「債権者による任意清算」として扱われます(同条(3))。

#### < 清算手続き >

#### 株主による任意清算

会社は、株主総会にて会社の事務の清算および資産の分配のために清算人を選任し、報酬を決定します。清算人が選任された時点で、取締役のいかなる権限も、株主総会において会社が承認したか、清算人が継続を承認した場合を除き、停止します(292条)。

会社の事務が完全に清算された後、清算人は、速やかに、当該清算の実施方法および会社財産の処分方法について示す清算手続の記録を作成しなければならず、その後、当該記録を説明するために、株主総会を招集しなければなりません。

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株主総会の日から1週間以内に、清算人は当該記録の写しを商業登記所に送付し報告しなければなりません。 商業登記所は、それらの書類を記録し、報告書の登記から3か月で、会社は解散したものとみなされます (296条)。

#### 債権者による任意清算

債権者および会社は、債権者集会および株主総会において、清算人を指名することができ、債権者および会 社が異なる者を指名した場合、債権者に指名された者が清算人となります(299条)。株主による清算の場 合と同様に、清算人は、商業登記所に対して報告する義務があり、報告書の登記時点から起算して3か月間 の満了日に、会社は解散したものとみなされます(305条)。

#### (3) 裁判所の監督の対象となる清算

特別決議または特殊決議による任意清算が決定された場合、裁判所は、出資者もしくは債権者の申立てにより、一般的に裁判所が適切と考える条件および状況のもとで、裁判所による監督下で任意清算を継続すべき旨の命令をすることができます(316条)。裁判所の監督による清算命令が出された場合、清算人は、裁判所による制限のもと、会社の任意清算と同様に全ての権限を行使することができます(320条)。

# Winding up of a company under the Companies Act in Bangladesh (2)

In the Newsletter No.5, "Winding up by the court" was introduced, "Voluntary winding up" and "Winding up subject to the supervision of the court" are introduced in this issue of Newsletter.

#### (2) Voluntary Winding up

In accordance with the section 286 of the Companies Act, a company may be wound up voluntarily in either of follows:

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the even, if any occurs, on the occurrence of which articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

#### Members' voluntary winding-up and Creditors' voluntary winding up

Where it is proposed to wind up a company voluntarily, the directors of the company shall make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up. A winding up, in this case is referred to as "members' voluntary winding up", and, where a declaration has not been made and delivered is in the Companies Act referred to as "creditors' voluntary winding up."

#### Procedure

#### Members' voluntary winding up

The company in general meeting shall appoint liquidator(s) for the purpose of winding up, winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them. On the appointment of liquidator, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator, sanctions the continuance thereof (section 292).

As soon as the affairs of the company are fully wound up, liquidator shall make up an account of the winding of up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting the company for the purpose of laying before it the account, and giving explanation thereof. Within one week after the meeting the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date. The Registrar on receiving the account and either of the returns shall

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forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved (section 296).

#### Creditors' voluntary winding up

The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator (Section 299).

Same as the case of members' voluntary winding up, liquidator shall send to the Registrar a copy of the account and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved (Section 305).

#### (3) Subject to the supervision of the 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 (Section 316). 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 (Section 320).

# 2022 年 10 月に発出された主な法令情報(10 月 11 日~11 月 10 日)/ Major updates on Legislations in October 2022 (11 October to 10 November)

#### Official Extraordinary Gazette of October to November 2022 Notification Circulars

Issue	Title	Issuing Ministry
Date		
12-Oct	S.R.O. No297-Act/2022The Directorate of Labour, Minimum Wage Board,	Ministry of Labor and
	Labor Court and Labor Appellate Tribunal (Employees) Recruitment Rules, 2022.	Employment
15-Oct	No. 11/Musak/2022Receive of invoice issued by mobile banking service	National Board of
	provider against electricity bill paid by customer as tax invoice.	Revenue (NBR)
27-Oct	No. 49.00.0000.042.01.075.22-160Policy regarding Health Examination of	Ministry of
	Bangladeshi Workers Going Abroad, 2022 (Amended)	Expatriates Welfare &
		Overseas Employment
27-Oct	S.R.O No. 324-Act/2022Bangladesh Water and Wetland Development	Ministry of Water
	Directorate (Employees) Recruitment Rules, 2022.	Resources
01-Nov	Ba. Ja. S. Bill No. 26/2022Bangladesh Small and Cottage Industries	National Parliament
	Corporation Act, 1957 repealed and re-enacted bill Bangladesh Small and	of Bangladesh
	Cottage Industries Corporation Act, 2022.	
10-Nov	S.R.O No-341-Act/2022Financial Reporting Council (Registration of Auditors	Ministry of Finance
	and Audit Firms) Rules, 2022.	

## Bangladesh Bank Circular

Issue Date	Title
11-Oct	BRPD Circular Letter No. 39: Single Borrower and Large Loan Exposure Limit
12-Oct	FEPD Circular Letter No. 37: Prohibition of issuance of LCs for import of narcotics without license/permit/NOC/prior permission from Department of Narcotics Control.
12-Oct	BRPD Circular Letter No. 40: Prohibition regarding dealing of virtual assets & virtual currencies and facilitating their exchange/transfer/trading
20-Oct	FEPD Circular No. 29: Transactional procedures for import trade on phase-out of LCAF

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24-Oct	DMD Circular Letter No. 09: Considering Passport Number as Unique Identification Number for Purchasing US Dollar Premium Bond and US Dollar Investment Bond	
25-Oct	BRPD Circular No. 18: Regarding Loan Adjustment of Government Identified Sick/Closed Industries (Non-Textile Sector)	
26-Oct	BRPD Circular Letter No. 41: Policy for Post Import Financing-PIF	
26-Oct	FEPD Circular Letter No. 38: Import/Accepted Bill Payment on maturity	
27-Oct	FEPD Circular Letter No. 39: Payments through Asian Clearing Union (ACU)	
03-Nov	DOS Circular Letter No. 35: Change in bank office and transaction hours.	
08-Nov	BRPD Circular Letter No. 44: Exemption from the provision of section 26kha(1) of Bank Company Act, 1991 regarding general credit limit to coal-based electricity producing companies.	
08-Nov	DFIM Circular Letter No. 23: Change in office hour for NBFIs	
08-Nov	FEPD Circular No. 30: Interest rate on borrowing from Export Development Fund (EDF)	
09-Nov	FEPD Circular Letter No. 41: Release of foreign exchange for online study abroad	
10-Nov	PSD Circular Letter No. 07: Change in BACH and RTGS Schedule	
10-Nov	FEPD Circular Letter No. 42: Stock of cash currency and foreign currency account maintained by Money Changers.	
10-Nov	DFIM Circular Letter No. 24: Prohibition regarding dealing of virtual assets & virtual currencies and facilitating their exchange/transfer/trading	
10-Nov	PSD Circular No. 16: Determination of Platform Fees, Interoperable Fees and Service Charges for transactions through Interoperable Digital Transaction Platform (IDTP)	
10-Nov	DMD Circular Letter No. 10: Time schedule of Bangladesh Government Bill/Bond Auction, Bangladesh Bank Bill Auction, Repo, ALS & EDS Money platform transaction.	

# ご案内

弊事務所では、新規取引に関する契約書の作成やレビュー、雇用契約に関するご相談、債権回収に関する ご相談、日本語での解説、書類の用意、手続き代行など、幅広く承っております。

例えば、顧問契約においては、お客様のご事情に沿ったサービス内容を検討し、お見積りをご提案しております。その他、顧問契約などの継続的なお取引のない方でも、案件ごとにご依頼いただけます。

また、事業の進め方や取引方法について、バングラデシュの法令に基づいて最善の方法を検討したいというお客様には、法令調査や関係機関へのヒヤリングなどの法律調査も承っております。

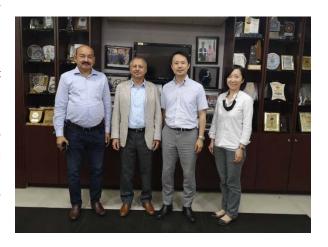
- ✓ 株式譲渡手続きをしたい
- ✔ 取締役、株主の変更手続きをしたい
- ✔ 支店から現地法人に変更したい
- ✓ 計画している事業について、外資規制があるか確認したい
- ✔ 雇用契約のリーガルチェックをして欲しい
- ✓ 契約書を作成して欲しい
- ✔ 労働者のストライキへの対応について相談したい
- ✓ 従業員を解雇したいが、どのように進めればよいか
- ✔ 金銭トラブルを解決したい
- ✓ 法務に関する事案は日本の親会社の法務部が管轄するが、現地でのサポートが欲しい、etc....

といった方、個々の案件ごとにお見積りを差し上げております。突発的に生じる、契約書作成やレビュー、 就業規則をはじめとする社内規定類の見直しなど、お気軽にお問合せください。

## 編集後記/Editor's Note

この 1 ヶ月は、チッタゴン出張、アダムジーEPZ 訪問、商工会・JBCCI 共催の 50 周年記念レセプション、カンファレンスでの初のモデレーター経験など、多くの刺激とチャレンジがありました。気がつけば、日差しが柔らかくなり、朝晩は冷えてきて、ダッカも冬の訪れを感じます。

I had exciting events and challenges last one month, such as business trip to Chittagong, visiting Japanese companies in Adamjee EPZ, participating in 50th Anniversary reception co-hosted by Shoo-Koo-Kai and JBCCI, and my first experience as a moderator at the Conference. Meanwhile, I find that the sunlight is getting gentle and it is getting cooler in the mornings and evenings, with the arrival of Winter in Dhaka.



CCCI (Chittagong Chamber of Commerce & Industry)

本稿は、2022年11月10日現在の情報に基づきます。

The ilnformation in this Newsletter is the information as of 10 November, 2022.

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