

Voluntary Liquidation Guidance
Registration Authority

December 2022





Contents

Part 1 – Introduction	3
Guidance overview and application	3
Legal framework	3
Insolvency proceedings	3
ADGM Companies can be dissolved without insolvency proceedings.....	3
Voluntary Strike Off	3
Further Information	4
Part 2 - Voluntary Liquidation	5
Liquidation.....	5
Types of Voluntary Liquidation	5
How a liquidation is managed.....	5
Part 3 – Members’ Voluntary Liquidation (MVL)	6
When an MVL is applicable.....	6
Declaration of solvency.....	6
Commencement of liquidation	6
Notice of a members’ voluntary liquidation.....	6
Status of Company once liquidation commences.....	7
Conversion of MVL to CVL.....	7
Summary of the steps to commence an MVL	7
Part 4 – Creditors’ Voluntary Liquidation (CVL)	8
When a CVL is applicable	8
Statement of Company’s Affairs.....	8
Notice of voluntary liquidation	8
Status of Company once liquidation commences.....	8
Role of Directors once liquidation commences.....	8
Disqualification of unfit Directors	8
Summary of the steps to commence a CVL	9
Part 5 – Liquidators	10
Role of the liquidator	10
Notice of a liquidator’s appointment.....	10
What the liquidator must send to the Registrar.....	10
What happens when the company’s affairs are fully wound up	11
Court’s power to control proceedings	11
Disclaimer	12

Part 1 – Introduction

Guidance overview and application

- 1.1 This guidance provides an overview of voluntary liquidations under ADGM's insolvency legal framework, the ADGM Insolvency Regulations 2022. The Guide also provides information about the documents that must be delivered to the Registration Authority as part of a voluntary liquidation and the process.
- 1.2 This guidance does not cover other types of insolvency proceedings available under ADGM's insolvency legal framework, such as compulsory winding up, receivership, and administration.
- 1.3 The guidance applies to ADGM incorporated public and private limited companies, limited liability partnerships (LLPs) and limited partnerships with legal personality (LPs). For ease of reference, the term 'Company' is used throughout this guidance to refer to ADGM incorporated companies, LLPs and LPs, unless specifically stated otherwise.
- 1.4 This guidance is issued under section 28 of the Commercial Licensing Regulations 2015 (CLR 2015).

Legal framework

- 1.5 The relevant ADGM legislation regarding the dissolution of Companies is the:
 - a) ADGM Companies Regulations 2020 (CR 2020); and
 - b) ADGM Insolvency Regulations 2022 (IR 2022).
- 1.6 This guidance provides information on voluntary liquidations and therefore should be read in conjunction with the IR 2022 specifically, as the guidance will not be able to tell you everything about a voluntary liquidation.
- 1.7 ADGM's Regulations and Rules are available on the ADGM website by following this [link](https://en.adgm.thomsonreuters.com/) (<https://en.adgm.thomsonreuters.com/>).

Insolvency proceedings

- 1.8 Insolvency proceedings are formal measures taken to deal with Company debt. There are a number of different types of Company insolvency proceedings available under ADGM's legal framework. It is important to note that not all companies involved in insolvency proceedings are insolvent.

ADGM Companies can be dissolved without insolvency proceedings

- 1.9 ADGM's CR 2020 provides an alternative Company dissolution process called voluntary strike off, as well as a power for the Registrar to strike Companies off the register. Both of these processes are outlined as follows.

Voluntary Strike Off

- 1.10 Voluntary strike off is the process of dissolving a Company at the Company's request, pursuant to CR 2020. There are two methods of voluntary strike off available under CR 2020:

- a) voluntary strike off by company with notice to members - this is informally referred to as an “ordinary” strike off, or
 - b) voluntary strike off by company supported by a prescribed statement - this is informally referred to as a “simplified” strike off.
- 1.11 There are various eligibility requirements that must be satisfied for a Company to apply for either type of voluntary strike off. For example, in the three months prior to making an application, a Company must not have traded or carried on business.
- 1.12 Where a satisfactory application is submitted to the Registrar, the Registrar will issue a public notice of the Company’s intention to be struck off. If the Registrar does not receive any claims against the company at the end of the public notice period, the Company’s name is struck off the register and the Company is dissolved.
- 1.13 A liquidator or insolvency practitioner is not required to complete this process. However, voluntary strike off is not an alternative to formal insolvency proceedings.

Further Information

After reading this guidance, if you require further information or clarification on voluntary liquidation, please email the ADGM Registration Authority at: ra@adgm.com.

Part 2 - Voluntary Liquidation

Liquidation

- 2.1 The liquidation or ‘winding up’ process ends the life of a Company and ensures that its property is administered for the benefit of creditors and members. When the liquidation process is completed, the Company is dissolved and removed from the register.
- 2.2 During the liquidation process, a Company’s assets are used to pay off its debts, liabilities and winding up expenses. Any remaining value is distributed to the shareholders.

Types of Voluntary Liquidation

- 2.3 The IR 2022 provides two types of voluntary liquidations of Companies. The table below lists each type and the circumstances in which each type may be appropriate.

No.	Liquidation Type	Circumstances
1	Members’ Voluntary Liquidation	Where the members want to close a Company and has sufficient assets to pay its debts within 12 months.
2	Creditors’ Voluntary Liquidation	When a Company is unable to pay its debts.

- 2.4 A solvent Company whose directors have decided to stop trading, may apply for a Members’ Voluntary Liquidation (“MVL”). Alternatively, if the Company has ceased trading for a period exceeding three months and otherwise qualifies, the Company may apply for voluntary strike off, as provided for in the CR 2020.
- 2.5 For an insolvent company, the directors can propose to the members that the Company be wound up through a Creditors’ Voluntary Liquidation (“CVL”).
- 2.6 Creditors can also apply to wind-up an insolvent Company via a compulsory winding-up by the ADGM Courts. Compulsory winding-up is not covered in this guidance.

Note: if a Company has already been dissolved, it will need to be restored to the register before applying for liquidation. Please refer to the CR 2020 for the requirements on company restoration.

How a liquidation is managed

- 2.7 Liquidation is overseen by a liquidator (insolvency practitioner). All liquidators appointed to a voluntary liquidation must be licensed as an insolvency practitioner under the Insolvency Regulations (Insolvency Practitioner) Rules 2022 (IP Rules 2022). IP Rules 2022 is enacted on 29 August 2022. Pursuant to IP Rules 2022 a natural person must be registered as an Insolvency Practitioner in accordance with the IP Rules 2022 in order to be appointed as a receiver, administrative receiver, administrator, liquidator or provisional liquidator or an administrator of a Deed of Company Arrangement under the Insolvency Regulations. Neither a firm, partnership nor body corporate can be appointed as a receiver, administrative receiver, administrator, liquidator or provisional liquidator or an administrator of a Deed of Company Arrangement under the Insolvency Regulations, nor is it required to be registered under the IP Rules 2022.

- 2.8 For an MVL, the shareholders choose and appoint the liquidator, while for a CVL, the Company's creditors choose and appoint the liquidator.
- 2.9 The expenses of the winding up, including the liquidator's fees, are payable by the Company in priority to the claims of unsecured creditors.

Part 3 – Members' Voluntary Liquidation (MVL)

When an MVL is applicable

- 3.1 An MVL can take place where it has been decided that a Company is no longer required (for example, it is no longer needed, there is a lack of business or there no one to continue running the Company), and the directors of the Company believe that the Company is solvent (can pay its debts and liabilities).

Declaration of solvency

- 3.2 Where it is proposed to wind up a Company using an MVL, the Directors (or, in the case of a Company having more than two Directors, the majority of them), must make a declaration of solvency.
- 3.3 The declaration of solvency must state that the directors have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full, together with interest, within 12 months from the start of the winding-up process.
- 3.4 The directors must make a declaration of solvency within the five weeks immediately before a resolution to wind up the Company is passed.

Making a declaration of solvency

In addition to writing a statement that the Directors have assessed and formed the opinion that the Company can pay its debts in full, with interest, you should include:

- a) the name and address of the company;
- b) the names and addresses of the company's directors; and
- c) how long it will take the company to pay its debts (*which must be no longer than 12 months from the start of liquidation*).

Commencement of liquidation

- 3.5 The liquidation is deemed to have commenced at the time of the passing of a Special Resolution ("resolution") by members for voluntary winding up at a general meeting.

Notice of a members' voluntary liquidation

- 3.6 When the members have passed a resolution for an MVL, the Company must publish a notice of the resolution in the ADGM within seven days.

Publishing a notice of members' voluntary winding up in the ADGM

To satisfy the requirement to publish a notice in the ADGM, the Registrar expects that a Company will published in (a) an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market; and (b) on the website of the Company to which such notice relates.

The advertisement should be published for three consecutive days.

Status of Company once liquidation commences

- 3.7 From the commencement of the liquidation, a Company must cease to carry on business, except where required for its beneficial winding up. For example, a Company may sell any of its remaining inventory as this is required for its beneficial winding up.

Conversion of MVL to CVL

- 3.8 During an MVL, if the liquidator decides that the company will not be able to pay its debts in full within the period stated in the directors' declaration of solvency, the liquidation becomes a CVL (see Part 5 of the guidance for more information).
- 3.9 Where the liquidator takes that decision, the liquidator must call a meeting of the creditors, notice of which shall not be less than seven days. The liquidator must prepare a Statement of Affairs of the Company and provide it to the creditors at the meeting. The liquidation becomes a CVL from the date of that meeting.

Summary of the steps to commence an MVL

- 3.10 The following is a summary of the steps to commence an MVL.

1	Make a Declaration of Solvency	Signed by the Directors (or a majority of them)
2	Call a general meeting	Within 5 weeks of the Declaration of Solvency and the members must pass a resolution for winding up
3	Appoint a liquidator	At the general meeting. The liquidator must be an ADGM licensed insolvency practitioner
4	Advertise the resolution in ADGM	The Company must publish an advertisement in an English with a wide circulation, including the ADGM and Abu Dhabi, UAE

Part 4 – Creditors’ Voluntary Liquidation (CVL)

When a CVL is applicable

- 4.1 When a Company cannot pay all of its debts within 12 months or at all (i.e. it is insolvent), it may choose to proceed in a number of ways, include going into a CVL.

Statement of Company’s Affairs

- 4.2 Where it is proposed to wind up a Company via an MVL, the Directors of the Company must prepare a Statement of Affairs of the Company and provide the Statement to the Company’s creditors.
- 4.3 The Statement of Affairs must:
- a) give the particulars of the Company’s property, debts and liabilities;
 - b) give the names and addresses of the Company’s creditors;
 - c) specify the security held by each creditor;
 - d) give the date on which each security was granted; and
 - e) contain such other information as may be prescribed.

Notice of voluntary liquidation

- 4.4 When the members have passed a resolution for voluntary winding up, the Company must publish a notice of the resolution in the ADGM within seven days.

Publishing a notice of voluntary winding up in the ADGM

To satisfy the requirement to publish a notice in the ADGM, the Registrar expects Company’s to publish an advertisement In (a) an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market; and (b) on the website of the Company to which such notice relates.

The advertisement should be published for three consecutive days.

Status of Company once liquidation commences

- 4.5 From the commencement of the liquidation, a Company must cease to carry on business, except where required for its beneficial winding up.

Role of Directors once liquidation commences

- 4.6 Once a liquidator is appointed the Company’s director(s) no longer have control of the company or anything that it owns and cannot act on behalf of the Company.

Disqualification of unfit Directors

- 4.7 Pursuant to the CR 2020, the Registrar has a duty to disqualify unfit directors of insolvent companies. If you were the director of a Company in a CVL and the Registrar is satisfied that

your conduct, as a director of the Company, makes you unfit to be concerned in the management of a company, you will be served a disqualification order. The minimum period of disqualification is two years, and the maximum period is 15 years.

Summary of the steps to commence a CVL

4.8 The following is a summary of the steps to commence a CVL.

1	Prepare a Statement of Affairs	The Directors must prepare a Statement of Affairs
2	Call a general meeting	Members must pass a resolution for voluntary winding up
3	Call a meeting of creditors	Directors to lay the Statement of Affairs before the creditors
4	Appoint a liquidator	The liquidator shall be nominated by the creditors (if they do not do so, then the Company may). The liquidator must be an ADGM licensed insolvency practitioner.
5	Advertise the resolution in ADGM	The Company must publish an advertisement in an English language newspaper with a wide circulation, including ADGM and Abu Dhabi, UAE

Part 5 – Liquidators

Role of the liquidator

- 5.1 The liquidator is appointed to wind up the company's affairs. The liquidator does this by calling in and using the company's assets to pay off creditors and distribute the remainder to shareholders.
- 5.2 The liquidation involves the following:
- a) ensuring all Company contracts (including employee contracts) are completed, transferred or otherwise ended;
 - b) ceasing the Company's business;
 - c) settling any legal disputes;
 - d) selling any assets;
 - e) collecting money owed to the Company;
 - f) distributing any funds to creditors;
 - g) repaying share capital to shareholders; and
 - h) dissolving the company and removing it from the register.
- 5.3 On the appointment of a liquidator, ordinarily all the powers of the Directors cease. The liquidator will take control of the company's affairs and the directors no longer have control of the company or anything it owns and cannot act for or on behalf of the company.

Notice of a liquidator's appointment

- 5.4 Within seven days of being appointed, a liquidator must:
- a) publish a notice of their appointment in the ADGM, and
 - b) deliver to the Registrar for registration, a notice of their appointment.

Publishing a notice of appointment in the ADGM

To satisfy the requirement to publish a notice in the ADGM, the Registrar expects liquidators to publish an advertisement in (a) an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market; and (b) on the website of the Company to which such notice relates.

The advertisement should be published for three consecutive days noting that creditors have 21 days to bring forward any claims against the company.

What the liquidator must send to the Registrar

- 5.5 Once a Company's affairs are fully wound up, the liquidator must send a copy of the account of the winding up and a return of meetings held with the Company and creditors, to the Registrar within seven days after completion of the meetings.

- 5.6 Where the liquidation continues for more than one year, the liquidator must also send a progress report to the Registrar every 12 months, until the liquidator ceases to act. The progress report must cover the period of 12 months starting with the date the liquidator is appointed and each subsequent period of 12 months.

What happens when the company's affairs are fully wound up

- 5.7 When a Company's affairs are fully wound up, the liquidator must send a copy of the final account and return to the Registrar.
- 5.8 Unless the Court makes an order deferring the dissolution of the Company, it is dissolved on the expiration of three months from the date of dispatch of the final account and return.

Court's power to control proceedings

- 5.9 On the application of a liquidator, the Court may make an order staying winding up proceedings. The liquidator may make such an application for a number of reasons such as to provide more time to administer the affairs of the Company or if misconduct has been identified that requires further investigation.

Disclaimer

This guidance is a non-binding indicative guide and should be read together with the relevant legislation, in particular the ADGM Insolvency Regulations 2015, Companies Regulations 2020 and any other relevant regulations and enabling rules, which may change over time without notice. Information in this guidance is not to be deemed, considered or relied upon as legal advice and should not be treated as a substitute for a specific advice concerning any individual situation. Any action taken upon the information provided in this guidance is strictly at your own risk and the Registration Authority will not be liable for any losses and damages in connection with the use of or reliance on information provided in this guidance. The Registration Authority makes no representations as to the accuracy, completeness, correctness or suitability of any information provided in this guidance.