

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 32

Pt 8 (Heading and ss 32–37) amended by Nos 9761 s. 3, 10236 ss 7(2)(c)–(f), 8(2)(i)–(m), 110/1986 s. 140(2), 14/1995 s. 4, substituted as Pt 8 (Headings and ss 32–37) by No. 57/1997 s. 25.

PART VIII—WINDING UP AND CANCELLATION

Pt 8 Div. 1 (Heading and ss 32, 33) substituted as Pt 8 Div. 1 (Heading and ss 32–33E) by No. 57/2000 s. 3.

Division 1—Voluntary winding up

S. 32 substituted by No. 57/2000 s. 3.

32. Definitions

In this Division—

"assets" in relation to an incorporated association, means the assets remaining after satisfaction of the debts and liabilities of the incorporated association and the costs, charges and expenses of the winding up;

"winding up date" in relation to an incorporated association, means the date on which that incorporated association resolves by special resolution to be wound up voluntarily.

S. 33 substituted by No. 57/2000 s. 3.

33. Voluntary winding up

An incorporated association may be wound up voluntarily if the association so resolves by special resolution.

33A. Distribution of assets on voluntary winding up in accordance with special resolution

S. 33A
inserted by
No. 57/2000
s. 3.

- (1) An incorporated association may, on or after the date on which it resolves by special resolution to be wound up voluntarily, pass a special resolution relating to the distribution of assets of the incorporated association on that winding up.
- (2) Subject to sub-section (3), if an incorporated association passes a special resolution under sub-section (1), the assets of the incorporated association must be dealt with or disposed of in accordance with that special resolution.
- (3) A special resolution referred to in sub-section (1) that provides for the distribution of the assets of the incorporated association to any of the members of the association, or has the effect of distributing the assets of the incorporated association to any of the members of the incorporated association, is of no effect if—
 - (a) on the winding up date, or at any time in the period of 5 years immediately before that date, the rules of the incorporated association prohibited the distribution of the assets of the incorporated association to any of the members of the incorporated association on a voluntary winding up; or
 - (b) on the winding up date the rules of the incorporated association contained provisions referred to in section 51(4)(a)(ii).
- (4) Sub-section (3)(a) does not apply to a special resolution if—
 - (a) at any time in the period of 5 years immediately before the winding up date, the rules of the incorporated association were altered to provide for the distribution of the

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 33A

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- assets of the incorporated association to any of the members of the association; and
- (b) the incorporated association had the consent of the Minister under section 51(6) to alter the rules of the association in that manner.
- (5) Sub-section (3)(a) does not apply to a special resolution if—
- (a) that special resolution deals with or disposes of the assets of the association by distributing the assets to a specified member of the association that is a body corporate; and
- (b) the rules or constitution of that body corporate prohibit the disposition or distribution of the assets or property of the body corporate to the members of the body corporate on a voluntary winding up.
- (6) The public officer of an incorporated association must, within 28 days after the passing of a special resolution under sub-section (1), lodge with the Registrar—
- (a) notice in a form approved by the Registrar of the special resolution; and
- (b) a statutory declaration signed by at least 2 members of the committee to the effect that—
- (i) the special resolution was passed in accordance with this Act; and
- (ii) all statements and documents required to be lodged with the Registrar under this Act have been lodged by the incorporated association or are lodged with the notice.
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**33B. Distribution of assets on voluntary winding up
without special resolution relating to assets**

S. 33B
inserted by
No. 57/2000
s. 3.

- (1) Subject to sub-section (2), if a special resolution under section 33A is not passed by the incorporated association, the assets must—
 - (a) if the rules of the incorporated association do not otherwise provide, be divided amongst the members of the association in equal shares; and
 - (b) if the rules otherwise provide, be dealt with in accordance with the rules.
- (2) If on the winding up date, or at any time in the period of 5 years immediately before that date—
 - (a) the rules of the incorporated association prohibited the distribution of the assets of the incorporated association to any of the members of the incorporated association on a voluntary winding up; and
 - (b) the rules of the incorporated association were altered to provide for such a distribution—

the assets of the incorporated association must be dealt with or disposed of in accordance with the rules of the association as if the rules had not been so altered.
- (3) Despite sub-section (2), the assets of an incorporated association may be dealt with or disposed of in accordance with the rules of the association if—
 - (a) the rules of the association provide that the assets be dealt with or disposed of in a manner that distributes the assets to a specified member of the incorporated association that is a body corporate; and

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 33C

- (b) the rules or constitution of that body corporate prohibit the disposition or distribution of the assets or property of the body corporate to the members of the body corporate on a voluntary winding up.

S. 33C
inserted by
No. 57/2000
s. 3.

33C. Certain assets not to be distributed on voluntary winding up

- (1) Despite sections 33A and 33B, an asset or part of an asset of the incorporated association that consists of property supplied by a government department or public authority, including the unexpended portion of a grant must be returned to the department or authority that supplied it or to a body nominated by the department or authority.
- (2) Sub-section (2) does not apply if a contract or agreement between the incorporated association and the government department or public authority makes express provision to the contrary.

S. 33D
inserted by
No. 57/2000
s. 3.

33D. Application to Supreme Court by persons aggrieved under a voluntary winding up

Any person aggrieved by the operation of this Division in relation to the assets of an incorporated association may apply to the Supreme Court which may make any orders relating to the disposal of the assets that it thinks fit.

S. 33E
inserted by
No. 57/2000
s. 3.

33E. Distribution of assets of incorporated association subject to trusts

This Division applies subject to any trust affecting the assets or any of the assets of the incorporated association.

Division 2—Winding up by the court

34. Winding up by the court

S. 34
substituted by
No. 57/1997
s. 25.

- (1) The Supreme Court may order the winding up of an incorporated association if—
 - (a) the incorporated association has by special resolution resolved that it be wound up by the court; or
 - (b) the incorporated association suspends its operations for a whole year; or
 - (c) the incorporated association is unable to pay its debts; or
 - (d) the incorporated association has traded (except in accordance with section 51) or secured pecuniary profit for its members; or
 - (e) the incorporated association has, as trustee, traded (except in accordance with section 51) or secured pecuniary profit for the members of the incorporated association; or
 - (f) the incorporated association has engaged in activities outside the scope of its statement of purpose; or
 - (g) the court is of the opinion that it is just and equitable that the incorporated association should be wound up.
- (2) An application to the court for the winding up of an incorporated association must be made by—
 - (a) the incorporated association; or
 - (b) a member or creditor of the incorporated association; or
 - (c) the Registrar.

Division 3—Winding up on certificate of Registrar

35. Winding up on certificate of Registrar

S. 35
substituted by
No. 57/1997
s. 25.

- (1) An incorporated association may be wound up on the certificate of the Registrar if the necessary grounds for the taking of that action exist, as referred to in sub-section (2).
- (2) The necessary grounds for taking that action exist if the Registrar certifies—
 - (a) that the number of members is reduced to less than 5; or
 - (b) that the incorporated association is not in operation; or
 - (c) that the incorporated association has traded (except in accordance with section 51) or secured pecuniary profit for its members; or
 - (d) that the incorporated association has, as trustee, traded (except in accordance with section 51) or secured pecuniary profit for the members of the incorporated association; or
 - (e) that the incorporated association has not given to the Registrar statements in accordance with section 30(4) in respect of each of the preceding 2 years; or
 - (f) that incorporation of the incorporated association has been obtained by mistake or fraud; or
 - (g) that the incorporated association exists for an illegal purpose; or
 - (h) that the incorporated association has, after notice from the Registrar of any breach of this Act or the regulations or of the rules of the incorporated association, failed to

Associations Incorporation Act 1981
Act No. 9713/1981

Part VIII—Winding up and Cancellation

s. 36

- remedy the breach within the time specified in the notice; or
- (i) that the incorporated association has failed to comply with a direction of the Registrar under section 31AB within the period specified in the notice under that section; or
 - (ia) that the incorporated association has failed to become registered or incorporated as a prescribed body corporate within 6 months after the period specified in a notice under section 31AB; or
 - (j) that in the opinion of the Registrar, circumstances exist which, in the public interest, justify the winding up of the incorporated association.
- (3) The Registrar must not certify under this section as to any matter unless the matter has been proved to the Registrar's satisfaction.

S. 35(2)(ia)
inserted by
No. 35/2000
s. 5.

36. Procedure before certification

S. 36
substituted by
No. 57/1997
s. 25.

- (1) Before giving a certificate under section 35, the Registrar must—
 - (a) give a notice to the incorporated association stating—
 - (i) the Registrar's intention to give that certificate; and
 - (ii) the grounds for giving the certificate; and
 - (iii) that the certificate will be given if an answer showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later; and