LIQUIDATION

Liquidation is the winding up of a company; in other words, the corporate life of the company is brought to an end and the company ceases to exist. The winding up of a company may be effected by the court or by the shareholders (voluntary); or voluntarily subject to the supervision of the court.

Circumstances in which companies may be wound up by a court

A company can be wound up by the court where:

a. The company is unable to pay its debt;
b. The number of the members is reduced below the authorized minimum;
c. The company defaults in delivery of the statutory report to the Corporate Affairs Commission;
d. The company defaults in holding statutory meetings;
e. Members of the company have by special resolution resolved that the company should be wound up; and
f. The court is of the opinion that it is just and equitable that the company should be wound up.

Circumstances in which companies may be wound up by a shareholders

A company may be wound up by members (shareholders) where:

a. When the period fixed for the duration by the articles of association of the company expires;
b. When an event occurs, which the articles of association provided that the company is to be wound up; and
c. When the company resolves by special resolution that the company be wound up voluntarily;

Commencement of the Winding up of a company

The time that winding up commences is dependent on whether it was done by the court or by members of the company.

a. **By the Court:**
   i. It is deemed to commence at the time of the presentation of the petition for the winding up;
   ii. It is deemed to commence if a voluntary resolution has been passed for the winding up, before a petition is presented to the court.
b. **A voluntary winding** up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Roles of Receiver and Liquidator

The Receiver may be appointed by the court or out of court (by creditors, trustee) for the undertaking of a company or part thereof, in the following circumstances.

a. The principal money borrowed by the company is in arrears.
b. The interest on loan is in arrears
c. The security or property of the company is in jeopardy.

The Receiver is expected to perform the following functions:

a. He shall manage the affairs of the company or part thereof.

b. He shall realise the property of the company and settle those on whose behalf he is appointed.
c. When the receiver has settled the creditors on whose behalf he is appointed, he shall be discharged and the affairs of the company will be handed over to the Liquidator.

ASSIGNMENT

1. What are the Consequences of winding up?
2. In details, explain the difference between a Receiver and a Liquidator in winding up of a company (Refer to CAMA 2004).

The Liquidator

The Liquidator is expected to perform the following functions:

a. Sell the property of the company, that is, those that have not been realized by the receiver;
b. Collect all the debts due to the company;
c. Make calls on uncalled shares;
d. Distribute the proceeds of all he collects as follows:
    i. The settlement of proved claims of the company's creditors.
    ii. Apply the balance (if any) in settling the contribution of the company's shareholders according to their rights.

Where the amount collected cannot cover the settlement of the claims of the unsecured creditors, they will rank equally in proportion of the cash available to settle them. After the settlement of all claims including the Liquidator's expenses and remuneration, the company is said to be dissolved.

Liquidator's Receipt and Payment Account

The receipt and payment account of the liquidator is meant for the realization of assets and settlement of the various classes of creditors and contributories in the liquidation of a company. The sequence of items in the liquidator's account must relate to the priority of payments as follows:

a. Secured creditors charged against security
b. Cost and charges of the liquidation such as:
    i. Legal fees and taxes relating to the liquidation;
    ii. Realization expenses paid to valuers and auctioneers
    iii. Cost of maintenance of properties before they are sold;
    iv. Cost of notice of gazette and local papers;
    v. Incidental expenses;
    vi. Liquidator's remuneration
    vii. Remuneration of manager appointed for the liquidation purpose.
c. Preferential creditors.
d. Debenture secured on floating charges.
e. Unsecured creditors
f. Contributories.

Preferential Creditors

The Act defines preferential creditors as follows:

a. All local rates and charges due from the company within 12 months preceding the relevant date.
b. All PAYE, assessed taxes, land tax and property taxes due from the company up to the annual day of assessment preceding the relevant date, but not exceeding one year of assessment.
c. All deductions under the National Social Insurance Trust Fund (NSITF).
d. All wages and salary of any clerk or servant in respect of service rendered to the company.
e. All wages of any workman or labourer whether payable for time or piece of work in respect of services rendered to the company.
f. All accrued holiday remuneration becoming payable to any clerk, servant, workman, or labourer (or in the case of death to any other person in his right) on the termination of his employment before or by the effect of the winding up order or resolution.
g. All amount due in respect of any compensation or liability for compensation accrued before the relevant date.

All these preferential creditors shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case, they shall be settled in equal proportion.

Receiver's Receipt and Payment Account

Where a Receiver is appointed by the debenture holders (creditors), he will be required to prepare only the receipt and payment account for the receivership in respect of settlement only of the debenture holders and the preferential creditors. He will then transfer the balance to the liquidator, who will now sell the remaining assets, settle the remaining liabilities, distribute the surplus, if any, among the contributories.

Making Calls on Contributories

The preference and ordinary shareholders are contributories. Their liabilities are limited to the amount of shares not yet paid at the point of winding up of the company.

The preference shareholders are expected to rank before the ordinary shareholders for the repayment of their contributions in the event of liquidation. However, the fact that they rank prior to the ordinary shareholders must be stated in the Articles of Association of the company, otherwise both classes of shareholders will be deemed to rank equally.

The following are the ways of making calls from the contributories by the managers of the company in liquidation:

a. When preference shareholders rank prior to ordinary shareholders: the amount not yet called on the ordinary shareholders that is sufficient to pay the creditors and make returns to preference shareholders (paid up) would be made. That is, the lower of the liability on uncalled ordinary shares and the amount payable to the creditors plus the preference shareholders. The preference shareholders would be required to pay part of or all the unpaid liabilities on their shares if the call on ordinary shareholders is insufficient to pay the creditors.

b. When preference shareholders and ordinary shareholders rank equally: Calls would be made on both classes that is sufficient to settle the creditors.

Differences between Statement of Affairs and Statement of Financial Position

Although the Statement of Affairs and Statement of Financial Position basically show assets and liabilities, there are some differences between them. These include:

a. A statement of affairs is a summary of the affairs of a company in liquidation and an insolvent debtor in bankruptcy; while a statement of financial position is a statement that summarizes the affairs of a going concern business at a particular date.
b. A statement of affairs shows the assets as they are realized and liabilities as they are settled, while the statement of financial position shows the cost of assets not yet expended and liabilities due not yet paid.
c. Assets are carried in a statement of affairs at break-up value basis; while they are carried at cost/valuation less accumulated depreciation in the statement of financial position.
d. Statement of affairs is accompanied by a deficiency or surplus account; but a statement of financial position is accompanied by a statement of profit or loss (income statement).
e. A statement of affairs shows the order of claims, which are followed strictly during settlement; while in a statement of financial position there is no order of priority of claims.
f. Owner's equity, working capital and capital employed are not features of a statement of affairs; but they are reported in a statement of financial position.
g. A statement of affairs classifies assets into those specifically pledged; while in a statement of financial position, assets are classified as non-current or current.
h. A statement of affairs classifies liabilities as secured, preferential and unsecured; while a statement of financial position classifies liabilities as current or long term.

Illustration 1

a. On 31st March, 2013, '**E GO BETTER' Nigeria Ltd**. decided to go into voluntary liquidation based on a unanimous resolution passed by its members in their last annual meeting. The following was the company's trial balance as at that date.

	₦	₦
Ordinary Shares of N1 each		200,000
10% Cumulative Preference Shares of N1 each		100,000
Freehold Property	180,000	
Plant and Machinery	155,000	
Investments	28,000	
Stocks and Work in Progress	79,600	
Receivables/Payables	58,400	97,000
Trading loss for the year	42,550	
8% Debentures (secured on freehold property)		80,000
Cash	4,150	
Call in Arrears/Advance	6,000	10,000
Preference dividend (half year to Sept. 2012)	5,000	
Bank Overdraft		43,000
Retained Profit		28,700
	558,700	558,700

Additional Information:

i. The company's assets are estimated to be realised as follows:

	₦
Freehold Property	187,400
Plant and Machinery	138,900
Investments	24,100
Stocks and Work in Progress	62,700
Debtors	
- Good	35,000
- Doubtful	18,000
-Bad	5,400

ii. The doubtful debts are estimated to realise one-fifth of the stated value.

iii. The call in arrears produced only ₦2,000.

iv. The creditors include preferential claims of ₦ 30,000.

v. The estimated costs and expenses of the liquidation are: legal – ₦ 10,000; liquidator's remuneration – ₦ 5,000 plus 6% of the amount distributed to contributories.

vi. The debenture interest has been paid up to 30th September, 2012.

vii. The preference share capital plus the arrears of dividend to date of winding up are to be settled at a premium of 2 kobo per share before the ordinary shares.

viii. The bank overdraft has a floating charge on the assets of the company.

You are required to prepare the **Statement of Affairs** and **Deficiency Account** as at 31st March 2013.