Options for company liquidation: time to go

OMB Large Corporate



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We consider the processes for removing a company from the register, and the issues to watch out for.

Key Points

What is the issue?

We examine the two primary methods for removing a company from the register at Companies House: members' voluntary liquidation and voluntary strike off and dissolution.

What does it mean to me?

Both processes result in the company being removed from the register, but they differ in terms of procedures, costs and potential issues.

What can I take away?

The strike off route is generally cheaper than liquidation but requires directors to manage the process. A member’s voluntary liquidation provides peace of mind by formally ending a company’s affairs, ensuring no outstanding matters remain. It is beneficial for companies with unknown potential liabilities, as it advertises the company’s closure and invites claims.

A company can generally be removed from the register of companies at Companies House in one of two ways:

- members’ voluntary liquidation (a solvent liquidation process); and
- voluntary strike off and dissolution.

The result of both processes is the same in that a company is removed from the register. The processes, outline costs and matters to consider with each option are outlined below.

Members’ voluntary liquidation

The members’ voluntary liquidation process requires the appointment of a licensed insolvency practitioner as liquidator, and the agreement of the board of directors and at least 75% of a company’s shareholders (members) before it can proceed. The appointment of a liquidator reduces the risk to a board of directors from the threat of future litigation and personal liability.

Tax benefits

If a decision is made to wind up a company, any distributions declared to shareholders are received as capital distributions. Accordingly, shareholders can take advantage of capital gains tax rates (at 18% or 24%). Shareholders can also possibly take advantage of business asset disposal relief (at 14% from April 2025 and 18% from April 2026) on proceeds up to £1 million, being the lifetime allowance.

Conversely, distributions declared by a company (outside of a liquidation) are subject to higher dividend or income tax rates. However, it should be noted that there is an anti-phoenix tax targeted anti-avoidance rule, which can recategorise the

capital gains treatment for individuals on a company liquidation as a dividend distribution (at rates up to 39.35%). This applies if the business owner liquidates a company, seeks to get capital gains tax treatment and is carrying on, involved with or starts up a similar trade within two years of the capital distribution received.

There are four conditions for the targeted anti-avoidance rule to apply, including a purpose test that the avoidance or reduction of a charge to income tax was one of the main purposes for the liquidation. We would always recommend that these conditions are considered in advance of any liquidation to ensure they won't bite.

Summarised process

Before commencing with the initial formal liquidation meeting (as noted below), it is recommended that the tax position of the company is assessed, particularly if the company is part of a group, to ensure that no pre-liquidation actions need to be taken before liquidation commences. The tax outcome of some transactions can be different if they happen pre- or post-liquidation.

It is also recommended that, where possible, any tax liabilities owing to HMRC, even if not due, are settled prior to a company being placed into liquidation. This avoids HMRC, as a creditor, seeking statutory interest at 8% on any outstanding tax balances for the period from liquidation commencement until the date of payment.

The directors swear a Declaration of Solvency, supported by a balance sheet, and hold a board meeting to convene a shareholders meeting. At this meeting, a resolution is passed to place the company into liquidation and appoint a licensed insolvency practitioner. These meetings can be held with little or no notice with the consent of the shareholder(s). The convening of these meetings and all associated documents and filings at Companies House will be dealt with by the proposed liquidator.

The liquidator's appointment is advertised in the *London Gazette*, and a notice to creditors must be publicised, allowing potential creditors to submit claims against the company. After 21 days, the liquidator can distribute any assets to the members either in cash or 'in specie'.

Once the liquidator has completed their work, which will generally be to realise any assets and distribute the surplus funds to the shareholders, tax matters can then be finalised with HMRC. Following this, the liquidator files a final return at Companies

House and the company is automatically dissolved three months after the filing of the final return and struck off the register.

Generally, no claims against the company that were not registered with the liquidator can be made subsequently.

Although a liquidated company can be reinstated to the register within six years, it is exceptional for this to happen where the dissolution is a consequence of a members' voluntary liquidation process.

The costs of a members' voluntary liquidation are wholly dependent upon a company's specific circumstances and the work required to be done.

Voluntary strike off and dissolution

Summarised process

In advance of a company strike off, it is recommended that a company is appropriately 'cleansed', depending on what balance sheet assets and liabilities it has, to make it ready for strike off. This is particularly the case for entities that may be part of a group and have historic intercompany positions that need to be settled, novated or written off. The aim is to leave no assets in the company that will pass to the Crown (the state) on strike off.

Tax liabilities can arise as part of the cleansing process, particularly if items are not dealt with in an appropriate manner. It is therefore recommended that tax advice is sought in advance of any actions being taken to minimise any such liabilities.

To strike off a company, the board of directors should consider all the steps to be taken at a meeting of directors or by way of a written resolution of the directors and approve the application for a strike off. On approval of the directors, Form DS01 (Striking off application by a company) must be completed, be signed by a majority of the directors and be submitted to Companies House along with a fee (currently £44).

The law permits all, or a majority of a company's directors, acting on behalf of a company, to close the company down if it is no longer needed by getting it struck off the companies register and dissolved. However, this only applies if the company:

- hasn’t traded for three months;
- isn’t threatened with liquidation;
- hasn’t changed name in the last three months;
- hasn’t disposed of any stock in the last three months; and
- has no agreements with creditors, such as a company voluntary arrangement.

What does a board have to do?

There are safeguards built into the procedure for those entities that are likely to be affected by a company’s strike off or dissolution. When directors apply to strike off and dissolve a company, they have certain responsibilities to close the business down properly. A large number of directors do not follow this procedure, which leads to the strike off and dissolution being delayed or, in some cases, abandoned.

Before applying to strike off a company, directors must close it down legally, which involves:

- announcing the plans to interested parties, including HMRC, creditors and employees. A breach of these rules could result in the director being fined and prosecuted;
- making sure that employees are treated according to employment law provisions;
- dealing with business assets, including closing any bank accounts in the company’s name; and
- bringing the company’s accounts up to date.

A copy of the completed strike off application form must be sent, within seven days, to those interested parties who could be affected.

What happens next?

The fee and strike off application are submitted to Companies House and this will be registered on the company’s record. The application will be advertised in the *London Gazette* (allowing interested parties the opportunity to object).

If there is no reason to delay, the registrar will strike the company off the register within two months of the date of the notice. The company will be dissolved on publication of a further notice in the *London Gazette*. A board must keep the company’s business documents for six years after a company is struck off and

dissolved. These include, inter alia, bank statements, invoices and receipts, VAT, PAYE and employee records.

Risk of a company being reinstated to the register

If a company has net assets at the time that it applies to be struck off, these assets become the property of the Crown (i.e. the state). A company can be reinstated to the register within six years (or indefinitely in the case of personal injury claims) if a court order is applied for by:

- any former director or creditor;
- any person with a contractual relationship or potential legal claim; and
- any other person who appears to the court to have an interest in the matter.

When a members' voluntary liquidation process has been concluded, the liquidator files their report and after three months Companies House removes the company from the register. As the members' voluntary liquidation has been carried out by an independent liquidator, there is limited potential for a company to be reinstated to the register.

With a dissolution process, it is vitally important that all creditors are advised of the directors' intentions to have a company struck off. If a creditor is not so advised, they can apply to have a company restored to the register and commence legal action to recover their debt. For a board, there may be personal implications if a company is dissolved when it has outstanding liabilities.

In conclusion

If the board receives assistance in dealing with the process, utilising the strike off route will be cheaper than a liquidation, ignoring internal management time. Even if assistance is provided, the strike off route is the responsibility of the directors.

In a members' voluntary liquidation, once the liquidation has been completed, generally no further claims may be brought against a company. The members' voluntary liquidation route advertises that a company is coming to an end and that all claims must be made, which may be useful for companies where details of all potential liabilities may not be known by the current management.

A liquidation brings with it peace of mind as a liquidator is appointed to bring a company’s affairs to a formal end, leaving no outstanding matters.

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