

WINDING UP OPTIONS

MEMBERS' VOLUNTARY WINDING UP VS DEREGISTRATION

Directors and shareholders of dormant companies without reasonable future business prospects wishing to reduce regulatory compliance costs and administrative burdens, as well as the ability to avoid ongoing reporting and disclosure requirements will likely seek to wind up the company.

In Botswana, the Companies Act (Chap42:01) provides two distinct processes that achieve these objectives.

Members' Voluntary Winding Up (Section 405 of the Companies Act)

1. Procedure

- 1.1. A Members' Voluntary Winding up is the method by which a solvent company is wound up and its assets are distributed to its members (shareholders). The winding up process is conducted by a liquidator under the authority of the Master of the High Court.
- 1.2. A company may be wound up voluntarily in the following circumstances:
 - 1.2.1. Where the constitution provides that the company is to be dissolved after a certain period, and the company in a general meeting has passed a resolution requiring the company to be wound up voluntarily; or;
 - 1.2.2. If the company resolves by special resolution that the company be wound up voluntarily
- 1.3. The directors of the company must meet and make a declaration of solvency and attach to that declaration a current statement of affairs of the company and confirmation of solvency from the company's auditors.
- 1.4. The directors must thereafter resolve to convene a meeting of shareholders to consider a resolution to wind up the resolution. Before the shareholders' meeting is held, the proposed liquidator must consent in writing to act as liquidator, if so appointed at the meeting.
- 1.5. The shareholders' meeting must:
 - 1.5.1. Consider a special resolution to wind up the company; and
 - 1.5.2. If passed, consider an ordinary resolution to appoint a liquidator and may at that meeting fix the amount of remuneration for the liquidator.

- 1.6. When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution:
 - 1.6.1. Give notice of the resolution by advertisement in the Gazette
 - 1.6.2. Give written notice of the resolution to the Master, to the Registrar, and if any immovable property or interest in minerals within Botswana appears to be an asset of the company, to the Registrar of Deeds
- 1.7. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except where it may be required for the beneficial winding up of the company.
- 1.8. The directors of the company may furnish security to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding 12 months from the commencement of the winding up. The Master may dispense with such security if the majority of the directors of the company provide him with a sworn statement supported by a certificate from the auditors of the company that the company has no liabilities.
- 1.9. Within 14 days of the resolution to wind up the company, the resolution must be published in the Government Gazette for 2 weeks.
- 1.10. The liquidator shall lodge a liquidation and distribution account with the Master and advertise this in the Government Gazette
- 1.11. If there are no objections after the stipulated period, the distribution shall be effected, if any.
- 1.12. The Master shall release the liquidator and issue an order dissolving the company.

2. Timeframes

The timeframe for the completion of the process is largely driven by the individual characteristics of the company being wound up and its state of the affairs at that time. If there is an audit certificate stating there are no creditors then completion could be achieved within 3-6 months, but if the process requires creditors meetings then 6-9 months.

3. Pros

The liquidator winds up the company mitigating risk for directors and shareholders of a creditor resurrecting the company and making claims against them in the future.

4. Cons

Costs more than the deregistration process, due to time and complexity.

Deregistration (Section 331 of the Companies Act)

1. Procedure

- 1.1. De-registration occurs when a company is removed from the Register of Companies (Register) at the direction of the Registrar of Companies (Registrar).
- 1.2. A request for de-registration may be made on the grounds that the company has ceased trading, has discharged its liabilities in full and has distributed its surplus assets; or the company, after paying its debts in full, has no surplus assets and there are no pending liquidation proceedings.
- 1.3. A letter must be made to the Botswana Unified Revenue Service (BURS), supported by the shareholders' resolution stating reasons for de-registration. BURS shall reply to the letter either granting permission (through a no objection letter) or denying permission.
- 1.4. A de-registration request by the company shall be made to CIPA supported by a letter from BURS confirming that it has no objection to the de-registration.
- 1.5. On receipt of a de-registration request, the Registrar shall publish a notice indicating
- 1.6. The company shall be removed from the register within 20 working days and a certificate shall be issued confirming removal.



2. Timeframes

Potentially the de-registration process could be completed within 2 months but in practice it may take 6 months or longer, primarily due to delays and complications associated with securing a letter of no-objection from BURS.

3. Pros

- 3.1. Avoiding any charges against the company in the form of payable returns
- 3.2. Less complex than a members voluntary winding up and cost effective.

4. Cons

Removal of a company from the register does not affect the liability of any former director or shareholder of the company in respect of any act or omission that took place before the company was removed from the register. That liability continues and may be enforced as if the company had not been removed from the register.

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