

CORRECT PROCEDURE IN SOLVENT COMPANY CLOSURES

Winding up a company takes a little time and there's a process to follow to ensure that there is no come back on you as a director.

All companies have a lifecycle, some much longer than others. At some point you may be faced with winding up a company that no longer serves its purpose. You no longer require the company to be registered and you would like to close the company once and for all.

We are concerned that some advisors tell clients to do nothing. Simply cease filing annual returns with the Companies Office and let the company fall off the register. Whilst this seems simple, this isn't the end of the story. Failing to file an annual return is in fact an offence under the Companies Act 1993. The Companies Office could choose to prosecute and each director of the company could be fined up to \$10,000. In addition, the Inland Revenue Department can apply to reinstate a company if the tax affairs of the company are not in order. So you are not really getting any peace of mind by following this route.

Best practice dictates that you should formally go through a process to wind the company up. This is called a voluntary removal. We have included a helpful checklist below.

- 1. Resolution of shareholders** – You need to have a special resolution of the shareholders which should be in writing and signed. It should state that the shareholders agree to close down the company and you need to organise to distribute the assets of the company.
- 2. Deregister** for GST & FBT (if applicable) with Inland Revenue. If you are an employer, you'll need to file your last employer monthly schedule before you can deregister as an employer.
- 3. File the final income tax return** at the end of the tax year with depreciation adjustments for the sale of any assets. Some directors attempt to co-incide the closure of a company with balance date but in reality this can be tricky. You may receive income or pay bills after 31 March so it pays to view winding up a company as a gradual process.

- 4. Apply to Inland Revenue** – Write to the Commissioner of Inland Revenue asking if the department has any objections to winding up the company and seek her approval. Your accountant or solicitor can do this for you. Once approval is received, the last step is to remove the company formally from the Companies' register.
- 5. Removal from the Companies' Register** – Firstly, you should ensure that your annual returns with the Companies Office are up to date. Once this is done you can make an application to the Companies Office to wind up the company stating the grounds for the request. This must state that the company has ceased trading, it has discharged all its liabilities to its known creditors and distributed any surplus assets. This can be done by your accountant or lawyer on your behalf. Bear in mind that the Companies Office will advertise the removal of the company to give your creditors an opportunity to object to the removal.

Remember to keep your business records securely for at least seven years. The IRD can still choose to audit prior years even if the company is closed.

Some clients opt to keep the company dormant for future use – and that's perfectly fine. Rather than file nil returns with IRD every year, you can complete an IR433 form to put the company into hibernation with IRD. You'll still need to file annual returns with the Companies Office.

This article covers solvent companies, not companies being put into liquidation.

Call 0800 24 26 23 CHAMBER for professional advice on this article.

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If you have any questions, please call 0800 CHAMBER (0800 242 623).

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