

# Spring Cleaning

*As part of ongoing corporate risk review and general housekeeping, the question of whether a company should be retained or disposed of often arises. The obvious questions, if a company is to be disposed of, are what is the best method, how long will it take and how much will it cost? Roger Woolley considers whether to wind up or strike off a company.*

It is tempting to have the company struck off; it only costs £10 and takes approximately six months. In comparison, a members' voluntary winding up may cost £2,000–£5,000 and can take between six and twelve months.

Time and cost are not the only considerations however when deciding whether to strike off or wind up a company (see the flowchart below). A company's assets and the nature of its business are also important.

## Assets

The effect of a company being struck off and dissolved is that the assets remaining in the company vest in the Crown. In the case of companies that are wound up via an insolvency practitioner, the assets are distributed to the creditors, or the shareholders if appropriate.

## Trading companies

Problems may arise where trading companies have assets such as:

- ◆ cash or current account balances and profits (in these cases it is useful to make whatever distributions can be made lawfully); or
- ◆ registered property, e.g. land and buildings, patents, trademarks and domain names.

Problems may also arise where companies have liabilities, real or contingent, such as:

- ◆ having been a member of a tax group within the last six years; or
- ◆ being subject to a claim for liabilities arising from operations (for example asbestosis, negligence and other liabilities).

## Non-trading companies

Non-trading companies which have previously traded may still have residual assets, registered and unregistered, and should be researched in the same way as a trading company. The same is true for dormant companies.

Companies which have never traded are the most straight forward to deal with. The most common reason cited for retaining them is to protect the name. It is often more effective to register a trademark, but to do that the company needs to trade!

## CA 1985, s 652A

A company may be struck off in one of two ways: it is either initiated by the company or by the Registrar of Companies. In the first case the directors pass a resolution confirming that the company is to be struck off and that it meets the criteria of *section 652A* of the *Companies Act 1985 (CA 1985)*. An officer of the company is authorised by the board

resolution to apply to the Registrar of Companies for striking off.

In the second case the Registrar initiates the process, usually because the company has failed to file accounts and/or annual returns, or some other statutory defect.

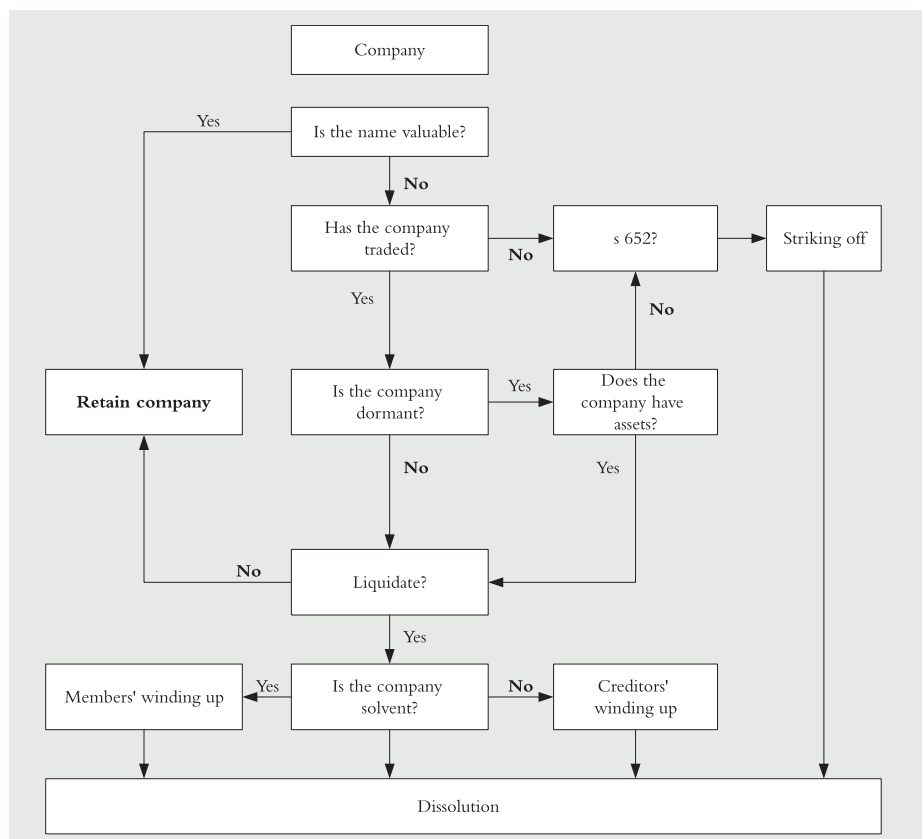
Where a company is wound up, the directors, or a majority of them, swear a statutory declaration of solvency, which is approved by special resolution by shareholders at an extraordinary general meeting.

Under *CA 1985, s 652A* it is possible to dispose of a company in six to twelve months, but there are practical matters to consider.

- ◆ The company must not have changed its name in the preceding three months.
- ◆ It must have been dormant for at least three months and be free from litigation or pending litigation.
- ◆ The group tax position and risk of a *section 179* claw-back must be checked.
- ◆ The Inland Revenue's approval is needed.
- ◆ All assets should be transferred into another group company.

## Prizes and pitfalls

The benefit of striking off a company is that it only costs £10 and is a quick and simple process of legally dissolving a company. The downside is that it can be reinstated within 20 years of dissolution.



The benefit of winding up a company is that it is a way of legally dissolving a company which might have some potential problems and thus liability.

On the other hand, it is more expensive (typically £2,000–£5,000, though there are discounts for bulk) and the company can usually only be reinstated within two years of dissolution. The pitfalls include losing assets, e.g. intellectual property rights such as patents and trade marks; and forgetting to reassign ownership or transfer licences of intellectual property.

One potential problem area can be where tax losses have been surrendered to the group in the last six years. If the company ceases to exist the loss goes back to the company, which usually is not able to set it off. The group profits are thereby increased and taxed.

### **Risk reduction**

Reducing risks is an integral part of good corporate governance practice.

- ◆ Replace individual directors with corporate entities – Where a company is struck off the last director remains on the registers at Companies House as a director. One method of protecting him from some ongoing liability is to replace human directors with corporate bodies.
- ◆ Check whether the company has any IP or other registered rights and ensure they are transferred before dissolution of the company so that they do not vest in the Crown or (perhaps worse) lapse, giving competitors an advantage.
- ◆ Ensure there is tax clearance – A dormant company with a current ‘clean’ balance sheet may have been part of a group tax arrangement which requires the company to remain a member of the tax group for a minimum period after the last tax transaction (usually six years). Being struck off or dissolved breaches that requirement and thus generates an unwelcome tax charge.
- ◆ Review the asset base of the company – This should ensure that all assets have been secured and nothing of value has been overlooked.

### **Summary**

Disposing of companies which are no longer needed should be an important part of risk management. The status of the company, assets, liabilities and potential liabilities should be checked carefully. Where there is any doubt, specialist advice should be taken.

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