KAPLAN&STRATTON
NEWSLETTER

Pulling the Plug: How Companies Officially Cease to Exist

Introduction

The dissolution of a company is a formal legal procedure through which a company terminates its corporate existence. Such dissolution essentially marks the formal end of such a company's legal existence. Under the Companies Act, CAP 486 ("the Act"), companies may be dissolved through either deregistration (voluntary strike-off) or winding up (liquidation).

Voluntary strike-off requires the submission of an application to the Registrar of Companies for the removal of the company's name from the Register, typically when the entity is no longer operational and is dormant, possesses no assets or liabilities, and is no longer required by its directors or members. In contrast, liquidation is a structured process led by a qualified liquidator (a registered insolvency practitioner), ensuring that all outstanding debts, obligations and liabilities are discharged; the company's assets are liquidated, with proceeds allocated to creditor claims, and any remaining surplus distributed among members. Each of the two methods entails distinct legal and procedural considerations for directors, members, and creditors.

What You Need to Know

This article examines the process by which a company may voluntarily dissolve itself in accordance with Section 897 of the Act.

As a condition precedent to any such application, Directors and management must first ensure that the company has met all compliance obligations with the respective statutory bodies before initiating deregistration to prevent rejection of the application.

To initiate voluntary dissolution, a company's directors—acting either unanimously or by majority—must submit an application to the Registrar of Companies. This application must be accompanied by various mandatory documentation, including a board resolution recommending dissolution, a resolution from members approving the dissolution, sworn affidavits from a director and a member confirming the company's financial status, and duly completed statutory forms. Furthermore, the company must obtain a financial report from its auditors or provide a set of audited accounts verifying the absence of assets and liabilities.

It is important to note that a company should not apply for voluntary strike-off if it has carried on business or traded within the three months preceding the application. The law requires that the company must have been dormant for at least three months before making such an application to the Registrar. Under the Act, a company is considered to have carried on business if, during this period, it has traded, changed its name, or disposed of property held for resale in the ordinary course of business. However, activities directly related to preparing for dissolution—such as disposing of premises—are permitted. For example, a company that sells shoes may not sell shoes during the dormancy period, but it may sell the shop from which it previously operated.

Within seven days of submitting the application, a copy of the application must be provided to every company member, employee, and creditor, as well as every director and any trustee or manager of the company-affiliated

pension fund (if applicable); with the exception being to members or directors who are parties to the application. Upon approval of the application, the Registrar then proceeds to publish a Notice of Intended Dissolution in the Kenya Gazette. This notice remains valid for three months, during which objections may be raised. In our experience, the Kenya Revenue Authority (KRA) presents the single most frequent objection to such applications and it is incumbent on the Company ensure that they receive a Tax Compliance Certificate (TCC) from KRA confirming that they have no liabilities or obligations pending with the Authority. If no objections are received within this period, the Registrar publishes a final notice in the Kenya Gazette confirming the company's dissolution.

Following dissolution, the company must then proceed to be deregistered from the relevant statutory bodies, including the Kenya Revenue Authority (KRA), National Social Security Fund (NSSF), Social Health Authority (SHA), and National Industrial Training Authority (NITA). Additionally, any existing bank accounts under the company's name must be closed by its management to ensure full compliance with regulatory requirements. According to Section 905 of the Act, once a company is dissolved, any remaining undistributed or unclaimed assets automatically vest in the State. This includes any funds held in the company's bank account, which will be frozen, with any credit balance therein reverting to the State.

Conclusion

Dissolving a company is a legally significant process that requires strict adherence to statutory obligations. Companies considering dissolution should seek professional legal and financial counsel to ensure full compliance with regulatory requirements, thereby mitigating potential risks and liabilities.

Even after dissolution, former officers and members may still be held liable for any outstanding obligations. Additionally, a company's name may be restored to the Register if it was struck off due to an administrative error. Former directors or members can apply for restoration within six years of dissolution. Courts may also order the restoration of a company if it is determined that the business was still operational at the time of strike-off.

In case of any queries, you can contact our Company Secretarial Team.

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