

CLOSING A COMPANY BY STRIKE-OFF VS. LIQUIDATION

What you need to know

COMPANY STRIKE OFF

VOLUNTARY STRIKE OFF

Voluntary strike off is a process of voluntarily closing down a limited company by getting it struck off the Companies Register.

INVOLUNTARY STRIKE OFF

Involutary strike off is a process by which the Registrar of Companies closes down a limited company by getting it struck off the Companies Register.

COMPANY LIQUIDATION

VOLUNTARY LIQUIDATION

Voluntary liquidation is a process by which a Company is liquidated by its Shareholders and/or its Creditors on a voluntary basis (i.e., without a Court Order mandating the liquidation).

LIQUIDATION BY COURT

Liquidation by the Court is a process by which a Company is liquidated following a Court Order in order to liquidate its assets and repay all or part of its debts.

WHEN MAY THIS PROCEDURE BE FOLLOWED?

When a Company has ceased to carry out business activities / operations, that Company may submit an application for its strike off from the Companies Register.

When the Registrar of Companies has reasonable cause to believe that a Company does not conduct business operations / activities or is not operating, or it does not comply with its legal and/or statutory filing obligations, the Registrar may commence a company strike off procedure.

A Company may be voluntarily liquidated when:

- (i) depending on the provisions of the Company's Articles of Association, the period set as the life-cycle of the Company has elapsed. Alternatively, when the Articles of Association of the Company provide for a specific event/circumstance which, when it takes place, the Company would be dissolved and such an event/circumstance has now taken place;
- (ii) the Company decides to proceed with voluntary liquidation by a Special Resolution;
- (iii) the Company decides by way of an Extraordinary Resolution that, owing to its obligations, it may not continue its business operations / activities and as a result, liquidation is advisable.

The date of commencement of the voluntary liquidation is considered to be the date of passing the relevant Resolution.

A Company may be liquidated by the Court where the Company:

- (i) is unable to pay its debts;
- (ii) has decided to proceed to Court-mandated liquidation by a Special Resolution;
- (iii) has failed to submit the statutory report to the Registrar of Companies or to convene its statutory meetings;
- (iv) does not commence its business activities within one (1) year from its incorporation or suspends its business operations for one (1) year.

A Company may also be liquidated where the Court is of the opinion that it is fair and in accordance with the law on leniency to dissolve the Company.

A Public Company may be liquidated by a Court Order where the number of its members is reduced to below seven (7) and it either (i) declares its inability to increase the number of its members, or (ii) is unable to increase the number of its members within the timeframe set by the Court.

Note: Foreign companies are liquidated by a Court Order, which will cover the assets of the foreign company that are located in Cyprus.

WHAT DOES THIS PROCEDURE ENTAIL?

Prospective Company strike off applicants should ensure they have complied with their obligations for the Company's statutory filing obligations with the Registrar of Companies (i.e., submission of their annual returns) and their obligations towards the Tax Department, Social Insurance Services, and creditors of the Company, as well as to ensure that there are no injunctions issued against the Company.

Following compliance with the above, a Company may proceed with the submission of a strike off application signed by the Director of the Company.

When the strike off application is duly prepared and submitted, with all the relevant legal requirements being complied with, the Registrar of Companies proceeds with registering the application and publishing it in the Official Gazette of the Republic of Cyprus.

Following the passing of three (3) months from the said publication date, provided no objection to the strike off of the Company concerned has been filed, the Company is struck off the Companies Register and the strike off is published in the Official Gazette of the Republic of Cyprus.

The Registrar of Companies will then update the status of the Company on the Companies Register.

A Certificate of Strike Off may be requested from the Registrar of Companies.

A Company may withdraw its voluntary strike off application via letter by the Director(s) of the Company addressed to the Registrar of Companies prior to the expiry of the three (3) month period from the date of publication of the strike off notice in the Official Gazette.

Throughout the three (3) month notice for strike off period the Company, or any member or creditor to the Company, may file an objection to the striking off of the Company with the Registrar of Companies, detailing the reasons for the objection.

INACTIVE COMPANY:

The Registrar of Companies begins by sending a letter to the registered office address of the Company concerned and the Company is given a period of one (1) month from the letter's date to respond. If the Company does not respond within that one (1) month period, the Registrar of Companies will proceed within fourteen (14) days to send a second letter to the Company, giving the Company another one (1) month to respond.

If the Company continues to not respond within the specified timeframe, the Registrar of Companies publishes a notice in the Official Gazette of the Republic of Cyprus stating that, in three (3) months from the publication's date, the Company will be struck off from the Companies Register.

Following the passing of three (3) months from the said publication date, provided no objection to the strike off of the Company concerned has been filed, the Company is struck off the Companies Register and the strike off is published in the Official Gazette of the Republic of Cyprus. The Registrar of Companies will then update the status of the Company on the Companies Register.

Note: Throughout the three (3) month notice for strike off period the Company, or any member or creditor to the Company, may file an objection to the striking off of the Company with the Registrar of Companies, detailing the reasons for the objection.

DEFAULT IN PAYMENT OF ANNUAL FEE:

If a Company omits to pay its annual fee for a period of up to one (1) year from the date the fee is due, the Registrar of Companies may proceed to sending a letter to the registered office address of the Company concerned, along with a relevant publication in the Official Gazette of the Republic of Cyprus, stating that in three (3) months from the said publication's date, the Company will be struck off the Companies Register.

Where (i) the aforementioned three (3) month period has elapsed, (ii) the Company concerned has not proceeded with the payment of the annual fee and any associated penalty fees due, and (iii) provided no objection to the strike off of the Company concerned has been filed, the Company is struck off the Companies Register and the strike off is published in the Official Gazette of the Republic of Cyprus. The Registrar of Companies will then update the status of the Company on the Companies Register.

Note: Throughout the three (3) month notice for strike off period the Company, or any member or creditor to the Company, may file an objection to the striking off of the Company with the Registrar of Companies, detailing the reasons for the objection.

OMITTING STATUTORY SUBMISSION OF DOCUMENTATION:

Where a Company omits to file with the Registrar of Companies any document required to be filed under the Companies Act, the Registrar of Companies may proceed to sending a letter to the registered office address of the Company concerned requesting the submission of that pending documentation.

If, following a period of six (6) months from the said letter's date, the Company concerned fails to comply with the Registrar's request, the Registrar may proceed to strike off the Company from the Companies Register and the strike off will be published in the Official Gazette of the Republic of Cyprus. The Registrar of Companies will then update the status of the Company on the Companies Register.

STAGES FOR THE VOLUNTARY LIQUIDATION OF A CYPRUS COMPANY BY SHAREHOLDERS:

First Stage:

Step 1: A Solvency Declaration executed by the majority of the Directors of the Company before the District Court's Registrar.

Step 2: Shareholder's Resolution, executed within a period of five (5) weeks following the date of the Solvency Declaration.

Step 3: Completion of Form HE41, which serves as a Notification for the Appointment of a Liquidator in a Voluntary Liquidation by Shareholders.

Step 4: Completion of Form HE43, detailing the information to be included in the relevant publication of the Official Gazette of the Republic of Cyprus.

Second Stage:

At this stage, a Final Shareholders Meeting is called by notification to the Shareholders and is published at least one (1) month in advance of the Meeting in the Official Gazette of the Republic of Cyprus.

Third Stage:

At this stage, the Final Accounts of the Liquidator and the Report (including the minutes for calling the Final Meeting) along with the above-mentioned documents are submitted within one (1) week following the Shareholder's Meeting.

Following three (3) months from the submission of the aforesaid documents, the Company is considered liquidated. The Company's liquidation is published in the Official Gazette of the Republic of Cyprus.

STAGES FOR THE VOLUNTARY LIQUIDATION OF A COMPANY BY CREDITORS:

First Stage:

Step 1: Resolution by Shareholders and Creditors.

Step 2: Completion of Form HE42, which serves as a Notification for the Appointment of a Liquidator in a Voluntary Liquidation by Creditors.

Step 3: Completion of Form HE43, detailing the information to be included in the relevant publication of the Official Gazette of the Republic of Cyprus.

Second Stage:

At this stage, a Final Shareholders and Creditors Meeting is called by a notification and is published at least one (1) month in advance of the Meeting in the Official Gazette of the Republic of Cyprus.

Third Stage:

At this stage, the Final Accounts of the Liquidator and the Report (including the minutes for calling the Final Meeting) along with the above-mentioned documents are submitted within one (1) week following the Shareholders and Creditors' Meeting.

Following three (3) months from the submission of the aforesaid documents, the Company is considered liquidated. The Company's liquidation is published in the Official Gazette of the Republic of Cyprus.

A Company may be liquidated by a Court Order following the submission of an application to the Court depending on the circumstances governing the liquidation.

WHO CAN COMMENCE THIS PROCEDURE?

The Company concerned.

The Registrar of Companies of the Republic of Cyprus.

Shareholders and Creditors of a Company may commence the process for the voluntary liquidation of the Company.

An application for a Court Order for the liquidation of a Company may be submitted by the Company itself, a creditor, a contributory, a foreign administrator, a temporary administrator, the Official Receiver, or the examiner.

WHAT IS THE EFFECT OF THIS PROCEDURE?

Company is struck off the Companies Register of the Registrar of Companies and Official Receiver of the Republic of Cyprus.

Note: The liability (if any) of director(s), executive officer(s), and any member(s) of the Company is continuous (i.e., even after the strike off of the Company) and may be acted or executed upon as if the Company has not been dissolved.

In addition, any interested party (i.e., a company or a member of a company or creditor) that is dissatisfied with the strike off of the Company concerned, or has sustained loss or damage prior to the Company concerned being struck off, may, following an application to the Court, request the restoration of the Company for a period of up to twenty (20) years from the date on which the Company was struck off.

Company is struck off the Companies Register of the Registrar of Companies and Official Receiver of the Republic of Cyprus. The Company is dissolved; without prejudice to any Court Order, any and all assets owned and rights held by the Company prior to its dissolution, excluding assets held by the Company on trust for a beneficiary or beneficiaries, are considered *bona vacantia* and are thereafter considered to belong to the Republic of Cyprus.

Note: The liability (if any) of director(s), executive officer(s), and any member(s) of the Company is continuous (i.e., even after the strike off of the Company) and may be acted or executed upon as if the Company has not been dissolved.

In addition, any interested party (i.e., a company or a member of a company or creditor) that is dissatisfied with the strike off of the Company concerned, or has sustained loss or damage prior to the Company concerned being struck off, may, following an application to the Court, request the restoration of the Company for a period of up to twenty (20) years from the date on which the Company was struck off.

As of the commencement of the voluntary liquidation procedure, the Company ceases to conduct its activities / operations, except where the continuance of its activities / operations benefits the liquidation process.

In addition, the Company maintains its legal personality (and powers associated with its legal personality) up until the completion of the liquidation process, which leads to the dissolution of the Company.

Once the assets of the Company have been realised and the funds have been distributed, the liquidator can apply to the Court for the Company's dissolution. Company is dissolved with effect from the date of the Court Order.

Note: When a Court Order has been issued for the liquidation of a Company, no judicial proceedings may be commenced or continued with against the Company, except by leave of the Court and subject to such terms as the Court may impose.

In addition, any disposition of the Company's property (including its actionable rights) and any transfer of shares or alteration of the status of its members that takes place after the commencement of the liquidation is void unless the Court orders otherwise.