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Quickguides

Ending the Life of a Solvent Company

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Quickguide overview

This Quickguide explains the two most common forms to bring a solvent company's life to an end and explains the processes involved in each, as well as in which circumstance which option may be best suited.

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Ending the Life of a Solvent Company

1. Strike-off or members' voluntary liquidation?

When a company has fulfilled its economic purpose or a group of companies wishes to consolidate its structure, there are two main options available to bring a solvent company to an end:

- strike-off – which is governed by the Companies Act 2006 (CA); or
- members' voluntary liquidation (MVL) – which is governed by the Insolvency Act 1986 (IA).

Deciding whether to use a strike-off or an MVL will depend on the individual facts of each case. Generally, if the affairs of the company are complicated and it has significant assets, an MVL will be the more suitable option.

2. What is strike-off?

A private company can, in the circumstances set out below, apply to be struck off the register and dissolved. Upon its dissolution, any assets that the company still owns will pass to the Crown. It is therefore essential that assets are transferred out of the company before an application for strike-off and dissolution. The strike-off process itself is quick and inexpensive – although it may take more time-consuming pre-planning to make a strike-off work well.

A company can apply to Companies House to be struck off provided that in the previous three months it has not:

- traded or carried on a business;
- changed its name;
- disposed of property for value or rights which, before it ceased trading, it used in the normal course of business; or
- engaged in any other activity except those necessary to make a strike-off application or to settle the company's affairs.

A company is also not eligible to apply for strike-off if any of the following apply:

- an application to the court has been made for the sanctioning of a scheme of arrangement and the application has not been concluded;
- a company voluntary arrangement has been proposed and is not yet concluded;
- the company is in administration or an application for administration has been made or a notice of intention to place the company into administration has been filed;
- the company is being wound up or a winding-up petition has been presented and has not been dealt with or withdrawn; or
- a receiver has been appointed over the company's property.

3. Strike-off: the process

First steps: application to strike off

The strike-off process is started by an application containing the prescribed information to Companies House made on the company's behalf by at least a majority of its directors. The company is also required within seven days of making the application to give copies of the application to the following:

- the company's shareholders;

- the company's creditors (including contingent or prospective creditors);
- the company's directors;
- the company's employees; and
- any pension fund, managers, trustees or parties that may have an interest in the company's affairs.

If at any point it becomes apparent to the directors that the company is no longer eligible for a strike-off they must withdraw the application.

Publication of strike-off and dissolution

Companies House then publishes a notice in the Gazette, stating that the Registrar of Companies may exercise his power to strike the company off and inviting any person who objects to contact him. Any interested person can object to the strike-off, provided they do so in writing to Companies House.

If there are no objections, the company will be struck off the register two months after the notice was published in the Gazette. Companies House will then publish in the Gazette a further notice stating that the company has been struck off and this signifies the dissolution of the company.

Despite the company's dissolution, any liabilities of the company directors, managing officers and members will continue to be enforceable. The company can also be restored to the register for a period of up to six years after its dissolution.

Dealing with assets prior to a strike-off

As all of a company's assets go to the Crown upon its dissolution, it is essential to ensure that as much as possible is extracted prior to the application for strike-off. Distributions can be made in accordance with the requirements of the CA if the company has distributable profits. Alternatively, a company can reduce its share capital in accordance with the new and simplified process under the CA. Any distributions should be carefully planned and tax clearance should be obtained to ensure that they are structured as tax efficiently as is possible.

4. What is an MVL?

An MVL is a liquidation process that is available to a solvent company whose directors (or a majority of them) are prepared to sign a statutory declaration of solvency.

An MVL does not require any involvement of the courts and can be effected quickly (with some pre-planning). In certain circumstances, it can also be possible to distribute assets of the company on the same day as its liquidation, thus making a return to shareholders quick and attractive. An MVL is often used in group restructurings or as an exit route for shareholders. Given that the essence of an MVL is that the company must be solvent, there is no stigma or negative public perception attached to being a director of a company that is placed into MVL.

5. MVL: the process

First steps: the statutory declaration of solvency

To enter into an MVL, the directors of the company must hold a validly convened and quorate board meeting at which all or the majority of the directors (if there are more than two) resolve to wind up the company and swear a statutory declaration of solvency.

The declaration must:

- be in Statutory Form 4.70;
- state that the directors making it have conducted a full inquiry into the company's affairs and formed the opinion that it will be able to pay in full all of its debts within a period not exceeding 12 months;

- include a statement of assets and liabilities;
- be made not more than five weeks before the shareholders' special resolution to wind up the company is passed; and
- be filed at Companies House no later than 15 days after the shareholders' special resolution has been passed.

If the company subsequently becomes insolvent despite the statutory declaration of solvency having been made, there is a (rebuttable) presumption that the declaration was not made on reasonable grounds and the directors will be liable to a fine or imprisonment or both. It is therefore essential that directors carry out a full investigation of the company's creditor position.

Next steps: appointing a liquidator

Once the statutory declaration of solvency is passed by the directors, the shareholders will need to pass a special resolution (75 per cent or more) agreeing to wind up the company. For a private company this can be done either at a shareholders' meeting or in the form of a written resolution, depending on the articles of association of the company. The special resolution must be filed with Companies House in accordance with the CA requirements for any special resolution. In addition, it has to be advertised in the Gazette within 14 days of it being passed.

At the same time as the shareholders resolve to wind the company up, they will also appoint a liquidator. This can be done by way of an ordinary resolution (> 50 per cent).

The liquidator's powers and distribution of assets

Once appointed, the liquidator must advertise his appointment in the Gazette and deliver notice of his appointment to Companies House within 14 days. On his appointment the liquidator will take control of all the company's assets and the powers of the company directors will cease (except in so far as the liquidator or the company sanctions their continuance). However, the appointment of a liquidator does not automatically remove the directors from office or terminate the office.

The liquidator will then contact actual or contingent creditors and ask them to submit so-called proofs of debt (i.e. a document that sets out in detail what amounts, if any, the creditor claims that he is owed by the company and the reasons why). The liquidator is entitled to accept or reject proofs of debt. Creditors whose proofs are rejected will have 21 days to apply to court to vary this decision.

Once all proofs of debt have been received and the liquidator has assessed what amounts are due to each, he will pay creditors in statutory order. This means that the expenses of the liquidation and his own remuneration are paid first, followed by claims of any preferential creditors (such as employees). Next in line for payment are holders of floating charges – subject to a certain amount of money that is taken from what would otherwise be due to the holders of floating charges, the so-called "prescribed part" which is set aside to pay unsecured creditors. Then unsecured creditors are paid pari passu (i.e. in equal proportions to the debt that they are due) and lastly any surplus money is returned to the company's shareholders in accordance with the company's articles of association. Unless otherwise provided for, the distribution of share capital will likely be on a pro rata basis.

Distributions to shareholders can also be made in kind (i.e. satisfied out of assets of the company other than cash). If the company's articles do not provide for this, it is worth considering an amendment by special resolution prior to the liquidation.

Final steps

When all creditors are paid and all assets of the company are distributed in the statutory order of priority, the liquidator will prepare and distribute his final account to the shareholders and the Registrar of Companies.

The notification to Companies House discharges the liquidator from duty and also from any liability arising out of the winding-up or his conduct as liquidator.

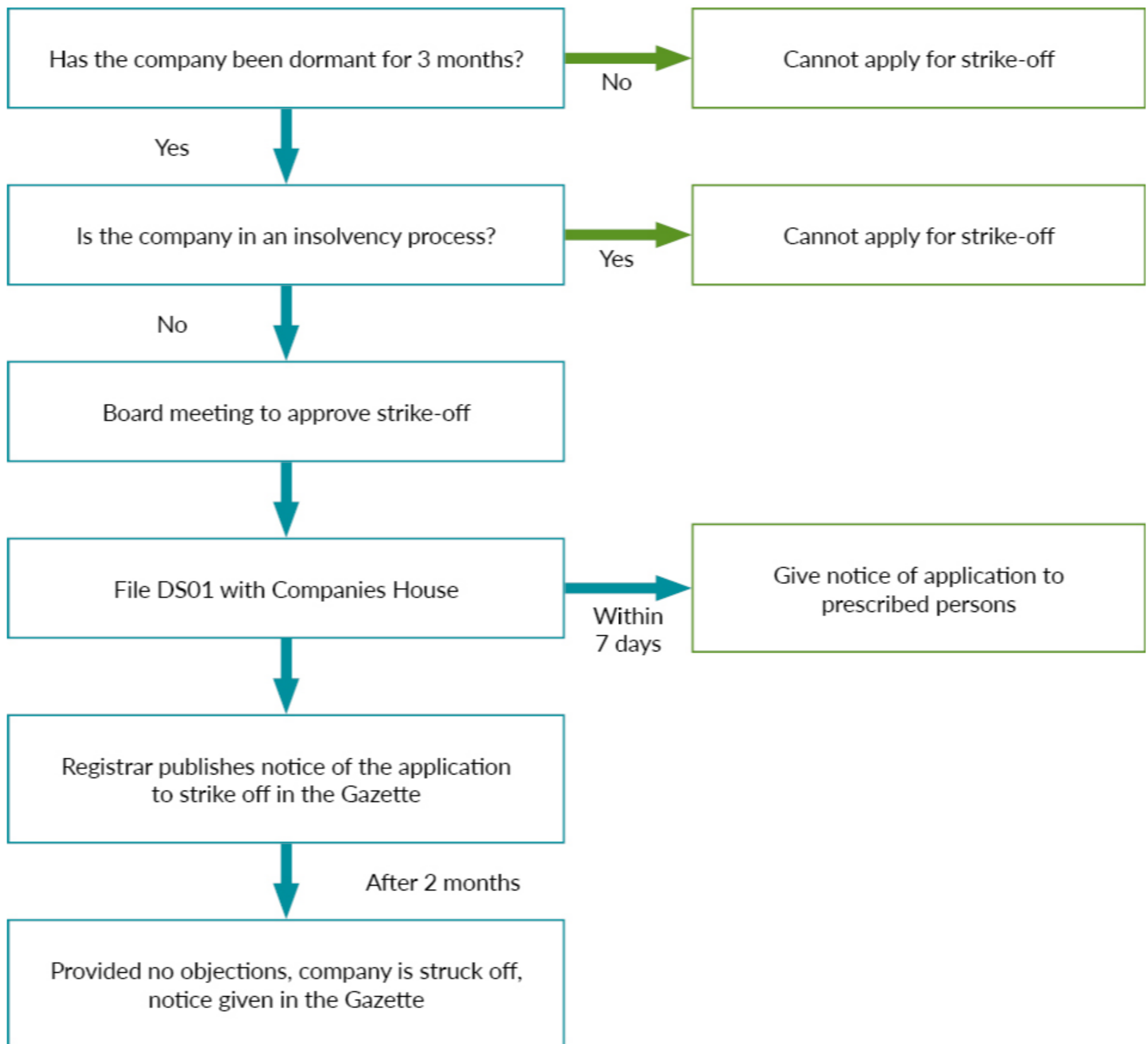
The company will be dissolved automatically three months after the final return is filed. As with strike-off, the company can be restored to the register for a period of up six years after it has been wound up.

6. MVL versus strike-off

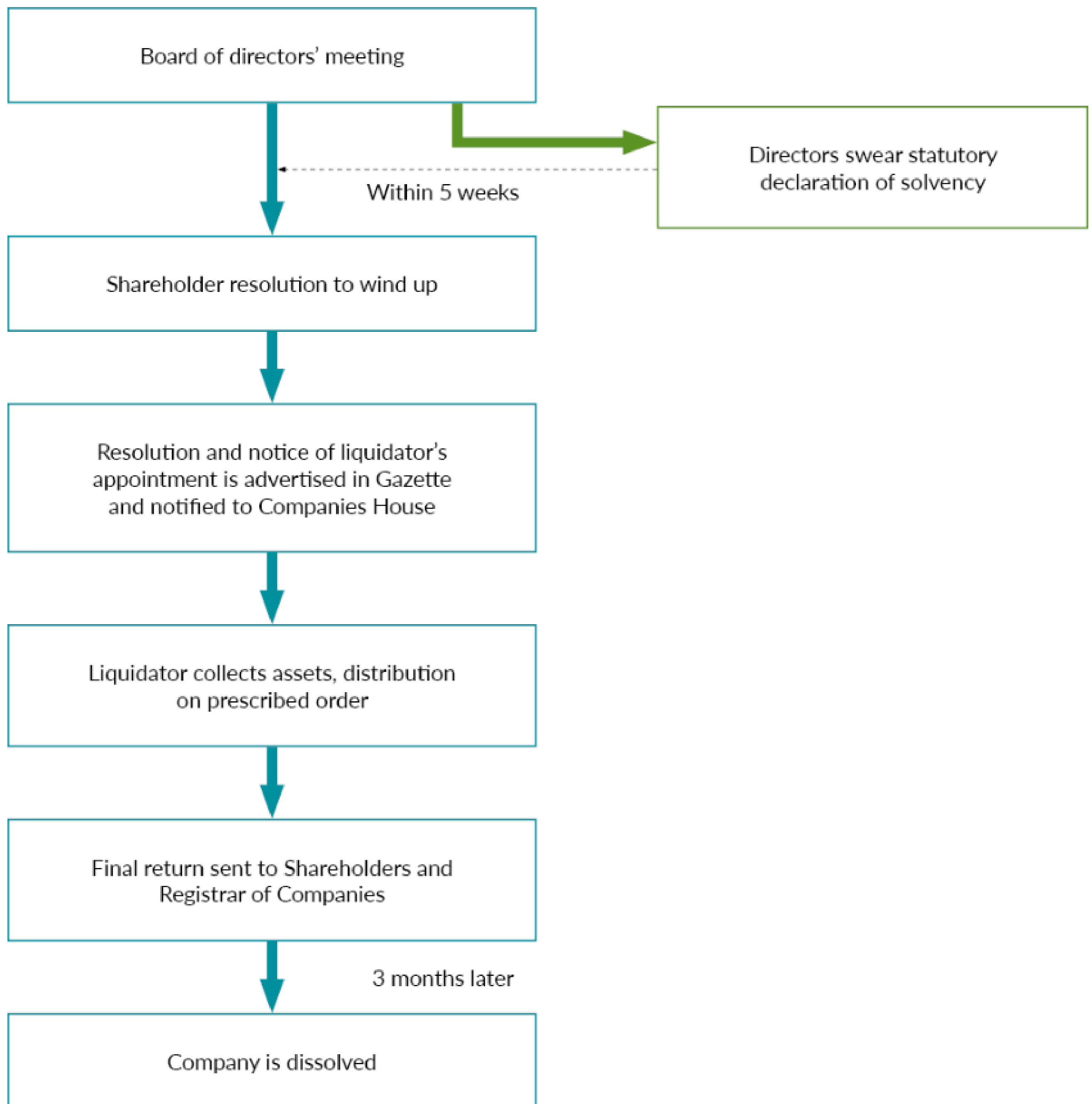
As stated at the outset, whether an MVL or a strike-off will be the more appropriate process for a company will depend on the individual set of facts. However, there are some "pointers" that can be used to guide the decision-making process. These are set out in the table below.

	MVL	STRIKE-OFF
Cost	• Requires the appointment of an insolvency practitioner (the liquidator). • No court involvement so costs are lawyers' fees and liquidators' fees.	• Does not require an insolvency practitioner.
Timing	• Can be achieved quickly (with appropriate pre-planning). • Distributions can in certain circumstances be made on the same day as the liquidator is appointed.	• Quick – if the company is eligible for strike-off.
Solvency	• An MVL requires directors to sign a statutory declaration of solvency which can carry personal liability if found to be untrue.	• No need for a declaration of solvency. • Creditors can object to the strike-off if they have not been paid.
Distribution of assets	• Distributions can in certain circumstances be made on the day of the liquidator's appointment. • Distributions can be made to shareholders in kind. • No assets will remain after.	• Assets that have not been extracted from the company prior to the strike-off will pass to the Crown on dissolution.
PR	• An MVL is a solvent process and so there is no negative PR involved for the group or the directors.	• An application for strike-off is well received by Companies House – rather than waiting for a compulsory strike-off.

Process for strike-off



Process for members' voluntary liquidation



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