



INSOLVENCY & BUSINESS RESCUE

Voluntary liquidations: A cost effective and efficient method of conducting a corporate clean-up, and for ending the existence of dormant companies

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Quite understandably, the word ‘liquidation’ can send shivers down the spine, and cause a company director to run for cover. The negative connotation makes sense: liquidation is almost always associated with corporate failure, empty bank accounts, and the misery of commercial dreams lying in tatters. It conjures images of a fire sale of assets, irate creditors, desperate staff, and threats of legal recourse.

But this is not necessarily the case. Many company directors, legal advisors and company secretaries are not fully aware of just how valuable and useful a tool a voluntary liquidation can be. It is a process that can be used not only to bring an end to a non-performing and terminal company, but also to effect corporate ‘clean-ups’ of dormant and unneeded subsidiary companies that continue a silent and unnecessary existence within a corporate group.

For those directors that are put off from liquidating because of the fear of costs and the public shame of liquidation proceedings being called in a Court, a voluntary liquidation can be cost effective, and can avoid lengthy Court proceedings. Legal advisors and company secretaries can identify subsidiary companies that are no longer needed, and use voluntary liquidations to conduct a clean-up of the corporate group, and sterilise the corporate organogram.

The benefits are obvious. The ongoing costs of maintaining the existence of an unwanted company, can be avoided: costs associated with the preparation and filing of annual returns, the conducting of audits, and the drafting of annual financial statements, would fall by the wayside. The valuable management time, usually dedicated to collating documents, attending meetings and finalising those processes, can be better spent managing the business, and conducting income-generating activities. Over the long run, insurance and legal fees could be reduced, whilst eliminating an unwanted / dormant company, usually eliminates any legal risk and obligation that arises from their continued existence.

Simply put, there is no reason, in circumstances where voluntary liquidations provide a cheap and efficient means of ending the existence of an unwanted or dormant company, to continue their existence. Similarly, there is no reason for directors, legal advisors, company secretaries, and tax departments, to continue incurring unnecessary costs, and unjustifiably allocating the valuable resources of time and attention.

There seems to be a belief that voluntary liquidations can only be used where the company in question has no debts, or is solvent. This is not the case. Whilst it is true that the voluntary liquidation of a solvent company (i.e. one with no debts) allows for slightly greater degree of ease, the reality is that an insolvent company, or even a company with debts, can also be liquidated voluntarily. A company with property, debts to SARS and employees, can also be voluntarily liquidated, although obtaining prior legal guidance is advisable.

Regardless, a voluntary liquidation avoids Court. Instead, the process commences with the passing of shareholder resolutions, and additional documents. Depending on the type of voluntary liquidation, the company’s auditors may need to provide a certificate, or the directors need to file a statement of affairs, or the Master’s Office may dispense with the need to put up security for the company’s debts. Again, depending on the type of voluntary liquidation, it may be possible not only to appoint a liquidator of choice and give the liquidator powers and authorities (to conduct the process), but there is the added benefit of being able to set a pre-agreed fee with the liquidator, so that costs can be managed, and are predictable from the outset of the process.

As in most processes governed by statute, there are certain technicalities and procedures involved, some of which are not always evident and clear from the statutory provisions. Directors, the legal advisor or the company secretary would likely prefer to lean on the expertise and experience of external legal advisors, to ensure that the entire procedure is conducted without any hiccups, and to provide the safeguard and comfort of finalisation. Once again, there is no reason why the attorney’s fees and costs cannot also be agreed from the outset of the process, thus lowering the prospects of any unpleasant cost surprises.

There is no need to continue to avoid correspondence from SARS, and communications from accountants and insurers, or to lament the allocation of precious time to an unwanted company. There is no need to have to report on a host of companies that have long-since ended their usefulness and exhausted their purpose. If, for whatever reason, the lifecycle of a company has reached its sunset, then a voluntary liquidation can be used to bring things to an end in a cost-effective and efficient manner.



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