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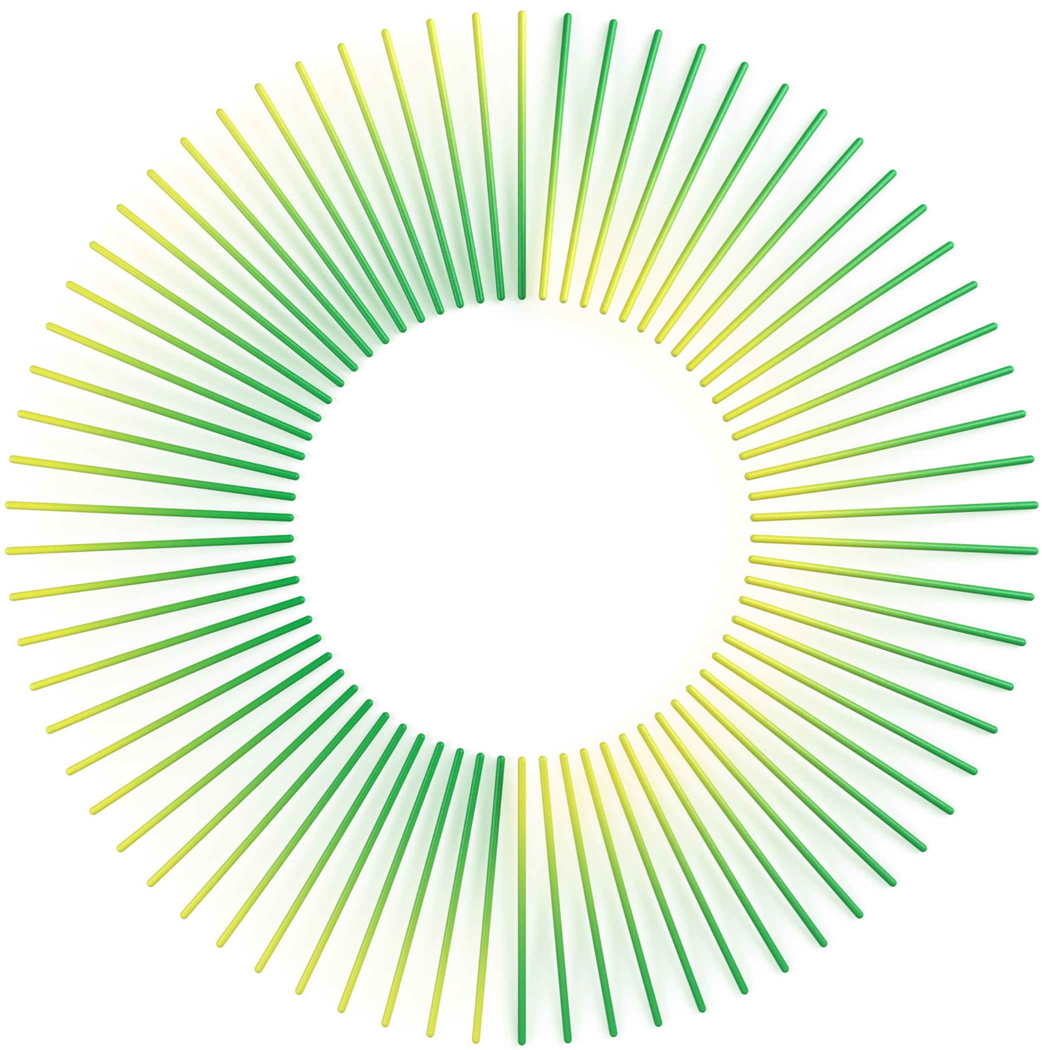

Members' voluntary liquidation or deregistration?

We'll help take you in the right direction

March 2021

What is a Members' Voluntary Liquidation (MVL)?

A Members' Voluntary Liquidation is a smart, cost effective way to reduce the burden of corporate maintenance costs. A MVL occurs when a special resolution is passed by a company's shareholders at an extraordinary general meeting. It will only happen after all or the majority of its directors declare that the company is solvent and will be able to pay all its debts within 12 months.

The date the members or their respective representatives resolve to wind up the company determines the date of the liquidation. The MVL process usually takes six to nine months for a dormant company.

A company is dormant when:

- The company has ceased to trade
- All tax issues are finalised
- The company has a nil balance sheet or only has intercompany asset and liabilities.

What is Deregistration?

A company or one of its directors can apply for voluntary deregistration if the company meets the specific requirements contained in s601AA(2) of the Corporations Act 2001 (Act). The criteria requires that:

- All the members of the company to agree to the deregistration
- The company does not carry on business
- The company's assets are worth less than $1,000
- The company has paid all fees and penalties payable under this Act
- The company has no outstanding liabilities
- The company is not party to any legal proceedings.

If the Australian Securities & Investments Commission (ASIC) is not aware of any failure to comply with the requirements in s601AA, the company may be deregistered after two months have passed since a notice of the

Critical business considerations

Considering the answers to the questions below will help you maximise the benefits and minimise the risks.

Liquidate or Deregister?

MVL	Deregistration
• Has the company been trading within the last five years?	• Do you have an extensive knowledge of the trading history?
• Does the company have outstanding liabilities?	• Has the company been a non trading entity for the last five years?
• Is the history unknown due to acquisition or previous directors being appointed?	• Is the company classified as a shelf company?
• Are the books and records inadequate to show all of the corporate history?	• Are there nil assets and liabilities in the company?
• Has there been a recent closure of operations?	• Have all statutory requirements and tax issues been finalised?
• Are there outstanding tax issues and statutory requirements?	

Making the right choice

You want to make the right decision for your company when it comes to choosing between a MVL and deregistration. Are you aware of the benefits and risks associated with each option?

MVL	Benefit	Risk
Significantly reduces risk to the company and its officers from exposure to liabilities and claims.	✓	
The clearance process provides directors with a level of comfort that the company has met all its liabilities.	✓	
Forgotten assets (e.g. trademarks) never vest in ASIC because a distribution is always made.	✓	
If a company has been deregistered due to MVL, it is difficult to reinstate as it requires a court application.	✓	
Once a company is in liquidation, control vests with the liquidator. Directors should not need to become directly involved again.	✓	
Directors are required to make a declaration of solvency, and only an estimate on the financial position of the company.	✓	
The company may be relieved from certain reporting obligations including the requirement to prepare audited financial reports.	✓	
Process can take 6 – 9 months, due to statutory advertising, notice periods and obtaining clearances from statutory authorities, including the ATO.		✓
Can be more expensive as: • A liquidator is involved • Cost of statutory notices • Time it takes to undertake the liquidation process.		✓

Deregistration	Benefit	Risk
The process is simple, quick and inexpensive.	✓	
Company can be reinstated more easily if claim arises post deregistration.		✓
Where the company is reinstated any person who was a company officer at the time of deregistration is also reinstated and deemed to have held that position throughout the period that the company was deregistered.		✓
To deregister a company the directors must make a statutory declaration that includes: • The company has less than $1,000 of assets • Has no liabilities. This can be difficult if the trading history is unknown. If this declaration is subsequently found to be incorrect, e.g. a forgotten asset is found, more than $1,000 of assets is discovered or a liability of any amount arises then the directors may have committed an offence punishable by fine and/or imprisonment.		✓

Milestones

- Pre-liquidation review is finalised

Day 1

- Directors' meeting
- Execute declaration of solvency

Day 2

- Shareholders' meeting/resolutions
- Consent to short notice (if required)
- Resolve to wind up
- Resolve to appoint a liquidator
- Resolve powers and remuneration

Day 3

- Advertise appointment
- Advertise winding up
- Request for proofs of debt

Day 4 – 5

- Request tax clearances
- Lodge tax returns (if required)

Timing to finalise once tax clearances are received

Tax clearances received (T)

T* + 7 days

- Advertise distribution

T* + 49 days

- Distribute funds in order of priority

T* + 56 days

- Prepare and lodge an end of administration return with ASIC (Form 5603)

Form 5603 + 3 months

- ASIC deregisters the company three months later

Company is deregistered

We'll take care of it

The successful execution of a Members' Voluntary Liquidation or Deregistration requires an experienced team with the necessary combination of accounting, finance, taxation and management skills to ensure that the process is undertaken efficiently, effectively and in compliance with the law.

Deloitte's experienced team have superior knowledge of the Corporations Act and is able to assist you with:

- A pre-liquidation review and planning
- Project management of stakeholders
- Effective tax advice in conjunction with specialist tax and stamp duty advisors
- Assistance and experience with maximising returns from realisation of assets
- Resolution and settlement of creditor claims
- Crystallisation of contingent claims
- Liquidation administration and statutory requirements
- Taxation clearances
- End-to-end service to cost effectively manage the closure
- Provision of expertise to manage the closure, releasing directors' and managers' time.

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