

Striking off

Overview

In the case of a private company, a **striking off procedure** might be a cost-effective procedure following a sale of the assets and payment of creditors in full. It is not strictly an insolvency procedure, since it is not governed by the Insolvency Act nor does it require a licensed insolvency practitioner. It is however an alternative to an MVL as a means of addressing an unwanted solvent company.

How does the procedure work?

As an alternative to an MVL in a solvent situation, it is possible simply to realise the assets, repay liabilities and distribute the cash to shareholders, although this should only be done with professional advice.

The company could then apply to the Registrar to strike the company off the Registrar once the directors have certified that the company has no assets or liabilities. It is advisable to hold a shareholders meeting to seek the shareholders' approval.

The Registrar would normally decide to strike off the company as long as he believes that the Inland Revenue, any third parties with an interest in the company and any creditors have been satisfied.

There is a fast track procedure for private companies. The directors can apply to the Registrar on prescribed form 652(a). The Registrar then publishes a notice in the Gazette inviting objections to be made within three months. The directors must distribute a copy to every notifiable person: shareholders, employees, creditors, directors and pension fund.

An application cannot be made if within the previous three months the company has changed its name, traded or otherwise carried on business, sold property or rights or engaged in any other activity

It is an offence for anyone to apply for striking off when the company is ineligible, to provide misleading information to support an application, not to copy the application to all relevant parties and not to withdraw the application if the company becomes ineligible for striking off. The penalties are a fine and/or imprisonment, together with the risk of being disqualified as a director.

Once a company has been struck off, it ceases to exist. Therefore any assets or rights to income which it might subsequently discover would be lost. The liabilities of directors for breach of fiduciary duties also continue.

Within twenty years of striking off, the company can be restored to the register and the court can make such orders as it thinks fit to place the company and those connected with it in the same position as if it had not been struck off. (Those pursuing personal injury claims can have it restored even after the twenty years have expired.)

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at www.portbfs.co.uk to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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Advantages	Disadvantages
<ul style="list-style-type: none"> ▪ Little professional cost ▪ It is not actually an insolvency procedure and avoids insolvency stigma altogether. 	<ul style="list-style-type: none"> ▪ Risk of restoration on application by a notifiable person within 20 years. In this event, the fiduciary liabilities and statutory responsibilities for directors continue. ▪ There can be a delay in proceeding whilst the three month dormant period passes. ▪ If the share capital exceeds £2,500, then there is a cumbersome procedure to make a distribution to shareholders. ▪ Overlooked assets can become Crown property

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