



MEMO

To: Board of Directors
From: Company Secretary
Subject: **COMPANY DE-REGISTRATION**

A company may apply to ASIC to be voluntarily de-registered under the Corporations Act [sec. 601AA(1)] provided, at the time, it:

- is solvent
- is not carrying on business and/or it is dormant
- has assets worth less than \$1,000
- has no liabilities (real or contingent)
- has no charges (over assets) outstanding
- is not party to any legal proceedings
- owes nothing to ASIC*

AND

- all members/shareholders of the company have agreed to de-registration.

An alternative is for the company to be voluntarily wound up under sec. 491 of the Act, although if the above criteria are met then application for de-registration is simpler, cheaper and quicker.

Steps Required

1. Hold a Board Meeting or pass a Directors' Resolution to agree:
 - a. that the above criteria are met
 - b. to recommend to shareholders/members to proceed to de-registration
 - c. to seek unanimous consent of ALL shareholders either by having them all sign a written resolution or call a General Meeting.
2. Obtain the consent of all shareholders to approve de-registration.

A Circulating Resolution, signed by all shareholders, is all that is really required for de-registration. However, a General Meeting may be called although even using that process the unanimous consent of ALL shareholders is required. To achieve this may require proxies from all shareholders not attending the meeting – or some form of written consent from each shareholder (eg, appointing an attorney).



3. Complete and lodge Form 6010 “Application for Voluntary Deregistration of a Company” with ASIC:
 - a. naming ‘the applicant’, which may be a director or shareholder of the company, or ‘the company’ itself (in which case a ‘nominee’ individual person must be named for contact/notification purposes);
 - b. signed by a Director or Company Secretary of the company, or a shareholder (i.e., by a director – but NOT Company Secretary – if the shareholder is a company); and
 - c. accompanied by the required fee.
4. Once the Form is submitted the application to voluntarily de-register the company will be considered by ASIC and, if acceptable, ASIC will write to the applicant or the person nominated within 3 / 4 weeks advising approval to de-registration proceeding and formally give notice of such in the Govt Gazette [sec 601AA(4)].
5. Two(2) months after gazettal (if there are no objections, etc) ASIC will:
 - a. officially de-register the company [sec. 601AA(4A)]
 - b. give Notice of De-registration to the company (or nominee) [sec. 601AA(5)].

Following de-registration any remaining company assets vest in ASIC [sec. 601AD(2)], but any property held on trust by the company vests in “the Commonwealth” [sec. 601AD(1A)]. I have been verbally advised by ASIC that, by negotiation, often these assets/property can be “bought back” by the directors or shareholders – otherwise they can be auctioned.

In need, there are processes available under the Act [sec 601AH] or through the Courts for “reinstatement” of a company – for example: if the company suddenly “comes into” additional assets – otherwise these too vest in ASIC – or if a former creditor wishes to take action against the company.

Also, officers of the Company may still be liable for things done before de-registration [sec. 601AD(1)]. And, books and records of the company must be retained for at least three (3) years after de-registration [sec. 601AD(5)].

* NOTE: Form 6010 states:

“Once we receive and approve the application, we will publish a notice of the proposed deregistration in the next Commonwealth of Australia ASIC Gazette. If the company's annual review date falls within 2 calendar months before or after the date on which the notice is published in the ASIC Gazette, you will not have to pay the current year's annual review fee.



The ASIC Gazette is published on Tuesday and Friday every week except for the first and last week of the year. Applications must be approved a minimum of 3 business days prior to the next ASIC Gazette in order for the notice to be published.”

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.

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