Dealing with dormant companies

Would you like to simplify your company group structure and eliminate a number of those dormant subsidiaries, which are no longer required?

Dealing with companies can be a simple process. Finance directors need to focus on core businesses and have a straight forward group structure. Disposing of your dormant companies can reduce administrative and audit costs and facilitate greater understanding among finance professionals.

Are any of your companies dormant?

Many groups of companies include some that are dormant. Formed or acquired as part of the natural business development of your group, these companies no longer have a useful role to play in the group's activities.

Quite often, however, dormant companies can hide outstanding issues that could cause problems in the future.

Issues such as:

- intercompany debts;
- potential problems regarding previous assigned leases;
- pension scheme issues;
- potential tax problems; or
- possible contingent creditors.

Investigating and resolving these issues will involve a number of people in different parts of your group. It is likely to prove difficult, therefore, to gather people together from the necessary disciplines such as company secretarial, accounting, tax and property to sort out the outstanding issues. This task can end up being one that is put on the "back burner" as a result.

An added problem is that your group may lose the background knowledge to some of the issues through retirement or changes in personnel. The result is that you may find that you have had dormant companies on your books for a number of years, and you could be incurring costs in maintaining them for no real benefit.

There are many costs, hidden and apparent, associated with maintaining dormant companies, such as preparation of the annual returns and accounts as well as management time.

Should these companies be struck off?

You as directors can apply to have dormant companies struck off. To make such an application you need to be sure that you have investigated all the outstanding issues. This includes identifying and notifying both actual and potential creditors. Until this has been done assets representing the nominal value of the company's share capital cannot lawfully be distributed.

Voluntary strike-off conditions

The company can request voluntary strike-off provided:

- all Companies Office filings are up to date;
- it has ceased trading or has never traded; and
- as at the date of the application:
  - the amount of any assets of the company does not exceed €150; and
  - the amount of liabilities of the company (including contingent and prospective liabilities) does not exceed €150.

You must be sure that liabilities have not been overlooked. These could be product liabilities or employee liabilities.

The potential dangers

If striking off is carried out without identifying and settling all the outstanding issues, creditors can apply to have companies put back on the Companies Register at any time up to 20 years following dissolution. The emergence of any liability can lead to this happening. In this situation, any previous distribution of assets may have to be reversed all of which can be an expensive process.

An alternative

Many of the potential dangers associated with striking off can be overcome by opting for a Members' Voluntary Liquidation (MVL). The outstanding issues surrounding the dormant company still need to be investigated and resolved but certain key advantages emerge. In particular:

- the nominal share capital of the company can lawfully be distributed, provided the company is solvent or can be made so;
- except in exceptional circumstances, the company can only be put back on the Register, following dissolution, within a two year period; and
- it can be advantageous to crystallise a capital loss or gain by liquidating the company if there are other capital issues arising in the group.

If your group is going to make a full enquiry into the affairs of a dormant company then it makes sense to opt for an MVL. This reduces by a multiple of 10 the period during which the company can be put back on the Register. This marks an end to the period of directors' responsibilities and can give the shareholders and directors "peace of mind".

The key characteristic of an MVL are:

- it is a solvent winding-up, initiated by the shareholders with no creditor involvement;
- the company directors swear a Declaration
- of Solvency that the company can pay any remaining debts in full within 12 months; and
- following completion of the liquidation the company is dissolved.

While in simple cases it may be appropriate to have dormant companies struck off due to the lower cost of the strike off process, in cases with even the slightest complexity it may prove to be more cost effective to wind-up dormant companies through the MVL process and deal with them once and for all.

Under the strike off process it is necessary to bring all annual returns and accounts up to date with the Companies Registry. Under the MVL process this is not necessary and can result in savings, depending on the company's filing history.

In most cases, the one-off liquidation cost will be substantially less than the cost of carrying a dormant company year after year. We can help you carry out the necessary investigations and handle the liquidation.

Our work is charged out at our usual hourly rates however fees can always be agreed in advance with discounts included where there is a number of entities.

Our approach

- we have extensive experience in carrying out investigations, handling MVLs and voluntary strike-off applications. We advise many businesses on group rationalisations, tax planning and restructuring.
- we have a keen understanding of the complex interplay between the taxation, property and company secretarial issues involved.
- our dedicated team of experts will work with your team in order to co-ordinate all of the relevant issues including tax planning and property audits. Where appropriate, we agree work timetables and use critical path techniques.
- we can carry out the rationalisation of your group structures even if we are not the auditors to your group. This can be dealt with as a stand-alone project.

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