cas Community Action Southwark

Winding up (dissolution of) a charitable company

This briefing assumes that the charity is solvent on winding up i.e. that it is able to pay all its debts.

Trustees should do all they can to ensure that they are aware of the financial position of the charity to ensure that insolvency is avoided. If at any stage you suspect that your charity is or might become insolvent you should seek advice as a matter of urgency. Community Action Southwark can assist you in assessing your financial situation and looking at the options that are available to you.

A charitable company that is being dissolved (wound up) should be removed from the Companies House Register before being removed from the Register of Charities.

Procedure with Companies House – solvent companies

The procedure at Companies House depends on whether the organisation is solvent or insolvent. If the organisation is solvent (that is it is able to pay of all its liabilities) procedures are straightforward. There are two choices, voluntary striking off or members' voluntary liquidation:

Voluntary striking off

Assuming that the company will go out solvent look at: **Companies House GP4 - Strike off, Dissolution and Restoration**

This covers the voluntary striking off procedure which enables a company that is not insolvent and has not operated in the previous three months to apply to be struck off the register and dissolved. A company which has been struck off in this way can be restored to the register within 20 years of dissolution, for example if a creditor says the former company owes it money and should not have been struck off.

Therefore, you do need to ensure that all loose ends have been tied up and that there are no skeletons (eg. an outstanding employment tribunal). The directors can initiate this process – they do have to inform company members amongst others.

Members' voluntary liquidation

If the company is solvent and the members want to end it, but the above procedure is not appropriate the members must pass a special resolution to be wound up voluntarily. You can find information about this at **Companies House GP08 - Liquidation and Insolvency** (see chapter 5).

The advantage of a members' voluntary liquidation is that the company generally cannot be revived, and the process is managed by a professional. In addition if an unexpected liability arises that makes the company insolvent, a members' voluntary winding up can relatively easily be converted into an insolvent liquidation. The disadvantage of a members' voluntary liquidation over a voluntary striking off is that it costs more. The procedure is though, as you will read, more complex. The members, in a general meeting, do have to pass a resolution to wind up the company

Procedure with the Charity Commission

Once the company has been removed from the Companies House Register you must notify the Charity Commission so that they can also remove it from the Register of Charities. You can do this by either:

- Completing the online declaration form on the Charity Commission website: http://www.charitycommission.gov.uk/notify-us-of-changes/update-your-details/tell-us-your-charity-has-closed/

- Sending the Charity Commission a copy of the charity's final accounts showing where the assets have gone and a nil balance, along with either a certified copy of the minutes of the meeting at which the decision to dissolve the charity was taken or certified copies of the relevant resolutions.

Providing this information will:

- Ensure that you have met the requirement to keep the charity's entry in the Register up to date.

- Enable the Charity Commission to remove the charity from the Register. The Charity Commission will check that the company has been removed from the Companies House Register and that they have all of the annual returns, accounts and directors' reports that should have been sent to them in previous years.

Remaining funds

Your memorandum and articles should contain a **dissolution clause** stating how the company should be wound up and saying what should happen to any remaining assets. This clause will usually say that remaining assets can be passed to a charity with similar charitable objects. If there is no dissolution clause you should contact the Charity Commission or Community Action Southwark for advice.

You must ensure that any grant or donations received for a specific purpose (restricted funds) are

- used for the intended purpose;
- used for a different purpose of the charity with the agreement of the donor; or
- returned to the donor.

Note: We advise you to seek independent professional advice if you suspect your company is, or is about to become, insolvent.

Support

For support and information on this and other organisational issues, please contact development@casouthwark.org.uk or 020 7358 7020

Resources

- Guidance on voluntary striking-off and dissolution at Strike-off, Dissolution and Restoration (GBW 2) on the Companies House website, along with the relevant forms.

- If the organisation is insolvent procedures are more complex. For companies house guidance look at http://www.companieshouse.gov.uk/about/gbhtml/gpo8.shtml.

- Companies House Contact Centre: 0870 33 33 636.
- Specific advice relating to your charity can be requested from the Charity Commission:
  By email: enquiries@charitycommission.gsi.gov.uk
  By post: Charity Commission Direct PO Box 1227, Liverpool L69 3UG
- Charity Commission: Dissolution and Removal from the Register of Charities
- Charity Commission: Manage your charity: Merge or close a charity
- Charity Commission Guidance CC12 - Managing Financial Difficulties and Insolvency in Charities
- The Insolvency Service website has a database of insolvency practitioners: http://www.direct.gov.uk/en/Diol1/DoItOnline/DG_187405