Matheson

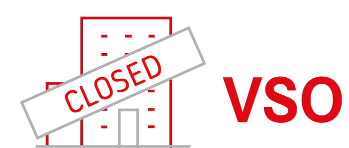
Dissolving an Irish Company

What are the Options?

Dublin Cork London New York Palo Alto San Francisco

DISSOLVING AN IRISH COMPANY – WHAT ARE THE OPTIONS?

Companies are increasingly focused on simplifying their corporate structures as part of efficient entity consolidation projects and / or as part of global post-acquisition integration projects. We take a look at three options available under Irish law to dissolve solvent Irish companies from the Register of Companies (the “**Register**”), those being: (i) voluntary strike-off (“**VSO**”); (ii) members’ voluntary liquidation (“**MVL**”); or (iii) domestic merger between Irish companies (“**Merger**”). Set out below is a brief overview of each of these options.



VSO

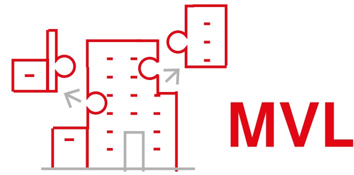
A VSO is typically considered to be the most timely and cost efficient dissolution option. In order to avail of the option however, VSO requires the reduction of the assets and liabilities of a company to €150 or less (issued share capital is not required to be included in this figure). In that respect, this process is not suitable for companies with material assets or operations and is most commonly used by: (i) companies that have never traded; or (ii) companies that have ceased trading and no longer have any significant assets or liabilities.

The Irish Companies Registration Office (the “**CRO**”) have issued guidelines on the steps which must be adhered to when making an application for VSO. Those steps are as follows:

- A letter of no objection to the VSO must be obtained from the Irish Revenue Commissioners (“**Revenue**”).
- The company must ensure that all of its outstanding annual filings are filed at the CRO, together with payment of relevant fees and penalties (as applicable).
- An advertisement must be placed in one daily newspaper published in Ireland within four weeks before the delivery of the VSO application to the CRO.
- A CRO filing form must be signed by all the directors of the company and submitted to the CRO together with (i) the original letter of no objection received from Revenue; and (ii) the original newspaper advertisement.

While timing is slightly less certain in terms of VSO, when compared with the other options, it is likely that the process will be completed within a period of 4 to 6 months. This timeline is not definitive as the Registrar of Companies ultimately retains the discretion as to when a company will be struck-off the Register.

In terms of reinstatement, and following VSO, a company may be reinstated at the instance of interested parties, for instance members or creditors. In such circumstances, an application can be made up to 20 years after the date of the strike-off of a company, therefore providing less legal certainty for the future than some of the other dissolution options. An application made within a period of 12 months from the date of dissolution can be dealt with by the CRO under a straight forward administrative procedure. An application made after a period of 12 months would require an application to be made to the Irish High Court.



MVL

If a company has assets and liabilities and is solvent (i.e. can pay its debts and liabilities as they fall due) at the time it wishes to be dissolved, it may be preferable to place a company into MVL. In practice, and in order to streamline the process, it generally makes sense to clean up the balance sheet in advance of placing a company into MVL.

The steps required to place a company into MVL are as follows:

- The first is the convening of a directors' board meeting. The items to be considered and approved are the liquidation, the statement of assets and liabilities of the company and the signing of the directors' declaration of solvency.
- In commencing a MVL, the company must be solvent. In this respect a statutory declaration of solvency must be sworn by, at a minimum, a majority of the directors of the Company during a board meeting (Step 1). The declaration must also contain a statement of the company's assets and liabilities made up to a period not exceeding 3 months from the making of the declaration.
- Following its execution by the directors, the declaration must be accompanied by both a report and a statement made by an independent person (typically the company's auditors) that the directors' declaration is not unreasonable.
- The shareholder(s) must then pass a special resolution to wind up the company voluntarily by way of MVL. Within 14 days from the passing of this resolution, notice of the resolution must be advertised in Iris Oifigiuil (the Irish Gazette).
- The relevant filing forms must be filed at the CRO to place the company into liquidation.

On timing, there is a little more certainty around the removal of a company from the Register. It typically takes a liquidator a period of 6 to 9 months to conclude their functions and once final accounts are filed with the CRO, there is a statutory waiting period of 3 months before a company will be formally dissolved and removed from the Register.

Where a company is dissolved by way of MVL, similar to VSO, a company can be reinstated at the instance of interested parties. Under the MVL process though, any such application to restore a company to the Register is required to be made within 2 years of the date of dissolution of a company, being a considerably shorter 'open' period than in the case of a VSO.

MERGER

A Merger involves the merger of two (or more) Irish incorporated companies whereby one company survives and the other is dissolved without entering liquidation. It is important to note that at least one of the merging companies must be an Irish private company limited by shares. A Merger can be approved in either of two ways, those being: (i) by way of confirmation by the Irish High Court; or (ii) using a prescribed method being the Summary Approval Procedure ("**SAP**"), a statutory approval procedure under Irish law. From a timing and cost perspective, where suitable, the most straightforward of these two options is the SAP and the option we see utilised the most in practice.

Pursuant to a Merger, the surviving company acquires all of the assets and liabilities of the transferor company and the transferor company is dissolved by operation of law without going into liquidation. The steps that companies need to follow under the SAP are as follows:

- As an initial step, the merging companies must prepare and execute common draft terms of merger ("**CDT**"). Once signed, and for a minimum of 30 days, each merging company must make the CDTs and the statutory financial statements (i.e. including directors' report) for the preceding 3 financial years of each merging company available for inspection free of charge to the member(s) of the relevant company at its registered office (the "**Inspection Period**").
- Following the Inspection Period, each merging company must schedule a board meeting to approve and sign a statutory declaration of solvency. The declaration must be sworn by, at a minimum, a majority of the directors of the Company during a board meeting (Step 1). The declaration must also contain a statement of the company's assets and liabilities made up to a period not exceeding 3 months from the making of the declaration.
- Each company's shareholder(s) must then pass a special resolution to approve the CDTs and the merger.
- The relevant filing forms must then be filed at the CRO.

From a corporate legal perspective, a Merger is capable of being completed within 6 to 8 weeks, provided all the necessary pre-Merger diligence and confirmations have been completed, legal conditions met and all material issues closed out. One gating item to commence the Merger process is that financial statements for each merging company for the previous financial year (and the two preceding financial years) must be available and this needs to be factored into the timing from the outset.

Upon completion of all relevant filings at the CRO, the designation of the transferor company will be recorded as "dissolved" and the transferor company will cease to exist. It is not possible to reinstate a company dissolved by way of Merger to the Register.

CONCLUSION

The most appropriate option will ultimately depend on the nature of a company's business and legal, tax and accounting advice and in that regard the pre-planning phase is important to determine the most appropriate option. In circumstances where a company has never traded and has little to no assets / liabilities then it may be preferable to apply for VSO. Where a company has traded and has assets and liabilities then MVL or Merger are likely to be the appropriate method of dissolution. For more information on this please contact Pat English, Ross Cashell or another member of our International Business Group.

CONTACTS

Pat English

Partner

T +353 1 232 2330

E pat.english@matheson.com

Ross Cashell

Senior Associate

T +353 1 232 2622

E ross.cashell@matheson.com

This Matheson LLP ("Matheson") material contains general information about Irish law and about our legal services. This material is not intended to provide, and does not constitute or comprise, legal advice on any particular matter and is provided for general information purposes only. You should not act or refrain from acting on the basis of any information contained in this material, without seeking appropriate legal or other professional advice.

Copyright © Matheson