

## Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Insolvency in Australia

### Question:

How much cost are we talking about with the two steps described, (1) to deregister a company (2) for a creditor to re-register a company?

### Answer:

#### (1) Voluntary deregistration

- A director, secretary, member or liquidator can lodge the one-page ASIC Form 6010 *Application for voluntary deregistration of a company*.
- The fee of \$44 must be paid for ASIC to continue with the deregistration.
- ASIC will check the company's account with ASIC and an *'application will not be approved if there is still an outstanding amount on your account.'*<sup>1</sup>
- Our primary concern, as raised, is ASIC does not check if there are any other outstanding fees, penalties or statutory payments.
- For example, check a company's Running Account Balance with the Australian Taxation Office is zero and that there are no lodgements, say a Business Activity Statement, outstanding.
- It appears that ASIC does not verify any of the pre-printed declarations on form 6010.

Extract from ASIC Form 6010:

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Australian Securities & Investments Commission

Application for

**voluntary deregistration of a company**

form **6010**  
Corporations Act 2001  
601AA(1) & (2)

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Company name \_\_\_\_\_  
A.C.N. \_\_\_\_\_

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**Application**

I, the applicant, apply to deregister the above company under subsection 601AA(2) of the Corporations Act 2001.

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**Declaration**

I declare that the statements below are correct.

- (a) All members of the company agree to the deregistration; and
- (b) the company is not carrying on business; and
- (c) the company's assets are worth less than \$1000; and
- (d) the company has paid all fees and penalties payable under this Act; and
- (e) the company has no outstanding liabilities; and
- (f) the company is not a party to any legal proceedings.

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**Details of the applicant**

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<sup>1</sup> ASIC website, <https://asic.gov.au/for-business/closing-your-company/deregistration/voluntarily-deregistering-a-company/>, checked on 7 March 2023

- Coupled with asking the ATO to confirm a company's Running Account Balance is zero, some of the pre-printed declarations could be replaced with questions.
- For example:
  - (c) What is the value of assets remaining in the company? \$ \_\_\_\_\_
  - (e) What is the total of the company's remaining liabilities? \$ \_\_\_\_\_
- By asking the applicant to provide the dollar value of assets and liabilities of the company may stress to an applicant that they can be held accountable for their declarations and provide ASIC with a higher degree of certainty that a company meets the criteria to deregister.

## (2) Reinstating a deregistered company

- If a company is reinstated it is taken to have continued in existence as if it had not been deregistered.
  - Costs can be significant as the applicant must be able to pay any missed annual review fees and state that they are able to meet the company debts as and when they fall due.
- (a) A director, secretary or member of the company
- may apply to ASIC on Form 581 *Application for ASIC Reinstatement* and pay a fee of \$44
  - the applicant must be able to support the view that the company should not have been deregistered.
- (b) Third parties
- may apply to ASIC on Form 581 *Application for ASIC Reinstatement* and pay a fee of \$44
  - they must have started legal proceedings against the company before its deregistration and be able to provide copies of court documents as evidence.
- (c) Aggrieved creditor or registered liquidator of the company
- can apply to the court for an order that ASIC reinstate a company.
  - on asking a few of our members, they indicated such a court application can cost upwards of \$10,000.