**When Charity Ends Part 2**

This is part two of a three part series of articles setting out the options for charities when the personal fulfilment of undertaking their charitable enterprise has been destroyed by regulation and red tape. Part one was on how to cease an unincorporated (non-company) charity. Part two will look at how to cease an incorporated (Company) charity and Part three will look at accounting for the merging of equals or the subsuming of a smaller charity into a larger one.

Most charities are companies limited by guarantee and it is not uncommon for people to drift away from a charity, meetings are not held, and perhaps the person who dealt the secretarial matters gets ill or resigns. Because nothing is happening the post is unopened or ignored and nobody keeps any accounting records, there may even be no cash or transactions to account for. But there is still a company and a legal requirement to prepare audited accounts, even if the company is dormant. There is also a requirement to make annual returns to Company Registration Office (CRO) and late filing fees could be racking up. Eventually CRO will lose patience and list the company for “strike off”. In some cases this is the end and if nothing is done the company ceases to exist. Technically all remaining assets now come into the ownership of the Minister for Finance. Sounds simple and an easy way out; it is neither.

**Winding up an incorporated (company) charity**

There are two legal ways of winding up a limited company charity and one not uncommon but illegal way: voluntary strike off; liquidation (which itself in 3 different types) and involuntary strike off respectfully. Of these, the easiest is liquidation, the cheapest can be voluntary strike off and the most common is involuntary strike off. Liquidation is a formal process undertaken by insolvency practitioners, anybody connected with the charity is barred from acting as liquidator.

**Voluntary strike off**

Voluntary strike off involves paying off all debts of the company, donating to another charity or otherwise disposing of all assets and cash so that the remaining assets, liabilities and share capital (where the entity has share capital) are all less than €150 and then following the procedures listed at <http://www.cro.ie/ena/business-termination-voluntary.aspx> Voluntary strike off requires in summary that:

* the Companies Registration Office (CRO) annual returns need to be up to date including up to date audited accounts and all fees and penalties are paid;
* the Revenue Commissioners must agree in writing to the dissolution;
* the dissolution must be advertised in a nationwide newspaper; and
* a form H15 is filed in CRO.

The process is set out in more detail on www.cro.ie, with examples of the advertisement and the address to write for clearance from the Revenue Commissioners etc…. The issue with voluntary strike off is that all annual returns and audited accounts need to be up to date and all CRO late fines paid. If these are more than 2 years out of date, then MVL (see below) is likely to be cheaper and easier; even just being one year out of date and a liquidator is likely to be cheaper. The cost of a voluntary strike off will be about €500 as there are requirements to take out advertisements and some filing fees etc…

If voluntary strike off is chosen, then the first requirement is to call an Extraordinary General Meeting, propose a motion that the charity cease operations and that the Secretary be authorised to apply for voluntary strike off (or authorised to instruct the auditor to assist in getting the company voluntary struck off). A motion might look something like this:

It is proposed that XYZ Charity Limited cease operation as of today and that the Secretary is authorised to:

1. dispose of all property
2. pay off all remaining debts of the charity
3. To donate all remaining funds, excluding the costs of voluntary strike off, and assets to ABC charity / return remaining funds to donors.
4. Apply for voluntary strike off of the company from CRO
5. Write to Donor A and B informing them of the charity ceasing and thank them for their support
6. Inform Revenue / Charity Commission of the cessation of the charity and ask for the removal of the charity from the charitable list
7. Inform the charities bank of the cessation and close all bank accounts.”

**Liquidation**

There are three different types of Liquidation. The plain and simple one is called a Members Voluntary Liquidation (MVL). The insolvent company one is called a Creditors Voluntary Liquidation (CVL) and the last type is called a Court Liquidation (CL). If the charity is solvent then a MVL is pretty straight forward and painless. If the charity is insolvent, then a CVL is the only option and if a creditor is chasing the charity for payment, then a CL is the option that the creditor will choose. There are a number of reputable insolvency practitioners in operation and all have detailed explanations on how each procedure works on their web site, for one example see [www.frielstafford.ie](http://www.frielstafford.ie). A CL would be very unusual in a charitable situation and they are outside the control of the charity and therefore not covered in this article.

*Members Voluntary Liquidation (MVL)*

Where the company is solvent (asset exceed liabilities), simply approach a liquidator and they will provide you with standard documentation to proceed with their appointment. You do not need to get the financial statement up to date, you do not need to get audits done up to date and you do not need to pay any late CRO fees. You will need a statement of affairs (a list of assets and liabilities) and you will have paid off all creditors and realised all assets and made donations etc… to just have sufficient funds in the bank to pay the liquidator. Budget €3,000 for the cost of a liquidator for a company with just cash left in the bank and no liabilities, but it may be cheaper or more expensive depending on the work involved and the level of assistance you need. You will need to call an EGM (Extraordinary General Meeting) but the liquidator will provide you with the formal wording of the motion you need to pass. You can then walk away from the charity and the liquidator will look after everything. While there are no qualification requirements to be a liquidator, ACCA strongly recommends that you engage a professionally qualified accountant to be your liquidator, if an MVL is not done properly, it can become a CVL (see below). Your auditor can not be your liquidator, but they can advise you of some local reputable liquidator’s.

*Creditors Voluntary Liquidation (CVL)*

Where the company is not solvent and cannot meet it debts, then you approach a liquidator to arrange a CVL; any reputable liquidator will give a free consultation to discuss this option. Either funds from the sale of company assets or other funds will need to be found to pay for the liquidation. If no funds are available and no company assets are available to sell to pay the liquidator, then involuntary strike off may be the only option (see below). Because there is additional work required of the liquidator with a CVL (the investigation and reporting to ODCE), a CVL might cost in excess of €10,000. The liquidator will provide you with standard documentation to pass the appropriate motions at an EGM to allow their appointment. The liquidator in a CVL has a duty to investigate the running of the company for the previous two years and report to the Office of the Director of Corporate Enforcement (ODCE) on your stewardship (a Section 56 Report). If the company was run recklessly or fraudulently or matters such as keeping proper books of account were not attended to, then the Directors can look forward to a day in court to answer for their actions or inactions. The likely outcome of such a court appearance is a restriction or disqualification from being a director or in extremely rare cases, personal liability for the debts of the company. ODCE [www.odce.ie](http://www.odce.ie) have a guide called “Penalties for Breaches of Company Law” which explains the various penalties. To be very clear though, if you acted honestly and responsibly and attended to keeping books of account, then there is nothing to fear from a CVL and the process will be quite straight forward and painless.

*Involuntary Strike off*

If a company is listed for “strike off” the directors have a choice: ignore the notice or take action. Some struck off companies simply stay struck off and are never heard of again. Directors of struck off companies are however, likely to receive instructions from CRO to place the company into liquidation, this instruction may also come in the form of a direction from a judge in a courtroom – it will be a personal obligation on the directors to personally attend to restoring the company:

* getting all accounts and audits done up to date;
* file all outstanding late annual returns and pay all late fees;
* Then once the company is fully restored, arrange the calling of a creditors meeting for a CVL (see above) and appointing a liquidator; and
* paying for all of this personally if necessary.

This whole process is unlikely to leave much change from €20,000. But you roll the dice and some companies are struck off and never hear from CRO again. Note that simply resigning as a director is not a personal solution; a director cannot legally resign if by doing so they reduce the total number of directors to less than two.

*Cooperatives, friendly societies and other legal entities*

There are processes similar to that available to a limited company also available to Industrial and Provident Societies and Friendly Societies. The first step is to obtain a copy of the most up to date rules for the entity and then seek the advice of an insolvency practitioner.

**Conclusion**

Limited companies offer the protection of limited liability; but you pay for this privilege with increased compliance and directors responsibilities. Where you have a company and you want to cease, I strongly advise against simply walking away and hoping that the company is struck off and nothing happens and as mentioned earlier resigning as a director will also not work. An ideal solution is that the successor charity or larger charity that you are planning to be subsumed into, takes over legal responsibility for your company. If the successor charity is unwilling to do this, or there is no successor, it would be important to ensure that there are sufficient funds to cover the costs of ceasing. If you are a new charity, full of enthusiasm and purpose, be aware of the difficulties you might face if you choose to operate as a limited company, it may only cost €300 to set up, but it can cost a multiple of this to cease.