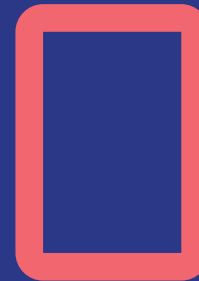


## Different Ways to Close a HK Company

There will be times when entrepreneurs want to close down their businesses, and there are various ways of doing so in Hong Kong. Below is a brief introduction about the means of closing a business in Hong Kong.

Business organizations in Hong Kong may either be sole proprietorships, partnerships or company. When there is a cessation of business for unincorporated business (i.e. sole proprietorship or partnership), you must notify the Business Registration Office of the Inland Revenue Department within one month of your date of cessation in writing. Business registration fee and levy must be paid up to and including the year in which the business has ceased.



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The remaining portion of this article mainly focus on the ways to close a HK limited company.

A company may be dissolved by either (a) deregistration of defunct solvent companies; or (b) winding-up.

### Deregistration of Defunct Solvent Companies

A private company, a company limited by guarantee or a director/member of a company can apply for deregistration. However, public companies, banks, insurance companies, trust companies and their holding companies within five years of applying deregistration as well as registered non-Hong Kong companies are ineligible to dissolve the company by deregistration.

Deregistration is a relatively simple, inexpensive and quick procedure for dissolving defunct solvent companies. The conditions to be met when applying deregistration are:

- All members consent to the deregistration;
- Either the company has never commenced business or operation, or has ceased to carry on business/operation for more than 3 months immediately before the application;
- The company has no outstanding liabilities;
- The company is not a party to any legal proceedings;
- The company's assets do not consist of immovable property situated in Hong Kong; and
- If the company is a holding company, and its subsidiaries' assets do not consist of immovable property situated in Hong Kong.

An application for deregistration must be accompanied by a Notice of No Objection issued by the Commissioner of Inland Revenue.

Upon dissolution, all the company's property, if any, is vested in the Government of the Hong Kong Special Administrative Region as bona vacantia (i.e. ownerless property that passes to the Government)

Although deregistration is a comparatively cheaper and simpler way to close a company, the largest drawback is that an aggrieved party (e.g. a creditor) may apply to the court for an order to restore the company. If you consider to clear all contingent liability once and for all, wind-up will be a preferred choice.

### Winding-Up

Winding-up means that all the assets of the company would be realized through a legal process in order to repay its debts. It may either be **(i) voluntary** or **(ii) compulsory**.

**(i) Voluntary winding-up:** A company can only be put into members' voluntary winding-up if it is solvent (which means the company will be able to pay its debts in full within a period not exceeding 12 months from the commencement of the winding-up), where the directors must execute a certificate of solvency. Note however if the Certificate of Solvency is later proved to be fraudulently executed, the directors will be liable to a fine and/or imprisonment.

An insolvent company can only be dissolved by a creditors' voluntary winding-up, it can be done under section 228A of

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the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWPMPPO) where there is an urgent need of placing the company into liquidation and appointing a provisional liquidator to preserve the company’s assets. A company can also be placed under a creditors’ voluntary liquidation under section 241 of the CWPMPPO by passing a special resolution in a general meeting, where at least seven days’ notice must be given for such a meeting.

In a members’ voluntary winding-up, the members appoint the liquidator. In a creditors’ voluntary winding-up, if the members and creditors cannot agree, then the creditors’ nominee is appointed as the liquidator.

**(ii) Compulsory winding-up:** means winding-up by the court. The company may either be solvent or insolvent. The most common ones are:

- The company is unable to pay a debt of \$10,000 or above;
- The Court is in the opinion that it is just and equitable that the company should be wound up; or
- The company has by special resolution resolved that the

company be wound up by the Court.

A creditor, a shareholder or the company itself can file a winding-up petition against the company. A solicitor is normally instructed by the petitioner to prepare and file the winding-up petition.

Any person (e.g. employee) who is qualified for receiving legal aid under the Legal Aid Ordinance and Rules may apply to the Legal Aid Department for assistance in filing a winding-up petition.

We hope this article will help you understand more on the closing of a business in Hong Kong.

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