



**OF AFRICELL, SHOPRITE AND GAME DEPARTURES:  
WAYS TO LEGITIMIZE THE CLOSURE OF  
YOUR BUSINESS IN UGANDA.**



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It is easy to incorporate a Company or register a Foreign Company in Uganda but closing of a Company may not be such a seamless process for a number of reasons.

The principle of a Company being a legal person separate and distinct from its shareholders has been the bedrock of Company law since the case of *Salomon v Salomon*. This means that a Company continues in existence even when its top management and shareholders eventually leave the Company. This explains the reason why even with Multinational Entities announcing their exit in Uganda, unless procedures are concluded to strike them off the Register of Companies, the said Companies will continue to exist in law.

### **Closing a Limited Liability Company in Uganda.**

There are two ways of closing a Limited Liability Company in Uganda: A permanent option (which the law refers to as winding up) and a Temporary option (which the law refers to as "Dormancy").

### **1. Dormancy**

If a Company is dormant, the shareholders have an obligation to inform the Registrar of Companies within 15 days from the date of the resolution for dormancy. The Company is then exempted from filing returns. Dormancy is permitted for a period of 5 (Five) years after which the Registrar shall require the Company to file a statement of solvency and show cause why the Company should not be struck off the register.

If the Company fails to show cause why it should not be struck off the register, the Company may be struck off.

### **2. Closing a Branch of a foreign Company.**

De-registering a Branch of a foreign Company is not as burdensome as a dissolving a locally incorporated Company. A Branch that has ceased to run any business in Uganda is required to send a notice in writing to the Registrar.

Upon giving the notice, the obligation of the Company to deliver any document ceases and the name of the Company is struck off the register.

### 3. Winding up

In Uganda, permanent closure of a Private Company is achieved by way of liquidating the Company.

The liquidation in general can be achieved through the following ways:

- a) Voluntarily by a Resolution of either the Shareholders or Creditors.
- b) By a Court Order if the Court is satisfied that the Company is unable to pay its debts.

The type of liquidation of a Company depends on whether the Company is solvent or insolvent. Members voluntary liquidation is possible in circumstances where there are sufficient assets to pay the debts of the Company. Where the Company cannot pay the debts of the Company, Creditors voluntary liquidation is adopted to liquidate such a Company.

#### a) Closing a Solvent Company.

In case of Voluntary liquidation of a Ugandan Company, the legal process can be summarised as follows:

- A majority of the Directors make a declaration to the effect that they have made a full inquiry into the affairs of the Company and will be able to pay its debts in full within a period not exceeding 12 (Twelve) months.

The declaration is accompanied by a Statement of the Companies' assets and liabilities at the latest practicable date before the making of the declaration. The declaration and statement of assets are filed at the Companies' registry.

- Call a General meeting of the shareholders within 30 (Thirty) days of making the declaration, pass a resolution for voluntary winding up and appoint an Insolvency Practitioner as a liquidator.
- Register the resolution with the Companies' registrar and send a copy to the Official receiver within 7 (Seven) days.
- Give notice of the resolution in the Gazette and a newspaper of wide circulation within 14 (Fourteen) days.

The winding up of the Company is taken to commence at the time of passing the resolution and the Company ceases to carry on business except for the beneficial winding up of the Company. As from the date of passing the resolution, the Board of Directors remain in office but cease to have powers other than those permitted under the law.

### **b) Closing an insolvent Company.**

Closing an insolvent Company is by way of a Creditors voluntary liquidation.

A meeting of the Creditors is called by the Company on the same day as the Companies' meeting for the proposed resolution for liquidation. The Creditors and the Company are entitled to nominate liquidators at their respective meetings.

However, if the Creditors and the Company nominate different people, the person nominated by the Creditors shall be the liquidator.

### **c) Liquidation of assets.**

Liquidation of the Company practically means that all assets of the Company will have to be sold and all debts settled. At the end of the liquidation, the Liquidator has to prepare an account of the liquidation showing how the liquidation was conducted. A final meeting is called where the account is presented and a return of the meeting is made. The Company is taken to be dissolved 3 (Three) months from the date of filing the final Account and return of the final meeting.

### **d) Status of employees during Liquidation**

Where an employer decides to wind up its business before expiry of its employees' contracts, the employment

contract with the employees is deemed to terminate one month from the date of the commencement of the winding up.

In the context of employee remuneration, Section 48 of the Employment Act, fortifies one of the timeless principles of social protection namely; the priority given to employee salaries over all other debts in distribution of the proceeds of an employer who is winding up. Therefore, in the event of winding up, the employees are treated as preferential creditors and have priority over all the other creditors of the Company.

### **Conclusion**

The commercial significance of incorporation has been reinforced in the law and unless procedures are taken to have a Company struck off the register of Companies, it continues to exist and as a Corporate entity, it can still sue and be sued.

### **Further information**

Every effort has been made to ensure this information is up-to-date as of the date of the publication. It is not intended to be a full and exhaustive discussion of the law in any area. This information is not intended as legal advice and may not be used as such.



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