

Commercial

Business Closure - things to consider Part 1

Unfortunately, business closures seem to be featuring more and more in the headlines at present. The UK's manufacturing and retail industries, in particular, have suffered a number of substantial store closures in the last 12 months, including such giants as Marks and Spencer and House of Fraser. Closing a business, or a part of a business, can be a very difficult experience for all parties involved. For management this includes dealing with commercial agreements, employment contracts and property arrangements, amongst other things, making it difficult to know where to start.

Commercial Law

The company must have ceased all trading for at least three months before it is wound up, all its liabilities must be settled, and the directors must be satisfied that the company is solvent and that no potential future debts may arise. There is then work to be done with the tax authorities – for VAT, PAYE, and corporation tax.

Once HM Revenue & Customs are satisfied that it is not owed any money, then the directors must go through the process of various company meetings, a statutory declaration of solvency, and appointing a liquidator who will take over the final steps involved with winding up the company. Any remaining assets that have not already been sold will be disposed of, and any cash that is remaining can be distributed to the shareholders.

The final stage is the filing of a notification with Companies House, which is then advertised in the London Gazette. This puts anyone who might be interested on notice that the company is about to be dissolved. Provided no objections are received, the company will finally be removed from the official register and will cease to exist.

The whole process can take several months, not least because of the requirement not to have traded for three months, and the need to deal with the tax authorities. A common alternative, if there is any chance the company may be needed in the future, is to register the company as 'dormant'. If that is done, a limited amount of annual housekeeping keeps the company alive. It can then be easily returned to active status whenever necessary.

Immigration Law

If you wish to close down an office in the UK and you currently sponsor migrant workers, you will have to surrender your Sponsor Licence. This is because, as a company, you can only hold a Sponsor Licence if you are actively trading. One of your level 1 users can make a report on the Sponsorship Management System (SMS) and send the submission sheet to the Home Office (which must be signed by the Authorising Officer). Until you surrender the Sponsor Licence, it is important to continue to carry out the Sponsor duties such as paying salary and keeping necessary records. Once you surrender the Licence, the Home Office will normally send each migrant worker a letter of curtailment. Usually the Home Office gives 60 days for the migrant workers to either leave the UK or make a different application to remain here.

Rather than discontinuing to sponsor the migrant workers by way of surrendering the Licence, for good orders you may first want to remove all of your sponsored migrant workers from the UK office. For Tier 2 (ICT) this may be by simply reassigning them to another group company outside the UK, whilst for Tier 2 (General) this may be by way of a redundancy process. In this way, migrant workers can get ready to leave the UK or arrange an alternative. You will report to the Home Office via the SMS once you have stopped sponsoring each migrant worker. You must remember that one level 1 user and the authorising officer will still have to be present at the time of surrendering the licence. Therefore, it is recommended that you plan the timing carefully, especially you have active migrant workers.

In **part 2** we will discuss the key employment and property considerations for full or partial closures.

If you require guidance and assistance with the shutting down of a business, please contact our commercial and immigration teams for advice. We can help you through the process from start to finish.

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