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## COMPANY CLOSURE CHECKLIST

**B**usiness activity is on the rise in Thailand as the Department of Business Development (DBD) reports an escalating number of newly incorporated companies and, at the same time, an increasing number of company closures and dormant/defunct companies. The process for closing a company, however, is more complicated and time-consuming than the process of incorporation. To successfully close a company, business owners must be well prepared and informed.

The checklists below provide an overview of the end stages of the life of a business during a voluntary closure: (1) pre-dissolution, (2) dissolution, and (3) liquidation. The checklists are meant as a general guide and may not include every task required to voluntarily close down every company. Similarly, some of the actions set forth below may not be applicable to the particular company closure.

### Pre-Dissolution

- Prior to initiating the dissolution process, business owners should determine, to the best of their ability, whether the business has sufficient assets to meet its liabilities.
- Business owners should ascertain whether the company is involved in any pending litigation or ongoing criminal proceedings, especially when the company is named as a defendant. All lawsuits must be completely resolved prior to the closure of the company.
- Retained earnings (if any) should be distributed to the shareholders prior to dissolution; otherwise, the distribution will be subject to a higher tax rate.
- The company should delay dissolution until it receives any pending tax or VAT refund.
- The company should preemptively study its tax exposure before undertaking dissolution.

### Dissolution

- The dissolution process starts with holding a shareholders' meeting to pass a resolution to dissolve the company. The resolution must be adopted by not less than 75 percent of the votes cast, unless a higher ratio is fixed in the Articles of Association.
- The shareholders must also appoint one or more liquidators who are current directors, unless otherwise provided by the Articles of Association. The liquidator replaces the directors and assumes the directors' authority and powers. Similarly, the liquidator has no personal liability, except in the case of fraud, misconduct, or negligence.
- The dissolution must be registered with the DBD (the date of registration is referred to as the Dissolution Date).
- The dissolution must be timely announced in a local newspaper and notified by registered mail to all the company's creditors.
- The liquidator must work with the company's auditor to timely produce an audited financial statement as of the Dissolution Date.

- The liquidator must organize an additional shareholders' meeting to approve the audited financial statement and other documents, including liquidation papers for submission to the DBD and the Revenue Department.
- In the case of a VAT payer, the dissolution application must also be registered with the Revenue Department within 15 days after the Dissolution Date.
- The original VAT Certificate of the company, copies of all tax and VAT filing forms, together with financial statements for the past two years, must be submitted to the Revenue Department.
- The liquidator must ensure that the company continues to file monthly VAT filing forms with the Revenue Department until receipt of permission to stop doing so.
- The Revenue Department normally initiates an examination of or a tax audit on the company's income tax and VAT. This creates an important responsibility for both the liquidator and auditor to closely monitor and resolve any tax issues with the revenue inspector. The investigation could include a review of up to five years of financial transactions. If any irregularity or extra tax burden is found, the Revenue Department may request the DBD to hold off on completing the liquidation.

### Liquidation

- The liquidator's principal tasks are to settle the affairs of the company, distribute assets, pay off all debts, and refund capital, if any remains, to the shareholders.
- In terms of settling the affairs of the company, the liquidator may perform a variety of tasks such as notifying suppliers and customers, canceling the office lease, terminating employees, closing bank accounts, and canceling any licenses and registrations with the relevant Thai authorities.
- Voluntary dissolution is not a justifiable cause of termination under employment law. Thus, sufficient funds must be allocated for severance pay to each employee. Employees are entitled to one-month advance notification or an extra month of pay.
- The liquidator must take all necessary actions to satisfy all creditors. If the available funds are not sufficient, then the liquidator must pursue the company's accounts receivable, call for unpaid capital from the shareholders, and auction or otherwise liquidate the company's assets.
- If the liquidator finds that the company's debts could never be fully satisfied, he or she must file for bankruptcy on behalf of the company. No liquidator would want to undergo a bankruptcy proceeding unless it is inevitable. A common practice is to ask creditors that are affiliated with the company to forgive any debts so as to help the company avoid bankruptcy. Note that forgiven debts are regarded as taxable income.
- If the liquidation is prolonged, the liquidator has the duty to file a status report with the registrar at the DBD quarterly and organize a shareholders' meeting yearly for the purpose of updating reports.
- When the liquidation is complete, the liquidator must prepare a report of liquidation and organize the final shareholders' meeting to approve the completion.
- The shareholders' resolution must then be registered with the DBD, at which point the company ceases to exist.
- The liquidator must return the company's tax I.D. card to the Revenue Department.

Please note that even if a company completes all of the applicable tasks above and ceases to exist, any unsatisfied creditor will be given an extra two years to file a claim with the court against the company, shareholders, or liquidator. 🐜