

Issue	Voluntary deregistration	Members' Voluntary Liquidation
Overview	<p>Under section 601AA of the Corporations Act, a company may apply to the Australian Securities and Investments Commission (ASIC) to be deregistered and dissolved.</p> <p>Deregistration and dissolution will terminate the company's corporate existence from the date of deregistration.</p> <p>The company's assets should be transferred or otherwise divested before deregistration. The company, a director or a member of the company must then lodge an application to deregister the company (using ASIC Form 6010).</p> <p>ASIC must then give notice of the proposed deregistration by publishing a notice online (see section 601AA(4)). Once two months have passed since the publication of the notice, ASIC may deregister the company and notify the applicant (see section 601AA(4A)).</p>	<p>Under section 491 of the Corporations Act, the shareholders of a solvent company may resolve, by special resolution, to appoint a liquidator to realise and distribute the company's assets before winding up the company.</p> <p>To put the company into voluntary liquidation, a majority of directors must first make a Declaration of Solvency. This is a declaration that the company can fully repay all debts within 12 months of the commencement of the liquidation (see section 494) and must be lodged with ASIC (using ASIC Form 520).</p> <p>The members may then resolve, by special resolution, to wind up the company and, by ordinary resolution, to appoint a nominated liquidator. From the date of the appointment, the liquidator takes control of the company while the directors remain in office with suspended powers. At this stage, the company must cease to carry on business unless the liquidator considers such business necessary for the effective winding down of the company (see section 493).</p>
Restrictions	<p>Under section 601AA(2), a company must meet several criteria to be eligible for deregistration. A company which deregisters in non-compliance with section 601AA(2) may be reinstated (see section 601AH(1)).</p>	<p>A company cannot resolve that it be wound up voluntarily subject to the conditions in section 490.</p>
Members' agreement	<p>A company may only be deregistered by unanimous agreement of the members (see section 601AA(2)(a)).</p>	<p>A company is put into voluntary liquidation by a special resolution (usually 75 per cent) of the members (see section 491).</p>
Business activity	<p>At the time of deregistration, the company must have ceased carrying on business (see section 601AA(2)(b)).</p>	<p>A company must cease to carry on business once it enters liquidation, although a liquidator may choose to carry on business if necessary (see section 493).</p>
Assets	<p>To deregister a company, the company's assets must be worth less than \$1,000 (see section 601AA(2)(c)).</p>	<p>Liquidation may still occur while a company has substantial assets. The liquidator will realise and distribute the assets before winding down the company's affairs.</p>
Liabilities	<p>A company with outstanding liabilities (including tax liabilities and fees or penalties payable under the Corporations Act) cannot be deregistered (see sections 601AA(2)(d)-(e)).</p>	<p>Voluntary liquidation may still occur while a company has outstanding liabilities, provided the company is solvent. The liquidator will settle any liabilities during the liquidation process.</p>
Legal proceedings	<p>At the time of deregistration, the company must not be a party to any legal proceedings (see section 601AA(2)(f)).</p>	<p>Since a company must be able to repay all liabilities within 12 months of the liquidation commencing, MVL is likely not suitable for a company which is a party to legal proceedings.</p>
Reinstatement	<p>A deregistered company may be reinstated either by application to ASIC or court. If reinstated, a company is taken to exist as if it were never deregistered (see section 601AH(5)). ASIC may reinstate a company if it believes the company should never have been deregistered (see section 601AH(1)). For example, if the company was carrying on business at the time of deregistration.</p> <p>Only a former liquidator or person aggrieved by the deregistration of a company may apply to the court for reinstatement of the company. A court will grant an order for reinstatement if it is just to do so (see section 601AH(2)).</p>	<p>A company which is formally wound up is much more difficult to reinstate at a later stage than a company which is simply deregistered. However, it is possible in certain circumstances, such as to enforce an issue of director's liability.</p>
Length of process	<p>Deregistration is a much simpler, quicker and cost-effective means of ending the company's corporate existence than if the company were to appoint a liquidator and formally wind up the company.</p> <p>Once the forms have been lodged, ASIC will publish the proposed deregistration online. Two months after publication, ASIC will deregister the company and notify the applicant.</p>	<p>Voluntary liquidation is a significantly more lengthy procedure than simply deregistering.</p> <p>This is a much more formal process which involves the declaration of solvency, the resolutions to wind up and to appoint a liquidator, the realisation and distribution of company assets, and settlement of company liability before the eventual deregistration of the company.</p>
Cost	<p>The actual cost of deregistration is minimal – \$44 to lodge an application for voluntary deregistration of a company.</p>	<p>Liquidation is a more costly option than deregistration due to payment of the appointed liquidator's fees.</p>
Tax implications	<p>This comparison table does not consider the tax implications of either option. Specific tax advice is recommended before deciding which option to take.</p>	

