

CLOSING AN ATTORNEY LAW PRACTICE IN SOUTH AFRICA:

What you need to know

- 1. Types of firms:** Attorney firms can have various business forms: Sole Proprietorships, Partnerships, Incorporated Companies, etc. This will have an impact on the requirements that have to be met when closing down such a law firm. A Sole Proprietorship or Partnership stops existing when it stops carrying on business and the normal rules in terms of personal liability are retained and remain regardless. But with a registered entity for example an Incorporated Company the closing down steps and requirements differ immensely and are more complicated.
- 2.** You must communicate with your clients [noting the right of clients to their files] and the LPC.
- 3. Deregistration:** If a company has never done any business or has no assets and/or liabilities then you can apply directly to CIPC in terms of the Companies Act to have the entity deregistered, the fees for this process is minimal dependent on the circumstances. You must write a letter to CIPC requesting the deregistration and the letter must be signed by at least 50% of the directors of the company, or the third party requesting the deregistration. The letter must include your tax number (if applicable), confirmation that the company is not carrying on any business, alternatively it is dormant as well as the fact that the business has no assets.

The following documentation must be attached to your letter: Tax Clearance Certificate or a letter from SARS that no tax liability is outstanding; certified copies of ID documents of all the signatories to the letter; For a third party a statement that the company is dormant or not conducting any business; that the company has no assets, or that

because of the inadequacy of its assets, that there is no reasonable probability of the company being liquidated (if a third party, the statement must be supplemented documentary proof).

The full document must be scanned and emailed to deregistrations@cipc.co.za.

When you close your business, you must inform the SARS branch office (where you are registered) in writing, by submitting a VAT 123 form.

- 4. Liquidation:** If the company has assets and/or liabilities, then liquidation is the best option, in order to protect yourself. Liquidation implies that the business is not able to pay its debts and that the business will cease to operate. The liquidation may be brought about by legal court process, or by the creditors or it may be a voluntary liquidation applied for by the members/directors of the business. In the case of a solvent voluntary (company or close corporation) liquidation the steps are as follows: Set security with the Master of the High Court for the payment of the company's debts within no more than 12 months after the start of the winding-up, or consent of the Master to dispense with security; in terms of consent to dispense with security the following information must be provided to the Master: Sworn statement by director that the company has no debts; a certificate by the company's auditor stating that to the best of their knowledge and belief, and according to the financial records of the company it appears to have no debts; register with CIPC as a customer; deposit the prescribed fee into the CIPC bank account under your customer code; print and complete form CoR40.1; documents to be attached are: Security JM12 or consent to dispense with security, certified copy of the written special resolution or minute of the meeting at which the decision to wind-up was taken (accompanied by the agenda/notice); certified ID copies of all the signatories to the resolution; power of attorney where representative is appointed.

Scan and Email all the documents to CIPC email address: liquidations@cipc.co.za.

- 5. Sequestration:** A voluntary sequestration (surrender) application to the High Court to

surrender your estate (assets and liabilities) to creditors in the hands of the Master of the High Court and declared insolvent/bankrupt. This is relevant for Sole proprietorship and Partnerships (natural persons). If successful a court appointed trustee/curator will ensure the assets of the estate are valued; the curator then oversees the sale of assets on auction and distributes the income from the sale amongst the creditors.

You remain sequestered until rehabilitated.

- 6. Legal Practice Council:** All law firms with a trust account must before closing down inform the LPC of such intent and must comply with Rules 54.31 – 54.33 of the Legal Practice Act 28 of 2014 specifically pertaining to trust accounts, **amongst others** the following; to submit within three months of the date that such practitioner ceases to practice, an audit or inspector's report of the trust bank account, final list of trust creditors, confirmation that trust creditors have been paid, if relevant that the takeover of trust creditors by another firm is correct and a certificate of nil balance from the trust account practitioner's bank confirming that the trust bank account has been closed.



LAW SOCIETY
OF SOUTH AFRICA

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FOR MORE INFORMATION: A detailed memoranda is available at www.LSSA.org.za

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