

Will the members of a close corporation be personally liable where it is deregistered?

The general rule is that members of close corporations are not liable for debt incurred by the corporation.

One of the exceptions is, however, provided for in section 26 (1) of the Close Corporations Act 69/1984. This section provides for the members' personal liability in case of deregistration of the close corporation. The Companies Office can deregister a close corporation if the close corporation ceases to do business and the deregistration process as set out in the Act has been followed. One of the steps of this process is

the sending of a notice by the Registrar of his intention to deregister the corporation and give the members the opportunity to convince him that the close corporation is indeed still in business.

In the matter of Firststrand Bank Limited v Davis and Others 2004 (1) SA 30 (N) the application for a declaratory order was, however, unsuccessful as the notice had not been properly served on the respondent.

The aforesaid section 26(1) is therefore a method that can be used by creditors to collect outstanding debts due by close corporations which do not own any assets. The approach is, however, cumbersome and entails certain steps that have to be taken by die Registrar. Our experience is that it is quite difficult to get the Registrar's co-operation in this regard. It is therefore not a very effective solution.

Creditors should therefore also make sure that they obtain personal sureties from members and possible other responsible persons when credit is granted to close corporations. Such a surety will considerably increase the chances of successful debt collection.