

REPERCUSSIONS OF “STRIKE-OFF” OF THE COMPANY REGISTER AND A GUIDE TO REINSTATEMENT

Striking a Company off the Register

Incorporating a limited liability company in the Cayman Islands offers many benefits. In addition to the governing corporate statute, the Companies Law, offering great flexibility in matters such as structuring the company’s constitutional documents, the jurisdiction is tax neutral with no personal, corporate, capital gains or property taxation and has a stable, well established banking sector. Upon incorporation, all companies are entered onto the Cayman Islands General Registry. Registration establishes the company as a separate legal entity, distinct from its owner and operator, and therefore it can contract, sue and/or be sued in its own company name, rather than in the owner’s name.

In the event that there is a desire to dissolve the company at some point, the method that many people are familiar with involves winding up the affairs of the company through a rather involved process of liquidation that may be either voluntary or involuntary. However, section 156 of the Companies Law (2016 Revision) provides an alternative method. If the company is “not carrying on business or is not in operation”, a request on behalf of the company may be made to the Registrar of Companies to “strike” the company off the register. In practice, the process involves the directors of the company passing a resolution authorising the making of such a request followed by submission of a letter to the Registrar of Companies respecting the same. Provided that the Registrar has reasonable cause to believe no liquidator is acting for the company and its affairs are fully wound up, he may so strike the company which, following a three-month period, will result in the company’s dissolution.

This method is expedient and useful in certain circumstances particularly where it can be resolutely determined that the company has been dormant for a significant period of time and has no assets, creditors or outstanding liabilities. However, in reality, the most common reason for strike-off pursuant to section 156, is a failure by a company to pay the annual dues mandated by statute.

The process of striking a company from the register results in significant and onerous legal consequences. Further, consider the following consequences when a company has been struck off the register:

- Liability of all members is not affected and continues as if the company had not been dissolved. This creates continuing exposure with no limit to the personal liability for any director, manager, officer or member of the company as they are no longer shielded by the “corporate veil”;

- Immediately upon being struck, a Government Notice shall be published and gazetted containing the name of the company, the date and reasons for it being struck off; and,
- any property owned by the company following the date upon which it was struck shall vest in the Minister in charge of Financial Services and shall be disposed of or retained for the benefit of the Cayman Islands.

Reinstating a Company Back onto the Register After it has been Struck

Pursuant to section 159 of the Companies Law, within two years of a company being struck off the register, a company may submit an application to the Grand Court for reinstatement. Most applications will be processed without the need for a formal hearing and are dealt with within a week of submission. However, it is possible that a hearing before a judge may be required if, for example, the court requires further evidence to be presented.

All applications must be accompanied by a letter of approval from the Registrar of Companies, which will set forth any reinstatement fees. Applications must also include an affidavit sworn by an official representative of the company, who typically is a former director of the company. The affidavit must state:

- the company's registration number and its original date of incorporation;
- the date the company was struck off including a copy of the notice;
- that the Registrar does not object to the company being restored to the registry;
- statement of any overdue annual fees and or registry reinstatement fees;
- the intended address of the company should it be reinstated; and,
- the reason the company seeks to be restored onto the registry.

Applications made more than two years after the original strike off date, but no more than ten years later, must also be accompanied by a letter of approval from the Governor in Cabinet. Applications made ten years after the original strike off date will not be considered.

Further Information

Broadhurst LLC would be pleased to assist with any company registration, dissolution (including where the method elected is by way of striking the company from the register) as well as reinstatement applications. If you have any queries on the above or need assistance in relation to a company matter, please contact us at info@broadhurstllc.com.

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