

New Companies Ordinance

Briefing Notes on Part 15

Dissolution by Striking Off or Deregistration

INTRODUCTION

Part 15 (Dissolution by Striking Off or Deregistration) of the new Companies Ordinance (“new CO”) contains provisions on striking off and deregistration of defunct companies, restoration of companies that have been struck off the Companies Register or deregistered by the Registrar of Companies (“the Registrar”), and related matters, including treatment of the properties of dissolved companies.

POLICY OBJECTIVES AND MAJOR CHANGES

2. Part 15 contains initiatives that aim at facilitating business and improving regulation, namely –
 - (a) extending the voluntary deregistration procedure to guarantee companies (paragraphs 4 to 6 below);
 - (b) imposing additional conditions for deregistration of defunct companies (paragraphs 7 to 10 below);
 - (c) introducing a new procedure of “administrative restoration” of a dissolved company by the Registrar (paragraphs 11 to 14); and
 - (d) streamlining the procedures for restoration of dissolved companies by court order (paragraphs 15 to 16 below).
3. The details of the major changes in Part 15 are set out in paragraphs 4 to 16 below.

Extending the voluntary deregistration procedure to guarantee companies (Section 750)

Position under the Companies Ordinance (Cap. 32) (“Cap. 32”)

4. Under Cap. 32, only a private company may make application to the Registrar for deregistration under section 291AA, provided that certain conditions are met, namely –

- (a) the company has not commenced operation or business or has not been in operation or carried on business for three months;
- (b) it has no outstanding liabilities; and
- (c) all the members agree to the deregistration.

Under this voluntary deregistration procedure, a company can be dissolved without going through the winding-up process.

5. Non-private companies and certain categories of business¹ are not allowed to apply for voluntary deregistration to avoid prejudicing the public interest. There has been a suggestion that non-private companies, particularly guarantee companies which are social or community organisations, should be allowed to deregister voluntarily if they satisfy the above conditions. It would be costly for them to commence a members’ voluntary winding-up instead.

Position under the new CO and key provisions

6. The deregistration procedure is extended to guarantee companies. Public companies and certain categories of businesses² will continue to be

¹ These include –

- (a) an authorized institution as defined in the Banking Ordinance (Cap 155);
- (b) an insurer as defined in the Insurance Companies Ordinance (Cap 41);
- (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap 571) to carry on a business in any regulated activity within the meaning of Schedule 5 to that Ordinance and an associated entity of the corporation within the meaning of Part VI of that Ordinance;
- (d) an approved trustee as defined in the Mandatory Provident Fund Schemes Ordinance (Cap 485);
- (e) a company having a subsidiary that falls within any of the categories specified above;
- (f) a company that has fallen within any of the categories specified above at any time during the preceding 5 years.

² The categories of businesses are the same as in Cap. 32 (see footnote 1), with the addition of trust companies under Part VIII of the Trustee Ordinance (Cap 29) and their holding companies.

excluded (**Section 749**). The conditions for applying for voluntary deregistration (**Section 750(2)**), particularly the requirement of agreement by all members would prevent any possible abuse of the procedure (see also paragraphs 8 and 9 below).

Imposing additional conditions for voluntary deregistration of defunct companies (Sections 750 to 751)

Position under Cap. 32

7. Under Cap. 32, a company only needs to satisfy the three conditions as set out in paragraph 4 above in applying for voluntary deregistration. However, there have been cases where some companies applying for deregistration were parties to legal proceedings or were in possession of immovable property in Hong Kong or being holding companies owning subsidiaries' assets which consist of immovable property in Hong Kong with high maintenance costs or encumbrances attached. As a consequence, deregistration proved to have adverse impact on third parties or the Government (as the immovable property would be vested in the Government as bona vacantia following dissolution of the company under section 292 of Cap. 32).

Position under the new CO and key provisions

8. Additional conditions have been imposed on companies applying for deregistration so as to prevent any potential abuse of the deregistration procedure, such as where a company applying for deregistration is a party to legal proceedings or is in possession of immovable property in Hong Kong.

9. **Sections 750 to 751** mainly restate the existing deregistration provisions under Cap. 32 with three additional conditions for deregistration: firstly, the applicant must confirm that the company is not a party to any legal proceedings; secondly, it has no immovable property in Hong Kong and thirdly, if the company is a holding company, none of its subsidiaries' assets consist of any immovable property in Hong Kong (**Section 750(2)(d), (e) and (f)**).

10. Any person who knowingly or recklessly gives false or misleading information in a material particular to the Registrar in an application commits an offence. The person is liable on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years or on summary conviction to a fine at level 6 and to imprisonment for 6 months (**Section 750(6)**).

Introducing a new procedure of “administrative restoration” of a dissolved company by the Registrar (Sections 760 to 762)

Position under Cap. 32

11. Pursuant to Cap. 32, where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, she may adopt the procedure set out in section 291 and strike the name of the company off from the register. Under section 291(4), the procedure may also be used where a company is being wound up and the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator (under sections 239 and 248 of Cap. 32) have not been made for a period of six consecutive months. Under section 291(7), the company, a member or creditor may apply to the court before the expiration of 20 years from dissolution for the company to be restored.

12. There have been some cases where a company which has been struck off seeks to be restored on the ground that, contrary to the Registrar’s belief, it was actually in operation or carrying on business at the time of striking off. This may occur because a company fails to file its annual returns, moves without notifying the Companies Registry of a change of registered office address and is unaware of the proposed strike-off despite that relevant notice has been published in the Gazette prior to the striking off action. Whilst restoration is often straightforward in such circumstances as it is unlikely to be contested, it still requires an application to the court.

Position under the new CO and key provisions

13. The new CO introduces a simplified restoration procedure to allow companies to be restored to the register in straightforward cases without the

need for recourse to the Court. **Sections 760 to 762** enable the Registrar to restore a company which has been struck off under **Section 746 or 747** (where it appears that the company is not in operation or carrying on business or, in the case of a company being wound up but with outstanding matters unattended to). The Registrar may, on an application by a director or member of a company, restore such a company. Three conditions must be met:

- (a) the company must be in operation or carrying on business at the time its name was struck off;
- (b) if the company has any immovable property situated in Hong Kong which has become vested in the Government as bona vacantia, the Government has no objection to the restoration; and
- (c) the applicant must bring up to date the company's records kept by the Registrar.

14. The above administrative restoration procedure does not apply to companies which were deregistered upon applications to the Registrar under **Section 751** (or section 291AA of Cap. 32). For those cases, application for restoration should be made to the court under **Sections 765 to 766**.

Streamlining the procedures for restoration of dissolved companies by court order (Sections 765 to 767)

Position under Cap. 32

15. There are two routes available for companies which have been struck off or deregistered pursuant to Cap. 32 to be restored or reinstated to the register by application to the court. They are respectively under sections 291(7) and 291AB(2) and are very similar in nature.

Position under the new CO and key provisions

16. The two existing procedures are merged into one for simplicity. **Sections 765 to 767** provide for a restoration procedure by court order. Where a company has been struck off the register by the Registrar or

deregistered upon its own application, and thereby dissolved, any director or member or creditor of the company or any interested person, including the Government, may make an application to the court for restoration of the company.

TRANSITIONAL AND SAVING ARRANGEMENTS (Sections 128 to 131 of Schedule 11 to the new CO)

17. The following provisions of Cap. 32, as in force immediately before their repeal, continue to apply in respect of a matter provided for in the provisions:

- Sections 290C and 290D – Disclaimer of property vested in Government
- Sections 291(2), (3) and (6), 291A and 291AA – Striking off and deregistration of a company
- Sections 291(7), 291A(2) and 291AB – Application for restoration of a dissolved company
- Section 292(2) – Effect of court order for restoration or reinstatement on bona vacantia

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