

## PART 15

### DISSOLUTION BY STRIKING OFF OR DEREGISTRATION

#### Introduction

1. At present, there are two ways in which a defunct company may be dissolved without formally being wound up:
  - (a) striking off the register by the Registrar or by the court; or
  - (b) deregistration upon application to the Registrar.
2. There are two routes available for companies which have been dissolved to be restored or reinstated to the register by application to the court under sections 291(7) or 291AB(2) of the CO.<sup>1</sup>
3. Part 15 sets out provisions on striking off and deregistration of defunct companies, restoration of companies that have been struck off or deregistered, and related matters, including treatment of the property of dissolved companies. The amendments aim at streamlining the existing procedures for striking-off and restoration of companies while imposing certain new requirements to prevent possible abuse of the deregistration procedure.

- The significant changes to be introduced under this Part are highlighted below:
  - (a) **Extending the voluntary deregistration procedure to public non-listed and guarantee companies with some exceptions;**
  - (b) **Imposing additional conditions for deregistration of defunct companies;**
  - (c) **Streamlining the procedures for restoration of dissolved companies by court order; and**

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<sup>1</sup> In the liquidation context, companies which have been dissolved pursuant to winding-up proceedings may, by order of the court made under section 290 of the CO, have the dissolution declared void. The provisions will be reviewed in Phase II of the CO Rewrite exercise.

**(d) Introducing a new procedure of “administrative restoration” of a dissolved company by the Registrar.**

## **Significant Changes**

**(a) Extending the voluntary deregistration procedure to public non-listed and guarantee companies with some exceptions**

*Background*

4. At present, an application may be made to the Registrar under section 291AA of the CO to deregister a private company if the following three conditions are met:
- (a) the company has not commenced operation or business or has not been in operation or carried on business for 3 months;
  - (b) it has no outstanding liabilities;<sup>2</sup>
  - (c) all the members agree to the deregistration.

The company will be dissolved upon deregistration without going through the winding-up process.

5. There has been a suggestion that non-private companies, particularly small guarantee companies which are social or community organisations, should be allowed to deregister voluntarily. Currently, they cannot apply for voluntary deregistration under section 291AA even if they satisfy the conditions in paragraph 4 above. It would be costly for them to apply to court for a members’ voluntary winding-up instead. It is noted that the UK has extended the facility of voluntary striking-off procedure to public companies under the UKCA 2006.<sup>3</sup>

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<sup>2</sup> A “no-objection” notice from the Commissioner of Inland Revenue certifying that the company has no outstanding tax liabilities is required.

<sup>3</sup> See section 1003 of UKCA 2006. This was proposed in UK Department of Trade and Industry, *White Paper on Company Law Reform* (March 2005), paragraph 4.9.

### Proposal

6. We believe that flexibility should be allowed for small non-private companies, particularly guarantee companies, to apply for voluntary deregistration. However, it would not be prudent to allow listed companies and certain categories of regulated businesses which have a public interest nature and are subject to regulation by relevant authorities (such as banks, insurance and securities companies, Mandatory Provident Fund Schemes trustees) from applying for deregistration. As trust companies registered under Part VIII of the Trustee Ordinance (Cap 29) may act as executors or administrators of estates in respect of which it may not be easy to identify all relevant beneficiaries, they should also be excluded from applying for voluntary deregistration to avoid prejudicing the beneficiaries' interests.
  7. **Clause 15.6** excludes listed companies and certain categories of businesses from applying for voluntary deregistration. The conditions for applying voluntary deregistration, particularly the requirement of consensus by all members and the additional conditions proposed in section (b) below, would prevent any possible abuse of the procedure by other public non-listed or guarantee companies.
- (b) Imposing additional conditions for voluntary deregistration of defunct companies**

### Background

8. As noted in paragraph 4 above, voluntary deregistration of private companies may be allowed if certain conditions are met. 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 with high maintenance costs attached (such as retaining walls). As a consequence, the deregistration proved to have adverse impact on third parties or the Government. For instance, the “deregistered” company might have outstanding liabilities contingent upon the outcome of the legal proceedings. The Government might have to bear high maintenance costs as the immovable property became vested in the Government as bona vacantia following dissolution of the company. To prevent the potential abuse of the deregistration procedure, we are of the view that additional conditions should be imposed on companies applying for deregistration.

### Proposal

9. **Clauses 15.7 to 15.8** mainly restate the existing deregistration provisions under section 291AA of the CO. **Clause 15.7** imposes two additional conditions for deregistration, namely that the applicant must confirm that the company is not a party to any legal proceedings and that it has no immovable property in Hong Kong. Any person who knowingly or recklessly gives false or misleading information to the Registrar in an application commits an offence.

### (c) **Streamlining the procedures for restoration of dissolved companies by court order**

#### Background

10. At present, there are two routes available for companies which have been struck off or deregistered to be restored or reinstated to the register by application to the court. They are respectively under sections 291(7) and 291AB(2) of the CO. The time of application for such a restoration or reinstatement may be up to 20 years after the company's dissolution. These two routes are very similar in nature. They should be merged into one procedure.
11. The current period of application (20 years) seems too lengthy. Under section 292(3) of the CO, former directors of a dissolved company are only obliged to keep the books and papers of the company for not less than 5 years after the dissolution. Although there are provisions in sections 291(7) and 291AB(5) to the effect that a company restored or reinstated shall be deemed to be continued in existence as if it had not been dissolved, an odd situation may arise where a dissolved company is restored or reinstated to the register more than 5 years from its dissolution when all its books and papers were destroyed. Consideration should be given to shorten the period of application.

#### Proposal

12. **Clauses 15.23 to 15.26** replaces the two existing routes in sections 291(7) and 291AB(5) with one 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.

13. The application period will be shortened to within 6 years of dissolution of the company in general (**Clause 15.24**).<sup>4</sup> However, where an application is intended to enable a person to bring legal proceedings against the company for damages for personal injury, the limitation period will not apply. This will avoid jeopardising the interests of the deceased or injured persons. Under **Clause 15.16**, the period for which former directors of a dissolved company must keep the company's books and papers will be aligned to 6 years. It will reduce any uncertainty arising from the restoration procedure.
- (d) **Introducing a new procedure of “administrative restoration” of a dissolved company by the Registrar**

Background

14. At present, 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 of the CO 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 the CO) have not been made for a period of six consecutive months.
15. There have been some cases where a company 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 its striking off. This may occur because a company fails to file its annual returns, moves without notifying the CR of a change of registered office and is unaware of the proposed strike-off.<sup>5</sup> While restoration is often straightforward in such circumstances as it is unlikely to be contested, it still requires an application to the court. We believe that a simplified restoration procedure should be introduced to allow companies to be restored to the register in straightforward cases without the need for recourse to the court.

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<sup>4</sup> Companies which have been struck off or deregistered under the existing CO will be grandfathered.

<sup>5</sup> Elaborate procedures are provided for in section 291 of the CO before a company is struck off and gazette notices are published before any striking off.

## Proposal

16. **Clauses 15.18 to 15.22** enable the Registrar to restore a company which has been struck off under **Clause 15.3 or 15.4** (where it appears that the company is not in operation or carrying on business or, in the case of a company being wound up, the circumstances in section 291(4) of the CO apply). The Registrar may, on an application by a director or member of a company, restore a company having being struck off by her. In this connection, 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) the applicant must bring up to date the company's records kept by the Registrar; and
  - (c) 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.
17. The administrative restoration procedure does not apply to companies which were deregistered upon applications to the Registrar. For those cases, application for restoration should be made to the court under **Clauses 15.23 to 15.24**.

## **Other Changes**

### **(a) Streamlining striking off procedure**

18. The current process of striking off a company not in operation or carrying on business under section 291 of the CO takes approximately 5.5 months to complete. The Registrar must take the following steps before striking off a company:
- (a) send to the company by post a letter inquiring whether it is carrying on business or in operation;
  - (b) if no answer is received within one month from the date of the first, the Registrar should within 14 days send to the company a second letter by registered post;