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Guide to Application for Dormant Status by a Hong Kong Company

(Hong Kong Company Applying for Dormant Status)

Section 344A of the Hong Kong Companies Ordinance (the "Ordinance") allows a private company, by passing relevant special resolution and delivering necessary documents to the Registrar, to declare as a dormant company. In accordance with the law, a dormant company is exempt from complying certain requirements as laid down in the Ordinance and there it allows an inactive company to be retained at a minimum maintenance costs.

This article aims to explain the requirements laid down in the ordinance regarding the conditions, procedures and consequences for application for dormant status and the procedures for reactivating such a dormant company.

1. Definition of Dormant Company

The term "dormant" applies to a Hong Kong limited company that, in legal terms, has "no significant accounting transactions" during a financial year. It is not the same as a "**non-trading company**", a term that has no legal meaning. No significant accounting transactions means no entries in the company's accounting records. The amount paid for shares when the company is first formed and a few costs that the company may incur in order to keep the company registered at Companies Registry do not count as significant accounting transactions.

A non-trading company is substantially different from a dormant company. A company can be non-trading in the sense that it isn't doing business. But it may still have other accounting transactions going through its books, which means that it is not dormant in a legal sense. A dormant company must not have any accounting transactions except specific allowable transactions that can be disregarded.

2. Reasons for Application for Dormant Status

Companies can be dormant for various reasons, often to protect a company name, in readiness for a future project, or to hold an asset or intellectual property. Some flat management companies whose main purpose is to own the head lease or the leasehold of a property choose to become dormant by setting up a residents' association to deal with any expenses.

Another reason is to retain an inactive company at a minimum maintenance cost. A dormant company under Section 344A of the Ordinance is exempt from complying with the following requirements as laid down in the Ordinance:

- (1) Filing of an annual return and holding of an annual general meeting (Sections 107 to 111);
- (2) Preparation of audited financial statements and appointment/resignation/removal of auditors (Sections 122 to 134, 140A to 141 and 141C to 141D).

A company can remain dormant for as long as necessary - indefinitely if, for example, its purpose is just to prevent the name being used by another company. However, there are expenses associated with keeping a company on the register.

3. Dormant Status Application Procedures

To become "dormant" the company must pass a special resolution authorising its directors to make and deliver to the **Registrar of Companies** a statutory declaration to the effect that the company will be treated as a dormant company.

While a company is deemed to be dormant under Section 344A of the Ordinance, the company must not enter into a relevant accounting transaction, i.e. a transaction which is required by Section 121 of the Ordinance to be entered in the company's books of accounts. A relevant accounting transaction is defined to include:

- (1) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (2) all sales and purchases of goods by the company; and
- (3) the assets and liabilities of the company.

Specifically excluded as a relevant accounting transaction is a transaction which arises from the payment of any fee which the company is required to pay by any Ordinance.

In breach of the above provision, the exemption conferred to a dormant company shall cease as from the date the relevant accounting transaction, and any shareholder of the company who know or ought to have known about the relevant accounting transaction, and all directors of the company shall be personally liable for any debt or liability of the company arising out of the relevant accounting transaction.

4. Responsibilities of Officers of a Dormant Company

The responsibilities of a dormant company's officers are the same as for those of a trading company. The directors and secretary manage the company on behalf of the shareholders or members. Among other things, they are responsible for holding meetings and ensuring that all the necessary returns and other documents reach Companies Registry by the due date.

5. Continuing Obligations of a Dormant Company

A dormant company is still required by the laws to:

- (1) Maintain 1 director, 1 shareholder, a company secretary and a registered office;
- (2) Report any changes in its officers or registered office to the Registrar; and
- (3) Renew its business registration certificate and pay the annual business registration fee to the Hong Kong Government
- (4) File Profits Tax Return should there is one issued by the Inland Revenue Department

6. Reactivation of a Dormant Company

It is possible to reverse the dormant status if the company is going to start doing business again. All that has to be done is to advise the Registrar by filing a statutory declaration.

Prior to a company ceasing to be dormant, the directors must deliver to the Registrar a further statutory declaration that the company intends to enter into a relevant accounting transaction, at which stage the company will cease to be dormant and the normal requirements will apply again.

7. Companies not Allowed to Claim as Dormant

Section 344A of the Ordinance does not apply to a company that is not a private company or that is any of the following types of companies as specified in the Sixteenth Schedule of the Ordinance:

- (1) an authorized institution as defined in the Banking Ordinance
- (2) an insurer as defined in the Insurance Companies Ordinance
- (3) a dealer registered under the Securities Ordinance
- (4) an investment adviser registered under the Securities Ordinance
- (5) a dealer registered under the Commodities Trading Ordinance
- (6) a licensed leveraged foreign exchange trader as defined in the Leveraged Foreign Exchange Trading Ordinance
- (7) an approved trustee as defined in the Mandatory Provident Fund Schemes Ordinance
- (8) a company having a subsidiary that falls with any of the above eight categories; or
- (9) a company that has fallen within any of the above nine categories at any time during the preceding five years.

In other words, if a company is not a private company or a private which engages in any of the business described above, it is not allowed to declare and become a dormant company.

8. Company no Longer Required

If you decide that you do not need your dormant company, you can arrange to have it struck off (deregistration) the register. There are two ways of doing this: if the company has no debts or other liabilities, you may be able to apply for 'voluntary striking-off and dissolution' without going through formal insolvency proceedings; or if the company has affairs to wind up, then the company can be put into "voluntary liquidation".

For further information, please feel free to contact our professional consultants.