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Hong Kong Private Company

Procedures and Fees for Restoration of a Company to the Register of Companies

1. Introduction

Under section 291 of the Companies Ordinance (as amended) (the "Law"), the Registrar may strike a company off the Register of Companies if he has reasonable cause to believe that the company is not carrying on business or is not in operation. The usual reason why the Registrar would strike a company off is the failure of the company to file annual returns and pay annual return registration fees. Alternatively, a company itself may request that it be struck off.

In the event that a company is struck off voluntarily or by the Registrar, an application may be made to the Hong Kong High Court under section 291(7) of the Law by the company, a shareholder or a creditor of the company or a person who feels aggrieved by the deregistration, for an Order that the company be restored to the Register. The application may be made at any time within twenty years of the date on which the company was struck.

2. Condition for Reinstatement

- (1) The court may order that the Registrar reinstate the registration of a company that was deregistered under section 291AA if-
 - (a) an application for reinstatement is made to the court within 20 years of the deregistration by a person who feels aggrieved by the deregistration; and
 - (b) the court is satisfied that it is just that the registration of the company be reinstated.

- (2) During the course of application for reinstatement, the company or the applicant is required to file all outstanding Annual Returns from the day when the company was deregistered to the time of application for reinstatement, as if the company has never been deregistered pay all Annual Return statutory filing fees together with late filing penalty, if any.
- (3) In addition, the company or the applicant is required to renew the business registration certificate from the day when the company was deregistered to the time of application for reinstatement, as if the company has never been deregistered.

3. Outline of the Basic Procedure for Reinstatement

- (1) The application for restoration should be made to the court. The application must be supported by an affidavit sworn by an authorised representative of the applicant. (In the event that the company itself is the applicant, a director of the company would usually swear the affidavit). The affidavit is required to prove the following facts:
 - (a) the company's registration number and date of registration, with copies of the certificate of incorporation and memorandum and articles of association exhibited;
 - (b) the date on which the company was struck off, with a copy of the notice confirming that the company has been struck off exhibited;
 - (c) if more than two years have elapsed, that the Governor in Cabinet has no objection to the restoration, with a copy of the letter confirming that lack of objection exhibited;
 - (d) that the Registrar of Companies has no objection to the restoration, with a copy of the letter confirming that lack of objection exhibited;
 - (e) the amount of the reinstatement fee payable and the amount of any outstanding annual fees as confirmed in the letter from the Registrar ((d) above);

- (f) the address where the registered office will be located assuming the restoration is ordered and, in the event that a professional service provider is to provide registered office services, that the professional service provider has agreed to do so; and
- (g) the reason why the restoration has been applied for (such as that the company was carrying on business or in operation or has assets and is thereby aggrieved by the striking off).

The affirmation should be signed by the director of the company in front of a Notary Public. If the client will visit HK, Kaizen will arrange the signatures in front of our Notary. But if the client will not visit HK, they can sign in front of an International Notary Public overseas. The affirmation should be either in English or Chinese, the official languages in Hong Kong.

- (2) The application, sworn affidavit and draft Order are filed with the Clerk of the Court.
- (3) Upon receipt of the written application, the Court will send a request to the Companies Registry to confirm if the Registrar would object to the reinstatement application;
- (4) Then, the Registrar will send a letter to the Lawyers directing to pay the costs for giving their consent to Originating summons. The Registry will require the filing of all outstanding annual returns, confirm to the Registry as to who will act as the director and secretary upon restoration and to where the registered office will now be located; after all outstanding annual information is provided and returns are filed, the Registrar will write to the Court to confirm that he has no objection to the reinstatement application.
- (5) Usually, the Clerk of the Court will determine the application on paper without the need for a hearing. If the Clerk is satisfied with the application and the evidence as filed, the Order will be made confirming the restoration subject to the conditions that the fees are paid as stated in the Registrar's letter and that a notice of the new registered office is filed with the Registrar of Companies.

- (6) If the Clerk is not satisfied with the application, he may order that further evidence be filed, that the application be served on the Registrar of Companies, that an oral hearing take place before a judge or he may dismiss the application.
- (7) Once the Order is made, it has to be advertised in the Hong Kong Government Gazette. It normally takes three weeks to publish the same in the Gazette.

3. Timeframe

The Clerk of the Court will usually consider and determine an application within four weeks of it being filed. However, time will be required to be allowed for the following:

- (1) obtaining the letter(s) of no objection from the Registrar of ;
- (2) collating the relevant documents that must be exhibited to the affidavit; and
- (3) having the affidavit sworn, particularly if the deponent is a person overseas. (The original affidavit must be filed with the application).

There is little consistency or guidance that can be offered in relation to the time that might be taken for paragraph 1 above. Ordinarily the Registrar will respond to a request within no more than four weeks.

In general, it will take around 4 months to reinstate a company to the Register of Companies.

If the Clerk of the Court does not grant the Order on the application and requires further evidence, service on the Registrar or a hearing before a judge, the timeframe will be extended depending on what is required.

4. Costs

(1) Fees for Reinstatement

The costs involved include:

- (a) the restoration fee;
- (b) any unpaid/outstanding annual return filing fees and business registration fees and penalty for late filings; and
- (c) the filing fees at Court and the Companies Registry (related to the application for reinstatement itself);

Kaizen's charges for carrying out all of the preparation work (including obtaining relevant letters and collating documentation, drafting the application, affidavit and Order, filing the application and dealing with advertisement) are usually no more than USD4,500, depending on the work involved and subject also to the Court requiring additional evidence, a hearing or other steps/conditions to be complied with.

(2) Company Secretary and Registered Office

After the company is reinstated, it is required to maintain a registered office in Hong Kong and also maintain a company secretary. We can provide the registered office and act as company secretary for a fee of USD220 and USD350 per annum respectively.

(3) Other Costs

The fees mentioned above do not filing of outstanding annual returns and renewal of business registration certificates. Once we are being engaged for handling the reinstatement, we will perform a complete company search with the Companies Registry, the Inland Revenue Department and the Business Registration Office to find out all outstanding filings and returns. By then, a more accurate estimate of the total costs can be advised.

The information contained in this memorandum is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.