LEGAL BRIEFING

Voluntary liquidation or Strike-off? - Strike-off as an alternative to voluntary liquidation of Cayman companies in order to achieve the conclusion of operations and dissolution

There are two principal routes to voluntarily dissolving a Cayman Islands company after the conclusion of its operations. Dissolution can be achieved either through (i) voluntary liquidation, or (ii) a strike-off. The dissolution will mean that the company is removed from the Register maintained by the Registrar of Companies in the Cayman Islands and cease to exist ultimately. If the company has entered into any agreements with investors, clients, customers and suppliers and/or undertaken any trading activities since its incorporation, the more common and appropriate choice is to undertake a formal liquidation of the company by way of a shareholders' voluntary liquidation. If the company has not entered into any agreements and/or undertaken any trading activities since its incorporation then it might consider a strike-off. However, a strike- off is only suitable as an alternative to a voluntary liquidation for companies that have never actually traded or have not traded for a long period of time because any shareholder or creditor, during the period of up to ten (10) years (see further details below) of the strike-off, can apply to have the company restored or reinstated to the Register maintained by the Registrar of Companies in the Cayman Islands.

Advantages of Strike-off

The main advantages of seeking dissolution of the company via the strike-off route are that (1) this will be a simpler legal process (even though not necessarily a simpler process for the company's Directors as they have to deal with settling and discharging all liabilities and distributing any remaining company assets prior to a strike-off) than a voluntary liquidation, (2) the fees and expenses chargeable for effecting a strike-off will be less than a voluntary liquidation, (3) it is typically effected by resolution of the Directors of the company, and (4) is normally quicker to complete than a shareholders' voluntary liquidation of the company.

Risks of Strike-off

There are risks associated with achieving a dissolution via the strike-off route, including:

i. the strike-off process is more suited to companies which have never traded because it does not deal with the company's liabilities to creditors and is not suitable for companies with extensive trading operations or valuable assets;

ii. in cases where there are any dissatisfied creditors or shareholders of the company, they can apply to the Cayman Islands Court at any time within a period of up to two (2) years (this period may be extended by the Governor of the Cayman Islands upon application for up to 10 years from the strike-off date) after the strike-off, to have the company restored or reinstated to the Companies' Register. The Court will normally order a restoration if it feels that the company was at the time of the strike-off, carrying on business, or was in operation, and it is "just" to restore it – for example, in cases where the Court feels that creditors should be allowed to take proceedings to recover assets. If the company is restored to the Register it is deemed to have continued in existence as if its name had not been struck off but the Court can also make other orders as seem "just" for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been subject to a strike-off;

iii. unless the company has properly distributed all residual assets prior to strike-off, any assets held by the company at the time of strike-off will pass to the Financial Secretary of the Cayman Islands Government (and will be subject to being disposed of by the Governor of the Cayman Islands or being retained for the benefit of the Cayman Islands) upon dissolution;

iv. the strike-off process, therefore, does not cut off creditors' options in the way that a properly executed voluntary liquidation process would, and the creditors who wish to challenge distributions made to the shareholders prior to a strike-off, for example, may be able to apply to the Court to have the company restored/reinstated and raise claims well after the strike-off and dissolution.

v. Unlike the strike-off process, the ability to restore the company is not available to creditors or shareholders after the conclusion of a properly executed voluntary liquidation.

Conclusion

In determining whether to (i) seek a voluntary liquidation, or (ii) a strike-off, the directors of a Cayman Islands company should assess, among other things:

i. the nature and extent of the assets and liabilities of the company and deal with these accordingly (i.e. discharge any and all creditors and transfer out all assets);

ii. whether or not there is a real risk of, for example, a shareholder or creditor seeking a restoration of the company in the future if the company is dissolved by strike-off.

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