

LEGISLATION UPDATE

ACRA MOVES TO STRIKE OFF DEFUNCT COMPANIES

ACRA issues circular on the striking off of defunct local companies pursuant to Section 344 of the Companies Act

Background

The Accounting and Corporate Regulatory Authority (“ACRA”) has recently issued [ACRA Circular No. 1 of 2008](#) setting out its proposed action to strike defunct local companies off the register pursuant to Section 344 of the Companies Act (the “Act”).

Section 344 of the Act empowers the Registrar of Companies (the “Registrar”) to strike the name of a company off the register if he has reasonable cause to believe that the company is not carrying on business or is defunct. ACRA believes that there are more than 15,000 companies which are defunct due to inactivity and/or the absence of any directors to manage the business.

Criteria for Striking Off

Companies that meet the following two criteria may be struck off:

Last accounts submitted more than 6 years ago | ACRA will target companies where the last accounts filed were for the period ending on or before 30 June 2002. ACRA will also target companies incorporated before 1 January 2002 which have yet to file any annual returns.

No fresh charge created in the last 6 years | Companies that either do not have any outstanding charges or have outstanding charges which were created before 1 July 2002 will be targeted. ACRA will assume that a chargee is no longer interested in pursuing a defunct company if more than 6 years have elapsed since the charge was created.

Related Considerations

Outstanding summonses and warrants of arrest | ACRA will strike a company off the register even if there are outstanding summonses or warrants of arrest against its directors. Any outstanding summons may be compounded after the company has been struck off.

Objections from creditors | Creditors may file objections to the proposed striking off of a company. If ACRA takes the view that any objections are justified, it will not proceed with the striking-off action until all objections have been cleared.

Companies without directors or without locally resident directors | ACRA will proceed to strike off companies with no directors. For companies without a locally resident director, ACRA will notify such companies to appoint a local director within 2 months, failing which ACRA will proceed with the striking off on the basis that such companies are defunct and are no longer carrying on business.

Action to be Taken by ACRA

Intention of Striking Off Notice | If ACRA has identified a company to be liable to be struck off, ACRA will send a Intention of Striking Off Notice (the “**Notice**”) to the company.

If a company does not want to be struck off, it must satisfy ACRA (within one month of the date of the notice) that it is indeed trading actively or have good reasons as to why it should not be struck off. Such company must also file its outstanding Annual Returns with up to date accounts within three months of the Notice. The usual penalties for late filing will apply.

ACRA will start sending out Notices in September 2008. Each Notice will be sent to the company at its registered office address and to the directors, company secretary and shareholders at their residential addresses. The Inland Revenue Authority of Singapore will be copied on the Notices.

Publication in the Gazette of names of companies to be struck off | Section 344(2) of the Act provides that the Registrar may publish in the Government Gazette (the “**Gazette**”) a notice that a company would, unless cause is shown to the contrary, be dissolved and its name struck off the register 3 months from the date of such notice. Upon expiration of the 3-month period, the names of the company to be struck off the register will be published in the Gazette. On publication in the Gazette of the name of the company to be struck off, the company will be dissolved.

Post-dissolution Matters

Liability of officers and members of company preserved | Section 344(4)(a) of the Act provides that any liability of the officers or members of a dissolved company shall continue, and may be enforced as if the company had not been dissolved.

Official Receiver to act as company representative | If the Official Receiver is satisfied that a dissolved company, if still existing, would have been bound to perform an obligation, and that in order to give effect thereto some purely administrative act should have been done by the company, pursuant to Section 345 of the Act, the Official Receiver may act as the company’s representative to do such act.

Outstanding assets to vest in Official Receiver | Section 346 of the Act provides that outstanding property (movable or immovable) of the dissolved company, including things in action, will vest in the Official Receiver, together with all claims, rights and remedies which the company had in respect thereof.

Disposal of outstanding interests | Under Section 347 of the Act, the Official Receiver may dispose of or deal with property vested in him either solely or concurrently with any other person upon such terms and conditions as he thinks fit. Any money received in the exercise of these powers will be applied to defray the costs and expenses incidental to such disposal or dealing, and any surplus will be dealt with as if it is unclaimed money paid to the Official Receiver.

Restoration to the Register

In the event creditors or other persons who have dealings with a company overlook the publication in the Gazette of the names of companies to be struck off, and the company is subsequently dissolved, such persons may apply to court within 15 years after such striking off to have the company restored to the register pursuant to Section 344(5) of the Act.

If the court is satisfied that the company was, at the time of the striking off, carrying on business or in operation, the court may order the name of the company to be restored to the register. The court may also direct that the company and all other persons be put in the same position as if the name of the company had not been struck off.

Case law suggests that restoration to the register validates retrospectively all acts done in the name or on behalf of the company during the period of dissolution. The court also has the power to order that the period between the dissolution and the restoration to the register should be disregarded for the purposes of the Limitation Act, so that any creditors' claims which were not statute-barred at the date of striking off would not be treated as having since become statute-barred.

If you would like more information about this ACRA circular or wish to discuss how it may potentially affect you or your business, please feel free to contact the **Directors** in Drew & Napier LLC, or either of the following lawyers:

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