

Corporate Name of Dissolved Company – Call Upon Our Expertise!

It could happen that a company neglects or forgets to file an annual declaration. If it fails to comply for two consecutive years, the Enterprise Registrar (hereinafter the “Registrar”) may strike off the registration of the company. The striking-off of a company constituted under the laws of Quebec entails its dissolution pursuant to s. 50 (2) of the *Act Respecting the Legal Publicity of Sole Proprietorships, Partnerships and Legal Persons* (hereinafter the “L.P.A.”).

The dissolved company may request to be revived by way of an application for revocation of striking-off and once the revocation is approved, the company is deemed to have never been dissolved, subject to the rights acquired by a third party (ss. 54 et 57 L.P.A.).

Until quite recently, it was mandatory to file a name search report with the application for revocation of striking-off. However, the Registrar does not require the search report anymore with the revocation. This is significant if you consider that, during the period of time the company is dissolved, some other person could form a company and select the same name since it becomes available upon dissolution.

For example, Solutions XYZ Inc. is struck off in May 2004. During the period of dissolution, another person forms a new company with the identical name as the dissolved company. The Registrar shall issue the certificate of incorporation with the identical name without any impediment because the first company is dissolved. When the dissolved company, Solutions XYZ Inc., later files a revocation



Name search department: Denis Livernoche, Madeleine Cadieux and Isabelle Boisvert.

of striking-off, the Registrar shall also allow it but it will result in two companies having identical corporate names. This seems to contravene s. 9.1 (8) of the *Companies Act*. What can be done then to protect the corporate name?

Administrative remedy

Under section 123.27.1 of the *Companies Act*, the revived company can file a petition against the second company in which it asks the Registrar to order the other company to change its corporate name.

Of course, the evidence before the Registrar must show that there is likelihood of confusion between the two corporate names, taking into account the

NEW!

Revised General By-Laws

(See p. 3)

Corporate Name of Dissolved Company (*cont'd*)

nature of the activities of the two companies, the goods and services they both provide, the territories where they both carry on business and the clients they serve.

If the Registrar decides there is likelihood of confusion based on the evidence, he

will order the second company to change its corporate name. On the other hand, if he concludes there is no likelihood of confusion between the two names, both names will be allowed to co-exist on the CIDREQ register.

Advantages of a search

It is obviously not recommended for your client to adopt an identical or similar name to one belonging to a company that is struck off simply because the latter may subsequently file an application

> cont'd on page 3

Turnaround Schedule for Corporate Services as of February 1st, 2005

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	5 - 6 days	3 - 5 days
Name search with reservation	*24 hours	2 - 6 hours
Name search without reservation	3 hours	—
Certificate of incorporation (paper filing)	*5 - 6 days	2 days
Certificate of incorporation (IncoWeb™ electronic filing)	*5 - 6 days	48 hours <i>4 - 6 hrs if numeric</i>
Certificate of amendment	*9 - 10 days	2 days
Certificate of continuation, of continuance or of amalgamation	*1 - 2 weeks	5 - 7 days
Certificate of dissolution	5 - 6 weeks	5 - 7 days
Notice of change (federal) or amending declaration (Quebec)	3 - 4 weeks	8 - 10 days
Letters patent for non-profit corporation	*3 - 4 weeks	25 days
Attestation / Certificate of good standing and certificate of compliance	*24 hours	48 hours
Revival	—	5 - 7 days
Initial declaration	4 - 5 weeks	—
Declaration of registration	*1 - 2 weeks	—
Annual declaration	*7 - 8 weeks	—
Revocation of striking-off (s. 54 L.P. Act)	*1 - 2 weeks	—

The turnaround times may vary slightly according to each file (*) = Priority service available.

FOOD FOR THOUGHT

“Give a man a fish
and you feed him for a day;
Teach a man how to fish
and you feed him for a lifetime.”

Chinese Proverb

C.R.A.C. Corporate Research and Analysis Centre Ltd.

1080 Beaver Hall Hill, Suite 1717
Montreal, Quebec Canada H2Z 1S8
Tel: (514) 861-2722
Toll free: 1-800-361-5744
Fax: (514) 861-2751
E-mail: crac@crac.com

Notice: The information contained in INFO-CRAC® is of a general informative nature and in no way constitutes nor should it be construed as a legal opinion. INFO-CRAC® is published bi-monthly for the benefit of our clients. Please submit any comments in writing to the Editor, Richard S. Gareau (rs gareau@crac.com).

WHAT'S NEW...

New General By-Laws

We took the initiative to have C.R.A.C.'s general by-laws reviewed by a renowned legal expert in the field of corporate law. Both provincial and federal by-laws pertaining to Quebec companies constituted under Part 1A of the *Companies Act* and federal corporations constituted under the *Canada Business Corporations Act* respectively were amended. These new general by-laws are currently available in C.R.A.C.'s minute books, either in French or English. To order, please contact our corporate accessories department at your convenience.

New 2005 Price List

Our new price list came into effect on January 1, 2005. Please note something different this year: the prices are now listed **before** taxes. In this manner, we thought you would have a more accurate gauge of C.R.A.C.'s service fees without appearing more expensive due to the applicable taxes. There's been a slight increase in our service fees this year whereas the government fees haven't changed. If you haven't received your copy of the new price list yet, please call Ms. Anne Roy at 514-861-2799, ext. 337, or email her at aroy@crac.com. You can also print yourself a copy by visiting our Web site (www.crac.com) at "What's New" page and then access "Latest News".

Business and Corporate Names



Choose your pen name.

Whether it is a matter of creating a new company or making changes to an existing name, we at C.R.A.C.® can help you. Protect your assets by investing in the opinion of an expert. It is more than a name – it is a signature!

CORPORATE RESEARCH AND
ANALYSIS CENTRE LTD.

Telephone: (514) 861-2722 Toll free: 1 800-361-5744

www.crac.com



Corporate Name of Dissolved Company (cont'd)

for revocation of striking-off and, once revived, cause trouble for your client.

That's why it's important to conduct a name search even if the Registrar no longer requires it. A search will reveal the corporate and business names and trade-marks declared in the CIDREQ

register (even those that are struck off) and help reduce the risk of getting sued or being forced to change the corporate name. The last thing your client wants is to be forced to change his corporate name after having incurred considerable costs to launch his business!

Conclusion

A name search remains the most effective means and the least costly to mitigate risk. Our specialized team in the name search department (see photo p. 1) can certainly assist you to make the right choice. Prevention is better than cure!