

January 2014

“A man must be big enough to admit his mistakes, smart enough to profit from them, and strong enough to correct them.” **John C. Maxwell**

COMPANY LAW: NEW YEAR'S RESOLUTIONS FOR YOUR BUSINESS

With the advent of 2014 comes a host of personal New Year's resolutions for most of us. For a business owner, manager, director and company secretary however, it is also imperative to ensure that your company starts 2014 off on the right foot. Accordingly, the following are some of the important issues to take note of in your company when trying to “clean house” for the New Year:

1. Review your company's corporate documents

The deadline for amending a company's corporate founding documents to the new single form Memorandum of Incorporation (“MOI”) has already come and gone in 2013. Companies who have missed this deadline however should actively endeavor to bring their old memorandum and articles of association in line with the provisions of the new Companies Act of 2008 (the “Act”) to ensure transparency and avoid being subjected to unnecessarily onerous legislative requirements.

2. File your Annual Returns

All registered companies are required to file yearly Annual Returns with the Companies and Intellectual Property Commission (“CIPC”) to avoid the deregistration of their business. Once a company is classified as “In deregistration” on CIPC's system, no changes (whether to directors, the company's name or registered address or even filing a new MOI) can be effected until all outstanding Annual Returns have been filed.

3. Ensure Director competence

Appointing new directors in a company, especially those who are more involved in the day to day business operations than the executive and administrative management of the company, brings with it the risk of increased accountability and director liability ushered in by the provisions of the new Act. Informative based board meetings and director's workshops presented by reputable institutions are handy tools to alleviate this potential problem.

As with personal resolutions, the success of a New Year's resolution for your company depends on a committed and disciplined approach from those tasked with the company's effective management. We therefore urge all business owners, company directors and managers to ensure that their company is properly equipped to deal with 2014's challenges.

Law & Laughter

Question: “What do lawyers and bullfrogs have in common?”

Answer: “Both have a big head that consists mostly of mouth.”

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TRUST LAW: TIPS FOR POTENTIAL BUYERS WHEN BUYING A SECOND HOME

Buying a second home can be a daunting and arduous prospect for people seeking a good stable investment opportunity or merely a holiday home. One of the most difficult choices potential buyers face is deciding between buying a second home in their personal (individual) capacity or doing so through a family trust, each of which have their own benefits and disadvantages.

Here are some of the more common advantages and disadvantages of both approaches that can be taken into consideration when making this decision:

- It is well known that financial institutions are more likely to grant financing to an individual rather than a family trust when buying a second home. The reason being that a family trust usually has little to no assets and thus requires a substantial deposit or security.
- A family trust however, has several other advantages which include the concept of capital gains tax if managed correctly. An individual will be susceptible to capital gains tax when selling a secondary residence and will further be taxed when the owner passes away, due to the property forming part of the owner's dutiable estate.
- This is in contrast to the position of a family trust where the capital gain can either be taxed in the hands of the trust or alternatively, be distributed amongst the beneficiaries where it would be taxed in terms of their individual tax rates.
- A secondary residence further does not form part of the estate of the "owner" and is administered by the trustees. Accordingly no capital gains tax or estate duty is applicable when the "owner" becomes deceased.
- It is particularly important to take note of the safeguarding of assets in the current prevailing economic circumstances and this is where a family trust is definitely the safer option. Your prized asset would be protected from creditors in the event of financial distress. A family trust would effectively ensure that beneficiaries are protected and hence guarantees a relatively stable long term investment.

Careful planning and due consideration of all circumstances are essential when deciding on the purchase of a second home and fundamentally depends on each individual's financial means and practical requirements.

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