

Company Strike Off

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Strike off is the procedure of removing a company from the Register of Companies (the Register) following which the company will cease to exist.

Under the Companies (Guernsey) Law, 2008 (the Companies Law), a company may be struck off in one of three situations:

1. if the company is defunct;
2. if the company is defaulting; or
3. if the company itself applies to be voluntarily struck off.

Strike off by the Registrar of Companies

The Registrar of Companies (the **Registrar**) may strike off any company which is defunct or defaulting.

A defunct company is one which the Registrar has reasonable cause to believe is not carrying on business or is not in operation or, in the case of a company which is being wound up, no liquidator is acting or that the affairs of the company are fully wound up.

A defaulting company is a company:

- which fails to deliver to the Registrar an annual validation in accordance with the Companies Law before the end of January in any year;
- in respect of which the Registrar receives a notice from a corporate service provider stating that a registered office address which it provides for the company is no longer effective;
- in respect of which the Registrar is of the opinion that there have been persistent or gross contraventions of the Companies Law;
- which does not have a resident agent; or
- which has less than the minimum number of directors required by the Companies Law, ie at least one director.

Notice

Notice of the proposed strike off is published by the Registrar on the Registry website and sent to the company at its registered office, or in the case of a company being wound up, to the liquidator. The Registrar may also send the notice to any officer or founder member of the company. Unless cause is shown to the contrary, the company will be struck off the Register at the expiry of two months from the date of the notice and the company will be dissolved. The Registrar will publish notice of the striking off which may, in the case of a defaulting company, include the names of the directors of the company.

Cause to the Contrary

A company may avoid strike off if cause to the contrary can be shown. In relation to a defunct company, a company must show that it is carrying on business or is in operation or that in the case of a winding up, that a liquidator is acting or that the affairs of the company are not fully wound up. In relation to a

defaulting company, the particular default must be rectified. For example, in the case of a company failing to deliver an annual validation, the company will be considered to have shown cause to the contrary by delivering its annual validation to the Registrar together with payment of the appropriate penalty. In relation to both defunct and defaulting companies, cause to the contrary will also be shown where the company is a party to proceedings.

Voluntary Strike Off Application

The procedure for a voluntary strike off allows company directors to remove unwanted companies, which have not traded or carried on business for at least three months, from the Register without the need to employ the services of a liquidator. Voluntary strike off is, therefore, a cheaper method of dissolving a company rather than resolving to be voluntarily wound up. It also moves away from the historical practice of company directors relying on the Registrar to strike off defaulting or defunct companies.

Application

An application to be voluntarily struck off must be made by the board of directors of the company to the Registrar and accompanied by a declaration of compliance, which is a declaration signed by a director of the company that all the requirements of the Companies Law in respect of an application for the striking off of a company have been fulfilled.

The application should be made using the Registry's on-line services portal, although it is possible to make the application in hard copy form. There is no charge or filing fee for making such an application.

On receipt of the application, the Registrar will publish a notice on the Registry website stating that the company will be struck off the Register and the Company will be dissolved two months from the date of the notice, unless cause is shown to the contrary, for example the company is a party to proceedings, and accordingly the Registrar shall not strike off a company. No certificate of discontinuance or notification of strike off will be issued to the company. The Income Tax Office, the Social Security Department or another third party can request that a company is retained on the Register whilst certain matters are concluded. The Registrar will honour this request until the company is no longer required, at which time it will proceed with the strike off.

Within seven days of making the voluntary strike off application, a copy of the application must be given to every member, employee, creditor and director of the company and the manager or trustee of any pension fund established for the benefit of employees of the company. In addition, at any time after the application has been made and before the application is finally dealt with, a copy of the application must be given to all new members, employees etc of the company within seven days of them becoming so. Where a company is a supervised company, a copy of the application must also be given to the Guernsey Financial Services Commission within seven days.

Restrictions on Application

An application for voluntary strike off cannot be made if, at any time in the three months preceding the date of application, the company has:

- changed its name;
- traded or otherwise carried on business;
- made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business;
- engaged in any other activity, except one which is necessary or expedient for the purpose of:
 - making a voluntary strike off application or deciding whether to do so;
 - concluding the affairs of the company; or
 - to comply with the requirements of any enactment.

Further, an application for voluntary strike off cannot be made in any of the following circumstances:

- the company is party to any proceedings;
- the company has been declared *en désastre*;
- an interim vesting order has been made against the company's property in Guernsey;

- the company has passed a special resolution that it be voluntarily wound up or a liquidator has been appointed other than for the purpose of a solvent amalgamation, reconstruction or winding up of the company;
- possession or control has been taken of any of the company's property or affairs by or on behalf of creditors;
- an application for compulsory winding up has been made;
- in the case of a protected cell company (a PCC), a receivership order has been applied for or is in force in respect of any of its cells;
- an administration order has been applied for or is in force in respect of the company or, in the case of a PCC, in respect of any of its cells; or
- the company has any outstanding liabilities (other than an obligation to return share capital to members on or prior to its dissolution).

Liability of officers and members

Notwithstanding the striking off of a company, the liability of every officer and member of the company continues and may be enforced accordingly.

Property of struck off company

All property and rights vested in the company or held on trust for it at the time of its strike off (excluding property held by it on trust for another) shall become *bona vacantia*, belonging to the Crown.

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