

# Strike off and restoration under the BVI Business Companies Act 2004

Last reviewed: February 2017

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The BVI registrar of corporate affairs (the **registrar**) maintains a register of companies (the **register**) which records the name of each company incorporated or continued under the BVI Business Companies Act 2004 (the **Act**).

This guide examines the procedures by which the name of a company may be struck off, or restored to, the register under the Act.

## What is strike off?

Strike off (sometimes referred to as administrative strike off) is a procedure by which the registrar removes the name of a company from the register even though it has not been liquidated or dissolved. A company continues to exist after it has been struck off, but it becomes incapacitated and (subject to limited exceptions) is unable to deal with its assets.

## Who may initiate a strike off?

Only the registrar may initiate a strike off. Unlike the position in other jurisdictions, the Act does not allow a company to apply to be struck off.

## Why will a company be struck off?

The registrar may strike off a company if

- it does not have a registered agent;
- it fails to file a document that it is required to file under the Act;
- it fails to pay an annual fee or a late payment penalty by the due date;
- the registrar is satisfied that it has either ceased to carry on business or is carrying on business without a required licence; or
- the BVI Financial Services Commission has revoked a licence issued to the company to carry on financial services business.

The most common reason for the registrar striking off a company is its failure to pay an annual fee or a penalty.

The registrar will not usually strike off a company if the registrar believes that the company is trading or owns property or there is some other reason why the company should not be struck off. In these circumstances, the registrar may instead refer the company to the BVI Financial Services Commission for investigation.

## Procedure

Except in the case of a strike off for failure to pay an annual fee or a penalty, the strike off process is as follows:

- the registrar must:

- send the company a notice stating that it will be struck off on the date specified in the notice (which must not be less than 30 days after the date of the notice) unless the company shows cause why it should not be struck off; and
- publish a notice of the registrar's intention to strike off the company in the BVI Gazette;
- if the company has not shown cause why it should not be struck off, the registrar will publish a notice of the company's striking off in the BVI Gazette; and
- the registrar will strike off the company's name from the register.

Where the registrar proposes to strike off a company for failing to pay an annual fee or a penalty, the registrar will not give a notice to the company and will simply publish a notice of the company's striking off in the BVI Gazette.

The company's striking off is effective from the date on which the strike off notice is published in the BVI Gazette.

### **Dissolution**

If a company remains struck off for a continuous period of seven years, it will automatically be dissolved on the last day of that period.

Any property owned by the company on the date of its dissolution will vest in the BVI government, although the property (or the property's value if the property has been sold) must be returned to the company if it is later restored to the register.

### **Right of appeal**

A person who is aggrieved by a company's striking off (such as a director, shareholder, employee or creditor of the company) may appeal to the High Court within 90 days of the date on which the strike off notice was published in the BVI Gazette.

### **Effects of strike off**

Once a company is struck off:

- its legal existence continues and it will not be dissolved until it has been struck off for a continuous period of seven years;
- neither it nor any director, shareholder, liquidator or receiver of it may:
  - commence any legal proceedings, carry on any business or deal with its assets in any way;
  - defend any legal proceedings, make any claim or claim any right for it or in its name; or
  - act in any way with respect to its affairs,

however, it or a director, shareholder, liquidator or receiver of it may:

- apply for its name to be restored to the register; or
- continue to defend or carry on any legal proceedings that had been commenced before it was struck off;
- it may incur additional liabilities even though it has been struck off;
- a creditor may make a claim, and obtain a judgment, against it even though it has been struck off; and
- each shareholder, director, officer or agent of it remains responsible for any liability that existed before it was struck off.

### **Restoration to register**

#### **Before dissolution**

##### **Application**

Where a company has been struck off but has not yet been dissolved, the company or a creditor, shareholder or liquidator of the company may apply to the registrar to have the company's name restored to the register.

The applicant must make the application within seven years of the date on which the strike off notice was published in the BVI Gazette and pay a restoration fee and any outstanding annual fee or penalty.

If a company was struck off for not having, or it does not have, a registered agent, the:

- registrar must be satisfied that a licensed person has agreed to act as its registered agent and that it is fair and reasonable to restore its name to the register; and
- it must appoint a registered agent immediately once its name is restored to the register.

### Effect

Where a company's name is restored to the register, it is taken never to have been struck off.

### After dissolution

#### Application

Where a company has been dissolved (whether as a result of an administrative strike off or a liquidation), any creditor, former shareholder, director or liquidator of the company or person who can show an interest in doing so, may apply to the High Court to have the company's name restored to the register.

The applicant must make the application not more than 10 years after the date on which the company was dissolved. Notice of the application must be given to the registrar, BVI financial secretary and (if the company was a regulated person at any time before it was dissolved) BVI Financial Services Commission.

### Orders

The High Court may:

- restore the name of the company to the register on any conditions it considers appropriate; and
- give any directions or make any orders it considers necessary or desirable for the purpose of placing the company and any other person in (as nearly as possible) the same position as if the company had not been dissolved or struck off.

In practice, the High Court is only likely to exercise its discretion to restore the name of the company to the register to allow a newly discovered asset to be distributed or a new claim to be made against the company.

### Restoration of a liquidated company

Where a company is liquidated under the Act or the Insolvency Act 2003, it is dissolved and its name is struck off (in this sense simply meaning deleted) from the register. In these circumstances:

- the High Court may not restore the company's name to the register unless
  - the applicant nominates a person to be the company's liquidator;
  - the nominated person consents, and is eligible, to act as liquidator; and
  - satisfactory provision is made for the fees and expenses of the liquidator; and
- if the High Court makes an order to restore the company's name to the register, the:
  - High Court will appoint the nominated person or some other eligible person as the company's liquidator;
  - company will be restored to the register as a company in liquidation; and
  - person appointed as liquidator will be the company's liquidator with effect from the time the company's name is restored to the register.

### Registration of order

If the High Court makes an order to restore a company's name to the register, a copy of the order must be filed with the registrar by the applicant or (if the company was dissolved after its liquidation) liquidator. The registrar will restore the company's name to the register with effect from the date and time on which the order is filed and issue a certificate of restoration.

If the company's name has been re used since the company was struck off, it will be restored with its company number as its name.

## Effect

Where a company's name is restored to the register, its existence is taken to have continued as if it had not been dissolved or struck off.

## Disadvantages of strike off

Frequently, where a company is dormant, its directors and shareholders will seek to avoid the cost of placing the company into voluntary liquidation by allowing the company to be struck off for non payment of fees.

It is generally preferable for a company to be placed into voluntary liquidation and to have its affairs wound up in an orderly manner rather than allowing it to be struck off. For information about voluntary liquidation, refer to our guide entitled 'Voluntary liquidation under the BVI Business Companies Act 2004' ([click here](#)).

Once the voluntary liquidation of a company has been completed, the company will be dissolved so that:

- it will not become liable to pay any further annual fees or penalties; and
- (unless a successful application is made to have the company's name restored to the register) its directors and shareholders will cease to have any further liability in respect of the company.

In contrast, there are disadvantages associated with strike off that make it potentially undesirable. These include that:

- the company becomes incapacitated, so if it has any property:
  - it will be unable to deal with its property; and
  - its property will vest in the BVI government;
- the company's directors and shareholders remain responsible for any liability that existed before it was struck off;
- the company remains liable to pay, and continues to accrue, annual fees and penalties until it is dissolved; and
- the company will not be dissolved until it has been struck off for a continuous period of seven years.

## Contacts

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