

# Guernsey company restorations

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## Introduction

A company that has been struck off from the Register is considered dissolved and its name is removed from the Register.

All property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) will, unless His Majesty's Receiver-General directs otherwise, become *bona vacantia* (ownerless goods) and become property of the Crown.

However, a Guernsey company that has been removed from the Guernsey Register of Companies (the **Register**) can, subject to certain conditions, be restored to the Register pursuant to the Companies (Guernsey) Law, 2008 (the **Companies Law**).

## When can a company be restored to the Register?

A company that has been struck off can, in certain circumstances, be restored to the Register provided that any application is made within ten years beginning on the date the company was struck off or, as the case may be, dissolved and removed from the Register.

This applies to companies that have been:

- Voluntarily struck off following an application by the company to the Registrar of Companies (the **Registrar**)
- Compulsory or voluntarily wound up
- Struck off for being **defunct** or **defaulting**
  - **Defunct** companies are those which the Registrar has reasonable cause to believe are not carrying on business or are not in operation or, in the case of a company which is being wound up, the Registrar has reasonable cause to believe that no liquidator is acting or that the affairs of the company are fully wound up.
  - **Defaulting** companies are those companies:
    - which fail to deliver to the Registrar an annual validation in accordance with the Companies Law
    - about which the Registrar receives notice from a corporate service provider stating that the registered office of the company is ineffective
    - which fail to comply with the provisions of the Companies Law in relation to the requirement to have a resident agent
    - which have less than the minimum number of directors required by the Companies Law, ie at least one director, or
    - with certain penalties imposed on them for not meeting the substance requirements.

A company cannot be restored if it was struck off under s519 of the Companies Law for persistent and gross contraventions of that Law.

## What is the procedure?

An application to restore a company is generally made through the Royal Court of Guernsey. However, s371(10) of the Companies Law gives powers to the Registrar, without the need for a Court process, to restore a struck off company where it was struck off in error.

A restoration application made to the Registrar can only be on grounds of an administrative error that meets the requirements of the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2014. While the Registrar has powers to restore a company that has for example failed to submit its annual validation or file its change of registered office on time as a result of an administrative error, the Registrar has taken a very restrictive view on the application of its powers and generally insists on a Court application.

## Who can apply?

The following persons may apply to the Court for an order restoring a company to the Register:

- a company which has been struck off as a result of being defunct, defaulting or voluntarily struck off the Register (as noted above)

- a company which has been dissolved and removed from the Register having been voluntarily or compulsorily wound up
- any director, member or creditor of the company
- any liquidator, administrator or, in the case of a protected cell company, the receiver of a cell
- the Guernsey Financial Services Commission (the GFSC) in respect of a supervised company or a company engaged in financial services business
- the Director of the Revenue Service in respect of a company struck off for not meeting certain substance requirements
- any other person appearing to the court to have a sufficient interest in making the application

### **Who must be notified of the application?**

Notice of the application to the Court is published by the Registrar on the Guernsey Registry website and must be served on the following persons in order to give them an opportunity to make representations before the Court makes an order for the restoration of the company:

- the Registrar
- His Majesty's Procureur
- His Majesty's Receiver-General
- any liquidator, administrator or, in the case of a protected cell company, receiver of a cell
- any administration manager of the company (or of a cell thereof)
- the GFSC in respect of a supervised company or a company engaged in financial services business
- the Director of the Revenue Service in respect of a company struck off pursuant to a notice of the Director of the Revenue Service where substance requirements were not met (second, third or fourth accounting period of default)

Notice of intent to make an application must be sent to the Registrar **before** an application is made to the Court.

In practice, once notice is served, each of the persons listed above will provide written confirmation to the applicant confirming it has no objection to the restoration. A copy of this confirmation is provided to the Court in the application in satisfaction of the above requirement.

The Court may also consider representations from such other persons including any member, creditor or director of the company.

Whilst the Companies Law does not require notification to the Income Tax office of every application to restore, it is good practice to do so.

### **When will the Court grant an application to restore a company to the Register?**

The Court may order that the company be restored to the Register if it is satisfied that:

- in the case of a company which was defunct, defaulting or voluntarily struck off, at the time of its striking off, the company was carrying on business or in operation
- in the case of a company struck off pursuant to notice from the Director of the Revenue Service where substance requirements were not met (second, third or fourth accounting period of default), it would if reinstated, comply with the substance requirements applicable to it, and
- it would be just for the company to be restored to the Register.

In reaching its decision, the Court will consider the following matters:

- whether or not the company would satisfy the solvency test, if restored (unless the application is made by a creditor)

In order to satisfy the solvency test a company must be able to pay its debts as they become due and the value of the company's assets must be greater than the value of its liabilities. In determining whether the value of a company's assets is greater than the value of its liabilities, the directors must have regard to the most recent accounts of the company and all other circumstances that the directors know or ought to know affect or may affect the value of the company's assets and the value of the

company's liabilities. The directors may also rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

- whether the persons who were directors at the time the company was struck off consent to being directors if the company is restored
- in the case of a company which has been dissolved having been voluntarily or compulsorily wound up, whether any person who was a liquidator prior to the company's dissolution consents to be a liquidator, if the company is restored
- the circumstances in which the company was struck off or dissolved
- whether there were any persistent or gross violations of the Companies Law
- whether the company was used for fraudulent purposes
- whether restoration to the Register would jeopardise the reputation of the Bailiwick of Guernsey as a financial centre, and
- whether it would be just and equitable to restore the company to the Register

The Order of the Court may be made on such terms and conditions, contain such directions and make such provision as the court thinks fit for placing the company and all other persons in the same position as nearly as may have been if the company had not been struck off or dissolved. The Order may require any person responsible for the company being struck off or dissolved to pay the costs of the application for restoration and require those persons to reimburse the applicant for any payments made to the Registrar and His Majesty's Procureur, even if that person is not a party to the application for restoration.

### **What are the effects of the Court Order?**

Upon a Court Order being taking effect, the company will be deemed to have continued in existence, upon restoration of the company's name to the Register.

If the name of the company is restored to the Register before the expiration of six years from the date of its striking off or, as the case may be, dissolution and removal from the Register, it is entitled to have returned to it any property which vested in the Crown (*bona vacantia*) upon its striking off or dissolution and removal from the Register or, if any such property has been disposed of, its value at the time of disposal.

This six-year period may be extended if the Court considers it equitable to do so having regard to the extent of prejudice the company would otherwise suffer.

### **What are the restoration fees?**

Restoration of a company is conditional upon payment by the applicant of:

- a restoration fee payable to the Registrar in addition to all fees, penalties etc which would have been payable by the company if it had not been struck off or dissolved and had each year delivered its annual validation in accordance with the Companies Law (including late filing fees for annual validations)
- any additional fees specified by the Registrar
- any costs incurred by His Majesty's Receiver-General in administering any property belonging to the company, and
- any costs incurred by His Majesty's Procureur in connection with the striking off, dissolution or the application for restoration.

In addition, there will be Court fees for making the application as well as notarial fees for swearing the affidavit and possible professional service provider fees.

Lastly, if beneficial ownership information has not been previously been submitted or it has changed since the company was last on the Register, the company will need to submit a manual beneficial ownership capture form to the Registry.

## **Contacts**

A full list of contacts specialising in this area can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](#). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED