
PRACTICE NOTE

NMVPN10/2014

Date: 16th January 2020

The Companies Act 2006

Restoring a Company to the Register

This Practice Note replaces NMVPN10/2013 "Restoring a Company to the Register" issued on 8th August 2013.

Introduction

NOTE:- This Practice Note is issued by the Department of Enterprise in its capacity as Registrar of Companies under the Companies Act 2006 ("the Act"). All references, unless specifically stated, are to that Act only.

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by the Attorney General:

<http://www.legislation.gov.im/cms/index.php>

This Practice Note sets out the procedure for applying to the Department for a Direction to Restore a "struck-off" or "dissolved" company to the Register under the provisions contained in Part XIII of the Act.

It is intended as a general guide only and must be read in conjunction with the relevant legislation. It has no legal status and should not be used as a substitute for legal advice.

Contents

- 1. Definitions and Exclusions**
- 2. Applying to restore a "struck-off" company to the register**
- 3. Restoring a "struck-off" company**
- 4. Applying to restore a "dissolved" company to the register**
- 5. Restoring a "dissolved" company**
- 6. Further information**

1. **Definitions and Exclusions**

1.1 There are two instances where an administrative application can be made to the Department for restoration to the register. That is in respect of a "struck-off" company or a "dissolved" company. These are defined in the Act as:

- (a) "struck-off" means a company which has been removed from the register under section 183 for failure to have a registered agent or file its annual return and less than six years have passed since the date of strike-off. After six years, the company is classed as "dissolved".
- (b) "dissolved" means (i) a company which has been "struck-off" and six years have passed since it was removed from the register; or (ii) a company which has obtained a Declaration of Dissolution under section 190.

1.2 An application **cannot** be made by a company which has been put into liquidation and wound up. In such a case, application must be made to Court for an order restoring the company to the register.

1.3 Where a company is "struck-off", any aggrieved person may appeal to Court within 12 weeks against the strike-off. After that appeal period, there is no provision for applying to Court for restoration until the company is classed as "dissolved", i.e. six years after its strike-off date and in the intervening period the procedure outlined in this Practice Note must be used.

1.4 Where a company is "dissolved", the procedure outlined in this Practice Note may be used, or an application can be made to Court by the company, any director, member or creditor, or its liquidator for an order for restoration within 12 years of the date of dissolution.

1.5 A creditor must seek legal advice before applying to restore a company, in particular with regard to the need to appoint a liquidator to take effective control of the company. A creditor is not an officer or shareholder and has no authority to appoint new officers or to dispose of the companies assets without the agreement of the Courts. The Companies Registry will not accept forms appointing new officers from a creditor who has restored a company.

1.6 **PLEASE NOTE – The Department has no power to require that the public record be brought up to date as part of the restoration procedure. On restoration, however, the company may be in default will its statutory filing obligations and action may be started at any time under section 183 with a view to striking the name of the company off the register. Persons having an interest in the affairs of the company should seek legal advice as to the courses of action open to protect their interest. Applicants should also note that a new registered agent may need to be appointed if the former agent is not willing to act after restoration.**

2. **Applying to restoring a "struck-off" company to the register**

2.1 A company which has been struck off the register under section 183 can apply within **six years** from the date it was struck off using the following procedure.

2.2 The company, a creditor, a member or a liquidator may apply using Form IM33.

2.3 The form, which is available from the website www.companiesregistry.gov.im must be completed by the applicant and, **in addition**, by the proposed registered agent of the company once restored.

2.4 There is a filing fee (**currently £1185**) payable on submission of the form. The restoration of a company will be delayed until any cheque exceeding £1,000 is cleared, unless the cheque is drawn on the account of a license holder.

2.5 The applicant must also

- (1) arrange for any outstanding fees to be submitted at the same time as the application for restoration:

- (2) arrange for a new registered agent to be appointed if the previous one is not willing to act and
- (3) ensure that the company name is acceptable for registration or arrange to change it if it is not so.

2.6 PLEASE NOTE: The applicant is not required to advertise the intention to apply for restoration nor is the Department required to give notice of receipt of the application. Neither is the Department able to accept an objection to the restoration from any person.

2.7 Once the application has been received, the Department will decide if the company can be restored or not (See below "Restoring a "struck-off company").

3. Restoring a "struck-off" Company

3.1 The Department can restore a "struck-off" company only if

- (1) the application form and all outstanding fees are submitted;
- (2) a person holding a Fiduciary Services Acts licence has agreed to act as registered agent and
- (3) we are satisfied that it would be fair and reasonable to restore the company name.

3.2 If those conditions are met, we will issue a certificate of restoration to the register without further reference to the applicant and send a copy of that certificate to the applicant. Upon restoration, the company is deemed never to have been struck off the register.

3.3 If we refuse to restore the company, the applicant has the right of appeal to Court under section 187(4) of the Act against such refusal.

4 Applying to restore a "dissolved" company to the register

4.1 A company which is classed as "dissolved" (see paragraph 1.1 (b) above) can apply to be restored to the register within **twelve years** from the date it was deemed to be dissolved.

4.2 The company itself, or any director, member or creditor, can make an application using Form IM34.

4.3 The form is available from the website www.companiesregistry.gov.im .

4.4 Before making an application, the applicant must have posted to each director, member and the registered agent at the date of the company's dissolution a notice stating that the applicant proposes to apply to us for a Direction restoring the company to the Register and that, unless written objection is made to us within one month of the date the notice was or posted, we may make a Direction restoring the company to the register.

4.5 The application must be accompanied by a copy of the notice described in paragraph 4.4 above. There is a prescribed fee for the application (currently £1200), which must be paid at the time the application is submitted for registration. The restoration of a company will be delayed until any cheque exceeding £1,000 is cleared, unless the cheque is drawn on the account of a license holder.

4.6 Once the application has been accepted, we will publish in one newspaper in the IOM, on our website and in an index available for inspection at our public counter, a notice to the effect that an application for restoration has been received.

4.7 Applicants are advised that, should any objection be received, no Direction for Restoration will be made until either the objection is withdrawn, or we decide that the objection is without justification.

5. Restoring a "dissolved" company

- 5.1 Once the one month period has passed since the notice given in paragraph 4.4 was last posted, and if no objection has been received, we will direct that the name of the company be restored to the register.
- 5.2 Applicants are advised that no notice is required, nor will any be given, when a "dissolved" company has been restored. Upon restoration, the company is deemed to have continued in existence as if it had never been dissolved.

6. Further Information

Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice. If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: 01624 689389 and the e-mail address is: companies@gov.im

Statutory forms and practice notes are available free of charge from the website: www.companiesregistry.gov.im .

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licenceholders is available on the Isle of Man Financial Supervision Authority website at www.fsa.gov.im / Licenceholders.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Isle of Man Law Society
27 Hope Street
Douglas
Isle of Man
IM1 1AR

Tel: (01624) 662910

E-mail: iomlawsoc@advsys.co.uk

Fax: (01624) 679232

<http://www.iomlawsociety.co.im/index.htm>

Documents may be submitted at any time during office hours (9.00am to 4.30pm Monday to Thursday and 9.15am to 4.00pm on Friday) 'over the counter' in the Companies Registry.

Submission may also be effected by post or after office hours by way of the letterbox located in the main door of the registries building on Deemsters Walk, Bucks Road, Douglas. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be left in the letterbox.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank Holiday will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

However, section 208(3) of the Companies Act 2006 states that a document which is not accepted for registration and has been rejected under the provisions of section 208(1), will not be considered to have been submitted at all.

It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

Please note: The Department does not currently accept statutory documents by fax or E-Mail.

COMPANIES REGISTRY

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Douglas, Isle of Man
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Telephone: +44 (0)1624 689389
E-mail: companies@gov.im
Website: www.companiesregistry.gov.im