

RESTORATION OF A COMPANY

INFORMATION LEAFLET NO. 11 / APRIL 2019

INTRODUCTION

The Companies Act 2014 introduced a formal procedure for the Voluntary Strike-off of a company and clarified the procedure for restoration. There is a simplified procedure for restoration regardless of the means of strike-off. See leaflet 28 for more information on strike-off.

Part of the effect of strike-off and dissolution is that the liability, if any, of a director, other officer or a member of a company that has been dissolved via strikeoff shall continue and may be enforced as if the company had not been dissolved. The High Court has the power to wind up a company that has been struck off the register or dissolved under that section.

PART 1: RESTORATION

A company can be restored to the register of companies in one of two ways depending on the period of time that has elapsed since the company was struck off:

- Administrative action
- Court order

This information leaflet addresses in detail these two restoration methods. All forms (and associated filing fees) referred to in this publication are available at www.cro.ie.

PLEASE NOTE: Payment in respect of all restoration applications must be made by bank draft (H1s, H1OMCs). **Cheques are not accepted.** All annual returns must be completed and paid for online as of June 1st 2017.

This leaflet does not seek to interpret the Companies Act in any way. While the staff of the CRO will answer any questions you may have, you should consult your professional adviser concerning the restoration procedures involved.

1.1. RESTORATION VIA ADMINISTRATIVE ACTION

Where a company has been struck off and dissolved for a period not exceeding 12 months, it may, on the application of an officer or member of the company, make an application for restoration to the Registrar of Companies.

(A separate process is available and applicable to Owner Management Companies only. See. 2.2 below).

Process for restoration

Where a company has been struck off pursuant to section 733 Companies Act 2014, it may make an application to the Registrar of Companies to have itself restored to the register, if application is made within the time limit.

An application for restoration should be made on **Form H1**. The Form H1 must be received within 12 months of the date of the company's dissolution. There are a number of documents that must be submitted with the form.

The following requirements must be met within 15 months of the date of the dissolution of the company:

1. All annual returns, together with the financial statements which are required to be annexed to same pursuant to the provisions of the Companies Act 2014, which are outstanding from the company, if any, are also delivered to the CRO. The financial statements must relate to an individual financial year and may not be amalgamated with the financial statements for another financial year or years. (Fee €20 per return plus the relevant late filing fees). Payment in respect of all restoration applications must be made by bank draft (including H1s, H1OMCs) - (B1's and late filing penalties are paid for online). Cheques are not accepted.

If a company was struck off following default in compliance with Revenue Commissioner requirements, an additional document must be submitted.

2. Written confirmation from Revenue that all outstanding, if any, statements required by section 882 Taxes Consolidation Act 1997 have been delivered to them by the company.

Please Note

All outstanding annual returns must be filed. Annual returns must be accompanied by audited financial statements (where required). Under the Companies Act 2014 if a company is late in filing its return, audit exemption is lost for the next two years returns. In addition, the application fee for a company restoration using Form H1 is payable by either cash, bank draft, from the company's CRO deposit account.

Where the address of the company has changed, a correctly completed **Form B2** must be filed. Where there has been a change in a director/secretary or a change in their details, a **Form B10** must be filed to accordingly notify the CRO. Both form B10 and B2 can only be completed online. See <https://core.cro.ie>.

In summary, for the company to be administratively restored within 12 months of the dissolution, form H1 must be submitted and regardless of the means of strike-off - (a) the Registrar must have received from the company all annual returns outstanding, if any, being annual returns prepared in accordance with Part 6 of the Companies Act 2014; (b) the Registrar must have received written confirmation from the Revenue Commissioners that they have no objection to the company being restored to the register under this section (if applicable); (c) the Registrar must be satisfied that section 137(1) is being complied with in relation to the company; and (d) the Registrar must be satisfied that no notification required by section 149(8) remains outstanding in relation to the company.

Failure to complete an application for an administrative restoration within a year and meet the requirements outlined above within 15 months of the dissolution of the company, will mean the presenter must apply to the court and follow the court restoration process.

Please Note: Company cheques belonging to the dissolved company cannot be used to submit forms for the restoration as a dissolved company has no legal status. Payment in respect of all restoration applications must be made by bank draft (including H1s, H1OMCs). B1's and late filing fees are paid online by credit card/customer account. Cheques are not accepted.

1.2. Multi-Unit Developments Acts 2011

An **Owners Management Company** is defined in Section 1 of the Multi-Unit Developments Act 2011 (a company established for the purposes of becoming the owner of the common areas of a multi-unit development and the management, maintenance and repair of such areas and which is a company registered under the Companies Acts). Where such a company has been struck off pursuant to section 733 Companies Act 2014, s.311 Companies Act 1963 or section 12 Companies (Amendment) Act 1982, it may make an application to the Registrar of Companies to have itself restored to the register.

An application for restoration should be made on **Form H1-OMC** after the first year and before the expiration of **six years** from the date of the company's dissolution.
(If restoration is being made within 12 months of the dissolution, form H1 must be used instead).

Provided that all annual returns, together with the financial statements which are required to be annexed to same pursuant to the provisions of the Companies Act 2014, which are outstanding from the company, if any, are also delivered to the CRO, the Registrar is empowered to restore the name of the company to the register. The financial statements must relate to an individual financial year and may not be amalgamated with the financial statements for another financial year or years. (Fee €20 per return plus the relevant late filing fees).

Unless the accountant's/solicitor's certificate accompanies the form, the company cannot be restored to the register. Without a certified copy of the deed of transfer of the common areas or a part thereof in respect of the multi-unit development in relation to which the company was incorporated, the company cannot be restored. "Certified copy" means a copy of the deed of transfer that has been certified by a solicitor as a true copy of the original deed.

2. RESTORATION VIA COURT ORDER

Where a company has been struck off and dissolved for a period exceeding 12 months, administrative restoration by the Registrar of Companies is not possible.

However, provided that 20 years has not elapsed from the date of its dissolution, the company or any member may make an application to the High Court for restoration where the company was struck off voluntarily at the request of the company, or by any officer or member of the company where the company was struck off for non-filing of annual returns or at the request of Revenue for non-delivery of a statement to it. (An investment company can only be restored by Registrar application within 2 years under section 1403 Companies Act 2014).

It is advisable that legal advice be obtained in relation to any proposed application to court for restoration.

A restoration application must be made on notice to the Registrar of Companies, the Minister for Public Expenditure and Reform and the Revenue Commissioners, each of whom has various procedural requirements before a letter of no objection to the restoration can be issued. The Chief State Solicitor's Office represents the CRO and the Minister for Public Expenditure and the Revenue Solicitor represents Revenue.

2.1 Company/member/officer & restoration

A company that has been dissolved for a period of less than 20 years may apply to the High Court to be restored. The company will generally opt for administrative restoration when less than 12 months has expired since the company was dissolved, as this is a speedier and cheaper option than a High Court application.

The application for court restoration is made under section 738 Companies Act 2014. The director, member or solicitor acting on behalf of the company should submit a letter, signed by a Director of the Company or by a solicitor acting on behalf of a Director of the Company, to Enforcement Section, CRO, requesting confirmation that the Registrar of Companies has no objection to the restoration of the company to the Register.

The Registrar will furnish a letter of no objection to an application pursuant to section 739(1) to restore a company to the register, subject to compliance with the following:

All outstanding annual returns¹ (including the financial statements which are required to be annexed pursuant to the provisions of the Companies Act) are delivered to the CRO, and are in order. Non-trading companies (dormant companies) must submit with each annual return an auditor's report and a balance sheet reflecting the share capital.

When the annual returns have been filed and checked, a letter of no objection to the restoration application will issue from CRO, subject to the restoration order including a provision that it will lapse unless it is delivered by the applicant to the Registrar of Companies within 28 days after the date of its perfection. In the event that it is not complied with within the period specified, the company will remain dissolved.

Where good cause is shown why the finalised returns cannot be submitted prior to the court hearing, the Registrar of Companies may issue a letter of no objection which is strictly conditional upon the restoration order sought including a provision that the order will lapse in the event of annual returns and accounts not being delivered by the applicant to the Registrar of Companies pursuant to the Companies Act 2014, within the timeline specified in the order. This letter will clearly state that the CRO is not in receipt of outstanding annual returns and it will be a matter for the court to decide whether or not a restoration order may be made in these circumstances.

¹ In addition to the standard filing fee, a late filing fee of €100 is levied in respect of a late return (i.e. filed more than 28 days after the date up to which the return is made), together with a fee of €3 for each additional day the return is late after the 28 day period, capped at a total filing fee of €1,200 per return. On a restoration application, the late filing fee is capped at a maximum of three years' filing fee i.e. €3,600. Payment must be made by credit card or CRO account only. Company cheques cannot be accepted in respect of dissolved companies.

A restoration order made by the Court will not have effect unless all outstanding returns, including financial statements, are delivered to the CRO within the period specified in the court order. A certified copy of the court order² must be filed within 28 days after the date of perfection of the order. In the event that it is not complied with within the period specified, the company will remain dissolved.

Following the lodgement of the court order in the CRO, the company's designation is changed from "Dissolved" to "Normal", effective from the date of receipt of the court order in CRO.

Notice of the restoration of the company will be published by CRO in CRO Gazette in due course. A company search carried out at <http://search.cro.ie/company/> will also show that the company has been re-instated. The date of re-instatement will also appear on a company printout.

2.2 Creditors & restoration

A creditor of a company, which was dissolved as a result of its failure to file annual returns, at the request of the Revenue or due to a voluntary strike-off request, may apply to the Circuit Court or High Court at any time to have that company restored to the register, provided that 20 years has not elapsed since the date of dissolution of the company.

If the company was struck off, a creditor may apply to the High Court or Circuit Court, pursuant to section 738(2)(b) Companies Act 2014, for the restoration of the company.

The following steps are required to be followed by the creditor or his/her/its solicitor:³

- (a) Submit a letter to Enforcement Section, CRO, requesting confirmation that the Registrar of Companies has no objection to the restoration of the company to the Register.

The Registrar will issue a letter of no objection to a creditor or solicitor strictly subject to notice being given by or on behalf of the creditor to the last recorded (as per CRO records) officers of the dissolved company:

- (i) of the hearing date of the restoration application, and
- (ii) that, pursuant to section 740(4) Companies Act 2014, a direction will be included in the court order that :
 - (a) there is procured by one or more specified members or officers of the company the delivery by the company of all outstanding annual returns, in accordance with Part 6 Companies Act 2014, to the Registrar;
 - (b) there is delivered by such specified members or officers all outstanding statements as required by section 882 of the Taxes Consolidation Act 1997 in relation to the company to the Revenue Commissioners;
 - (c) such specified members or officers take all reasonable steps to ensure that the company appoints a director and delivers to the Registrar the notification and consent required by section 149(8) and (10), respectively, and either that –
 - (i) the person so appointed is resident in a Member State of the EEA; or
 - (ii) unless a certificate under section 140 in relation to the company has been granted by the Registrar and is in force, the company provides the Registrar with a bond in accordance with section 137.

The Registrar will issue a letter of no objection to the application provided the restoration order includes a provision that it will lapse unless it is delivered by the applicant creditor to the Registrar within 28 days after the date of its perfection.

- (b) An application to the High Court or the Circuit Court under section 738 by a creditor shall be made on notice to the Registrar, the Minister for Public Expenditure and Reform and the Revenue Commissioners.

² Section 738(3) Companies Act 2014

³ In order to be a "creditor" for the purposes of the court application for restoration, the law is that the applicant must have been a creditor at the time the company was struck off the register.

- (c) Following the making of a High Court order restoring the company, deliver to the CRO for registration a certified copy of the order, together with the filing fee, within 28 days after the date of its perfection.

Following the lodgement of the court order in the CRO, the company's designation is changed from "Dissolved" to "Normal", effective from the date of receipt of the court order.

Notice of the restoration of the company will be published by CRO in CRO Gazette in due course. A company search carried out at www.cro.ie will also show that the company has been re-instated. The date of re-instatement will also appear on a company printout.

3. Restoration and Company Type

Where a company is restored to the register and has not undergone the changes required by the Companies Act 2014, the changes will need to be implemented at restoration.

- Public guarantee companies must include "Company Limited by Guarantee" or "Cuideachta faoi Theorainn Ráthaíochta" at the end of their names unless exempted. Section 1178 Companies Act 2014.
- Private guarantee companies must include "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe" at the end of their name unless exempted. Section 969 Companies Act 2014.
- Unlimited companies must include "Unlimited Company" or "Cuideachta Neamhtheoranta" at the end of their name. Section 1237 Companies Act 2014.

Private Limited by shares companies

Please note that under Schedule 6 Section (12)(3) Companies Act 2014 any restoration made of a private company limited by shares incorporated under the previous Companies Acts and dissolved prior to the end of the Transition Period and which was unconverted to either an LTD or DAC limited by shares company at the time of dissolution, will result in the restoration of such a company as a private company limited by shares under Part 2 Companies Act 2014 (LTD company).

If the company's type, before being so struck off, was that of a private company limited by shares and the date on which the company is restored to the register under Chapter 2 of Part 12 or section 30 of the Multi-Unit Developments Act 2011 is subsequent to the expiry of the transition period (within the meaning of Chapter 6 of Part 2), then, subject, in the case of a restoration under section 738 or 741, to any direction or order of the court under section 742, section 61 (1)(a) and (b) shall apply in relation to the company notwithstanding that the company was not an existing private company within the meaning of that Chapter 6 and, accordingly, the company shall, on the date of its restoration to the register, be deemed to be a private company limited by shares to which Parts 1 to 15 apply and the other provisions of section 61 shall apply to it with any necessary modifications. LTD companies have "Limited" or "Teoranta" at the end of their name. Section 26 Companies Act 2014.

If it is desired that the company should instead be a Designated Activity Company, then re-registration can be effected under Part 20 Companies Act 2014. Form D20 is submitted. The Company name would also change so that it is ended with the suffix "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe".

AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ
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