

STRIKE-OFF AND ENFORCEMENT

INFORMATION LEAFLET NO.28 / APRIL 2019

INTRODUCTION

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.

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The CRO continues to address the level of compliance by Irish registered companies. Over 11,000 companies are struck off on average each year. Companies have requirements under the Companies Act to file an annual return with the CRO. Failure to do so can result in the company being struck off the register.

1.1. INVOLUNTARY STRIKE-OFF

1.1.1. Grounds for Strike-off

There are several grounds for the strike-off of a company from the register involuntarily. The grounds are:

- The company has failed to file an annual return with the CRO as required by section 343;
- The Revenue Commissioners have given a notice under section 882(3) of the Taxes Consolidation Act 1997 to the Registrar of the company's failure to deliver the statement required under section 882 of that Act;
- The Registrar has reasonable cause to believe that section 137(1) is not being complied with in relation to the company - (the requirement to have an EEA resident director);
- The company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting;
- The company is being wound up and the Registrar has reasonable cause to believe that the affairs of the company are fully wound up and that the returns required to be made by the liquidator have not been made for a period of 6 consecutive months;
- There are no persons recorded in the office of the Registrar as being current directors of the company.

Companies should note that a company may be struck off the register if it has failed to file an annual return for one year.

1.1.2. Consequences of Involuntary Strike-off

The consequences are very serious for a company that is still trading (section 734 2014 Act):

- The assets of the company become the property of the State on dissolution of the company;
- The company ceases to exist as a legal entity with effect from the date of strikeoff and dissolution;
- The protection of limited liability is lost with effect from that date, and if the business formerly carried on through the company is continued, the owners are trading in their personal capacity;
- Banks should be unwilling to lend money to an entity which has, effectively, ceased to exist;
- There can also be unpleasant consequences for directors of such companies in that a disqualification order may be made against them by the High Court on the application of the Director of Corporate Enforcement.
- The liability, if any, of a director, other officer or a member of a company that has been dissolved under section 733(4) shall continue and may be enforced as if the company had not been dissolved.

1.1.3. Procedure

In accordance with section 728 of the Companies Act 2014, the registrar may give notice of the Registrar's intention to strike a company off the register on one of the grounds set out above. It is the policy of the CRO to issue non-statutory reminder letters to non-compliant companies.

These notices are issued by email where an address has been supplied or where the previous annual

return was submitted electronically. The strike-off process commences with the issue of the statutory strike-off notice.

The Registrar will send the notice by registered post - to the company at its registered office or if an individual is recorded in the office of the Registrar as the liquidator of the company, to the liquidator.

The Registrar will also send a copy of the foregoing notice by prepaid ordinary post to such persons, if any, as are recorded in the office of the Registrar as being current directors of the company but non-compliance with this subsection does not affect the validity of the process. The address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

Where a company does not have a registered office notified to the CRO, instead of giving a notice under section 727(1), the Registrar will publish a notice in the CRO Gazette containing the information required by section 728 where -

- (a) the company has not, for 20 or more consecutive years, made an annual return as required by section 343; and
- (b) no notice of the situation of the registered office of the company has been given to the Registrar as required by section 50.

1.1.4. Contents of Registrar's notice to company

The Registrar's notice under section 727(1) will -

- (a) state that the issue of the notice is the first step in a process that may lead to the company being struck off the register;
- (b) state the ground or grounds for striking off being invoked by the Registrar;
- (c) state that the company will be dissolved if it is struck off the register;
- (d) state that each director of the company at the date that the notice is sent is liable for disqualification if the company is struck off the register (this does not apply to companies in liquidation);
- (e) specify the remedial step;
- (f) specify the date on or before which the remedial step must be taken (28 days); and
- (g) state that failure to take the remedial step on or before the date so specified may result in the Registrar giving public notice of an intention to strike the company off the register.

The date to be specified for the purposes of subsection (1)(f) shall be a date falling not less than 28 days after the date of the notice.

1.1.5. Remedial Steps that can be taken to remove a company from the strike-off process

The remedial step to have a company removed from the strike-off process is whichever of the following applies:

- the delivery to the Registrar of all annual returns as required by section 343 that the company has failed to make;
- the delivery to the Revenue Commissioners of the statement that the company is required to deliver under section 882(3) of the Taxes Consolidation Act 1997;
- the provision to the Registrar of evidence that section 137(1) is being complied with in relation to the company;
- the provision to the Registrar of the details of the liquidator and of up to date periodic statements having been furnished under section 681;
- the notification to the Registrar under section 149(8) of the appointment of a director of the company.

If the Registrar does strike-off the company it will be dissolved under section 733(2) 2014 Act.

1.1.6 The CRO Gazette - Public notice of intention to strike company off register

If the Registrar has given a notice and the remedial step has not been taken on or before the date specified in that notice, the Registrar may, by publishing a notice in the **CRO Gazette** that gives public notice of the Registrar's intention to strike the company off the register. The CRO Gazette is published on the CRO website each week - www.cro.ie. The date shall be a date falling not less than 28 days after the date of publication of the notice.

The company will be dissolved on the date of publication by the Registrar of the notice in the CRO

Gazette (2nd Involuntary Strike-off Gazette) of its being struck off the register and that date is referred to subsequently as “date of dissolution”.

1.2 VOLUNTARY STRIKE-OFF

Strike-off is not always involuntary. A company that ceases to trade, or has never traded, has no assets in excess of €150 and which has no outstanding creditors can request that the Registrar strike-off the company. Under the Companies Act 2014, this procedure has been placed on a formal setting (section 731-733).

1.2.1 Conditions for Voluntary Strike-off

Section 731 of the Companies Act 2014 sets out the conditions for the voluntary strike-off application. A company may apply to the Registrar to be struck off the register if the following conditions are satisfied:

- (a) the circumstances relating to the company are such as to give the Registrar reasonable cause to believe that it has never carried on business or has ceased to carry on business;
- (b) the company has, within 3 months before the date of the application, by special resolution -
 - (i) resolved to apply to the Registrar to be struck off the register on the ground that it has never carried on business or has ceased to carry on business; and
 - (ii) resolved that pending the determination (or, should it sooner occur, the cancellation, at its request, of this process) of its application to be struck off, the company will not carry on any business or incur any liabilities;A copy of the special resolution must be filed with the CRO. If it is not already submitted when applying for voluntary strike-off, it should be filed with the H15 on the G1-H15 form.
- (c) the company has delivered to the Registrar all annual returns required by section 343 that are outstanding in respect of the company as at the date of the application;
- (d) the company has delivered to the Registrar a certificate in the **Form H15** (filing fee €15) signed by each director certifying that as at the date of the application -
 - (i) the amount of any assets of the company does not exceed €150;
 - (ii) the amount of any liabilities of the company (including contingent and prospective liabilities) does not exceed €150; and
 - (iii) the company is not a party to ongoing or pending litigation;
- (e) the Registrar has received from the Revenue Commissioners written confirmation dated **not more than 3 months** before the date on which the Registrar receives the application that the Revenue Commissioners do not object to the company being struck off the register; and
- (f) the company has caused an advertisement, in the prescribed form (see 1.2.5), of its intention to apply to be struck off the register to be **published within 30 days before the date of the application** in at least 1 daily newspaper circulating in the State.

(2) Where an application under this section by a company to be struck off the register is made within one year after the date on which the company has changed its name or its registered office (or both), then, as the case may be –

- (a) the former name of the company, as well as the existing name of the company; or
- (b) the former address, as well as the current address, of the company’s registered office; or
- (c) both its former name and the former address of its registered office, as well as the existing name of the company and the current address of its registered office, shall be stated in the advertisement (See 1.2.5).

1.2.2 The CRO Gazette - Public notice in case of voluntary strike-off

As soon as is practicable after the receipt of an application by a company to be struck off that satisfies the conditions, the Registrar shall, by publishing a notice in the **CRO Gazette**, (the first Voluntary strike-off Gazette), give public notice of the Registrar’s intention to strike the company off the register. The CRO Gazette is published every week on the CRO’s website - www.cro.ie.

The company will be dissolved on publication in the second Voluntary strike-off Gazette (at least 90 days after the date of the first Gazette publication) unless objection is received. Objection to the strike-off must be submitted within 90 days of the date of publication of the notice of strikeoff. Objection can be made using either Form H16 (member of public) or Form H17(the company itself)

can be used to cancel the process. Forms H16 and H17 must be received within the 90 day period before 2nd publication in the CRO Gazette.

1.2.3 Objection to Voluntary Strike-off

Any person may deliver to the Registrar an objection to the striking off of the company in the **form H16**. The objection must be confined to the ground that one or more of the conditions set out at 1.2.1. have not been satisfied. The objection must be submitted **within 90 days** of the date of the publication of the notice of the strike-off. The Registrar will strike-off the company if no valid objection is made and the company will be deemed dissolved.

1.2.4 Company requests that application be cancelled

The company may request of the Registrar, by delivering to the Registrar a notice in that behalf in the prescribed **form H17**, the cancellation of the process of its being struck off the register. The request must be submitted **within 90 days** of the date of the publication of the notice of strike-off.

1.3 Format of the Advertisement to be used in Voluntary Strike-off Application

One Company

XY Limited [formerly EFG Limited*], trading as Z, [and formerly having traded as W**], having ceased to trade/never having traded (delete as applicable) having its registered office at [] {and formerly having its registered office at []***} and having its principal place of business at [], and having no assets exceeding €150 and/or liabilities, has resolved to notify the Registrar of Companies that the company is not carrying on business and to request the Registrar on that basis to exercise her powers pursuant to section 733 of the Companies Act 2014 to strike the name of the company off the register.

By Order of the Board

{Name} Director/Secretary (as applicable)

For two or more companies (Maximum 6) - which have same registered office and same principal place of business

VW Limited [formerly ABC Limited*], trading as D, [and formerly having traded as F**], having ceased to trade/never having traded (delete as applicable) and

XY Limited [formerly EFG Limited*], trading as Z, [and formerly having traded as W**], having ceased to trade/never having traded (delete as applicable) both having their registered offices at [] {and formerly having their registered offices at []***} and having their principal place of business at [], and each of which has no assets exceeding €150 and/or liabilities, have each resolved to notify the Registrar of Companies that the company is not carrying on business and to request the Registrar on that basis to exercise her powers pursuant to section 733 of the Companies Act 2014 to strike the name of the company off the register.

By Order of the Board

{Name} Director/Secretary (as applicable)

For two or more unrelated companies (Maximum 6) - (different registered offices and different principal place of business).

VW Limited [formerly ABC Limited*], trading as D, [and formerly having traded as F**], having ceased to trade/never having traded (delete as applicable), having its registered office at [] {and formerly having its registered office at []***} and having its principal place of business at [] and

XY Limited [formerly EFG Limited*], trading as Z, [and formerly having traded as W**], having ceased to trade/never having traded (delete as applicable) having its registered office at [] {and formerly having its registered offices at []***} and having its principal place of business at [],

and each of which has no assets exceeding €150 and/or liabilities, have each resolved to notify the Registrar of Companies that the company is not carrying on business and to request the Registrar on that basis to exercise her powers pursuant to section 733 of the Companies Act 2014 to strike the name of the company off the register.

By Order of the Board

{Name} Director/Secretary (as applicable)

** Where the company has changed its name within the period of 12 months prior to the date of publication of the advertisement, the former name as well as the current name must appear in the advertisement.*

*** Any business name being used by the company or which was used by it during the 12 month period prior to the date of publication of the advertisement, is required to be included in the advertisement.*

**** Where the advertisement is published within one year after the company has changed its registered office, the former registered office address as well as the current registered office address must appear in the advertisement.*

1.4 CRO Integrated Enforcement Environment (IEE)

Enforcement Measures for Overdue Returns

Annual returns which are filed late with the CRO incur a late filing fee of €100 with effect from the expiry of the company's filing deadline, with a daily late fee of €3 accruing thereafter, up to a maximum of €1,200 per return.

In addition to the late filing fee, the Registrar of Companies is empowered under law to take a number of enforcement measures in respect of those companies that file late. However, a number of companies are repeatedly paying late filing fees and therefore, the severity of the enforcement measures employed by the CRO in respect of a company relate directly to that company's annual return filing compliance history in respect of the two most recent years.

"Firm but fair" is the guiding force behind the IEE and the four underlying principles are:

- **Proportionality:** We will meet non-compliance with an appropriate enforcement response, the severity of which is related to the compliance history of the company.
- **Consistency:** The IEE will ensure that companies are not left out of an enforcement process in which they should be included. We will also take a similar approach in similar circumstances.
- **Transparency:** We will ensure company directors understand what is expected of them. This will include making clear why we intend to, or have taken enforcement action.
- **Targeting:** We will make sure that effort is directed primarily towards those companies that repeatedly breach their filing requirements.

The range of enforcement actions to which a company is exposing itself, in the event that it does not deliver this year's annual return on time (together with any other annual return that may be outstanding), is as follows:

High Court Order

Under section 797 of the Companies Act 2014, the Registrar is empowered, after the expiry of a period of 14 days or longer period as specified in the notice following the issue of a notice to a company and/or its directors, if the outstanding annual return(s) has/have not been filed at the end of that period, to apply to the High Court for:

- an order directing the company and any officer thereof to make good the default within such period as the court may specify
- an order directing that the costs of and incidental to the application be borne by Company or the officers of the company responsible for the default. Section 797 (4) (8) 2014 Act.

Furthermore, this measure may be used by the Registrar to secure the filing of an outstanding return, notwithstanding the prior conviction of the company or its directors for non-filing of annual returns, in the event that any return remains outstanding post-conviction of the company or its directors.

On-the-Spot Fine

Under section 874 (1) Companies Act 2014, a defaulting person or company must, within the period of 21 days following the issue of a notice of on-the-spot fine by the Registrar to that person or company:

- Remedy the default by filing the outstanding annual return(s), and
- Make to the Registrar a payment of the amount set out in the notice.

The defaulting person/company will be prosecuted if the terms of the on-the-spot fine notice are not complied with within the 21-day period.

Prosecution of Companies and Directors

Companies and directors of companies who fail to file an annual return with the CRO may be prosecuted under section 343 (11) Companies Act 2014. If a company fails to comply with the requirements of this section, the company and any officer of it who is in default shall be guilty of a

category 3 offence.

A director who has received three such convictions may be disqualified from acting as director, or having any involvement in the management, of any company. (Section 843 (1) 849 Companies Act 2014).

Involuntary Strike Off

A company, which fails to file an annual return in respect of any one year, may be struck off the register and dissolved. In the event that a company has an annual return outstanding, one statutory warning only is required to be issued by the CRO to the registered office of the company. (Section 727 2014 Act)

The protection of limited liability will be lost with effect from the date of strike off and any assets of the company will vest in the Minister for Public Enterprise under the State Property Act 1954 by operation of law on dissolution of the company. (Section 734 (4) 2014 Act)

Furthermore, the Director of Corporate Enforcement (ODCE) may apply to the High Court for an order pursuant to section 842 of the Companies Act 2014, disqualifying the company's directors from acting as director, or having any involvement in the management, of any company, together with an order for the legal costs incurred by the ODCE in bringing such an application and the costs incurred by that Office in investigating the matter.

Because of the emphasis on the latest return, the inclusion of a company in the list for enforcement action need not concern any company that files on time in the current year. However, if a company does not file its current return on time, the nature of the enforcement measure which will be employed will be determined by reference to the company's compliance with its return filing obligations in previous years.

Please see information leaflet 29 Offences for further information and Part 14 Companies Act 2014. Please see information leaflet 11 on Restorations.

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