

Extension of time to file annual return - District Court

INFORMATION LEAFLET NO. 39 / SEPTEMBER 2018

APPLICATIONS TO THE DISTRICT COURT

1. BACKGROUND

Under the terms of section 343 Companies Act 2014, a company whose annual return was due to be delivered to the CRO **after the commencement of the 2014 Act on 1st June 2015** and which has missed, or knows that it will miss, the deadline for filing its annual return with the CRO, may make an application for an Order to extend the time for delivery of its annual return to either the District Court, for the district where the registered office of the company is located, or the High Court.

The Registrar of Companies must be put on notice that the company is making such an application to the Court.

In this regard the Registrar must be provided with a copy of the Notice of Application (Form 93B.1) and a copy of the Affidavit (Form 93B.2) that the company will rely on in its application to the District Court. Samples of the Court Forms are provided at Appendix 2 to this Leaflet.

The District Court rules (see Appendix 1) require that the Affidavit explain why it has not been possible to prepare the annual return and that it must set out, and verify, any facts supporting the reasons why the annual return was not delivered to the Registrar within the time permitted by the Companies Act, and why it is alleged that it would be just to make an Order extending the time to file.

The Court may, if it is satisfied that it would be just to do so, make an Order extending the time in which the annual return of the company, may be delivered to the Registrar of Companies. An application to the Court can only be made in respect of an annual return which has not already been delivered to the CRO.

Only one Order may be made in respect of a particular filing year. The Order may, at the discretion of the Court, be granted to include multiple years for which returns are outstanding. However, where applications to extend are being made for multiple years, for any annual return that was due to be filed prior to 1st June 2015, the relevant court is the High Court.

The extension of time to file an annual return does not alter the Annual Return Date (ARD) of the company. The period being extended is the 28 days referred to in sections 343(2) and (3) of the Act.

If the Court grants an Order to extend the time to file, and the company delivers the Order and the annual return for the year in question to the CRO within the time periods specified by the Order, the annual return will have been delivered on time and the consequences of late filing (late filing penalties and loss of audit exemption for the following two years (if applicable)) will not apply to that annual return.

2. PROCEDURES TO BE FOLLOWED

Please note that a company must have legal representation in Court:

Step One - Obtaining a Court Date and Completing the Court forms

- An application for a court date, on Form 93B.1, must first be made to the District Court in which the company's registered office is situated - see Court Services website.
<http://www.courts.ie/rules.nsf/districtapps>
- The Form 93B.1 must state the financial year in question, the company's current Annual Return Date (ARD) and the date up to which the Court is asked to extend the time for delivery of the company's annual return to the Registrar.
- Please note that the DATE AT PARAGRAPH 3 ON THE FORM 93B.1 is the NEW EXTENDED DATE by which the company must deliver the annual return to the CRO in order to file on time. In choosing this date, the company must give itself sufficient time to deliver the annual return to the CRO, as only one Order can be made per annual return year. The date must be a date after the Court hearing and after the date of delivery of the Court Order to the Registrar.

- The time period which may be extended by the Court is the 28 days after the ARD provided for in sections 343(2) and 343(3) Companies Act 2014. The Court is being asked to extend this period of 28 days and is not changing the ARD.
- The Form 93B.1 must be signed by the Applicant (an officer of the company) or by the Solicitor for the Applicant. It must include a statement that no previous Order has been made by the District Court under section 343(5) in respect of the annual return year which is the subject of the application.

Step Two - Putting the Registrar on Notice & Letter from Registrar

- A copy of the Notice of Application (**Form 93B.1**) which contains the date and time of the Court hearing, must be served on the Registrar of Companies **along with a copy of the company's Affidavit (Form 93B.2)**, thereby putting the Registrar on notice in accordance with section 343(5), Companies Act 2014.
- The Affidavit (93B.2) is a supporting document outlining the reasons why the Court Order is being sought and must be sworn by a Director or Secretary of the Applicant company. The Affidavit is required to explain why it has not been possible to prepare the annual return and set out, and verify, any facts supporting the reasons why the return was not delivered to the Registrar on time.
- The Notice of Application (93B.1) and the signed Affidavit (93B.2), putting the Registrar on notice, **must be delivered to the CRO at least 21 days before the date fixed for hearing the application in the Court.**
- Following receipt of the Forms 93B.1 and 93B.2 in the CRO, a Letter will be issued by the Registrar to the presenter and copied to the District Court in question.
- The Registrar reserves the right to object to any application made to the District Court for an extension of time under section 343(5) Companies Act 2014.
- The Registrar will object if any one of the following circumstances apply:
 - (1) the annual return should have been delivered prior to 1st June 2015,
 - (2) the reasons provided in the Affidavit and the supporting facts do not, in the opinion of the Registrar, explain or verify why it was not possible to deliver the annual return to the CRO within the time permitted by sections 342(2) or 343(3) Companies Act 2014.
 - (3) the applicant company is a dissolved company.
 - (4) the company has previously obtained an extension of time for the same annual return year.

Step Three - Lodging papers with the District Court

- The Forms 93B.1 and 93B.2 must be lodged with the Court Clerk, along with a statutory declaration as to service on the Registrar and the Letter from the Registrar, **not later than four days before the date fixed for hearing the application.**

Step Four - The Court Hearing and granting of the Court Order

- Please note that a **company must have legal representation in Court.**
- The Registrar of Companies reserves the right to be represented in the District Court in any case where an application is made for an extension of time to file an annual return.
- If the Court grants an Order extending the time to file, the Order (**Form 93B.3**) will show:
 - a) the new date to which the extension of time to file the Annual Return has been granted.
 - b) the date by which the Court Order must be delivered to the CRO (normally 28 days after the court date).

Step Five - Delivering the Court Order and the Annual Return(s) to the CRO

If granted an Order extending the time to file, the company must

- Deliver the Court Order (93B.3) to the CRO within the period time provided in the Order. If the Court Order is not delivered to the CRO within this period provided, it will invalidate the Order.
- deliver an annual return (B1 & financial statements with the standard filing fee) to the CRO by the date to which the extension has been granted, or
- submit the B1 electronically to the CRO by the extended date and complete the filing within 28 days of the date it was submitted electronically.

It should be noted that if the company delivers its annual return to the CRO, or submits it electronically, AFTER the date to which the extension has been granted, it will be deemed to be late and will be subject to late filing penalties and loss of audit exemption for two years in the normal way.

3. CHANGE OF ORIGINAL COURT DATE

If the original Court date is changed or the case is adjourned, the company must immediately inform the Registrar of the new Court date.

4. FREQUENTLY ASKED QUESTIONS

Do I have to tell the CRO that I am making an application to the District Court for an extension of time?

Yes, the company must put the Registrar of Companies on notice that it is applying to the court and must deliver Court Forms 93B.1 and 93B.2 to the CRO **at least 21 days before the Court hearing**. The CRO will issue a Letter of Acknowledgement or Letter of Objection which the Applicant must provide to the Court.

Can I apply for an extension of time retrospectively?

Yes. Applications can be made to the District Court in respect of an annual return which has missed its deadline or where it is envisaged that a return will be late.

However, an application for extra time to file **can only be made to the District Court** in respect of (a) an annual return which has not already been filed with the CRO and (b) where the annual return was due to be filed on or after 1st June 2015.

Can I apply to the District Court for extra time to file an annual return that was due to be filed prior to 1st June 2015?

No, in that case the application for extra time must be made to the High Court. The Registrar will object to any application made in the District Court for an extension of time to file an annual return that was due to be delivered to the CRO prior to 1st June 2015.

What date can I nominate for the extension of time?

You must nominate a date (at paragraph 3 on the Form 93B.1) that is into the future and must be **after** the Court Hearing date **and** after the date allowed for the delivery of the Order to the Registrar. As a company cannot go back to the Court for a second Order for the same year, the company should ensure that it will definitely be in a position to file its annual return by the date it applies for.

The CRO must receive the Court Order (Form 93B.3) before it receives the outstanding annual return. So, when applying to the Court, the extended date on the Form 93B.1 should be a date that will enable the company to deliver the annual return and financial statements to the CRO in good time before the new deadline.

Does the extension of time change my Annual Return Date (ARD) ?

No, the extension of time relates to the 28 days after a company's ARD. It extends those 28 days for

that year only and does not change the ARD for future years.

Can I include other years in the application?

You can include multiple years for which annual returns are outstanding in an application to the District Court where the returns were due to be filed **after** the commencement of the Companies Act 2014 (1st June 2015).

However, where a return was due to be filed before 1st June 2015, the application must be made to the High Court.

You can only apply to the Court once for a particular annual return year (i.e. you cannot apply to the Court again for another Order in respect of a return for which an Order has already been granted).

Where can I get the forms to apply for an extension of time?

These forms are issued by the Courts Service - you may download them from the Court Service website. <http://www.courts.ie/rules.nsf/DistrictApps?OpenView&Start=5.83&Count=30&Expand=5#5>

My Company has been struck off/dissolved. Can my company seek an extension of time to file its outstanding annual returns?

A struck off/dissolved company does not have a legal existence until such time that it is restored to the Register.

It is the view of the Companies Registration Office that a dissolved company cannot make an application to the Court under section 343 to extend time to file its annual returns as it has no legal standing to make such an application. The Registrar will object to any application in the District Court for an extension of time to file an annual return that is made by a dissolved company.

5. WHO CAN I CONTACT IN CRO

When putting the Registrar on notice, Forms 93B.1 and 93B.2 should be sent to DCET section, CRO, O'Brien Road, Carlow.

Queries can be referred to dcet@djei.ie or 01-8045200/1890220226 and select "Option 1" for Annual Returns.

6. QUERIES ON COURTS SERVICE FORMS

The forms referred to in this document (Forms 93B.1, 93B.2 and 93B.3) are Court Service forms and queries in relation to completion of these forms should be directed to your legal advisor or to the Courts Service and not to the Companies Registration Office. Samples of the Court Forms are provided at Appendix 2 to this Leaflet.

APPENDIX 1 - STATUTORY INSTRUMENT

S.I. No. 256 of 2015

DISTRICT COURT (COMPANIES ACT 2014) RULES 2015

The District Court Rules Committee, in exercise of the powers conferred on them by section 91 of the Courts of Justice Act 1924, section 72 of the Courts of Justice Act 1936, section 34 of the Courts (Supplemental Provisions) Act 1961, and section 24 of the Interpretation Act 2005, and of all other powers enabling them in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the following rules of court.

Dated this 11th day of May 2015.

Rosemary Horgan Chairperson
Mary C Devins
Brian Sheridan
Anne Watkin
Fiona Twomey
Grainne Larkin
Roy Pearson
Noel A Doherty
Michelle Johnston

I concur in the making of the following rules of court.

Dated this 17th day of June, 2015.

FRANCES FITZGERALD,
Minister for Justice and Equality.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 23rd June, 2015.

S.I. No. 256 of 2015

DISTRICT COURT (COMPANIES ACT 2014) RULES 2015

1. (1) These Rules, which shall come into operation on the 1st day of July, 2015, may be cited as the District Court (Companies Act 2014) Rules 2015.

(2) These Rules shall be construed together with the District Court Rules 1997 (S.I. No. 93 of 1997) and all other District Court Rules.

(3) The District Court Rules as amended by these Rules may be cited as the District Court Rules 1997 to 2015.

2. The District Court Rules 1997 (S.I. No. 93 of 1997) are amended by the insertion immediately following Order 93A of the following Order:

*"Order 93B
Applications to extend time for delivery of annual return under section 343
of the Companies Act 2014*

1. *In this Order,
the "Act" means the Companies Act 2014 (No. 38 of 2014);
the "Registrar" means the Registrar of Companies.*

2. (1) *An application to the Court for an order under section 343(5) of the Act by a company for an order extending the time for the purposes of section 343(2) or section 343(3) of the Act in which the annual return of the company in relation to a particular period may be delivered to the Registrar shall be preceded by the issue by the applicant of a copy of a notice of application in the Form 93B.1, Schedule C.*

(2) *An application under this Order may be heard and determined on affidavit, which may be in the Form 93B.2, Schedule C, modified to the circumstances of the case.*

(3) *The notice of application shall-*

(a) *set out the name, registered number and location of the registered office of the applicant (and that the registered office is within the court district in which the application is made);*

(b) *set out the company's annual return date;*

(c) specify the date up to which the Court is asked to extend the time in which the annual return of the company in relation to a particular period may be delivered to the Registrar of Companies;
(d) include a statement that no previous order has been made by the District Court under section 343(5) of the Act in respect of the applicant as respects the period to which the annual return which is the subject of the application relates.

(4) An affidavit relied on in an application under this Order shall be sworn by a director or secretary of the applicant and shall-

- (a) verify the facts set out in the notice of application;
- (b) where the annual return proposed to be delivered has been prepared, exhibit a copy of same including both the annual return in the form for the time being prescribed by the Registrar of Companies and any financial statements of the company required to be delivered to the Registrar of Companies), or explain why it has not been possible to prepare same;
- (c) set out, and verify any facts supporting, the reasons why the annual return was not delivered to the Registrar within the time permitted by section 343(2) or section 343(3) of the Act and set out, and verify any facts supporting, any additional reasons why it is alleged that it would be just to make an order extending time;
- (d) exhibit any correspondence between the applicant and the Registrar concerning the application, including in particular any correspondence from the applicant notifying the Registrar of its intention to make the application and any response by the Registrar.

3. (1) The applicant shall serve on the Registrar a copy of the notice of application and copies of any affidavit and exhibits relied on not later than 21 days before the date fixed for hearing the application.

(2) In every case, the original notice of application shall be lodged with the Clerk not later than four days before the date fixed for the hearing of the application.

(3) The applicant shall, when lodging the original notice of application with the Clerk, also lodge a statutory declaration as to service on the Registrar.

4. Notwithstanding rule 2-

(a) the applicant shall be obliged to produce at the hearing of the application any correspondence received from the Registrar which has not been exhibited to any affidavit;

(b) the Court may allow, or may direct, that evidence on the application be given viva voce and on oath by an officer of the applicant or another person in addition to, or in lieu of, evidence on affidavit.

5. An order extending time in accordance with section 343(5) of the Act shall be in the Form 93B.3, Schedule C, and the applicant shall cause a certified copy of the order to be served upon the Registrar in accordance with section 343(6) of the Act, and on any other person whom the Court directs should be served with a copy of the order.

6. An application under this Order may be brought, heard and determined at any sitting of the court for the court district wherein the registered office of the applicant company is situated."

3. The Forms numbered 93B.1, 93B.2 and 93B.3 in Schedule 1 shall be added to the Forms in Schedule C of the District Court Rules 1997 (S.I. No. 93 of 1997)

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Rules insert a new Order 93B and associated forms to the District Court Rules to prescribe the procedure for applications under section 343 of the Companies Act to extend time for delivery of an annual return.

APPENDIX 2 – Samples of Courts Service Forms – originals should be obtained from the Courts Service or downloaded from Courts Service website

<http://www.courts.ie/rules.nsf/DistrictApps?OpenView&Start=5.83&Count=30&Expand=5#5->

Form No. 93B.1

COMPANIES ACT 2014, Section 343(5)

NOTICE OF APPLICATION FOR ORDER EXTENDING THE TIME IN WHICH ANNUAL RETURN MAY BE DELIVERED TO THE REGISTRAR OF COMPANIES

District Court Area of District No.
.....Applicant
..... Registrar of CompaniesRespondent

TAKE NOTICE that the above-named applicant company (the “company”), whose registered number is will apply to the District Court sitting at on the day of 20 at a.m./p.m. under section 343(5) of the Companies Act 2014 for an order extending the time for the purposes of *section 343(2) *section 343(3) of the Companies Act 2014 in which the annual return of the company in relation to the period may be delivered to the Registrar of Companies.

1. The registered office of the company is situated at in the court *(area and) district aforesaid.
2. The company’s annual return date is
3. If an order is made extending time, the annual return which is the subject of this application is intended to be made up to *(NB. Insert new/extended date for delivery of Annual Return here. You must nominate a date that is after the Court Hearing and after the date for delivery of the Court Order to the CRO).*
4. No previous order has been made by the District Court under section 343(5) of the Act in respect of the company as respects the period mentioned at 3 above.
- *5. The company will apply to the Court to allow a period longer than 28 days after the date on which an order under section 343(5) of the Act is made for delivery of a certified copy of the order to the Registrar, being a period of

Dated this day of 20

Signed
Applicant/solicitor for the Applicant

To District Court Clerk
District Court Office
At

To the Registrar of Companies
At

*Delete where applicable

The Notice to the Registrar must be delivered to the CRO not later than 21 days before the Court date. Otherwise it cannot be accepted.

The Court Order must be delivered to the CRO not later than the time provided by the Court for this purpose (normally 28 days). If delivered after this date, it will invalidate the Order.

Form No. 93B.2

COMPANIES ACT 2014, Section 343(5)

**AFFIDAVIT SUPPORTING APPLICATION FOR ORDER EXTENDING
THE TIME IN WHICH ANNUAL RETURN MAY BE DELIVERED TO
THE REGISTRAR OF COMPANIES**

District Court Area of

District No.

..... Applicant
..... Registrar of Companies Respondent

I, of, a *director *secretary of the applicant company, aged eighteen years and upwards MAKE OATH and say as follows:

1. I beg to refer to the contents of the notice of application herein. The statements of fact contained in the said notice of application which are within my own knowledge are true. I honestly believe that the information contained in the said notice of application which is not within my own knowledge is true.

2. *[I beg to refer to a print of the company's annual return in the form for the time being prescribed by the Registrar of Companies covering the period to *and to a copy of the company's financial statements up to upon which marked "A" I have signed my name prior to the swearing hereof.] or *[It has not been possible to date to prepare the company's annual return covering the period to because (set out reasons)]

3. The reasons why the annual return was not delivered to the Registrar of Companies within the time permitted by section 343(2) or section 343(3) of the Companies Act 2014 are (set out reasons and verify any facts relied on). *It would additionally be just to make an order extending time for delivery of the company's annual return because (set out reasons and verify any facts relied on).

*4. (Where the applicant will apply to the Court to allow a period longer than 28 days after the date on which an order is made for delivery of a certified copy of the order to the Registrar) The reasons why a longer period than 28 days should be allowed for delivery of a certified copy of the order to the Registrar are (set out reasons and verify any facts relied on);

*5. I beg to refer to the entire sequence of correspondence between the applicant and the Registrar concerning this application, upon which pinned together and marked "B" I have signed my name prior to the swearing hereof.

6. I accordingly request an order in the terms set out in the notice of application.

SWORN before me [name in capitals] at in the County of on the day of20, by the said

*[who is personally known to me],

*[who is identified to me by who is personally known to me]

*[whose identity has been established to me before the taking of this affidavit by the production to me of

†passport no. issued on the day of by the authorities of , which is an authority recognised by the Irish Government,

†national identity card no. issued on the day of by the authorities of which is an EU Member State, the Swiss Confederation or a Contracting Party to the EEA Agreement

†Aliens Passport no. issued on the day of by the authorities of which is an authority recognised by the Irish Government

†refugee travel document no. issued on the day of by the Minister for Justice and Equality

† travel document (other than refugee travel document) issued on the day of by the Minister for Justice and Equality]

.....
Deponent

.....
*Commissioner for Oaths/ *Practising Solicitor

*Delete if inapplicable

†Where relevant, select appropriate option and delete others.

This affidavit is filed with the District Court Clerk aton theday of 20... by on behalf of the applicant in the above proceedings.

Form No. 93B.3

COMPANIES ACT 2014, Section 343(5)

**ORDER EXTENDING THE TIME IN WHICH ANNUAL RETURN MAY
BE DELIVERED TO THE REGISTRAR OF COMPANIES**

District Court Area of District No. Applicant
..... Registrar of Companies Respondent

WHEREAS UPON APPLICATION made to the Court today by the above- named applicant company (the "company"), whose registered number is and whose registered office is situated at in the court *(area and) district aforesaid and whose annual return date is , under section 343(5) of the Companies Act 2014 for an order extending the time for the purposes of *section 343(2) *section 343(3) of the Companies Act 2014 in which the annual return of the company in relation to the period to may be delivered to the Registrar of Companies.

THE COURT

*HAVING READ THE AFFIDAVIT of grounding the application

*HAVING HEARD what was offered on behalf of the company *and the Registrar

*BEING SATISFIED THAT notice of the application was duly served

BEING SATISFIED THAT no previous order has been made by the District Court under section 343(5) of the Act in respect of the company as respects the period concerned

BEING SATISFIED THAT it would be just to do so

HEREBY ORDERS pursuant to section 343(4) of the Companies Act 2014 that the time within which the annual return of the company in relation to the period to may be delivered to the Registrar of Companies be and is hereby extended up to

A certified copy of this order is to be delivered by the company to the Registrar of Companies *within 28 days
*[insert longer period if ordered]

Dated thisday of 20.....

Signed
Judge of the District Court

**Delete where inapplicable*

AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ
Oifig Poiblí: Teach Bloom, Plás Gloucester Íochtarach, BÁC 1
Fiosruithe: Bóthar Uí Bhriain, Ceatharlach, R93 E920

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Ríomhphost: info@cro.ie **Láithreán:** www.cro.ie

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