

Strike off, dissolution and restoration under the BVI Business Companies Act

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The BVI Registrar of Corporate Affairs (the **Registrar**) maintains a Register of Companies (the **Register**) which records the name of each company incorporated or continued under the BVI Business Companies Act (as amended) (the **Companies Act**).

This guide examines the procedures by which the name of a company may be struck off, or restored to, the Register under the Companies Act.

What is strike off?

Strike off (sometimes referred to as administrative strike off) is a procedure by which the Registrar removes the name of a company from the Register. A company which has been struck off the Register on or after 1 January 2023 will be dissolved on the date the Registrar publishes the notice of striking off in the BVI Gazette in respect of the company.

Who may initiate a strike off?

Only the Registrar may initiate a strike off. Unlike the position in other jurisdictions, the Companies Act does not allow a company to apply to be struck off.

Why will a company be struck off?

The Registrar may strike off a company if:

- the company does not have a registered agent;
- the company fails to file any return, notice or document that it is required to file under the Companies Act;
- the Registrar is satisfied that the company has either ceased to carry on business or is carrying on business without a required licence, permit or authority;
- the company fails to pay its annual fee or any late payment penalty by the due date; or
- the BVI Financial Services Commission (the **FSC**) has revoked or cancelled a licence issued to the company to carry on financial services business.

The most common reason for the Registrar striking off a company is its failure to pay an annual fee or a penalty.

The Registrar will not usually strike off a company if the Registrar believes that the company is trading or owns property or there is some other reason why the company should not be struck off. In these circumstances, the Registrar may instead refer the company to the FSC for investigation.

Procedure

The strike off process is as follows:

- the Registrar must:

- send the company a notice stating that it will be struck off on the date specified in the notice (which must not be less than 90 days after the date of the notice) (the **Expiration Period**) unless the company shows cause why it should not be struck off; and
- publish a notice of the Registrar's intention to strike off the company in the BVI Gazette;
- if the company has not shown cause why it should not be struck off during the Expiration Period, the Registrar will strike off the company's name from the Register; and
- the Registrar will publish a notice of the company's striking off in the BVI Gazette;

the company's striking off is effective from the date on which the strike off notice is published in the BVI Gazette (the **Strike Off Date**). A company is immediately dissolved on the Strike Off Date.

Right of appeal

A person who is aggrieved by a company's striking off from the Register and dissolution (such as a director, shareholder, employee or creditor of the company) may appeal to the High Court within 30 days of the Strike Off Date. Notice of such appeal must be served on the Registrar who is entitled to appear and be heard at the hearing of the appeal. The Registrar may suspend operation of the striking off upon such terms as the Registrar considers appropriate until after the determination of the appeal.

Effects of strike off and dissolution

Once a company is struck off and dissolved:

- neither it nor any director, shareholder, liquidator or receiver of it may:
 - commence any legal proceedings, carry on any business or deal with its assets in any way;
 - defend any legal proceedings, make any claim or claim any right for it or in its name; or
 - act in any way with respect to its affairs,
 however, it or a director, shareholder, liquidator or receiver of it may:
 - apply for its name to be restored to the Register; or
 - continue to defend or carry on any legal proceedings that had been commenced before it was struck off;
- it may incur additional liabilities even though it has been struck off and dissolved (and is acting in contravention of law);
- a creditor may make a claim, and obtain a judgment, against it even though it has been struck off and dissolved; and
- the company and each shareholder, director, officer or agent of it remains responsible for any liability that existed before it was struck off.

Restoration to Register

Application to the Registry

Where a company has been struck off and dissolved, the company or a creditor, shareholder or liquidator of the company may, within five years of the Strike Off Date, apply to the Registrar to have the company's name restored to the Register.

The Registrar may restore the company to the Register upon being satisfied that the following conditions have been met:

- the company was carrying on business or in operation at the date of its striking off and dissolution;
- a licensed person has agreed to act as registered agent of the company;
- the registered agent has made a declaration in the approved form that the company's records have been updated as required under section 213(3B) of the Companies Act;
- if, following the striking off and dissolution of the company, any property of the company has vested in the Crown *bona vacantia*, the Financial Secretary:
 - has signified to the Registrar the Crown's consent to the company's restoration to the Register; or
 - has, within seven days of receiving a request to give the Crown's consent to the company's restoration to the Register, failed to respond to the request giving the Crown's consent or refusing consent;

- the company has paid the restoration fee and any outstanding penalties in relation to the company; and
- the Registrar is satisfied that it would be fair and reasonable for the company to be restored to the Register.

The company must appoint a registered agent immediately once its name is restored to the Register.

Effect

Where a company's name is restored to the Register, the company is deemed never to have been struck off the Register and dissolved.

Application to court

Where a company has been dissolved (whether as a result of an administrative strike off or a liquidation), any creditor, former shareholder, director or liquidator of the company or person who can show an interest in doing so (among others), may apply to the High Court to have the company's name restored to the Register if:

- the company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation under the Companies Act or liquidation under the Insolvency Act (as amended) (the **Insolvency Act**);
- on the date of dissolution, the company was not carrying on business or in operation;
- the purpose of restoration is to:
 - initiate, continue or discontinue legal proceedings in the name of or against the company; or
 - make an application for the company's property that has vested in the Crown *bona vacantia* to be returned to the company, subject to certain conditions; or
- in any other case not falling under the foregoing or in which application cannot be made to the Registrar (as discussed above under 'Application to the Registry'), the Court considers that, having regard to any particular circumstances, it is just and fair to restore the company to the Register.

The applicant must make the application not more than five years after the date on which the company was dissolved. Notice of the application must be given to the Registrar, BVI financial secretary and (if the company was a regulated person at any time before it was dissolved) the FSC, each of whom is entitled to appear and be heard on the hearing of the application.

Court orders

The High Court may:

- restore the company to the Register subject to:
 - the court being satisfied that a licensed person has agreed to act as registered agent of the company;
 - the registered agent making a declaration that the company's records have been updated as required under section 213(3B) of the Companies Act;
 - the company paying the restoration fee and any outstanding penalties in relation to the company; and
 - such other conditions it considers appropriate; and
- give any directions or make any orders it considers necessary or desirable for the purpose of placing the company and any other person in (as nearly as possible) the same position as if the company had not been dissolved or struck off.

In practice, the High Court is only likely to exercise its discretion to restore the company to the Register to allow a newly discovered asset to be distributed or a new claim to be made against the company.

Liquidated company

Where a company is liquidated under the Companies Act or the Insolvency Act, it is dissolved and its name is struck off (in this sense simply meaning deleted) from the Register. In these circumstances:

- the High Court may not restore the company to the Register unless:
 - the applicant nominates a person to be the company's liquidator;

- the nominated person consents, and is eligible, to act as liquidator; and
- satisfactory provision is made for the fees and expenses of the liquidator; and
- if the High Court makes an order to restore the company to the Register:
 - the High Court will appoint the nominated person or some other eligible person as the company's liquidator;
 - the company will be restored to the Register as a company in liquidation; and
 - the person appointed as liquidator will be the company's liquidator with effect from the time the company's name is restored to the Register.

Registration of court order

If the High Court makes an order to restore a company to the Register, a copy of the order must be filed with the Registrar within 30 days of the making of the order by the applicant or (if the company was dissolved after its liquidation) liquidator. Provided that the order was filed within the required time frame and the Registrar is satisfied that the company has complied with the terms and conditions of the order, the Registrar will restore the company to the Register with effect from the date and time on which the order is filed and issue a certificate of restoration.

If the company's name has been reused since the company was struck off, it will be restored with its company number as its name.

Effect

Where a company's name is restored to the Register, the company is deemed never to have been struck off the Register and dissolved.

Disadvantages of strike off

Frequently, where a company is dormant, its directors and shareholders will seek to avoid the cost of placing the company into voluntary liquidation by allowing the company to be struck off and dissolved for non-payment of fees.

It is generally preferable for a company to be placed into voluntary liquidation and to have its affairs wound up in an orderly manner rather than allowing it to be struck off and dissolved automatically. For information about voluntary liquidation, refer to our guide titled *Voluntary liquidation under the BVI Business Companies Act*.

Once the voluntary liquidation of a company has been completed, the company will be dissolved so that:

- it will not become liable to pay any further annual fees or penalties; and
- (unless a successful application is made to have the company's name restored to the Register) its directors and shareholders will cease to have any further liability in respect of the company.

In contrast, there are disadvantages associated with the automatic strike off/dissolution process that make it potentially undesirable, including:

- the company becomes incapacitated, so if it has any property:
 - it will be unable to deal with its property; and
 - its property will vest in the BVI government;
- the company's directors and shareholders remain responsible for any liability that existed before it was struck off; and
- the company remains liable to pay, and continues to accrue, annual fees and penalties until it is dissolved.

Contacts

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

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