

A Guide to Company Restoration

When are Companies removed from the Companies Register?

The directors of a company may strike-off a company themselves simply by filing a form with Companies House. However voluntary application to remove a company should only be contemplated in certain circumstances and if the Company has recently traded or if there are outstanding creditors then the Company should not be struck-off, as doing so may constitute a breach of duty by the directors and the consequences can be severe.

Please note that a 'dormant' company is not the same thing as a company which has been removed from the register or struck-off. A dormant company is a company which is maintained on the register but which does not carry out any accounting, trading or investment activity. A dormant company is not required to file full accounts, however annual returns and dormant accounts forms still need to be filed for dormant companies.

In many cases companies are struck-off not by the directors but by Companies House.

Why is a Company Struck-Off by Companies House?

If companies do not fulfil their obligations to file accounts, annual returns etc. then Companies House will eventually strike the company from the companies register and it will no longer have any legal existence.

Companies House do send out reminders of filing requirements and missed deadlines. However often the registered office of the Company, which is where the reminders will be sent, has not been updated and officers of the Company no longer reside there. In that case the reminders may not be picked up.

In many other cases the reminders are sent to the correct address but they are unfortunately ignored. If you receive a filing reminder from Companies House we would strongly advise that you **act immediately** to remedy the late filing.

Companies House are becoming much stricter in relation to filing requirements and more companies are being struck-off, and are being struck-off sooner than ever before.

What is the effect of a Company being Struck-Off?

As soon as a company is removed from the register, it ceases to have any legal existence at all. All of its property will be transferred automatically to the Crown. Banks will freeze any bank accounts which belong to the struck-off company. If the company owns property then the Land Registry will not permit any transfers of that property. This does not mean that the

property is actually used by the Queen or the Government but access to the property is effectively frozen.

Often where the company owns the freehold of a residential block, individual flat-owners are unable to sell their flats until the company has been restored.

The only way of recovering property is to make an application to the Companies Court for the company to be restored to the register.

Who can Apply to Restore a Company?

There are several categories of people with an interest in the company who can apply to restore a company being: directors (on behalf of the company itself), shareholders or creditors.

There are also circumstances in which insolvency professionals can apply to restore a company.

What is the Effect of Restoration?

The effect of restoration to the register is that the company will be 'revived' as if it had never been struck-off and all of its property will be returned to it by the Crown.

What's Involved in Restoring a Company?

In order to restore a company to the register an application needs to be made to the Companies Court (a branch of the High Court). In many cases a hearing will not be required and the company may be restored with the consent of the Treasury Solicitor (who act as the Crown's legal adviser) and Companies House.

In terms of timescale, the restoration process can be relatively lengthy. Once the application has been made, the Court will set a date for the hearing of the application, which is likely to be between eight and twelve weeks at least from the date of application. The application will need to be supported by a witness statement sworn by a person who was a director of the company at the time it was struck off, setting out certain details concerning the company and the reasons for the failure to deliver the appropriate returns to Companies House.

Russell-Cooke can make the application and prepare the various documents on your behalf if you wish.

Companies House may require the overdue annual returns and annual accounts to be lodged with them prior to consenting to the order for restoration and will also require payment of any outstanding fines.

Contact Details:

If you have any queries please do not hesitate to contact Guy Wilmot on 0208 394 6531.

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.