

Snapshot application to Court for the restoration of a Guernsey company

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In Guernsey, as in the UK, there is a relatively quick and easy process for restoring companies to the Register of Companies when they have been struck off and dissolved.

Circumstances where a company may be struck off the Register of Companies (the Register)

A Company can be struck off the Register where:

- The Registrar of Companies has declared it to be defunct i.e. it is not carrying on business or is not in operation
- The Company has defaulted i.e. it has failed to deliver an annual validation, has no resident agent or registered office or has persistently contravened the Companies (Guernsey) Law, 2008 (as amended) (**Companies Law**)
- The company has voluntarily applied to be struck off pursuant to an application made by the Company

Application for restoration

An application for restoration to the Register can be made to the Court pursuant to Part XX of the Companies Law by the following parties:

- The company
- A director of the company
- A member of the company
- The Guernsey Financial Service Commission (**GFSC**) (in respect of a regulated company)
- A creditor of the company

- Any other person with sufficient interest in making the application

An application can be made to the Non-Contentious Court which sits on a Tuesday. The matter will then be dealt with '*on the papers*' and no physical court attendance is usually required. If, however, there is likely to a party opposing the application to restore then an application should be made to the Ordinary Court and court attendance will be required. Any application must be accompanied by an affidavit detailing the reasons why the company was struck off and why it needs to be restored.

It is also important that notice of the proposed application for restoration is provided to:

- HM Receiver General
- HM Procureur
- The Registrar at the Guernsey Registry
- If the entity is either regulated or supervised by the GFSC then the GFSC must also be notified

This notification allows for any comments or objection to be made to the restoration application. If there are any company fees outstanding then payment will be need to be arranged before the company can be restored. It is also important that written consent is obtained from any former directors who will continue as directors upon a restoration application being granted. Provided no issues are raised, the application can then be made at the next sitting of the non-contentious court.

It is worth noting that, in certain circumstances i.e. where the company was struck off in error, in circumstances where it should not have been, an application can be made straight to the Registrar under Section 371(10) of the Companies Law and an application to court is not required.

What will the Court consider when deciding an application?

The Court will have regard to the following:

- Whether the Company satisfies the solvency test upon restoration (except where the application is made by a creditor)
- Whether, in the case of a company that was voluntarily or compulsorily wound up, any person who was a liquidator prior to the dissolution consents to be a liquidator if the company is restored
- Whether the persons who were directors at the time the Company was struck off consent to being directors should a restoration application be granted
- The circumstances in which the Company was struck off/dissolved

- Whether there was persistent or gross violation of the Companies Law;
- Whether the Company was used for fraudulent purposes
- Whether the reputation of the Bailiwick of Guernsey as a financial centre would be jeopardised as a result of the restoration of the Company
- Whether it is just to restore the Company to the Register.

This information will all be covered in an affidavit supporting the application referred to above.

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