

Financial Supervision Commission

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Practice Note

Practice Note NMVPNI0/2006

6th April 2008

The Companies Act 2006

Restoring a Company to the Register

This Practice Note replaces NMVPNI0/2006 “Restoring a Company to the Register” issued on 1st November 2006.

Introduction

NOTE:- This Practice Note is issued by the Financial Supervision Commission in its capacity as Registrar of Companies under the Companies Act 2006 (“the Act”). All references, unless specifically stated, are to that Act only.

A copy of the Act is available on our website at:

www.fsc.gov.im > *Companies Registry* > *Companies Legislation*

This Practice Note sets out the procedure for applying to the Commission for a Direction to Restore a “struck-off” or “dissolved” company to the Register under the provisions contained in Part XIII of the Act. It is intended as a general guide only and must be read in conjunction with the relevant legislation. It has no legal status and should not be used as a substitute for legal advice.

Contents

1. Definitions and Exclusions
2. Applying to restore a “struck-off” company to the register
3. Restoring a “struck-off” company
4. Applying to restore a “dissolved” company to the register
5. Restoring a “dissolved” company

6. Further information

I. Definitions and Exclusions

- I.1 There are two instances where an administrative application can be made to the Commission for restoration to the register. That is in respect of a “struck-off” company or a “dissolved” company. These are defined in the Act as:
- (a) “struck-off” means a company which has been removed from the register under section 183 for failure to have a registered agent or file its annual return and less than six years have passed since the date of strike-off. After six years, the company is classed as “dissolved”.
- (b) “dissolved” means (i) a company which has been “struck-off” and six years have passed since it was removed from the register; or (ii) a company which has obtained a Declaration of Dissolution under section 190.
- I.2 An application **cannot** be made by a company which has been put into liquidation and wound up. In such a case, application must be made to Court for an order restoring the company to the register.
- I.3 Where a company is “struck-off”, any aggrieved person may appeal to Court within 12 weeks against the strike-off. After that appeal period, there is no provision for applying to Court for restoration until the company is classed as “dissolved”, i.e. six years after its strike-off date and in the intervening period the procedure outlined in this Practice Note must be used.
- I.4 Where a company is “dissolved”, the procedure outlined in this Practice note may be used, or an application can be made to Court by the company, any director, member or creditor, or its liquidator for an order for restoration within 12 years of the date of dissolution.

2. Applying to restoring a “struck-off” company to the register

- 2.1 A company which has been struck off the register under section 183 can apply within **six years** from the date it was struck off using the following procedure. The company, a creditor, a member or a liquidator may apply using Form IM33. The form, which is available from our website www.fsc.gov.im >Companies Registry >Company Forms >2006 Companies, must be completed by the applicant and, **in addition**, by the proposed registered agent of the company once restored. There is a filing fee (currently £1050) payable on submission of the form. The restoration of a company will be delayed until any cheque exceeding £1,000 is cleared, unless the cheque is drawn on the account of a licence holder.
- 2.2 The applicant must also (1) arrange for any outstanding documents and fees to be submitted at the same time as the application for restoration: (2) arrange for a new registered agent to be appointed if the previous one is not willing to act and (3) ensure that the company name is acceptable for registration or arrange to change it if it is not so.
- 2.3 **PLEASE NOTE: The applicant is not required to advertise the intention to apply for restoration nor is the Commission required to give notice of receipt of the application. Neither is the Commission able to accept an objection to the restoration from any person.**
- 2.4 Once the application has been received, the Commission will decide if the company can be restored or not (See below “Restoring a “struck-off company”).

3. Restoring a “struck-off” Company

- 3.1 The Commission can restore a “struck-off” only if (1) the application form and all outstanding fees are submitted; (2) a person holding a Fiduciary Services Acts licence has agreed to act as registered agent and (3) we are satisfied that it would be fair and reasonable to restore the company name.
- 3.2 If those conditions are met, we will issue a certificate of restoration to the register without further reference to the applicant and send a copy of that certificate to the applicant. Upon restoration, the company is deemed never to have been struck off the register.
- 3.3 If we refuse to restore the company, the applicant has the right of appeal to Court under section 187(4) of the Act against such refusal.

4 Applying to restore a “dissolved” company to the register

- 4.1 A company which is classed as “dissolved” (see paragraph 1.1 (b) above) can apply to be restored to the register within **twelve years** from the date it was deemed to be dissolved. The company itself, or any director, member or creditor, can make an application using Form IM34. The form is available from our website www.fsc.gov.im >Companies Registry >Company Forms >2006 Companies.
- 4.2 Before making an application, the applicant must have posted to each director, member and the registered agent at the date of the company’s dissolution a notice stating that the applicant proposes to apply to us for a Direction restoring the company to the Register and that, unless written objection is made to us within one month of the date the notice was or posted, we may make a Direction restoring the company to the register.
- 4.3 The application must be accompanied by a copy of the notice described in paragraph 4.2 above. There is a prescribed fee for the application (currently £1050), which must be paid at the time the application is submitted for registration. The restoration of a company will be delayed until any cheque exceeding £1,000 is cleared, unless the cheque is drawn on the account of a licence holder.
- 4.4 Once the application has been accepted, we will publish in one newspaper in the IOM, on our website and in an index available for inspection at our public counter, a notice to the effect that an application for restoration has been received.
- 4.5 **Applicants are advised that, should any objection be received, no Direction for Restoration will be made until either the objection is withdrawn, or we decide that the objection is without justification.**

5. Restoring a “dissolved” company

- 5.1 Once the one month period has passed since the notice given in paragraph 4.2 was last posted, and if no objection has been received, we will direct that the name of the company be restored to the register.
- 5.2 **PLEASE NOTE – The Commission has no power to require that the public record be brought up to date as part of the restoration procedure. On restoration, however, the company may be in default will its statutory filing obligations and action may be started at any time under section 183 with a view to striking the name of the company off the register. Persons having an interest in the affairs of the company should seek legal advice as to the courses of action open to protect their interest. Applicants should also note that a new**

registered agent may need to be appointed if the former agent is not willing to act after restoration.

- 5.3 Applicants are advised that no notice is required, nor will any be given, when a “dissolved” company has been restored. Upon restoration, the company is deemed to have continued in existence as if it had never been dissolved.

6. Further information

- 6.1 Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice. If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: +44 (0) 1624 689389 and the e-mail address is: companies@fsc.gov.im

- 6.2 Statutory forms and practice notes are available free of charge from our website: www.fsc.gov.im

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licenceholders is available on our website at www.fsc.gov.im/Licenceholders.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Isle of Man Law Society
27 Hope Street
Douglas
Isle of Man
IMI IAR

Tel: (01624) 662910

Fax: (01624) 679232

E-mail: iomlawsoc@advsys.co.uk <http://www.iomlawsociety.co.im/index.htm>

- 6.3 Company documents may be submitted to the Financial Supervision Commission at any time.

During office hours (9.00am to 4.30pm), submission may be effected ‘over the counter’ in the Companies Registry or at the Commission’s main reception desk on the first floor.

Submission may also be effected by post or after office hours by way of the letterbox situated by the main entrance. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be delivered to the first floor or left in the letterbox.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank

Holiday, will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

However, section 208(3) of the Companies Act 2006 states that a document which is not accepted for registration and has been rejected under the provisions of section 208(1), will not be considered to have been submitted at all.

It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

<p>Please note: The Financial Supervision Commission does not currently accept statutory documents by fax or e-mail.</p>
