

Financial Supervision Commission

Companies Registry

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Practice Note

Practice Note 3/2008

6th April 2008

The Companies Acts 1931-2004

Restoring a Dissolved Company to the Register Under Section 273B of the Companies Act 1931

Introduction

This Practice Note replaces Practice Note 3/2006 “Restoring a Dissolved Company to the Register Under Section 273B of the Companies Act 1931” issued on 1st January 2006.

This Practice Note sets out the procedure for applying to the Financial Supervision Commission (Companies Registry) for a Direction to Restore a dissolved company to the Register under Section 273B of the Companies Act 1931. It is intended as a general guide only and must be read in conjunction with the relevant legislation. This Practice Note has no legal status and should not be used as a substitute for legal advice.

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1. The Application Form and associated actions

- 1.1 This revised procedure for restoring a company is effective from 1st April 2004. It must be noted that the procedure applies to companies that have been struck off under Section 273 or dissolved under Section 273A within the previous 12 years **only**. The Financial Supervision Commission has no power to restore a company in any other circumstances.
- 1.2 A company, any person who was a director, member or creditor of the company at the date of dissolution, can make an application.
- 1.3 Before making an application, the applicant must have posted a notice to each director, the secretary and each member of the company and published such notice in one Isle of Man newspaper, stating that the applicant proposes to apply to the Financial Supervision Commission for a Direction restoring the company to the Register and that, unless written objection is made to the Commission within 30 days of the date the notice was published or posted, the Commission may make a Direction to restore the company.
- 1.4 In addition, the applicant must obtain from the Attorney General, the Assessor of Income Tax and the Collector of Customs & Excise written confirmation stating that they have no objection to the restoration of the company to the register.
- 1.5 Applicants should be aware that the Assessor of Income Tax and the Collector of Customs & Excise will require all matters outstanding with their respective departments to be settled to their satisfaction before issuing such written confirmation.
- 1.6 The application to restore the company must be made on the prescribed form "273B", which is downloadable from the Commission's website www.fsc.gov.im this consists of a single page document to be completed by the applicant.
- 1.7 The application requires to be accompanied by a copy of the notice described in paragraph 1.3 above, and by the written confirmations described in paragraph 1.4. Please note that photocopies or faxes of the written confirmations are not acceptable.
- 1.8 There is a prescribed fee (currently £1050), which must be paid at the time the application is submitted for registration.

2. Duties of the Companies Registry on receipt of an application

- 2.1 Once the application has been accepted, the Companies Registry will publish on its website and in an index available for inspection at its public counter, a notice to the effect that an application for restoration has been received.

- 2.2 **Applicants are advised that, should any objection be received, no Direction for Restoration will be made until either the objection is withdrawn, or the Commission decides that the objection is completely without justification.**
- 2.3 Once 30 days have passed since the notice given in paragraph 1.3 was last published, and if no objection has been received, the Commission may direct that the name of the company be restored to the register, and a certified copy of the direction will be posted to the applicant.
- 2.4 The direction may also include such further directions or provisions as may be thought just. The most common conditions imposed are for the filing of all outstanding documents, with payment of all fees due at the rates applicable under the current fees order.
- 2.5 A company applying to be restored may be directed to change its name on restoration where, for example, another company has taken a similar or identical name to that of the dissolved company during the period it was dissolved.

3. Restoring the Company

- 3.1 In order to complete the restoration, applicants should ensure that any conditions attached to the direction described in paragraph 2.3 to restore the company have been met, or that they can be met on registration, before submitting the certified copy of the direction to the Companies Registry. However, if these documents are not produced or the conditions are not met, this will delay the restoration of the company to the register.
- 3.2 There is no time limit for submission of the certified copy of the direction to the Companies Registry. It is up to the applicant to decide how quickly the restoration is to take effect.
- 3.3 **If the application is made by a creditor of the company, the creditors will not be required to file any outstanding documents due under the Companies Acts as a creditor is not in a position to complete statutory documents. On restoration, however, the company may be in default will its statutory filing obligations and action may be started at any time under Section 273 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.**
- 3.4 In order to speed up the process of restoration, the Companies Registry will accept the filing of all outstanding documents, together with the relevant current filing fees, at the same time as the application for restoration is submitted.
- 3.5 If all the submitted documents are in order, and no other conditions for restoration require to be made, the Companies Registry will register the certified copy of the direction without further reference to the applicant.

- 3.6 Applicants are advised that no notice is required, nor will any be given, when a company has been restored. Finally, applicants should also be aware that the Commission is not obliged to make a direction to restore a company, and any refusal to make such a direction does not affect any right to petition the High Court of the Isle of Man for an order for restoration.
- 3.7 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. Further information

- 4.1 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: 01624 689389 and the e-mail address is: companies@fsc.gov.im
- 4.2 Statutory forms and practice notes are available free of charge from our website: www.fsc.gov.im >Companies Registry.

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

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>

- 4.3 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 283B(1) of the Act states that a document is not properly “submitted” until it has been accepted for registration. Accordingly, if a document is submitted to the Companies Registry and subsequently rejected under the provisions of Section 283B(2), the document shall 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>

Company Number

Form 273B

THE COMPANIES ACTS 1931 - 1993

**APPLICATION TO THE FINANCIAL SUPERVISION COMMISSION FOR RESTORATION
OF A DISSOLVED COMPANY TO REGISTER**

Pursuant to section 273B of the Companies Act 1931

Please complete legibly in black type or bold, block lettering

Name of company:		Limited*
Date of incorporation:	Date on which company dissolved:	
Grounds for restoration of the company to the register:		

Are there any court proceedings pending by or against the company?

YES/NO

If YES, please give details:

Date of last posting or publishing of the notice to directors and members in respect of this application

___/___/20___

Name and address of applicant: (see note 1)

Relationship of applicant to the company (e.g. director, shareholder etc):
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Signed:	Date:
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Presented by:	Official use only:
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***delete as appropriate**

NOTES

I. The application for restoration may be made by a company, any director, member or creditor.

This application must be accompanied by the documents referred to in section 273B (2) of the Companies Act 1931