

**RESTORATION AND BONA VACANTIA OF STRUCK OFF COMPANIES IN CYPRUS AND THE
BRITISH VIRGIN ISLANDS**

1) IN WHAT CIRCUMSTANCES CAN A COMPANY'S NAME BE RESTORED IN THE REGISTRAR'S REGISTER FOLLOWING STRIKE OFF?

CYPRUS

At the expiration of the three month period mentioned in the notice of strike off which is published by the Registrar of Companies in the Cyprus Gazette according to Article 327(3) of the Cyprus Companies Law Cap. 113(the "**Law**"), the Registrar may, unless cause to the contrary is previously shown by the company or by any creditor or any member of the company by filing an objection in the specified form, strike its name off the register, and upon publication of the notice of strike off in the Cyprus Gazette the company shall be dissolved (Article 327(5) of the Law).

A) RESTORATION OF A COMPANY THROUGH THE COURT (SECTION 327(7))

Any company which has been dissolved by the Registrar following strike off, either voluntarily or involuntarily, can be restored under the provisions of the Law and once restored shall be considered to exist as if it has never been dissolved.

Section 327(7)(α) of the Law provides that if the company or any member or creditor thereof feels aggrieved by the company having been struck off the register or any person has suffered any damages by the company's actions prior to its strike off, may apply to the Court to restore the company.

The Court, if satisfied that the company was at the time of the strike off carrying on its business or was in operation, or otherwise that it is just that the company be restored to the register, may order the name of the company to be restored to the register, and upon an official copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off (Section 327(7)(β)).

The Court may, with the said order:

- give such directions and make such provisions which are deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off;
- order the delivery to the Registrar of such documents relating to the company which are necessary to update the register maintained by the Registrar;
- order the payment of any fees due to the Registrar by the company; and
- order the payment of any expenses incurred by the Registrar in relation to the procedure for the restoration of the company in the register.

WHAT IS THE TIME-FRAME WITHIN WHICH AN APPLICATION CAN BE MADE TO THE CYPRUS COURT TO RESTORE A COMPANY FOLLOWING STRIKE OFF:

An application can be made before the expiration of 20 (twenty) years from the date of the Registrar's publication of the strike off notice in the Cyprus Gazette (Section 327(7)(α)).

WHAT IS THE TIME-FRAME WITHIN WHICH AN APPLICATION CAN BE MADE TO THE CYPRUS COURT TO RESTORE A COMPANY FOLLOWING DISSOLUTION (LIQUIDATION)

An application may be made to restore a company which has been dissolved at any time within 2 (two) years from the date of the dissolution (Section 326(1)).

B) ADMINISTRATIVE RESTORATION (SECTION 327A)

Irrespective of the rights given under the Law to restore a struck off company through court under Section 327(7), a recent incorporation of Section 327A of the Law provides that where a company has been struck off from the companies' register due to a failure to meet the obligations imposed on it by the Law, can be restored through the procedure of administrative restoration without a court order and such company shall be considered to continue to exist as if its name had never been struck off.

The application can be made by any director or member of the Company in the specific form (HE 64).

A company who has been struck off is allowed to file for administrative restoration for the following reasons:

- non-submission of any document required under the law with the Registrar (i.e annual return);
- omission of payment of the annual levy fee with the Registrar;
- if the Registrar has reasonable cause to believe that the company was not conducting its business or was not in operation.

Criteria to be considered by the Registrar when restoring a struck off company:

- the company was conducting its business and/or in operation at the time of strike off;
- all forms, annual returns, financial statements and documents which were due at the time of strike off have been delivered or enclosed with the relevant application to update the register of the company maintained by the Registrar;
- all annual government levy fees, charges and/or fines that were imposed or incurred prior to strike off must have been paid or submitted;
- in case where the property and/or the rights of the company became bona vacantia pursuant to Section 328 of the Law, as further analysed herein below, a written consent of the authorized representative of the Republic for the company's restoration must have been submitted (Section 327A(2));

- the cost of administrative restoration of the amount of €20.00 (Twenty Euro) and an additional cost of €20.00 (Twenty Euro) for the expedition of the application has been paid; and
- the Registrar has a reasonable cause to believe that the company's strike off has placed the applicant in an adverse position.

WHAT IS THE TIME-FRAME WITHIN WHICH COMPANY CAN BE RESTORED THROUGH ADMINISTRATIVE RESTORATION FOLLOWING STRIKE OFF:

The relevant application may be made within 24 (twenty four) months from the date of the company's strike off (Section 327A(1)(a)).

The date of issuance of the certificate of restoration shall be considered as the official restoration date of the company in the register (Section 327A(3)).

The administrative restoration of a company does not affect the right of any applicant to resort to the court and request for an order such that he is placed in the same position, as nearly as may be, as if the name of the company had not been struck off, within 12 (twelve) months from the date of the administrative restoration of the company (Section 327A(4)).

The restoration of a company pursuant to this section, shall not affect the rights and obligations of a company in relation to any debt or obligation imposed or any contract committed by or on behalf of the company between the date of strike off and its administrative restoration (Section 327A(5)).

BRITISH VIRGIN ISLANDS ("BVI")

A) RESTORATION THROUGH THE REGISTRAR (SECTION 217 OF THE CONSOLIDATED BVI BUSINESS COMPANIES ACT 2004 (the "BVI ACT"))

Where a company has been struck off the register and dissolved, the company, or a creditor, member or liquidator of the company may submit an application to the Registrar to restore the company upon satisfaction of the conditions listed below (Section 217(1)):

Conditions to be met (Section 217(2)):

- 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 the BVI 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 7 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.

WHAT IS THE TIME-FRAME WITHIN WHICH A COMPANY CAN BE RESTORED BY THE REGISTRAR UNDER SECTION 217 FOLLOWING STRIKE-OFF

The application may be made within five years of the date of the notice published in the Gazette (Section 217(3) of the BVI Act).

In case the Registrar refuses to restore a company under Section 217, it is provided under Section 217(4) that the company, or a creditor, a member or a liquidator thereof, may, within 90 (ninety days), appeal to the Court from a refusal of the Registrar to restore the company to the register and, if the Court is satisfied that it would be just for the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

Where the Registrar restores a company to the register pursuant to Section 217(1) or pursuant to a direction of the Court under section 217(4), he or she or she shall issue a certificate of restoration to the Register.

Where a company is restored to the register under this section, the company is deemed never to have been struck off the Register and dissolved.

Where a company to which subsection (2) of Section 217 applies is restored to the register, it shall forthwith appoint a registered agent under section 91A of the BVI Act.

B) RESTORATION THROUGH THE COURT (SECTION 218)

Any of the following persons may make an application to the Court to restore a dissolved company to the register:

- Attorney General or any other competent authority in the British Virgin Islands;
- a creditor, former director, former member or former liquidator of the company;
- a person who but for the company’s dissolution would have been in a contractual relationship with the company;
- a person with a potential legal claim against the company;
- a manager or trustee of a pension fund established for the benefit of employees of the company; or
- any other person who can establish an interest in having the company restored on the register.

CIRCUMSTANCES UNDER WHICH AN APPLICATION TO THE COURT CAN BE MADE TO RESTORE A COMPANY TO THE REGISTRAR:

- the company was struck off the Register and dissolved following the completion or termination of its voluntary liquidation under the BVI Act or liquidation under the Insolvency Act 2003;
- 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; or
- in any other case not falling under the above or in which application cannot be made to the Registrar under section 217, the Court considers that, having regard to any particular circumstances, it is just and fair to restore the company to the Register.

WHAT IS THE TIME-FRAME WITHIN WHICH AN APPLICATION CAN BE MADE TO THE BVI COURT UNDER SECTION 218 TO RESTORE A COMPANY FOLLOWING STRIKE-OFF:

The application may not be made more than 5 (five) years following the date of dissolution of the company (Section 218(5)).

A BVI Court may, subject to the BVI Act provisions applicable to a company being voluntary liquidated under the BVI Act or under the Insolvency Act 2003, issue an order to 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 in the approved form that the company's records have been updated as required under the BVI Act;
- the company paying the restoration fee and any outstanding penalties in relation to the company; and
- such other conditions as the Court considers appropriate; and

give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.

Where a company is restored to the Registrar under Section 218, the company is deemed never to have been struck off the register and dissolved (Section 218 B(6)).

WHAT IS THE TIME-FRAME WITHIN WHICH AN APPLICATION CAN BE MADE TO THE BVI COURT TO RESTORE A COMPANY FOLLOWING LIQUIDATION:

An application for restoration of a company must be brought within five years after the company has been liquidated.

2) WHAT HAPPENS TO THE PROPERTY OF A DISSOLVED COMPANY

CYPRUS

In accordance with Section 328 of the Law, where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under Section 326 and 327 of the Law, be deemed to be bona vacantia and shall accordingly belong to the Republic, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Republic.

Furthermore, Section 329 of the Law provides that any bona vacantia property which vests in the Republic may be disclaimed by a notice signed by the Accountant-General. Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Republic under Section 328, and subsections (2) and (6) of Section 304 shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said Section 304 immediately before the dissolution of the company.

The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Republic either expressly or by taking possession or other act evincing that intention.

A notice of disclaimer under Section 329 shall be of no effect unless it is executed within 12 (twelve) months of the date on which the vesting of the property as aforesaid came to the notice of the Accountant-General, or, if an application in writing is made to the Accountant-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 (three) months after the receipt of the application or such further period as may be allowed by the Court which would have had jurisdiction to wind up the company if it had not been dissolved.

Case law suggests that the restoration of a UK company will, as with bona vacantia, trigger the automatic re-vesting in it of freehold and leasehold land that has escheated to. In *Re Fivestar Properties Ltd* [2015] EWHC 2782 (Ch), the High Court held that Crown disclaimer of freehold property is not a disposition. This means that, where property of a dissolved company has been disclaimed by the Crown, the company's ownership interest can survive the Crown disclaimer and the property can retrospectively re-vest in the company (as if the property had never been disclaimed) when it is restored to the register of companies.

However, if the Crown has disposed of the property to a third party while the company was dissolved, the restored company will not be able to get it back. Instead, the Crown will pay the restored company either:

- The amount of any consideration it received from the disposal of the property.
- The value of any consideration it received at the time of the disposal.

- If no consideration was received, an amount equal to the value of the property at the date it was disposed of¹.

The Crown's reasonable costs in dealing with the property will be deducted from any payment made, to the extent they are not already paid as part of the restoration process².

Upon restoration, the court has the power to give such directions as seem just to place the company and all other persons in the same position (or as nearly as possible) as if the company had not been dissolved or struck off the register³. In *Shire Court Residents Ltd v Registrar of Companies* [1995] BCC 821, the court directed that a lease held by a restored company should take effect subject to new leases of certain parts of the premises that had been granted by the owner of the freehold interest after disclaimer of the lease by the Crown and before the company was restored.

BRITISH VIRGIN ISLANDS

Any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown (Section 220(1) of the BVI Act).

When a company is restored to the register, any property, other than money, that was vested in the Crown under Section 220(1) on the dissolution of the company and that has not been disposed of, must be returned to the company upon its restoration to the register (Section 220(2) of the BVI Act).

The company is entitled to be paid out of the consolidated fund any money received by the Crown as bona vacantia and in case of property, other than money, vested in the Crown in respect of the company and that property has been disposed of, an amount equal to the lesser of the value of any such property at the date it vested in the Crown and the amount realized by the Crown by the disposition of that property.

¹ Bona vacantia, Crown disclaimer and escheat: issues in liquidation, dissolution and restoration by Practical Law Restructuring and Insolvency

² section 1034(3), UK Companies Act 2006

³ sections 1028(3) and 1032(3), UK Companies Act 2006