COLLAS CRILL

Restoring a Guernsey company

OCTOBER 2020

The Companies (Guernsey) Law, 2008 (the **Law**) has a procedure that allows a Guernsey company which has been dissolved to be restored to the Guernsey Company Register (the **Register**). This guide looks at the key things you need to know about restoring a dissolved company in Guernsey. This guide assumes that the company is an unregulated, non-cellular company limited by shares.

Why are Guernsey companies dissolved?

A company may:

- voluntarily strike itself off the Register and be dissolved following an application to the Guernsey registrar of companies (the **Registrar**);
- be compulsorily or voluntarily wound up; or
- be struck off and dissolved for being defunct or defaulting.

A company is defunct under the Law if the Registrar has reasonable cause to believe that:

- the company is not carrying on business or is not in operation; or
- in the case of a company being wound up, no liquidator is acting or the affairs of the company are fully wound up.

A company is defaulting under the Law if:

- it fails to deliver an annual validation to the Registrar in accordance with the requirements of the Law;
- the Registrar receives a notice from a corporate service provider regarding an ineffective registered office in respect of the company;
- in the opinion of the Registrar there have been persistent or gross contraventions of the Law;
- it fails to comply with the Law as regards the requirement for a resident agent;
- the company has less than the minimum number of directors stipulated by the Law; or
- the Registrar has received notice from the Director of the Revenue Service regarding certain substance requirements not being met by the company.

Unless cause is shown to the contrary, at the expiration of a period of two months beginning on the date upon which the Registrar gives notice of the company's being struck off, the company will be struck off the Register and the company will be dissolved.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Once a company is dissolved, its name is removed from the Register.

What happens to the assets of a dissolved Guernsey company?

It is not uncommon for companies to have valuable assets at the time of its dissolution.

If a dissolved company still has assets then, by operation of law, those assets will become *bona vacantia* (which essentially means 'ownerless goods') and will become property of the Crown (ie the office of His Majesty the King). HM Receiver General has published a policy that confirms she will not take foreign realty bona vacantia which can cause further complications.

Why restore a dissolved Guernsey company?

The Law allows an eligible person to apply to the Royal Court of Guernsey (the **Court**) within the eligible period – the period of 10 years beginning on the date on which the company was struck off or dissolved – for an order restoring a dissolved company to the Register. The process is sometimes colloquially referred to as a *reinstatement* because the dissolved company's name will be reinstated on the Register if the Court makes the order.

In this setting an eligible person means:

- the company itself;
- any director, member or creditor of the company;
- any liquidator of administrator of the company;
- the Guernsey Financial Services Commission (**GFSC**) (in respect of a regulated company); or
- any other person appearing to the Court to have a sufficient interest in making the application to restore the company.

An applicant will typically want to restore a dissolved company because:

- the company was struck off for a breach of the Law and the breach has been remedied;
- it has been discovered that the company owns assets of which it was unaware at the time of its dissolution so they have not been distributed to its shareholders or creditors; or
- the applicant is a creditor who wishes to make a claim against the company or its directors.

What is the restoration process in Guernsey?

Who may make a restoration application?

Only an eligible person may apply to restore a dissolved company.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

When may a restoration application be made?

An application to restore a company may only be made during the eligibility period.

Under the Law, companies have a six-year period from the date of their dissolution in which they are *entitled* to have returned to them their assets that have vested in the Crown since the company was dissolved. In circumstances where the six-year period has expired, provided that such application is made within 10 years beginning on the date on which the company was dissolved, an eligible person may apply for an extension to the six-year period. The Court may grant an extension to the six-year period if it regards it as equitable to do so having regard to the degree of prejudice the company would otherwise suffer.

A restoration application may not be made in respect of a company which, in the opinion of the Registrar, persistently or grossly contravened the Law or its predecessor.

Notice of application and opportunity to make representations to the Court

Notice of an application to restore a company must be served on:

- the Registrar;
- the members and directors of the company;
- the Director of the Revenue Service (in respect of a company struck off for failing to comply with substance requirements);
- the GFSC (in respect of a regulated company);
- His Majesty's Procureur;
- His Majesty's Receiver-General; and
- any liquidator or administrator.

The Registrar shall also publish notice of the application in such manner and for such period as he thinks fit.

The above persons, as well as any director, member or creditor of the company, will then be given the opportunity to make representations to the Court before an order for restoration is made. In practice, once notice is served, each of the Registrar, the GFSC, His Majesty's Procureur and His Majesty's Receiver-General will provide written confirmation to the applicant confirming it has no objection to the restoration. A copy of this confirmation is then provided to the Court as part of the application.

It should be noted that the parties being given notice may take weeks to consider the application to restore. Therefore, an applicant should be mindful of the time periods in respect of when the Company was stuck off and the six and 10 year periods because an application can take months.

When will the Court make an order to restore a Guernsey company?

The Court may order the company to be restored to the Register if it is satisfied that:

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- the company was at the time of its striking off, carrying on business or in operation;
- in the case of a company struck off for not complying with substance requirements, would, if restored, comply with applicable substance requirements; or
- it would be just for the company to be restored.

What will the Court consider in making its decision?

In deciding whether or not to restore a company to the Register, and without prejudice to any other matter it may have regard to, the Court shall have regard to:

- whether or not the company would satisfy the solvency test if it is restored (unless the application for restoration is made by a creditor);
  - in order to satisfy the solvency test a company must be able to pay its debts as they become due and the value of the company's assets must be greater than the value of its liabilities. In determining whether the value of a company's assets is greater than the value of its liabilities, the directors must have regard to the most recent accounts of the company and all other circumstances that the directors know or ought to know affect or may affect the value of the company's assets and the value of the company's liabilities. The directors may also rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.
- whether the directors at the time the company was dissolved consent to being directors if the company is restored;
- 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;
- the circumstances in which the company was struck off or dissolved;
- certain information (including value) of the assets of the company and legal ownership of the same;
- whether there were persistent or gross violations of the Law or its predecessor by the company;
- whether the company was used for fraudulent purposes;
- whether restoring the company would jeopardise the reputation of the Bailiwick of Guernsey as a financial centre; and
- whether it would be just and equitable to restore the company.

Payments and fees

Restoration of a company to the Register is conditional upon payment by the applicant of:

- a restoration fee prescribed by the Registrar and any additional fees specified by the Registrar;
- all sums which would have been payable by the company if it had not been struck off or dissolved and had each year delivered its annual validation in accordance with the Law;

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- any costs incurred by His Majesty's Receiver-General in administering any property belonging to the company;
- any costs incurred by His Majesty's Procureur in connection with the striking off, dissolution or the application for restoration.

Order to restore

An order to restore a company may be made on such terms and conditions and may contain such directions and provisions as the Court thinks fit for placing the company and all other persons in the same position as if the company had not been struck off or dissolved.

An order may require any person responsible for the company being struck off or dissolved to pay the costs of the application for restoration and require those persons to reimburse the applicant for any payments made to the Registrar and His Majesty's Procureur even if that person is not a party to the application for restoration.

Upon an order being made and taking effect, the company will be deemed to have continued in existence upon restoration of the company's name to the Register.

Once a company has been restored to the Registrar it is entitled to have returned to it:

- any property which vested in the Crown upon its striking off or dissolution; or
- if any property has been disposed of, its value at the time of disposal.

Application to the Registrar

Restoration applications are usually brought through the court process, as noted above. However, the Law permits the Registrar to restore companies which have been struck off voluntarily or for being defunct or defaulting (whether of his own motion or at the request of the company or any director, member or creditor) provided that he is satisfied that:

- the company was struck off in error;
- the company was struck off in circumstances in which it should not have been; or
- all grounds, circumstances or defaults resulting in the company being struck off no longer exist or have been remedied and all fees, penalties and amounts due, have been paid, subject to prior consultation with His Majesty's Procureur, His Majesty's Receiver-General, in the case of a regulated company, the GFSC, and in the case of a company struck off for non-compliance with substance requirements, the Director of the Revenue Service.

In addition, the Registrar must be satisfied that:

- an application to the Court for the restoration of the company would be successful but is not necessary for the fair disposal of the matter; and

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- the restoration of the company would not prejudice any creditor or third party.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Wayne Atkinson

Partner (Advocate) | Guernsey

t: +44 (0) 1481 734225 | **e:** wayne.atkinson@collascrill.com



Simon Heggs

Group Partner* | Guernsey

t: +44 (0) 1481 734825 | **e:** simon.heggs@collascrill.com



James Tee

Partner (Advocate)^ | Guernsey

t: +44 (0) 1481 734284 | **e:** james.tee@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.