

Company Restoration (by directors, members or officers)

Thousands of companies have fallen foul of involuntary strike off in Ireland, particularly since the economic collapse in 2008.

With the general improvement in economic conditions many of these companies have been given a second lease of life by their directors in the last number of months. Directors have realised that they have no access to the assets of the company while it is dissolved and therefore can't realise any value that the company may hold. These assets are held in trust by the state for a period of 20 years after strike off – if the company is restored the property reverts to the company but if the 20 years expires the ownership transfers in full to the state.

It is also a worth nothing that should the company continue to trade while dissolved that there is no veil of incorporation in existence and the concept of limited liability does not exist.

The most common cause of involuntary strike off is non-compliance with statutory filing requirements. Directors that allow companies to miss its Annual Return Dates give rise to the risk that the company will be struck off. Directors should note that it is a Category 2 offence to allow a company to be involuntarily struck off and as such it is not a recommended practice.

There are a couple of key timelines to consider when discussing restoration.

- 1) If the directors seek to restore the company within 12 months then its directors can avail of an administrative restoration.
- 2) If the company is dissolved for more than a year the directors must apply to the High Court for restoration – this application must be made within 20 years of the date of dissolution.
- 3) If 20 years has elapsed then the company cannot be restored and assets held by the company become assets of the state.

Administrative Restoration

The Administrative Restoration process requires the completion of a H1 and submission of same along with all outstanding returns to CRO. The submission must include all late filing fees up to a maximum of €3,600. All of the financial statements filed as part of this return must be audited. All of these documents must be filed within 12 months of strike off.

High Court Restoration

A 'standard' high court restoration process has a number of requirements and steps to be followed. A letter of consent is required from the Chief State Solicitor, the Companies Registration Office and the Revenue Commissioners. Under normal circumstances all returns need to be filed with the CRO and Revenue before a 'letter of no objection' can be obtained. Circumstances can arise whereby the CRO and Revenue will consent to the restoration on the basis that all outstanding returns will be filed within a prescribed time limit – these are exceptional circumstances and will ultimately be at the discretion of the judge.

The company must prepare and have audited financial statements for all years up to the proposed date of restoration and these should be filed with CRO along with any late filing fees (up to a maximum of €3,600 in total).

An affidavit must be drafted, setting out various details of the company including the activities of the company, how it came to be dissolved and the why the directors request that it be restored.

The affidavit, along with the various exhibits are required to be presented to the judge in court and the judge ultimately has discretion as to whether the company can be restored or not.

If the application is successful the order is granted and once perfected it is lodged with CRO, thus restoring the company.

There are a number of frequently asked questions in relation to restorations, for example:

Q. Can I apply for a Section 343 (5) if the company has been struck off?

A. The answer to this is no – once the company is struck off the company cannot apply to the District Court to extend its annual return date.

Q. Are there any circumstances under which the late filing/audit requirements can be waived in the case of a restoration case?

The answer to this question is yes but only in very exceptional cases. There is no precise provision in the legislation in relation to the waiving of fees however the judge has ultimate discretion and once the CRO does not object there is a reasonable chance of success.

Q. Can I represent the company in court?

A. No, the company must be represented by a barrister, and the barrister must be instructed by a practicing solicitor. Both have particular roles to play in the process.

Q. How long does the process take?

A. Restorations by their nature can take anything up to 6 months but if the company and acting accounting are diligent in providing information they can be turned around in as little as 8 weeks – on the assumption that the High Court is sitting. No restoration cases are heard out of term.

Common Pitfalls

The most common pitfall that companies encounter is not having their returns filed with Revenue. Often these companies have been out of sight and out of mind and as such returns have not been filed and it is crucial that these returns are filed and are up to date.

If properly managed the restoration process should be relatively stress free so please get in touch and we will help you to get back in business!

*This article does not deal with Creditor restorations.