



**Application for the restoration of a “struck off company” – To apply to the Registrar or to the Court?**

**Introduction**

Further to the Red Guides issued last year entitled “Restoration of a Guernsey Company to the Register of Companies” and “Procedures available for the voluntary dissolution of a Guernsey company” respectively, our Corporate and Dispute Resolution teams have recently been involved in various applications to restore Guernsey companies which had been struck off, to the Register of Companies (the “**Registrar**”) under the Companies (Guernsey) Law, 2008 (the “**Companies Law**”). The approach taken by the Registrar of Companies (the “**Registrar**”) in these applications is worthy of further note.

Readers will recall that there are two routes available under the Companies Law to restore a struck off company to the Register:-

- 1) By way of application to the Registrar; and
- 2) By application to the Royal Court.

It is the first option with which we are concerned here.

**Application to the Registrar**

In one of our recent matters an application was made to the Registrar in the first instance on the basis that the Company had been struck off the Register due to an administrative “error” on the part of the company as contemplated under section 371(10)(a) of the Companies Law:-

Section 371(10) provides that:

*“The Registrar may, subject to such terms and conditions as he thinks fit, restore a struck-off company to the Register of Companies .....if he is satisfied that :*

- (a) *the company was struck off in error or in circumstances in which, under the provisions of this Part [Part XX – Striking off], it should not have been struck off;*
- (b) *an application to the Court under section 370 for the restoration of the company would be successful but is not necessary for the fair disposal of the matter, and*
- (c) *the restoration of the company to the Register....would not prejudice any creditor or third party.”*

The application to the Registrar turned on whether the “error” which had resulted in the company being struck off the Register was one which the Registrar was authorised to consider under section 371(10) when exercising his discretion to restore the company to the Register.

The Registrar’s view was that his discretion to restore a company to the Register:

- only extends to where the error or circumstances which resulted in the company being struck off arose on the part of the **Registrar** (for example, in circumstances where the Registrar struck off the company and did not follow the correct procedure under the Companies Law); and
- does **not** extend to errors or circumstances which arose on the part of the company, its directors or corporate services provider (for example, in circumstances where a company failed to make its annual validation or change of registered office filings on time as a result of an administrative error and was struck off for non-compliance by the Registrar).

**Conclusion**

Whilst the logic behind the interpretation taken by the Registrar can be easily understood the practical effect is that almost all restoration applications will need to be

presented to the Royal Court. This is unfortunate since it leaves no cost effective and administrative procedure available under the Companies Law for those companies which, for whatever reason, have failed to keep up to date with their filings (such as the annual validation or registered office) and as a result have been struck off the register by the Registrar, even though they have continued to operate or carry on business.

It is understood that the Department of Commerce and Employment are considering widening the Registrar's discretion to restore companies to the Register as part of the proposed amendments to the Companies Law, but it is not certain if or when these changes will come into force.

We will continue to keep readers updated on any amendments or changes to the Registrar's position.

*This Red Line is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so. If you would like legal advice or more information in relation to the matters covered in this Red Line or generally in relation to a corporate or dispute resolution issue, please contact our Corporate team or our Dispute Resolution team on +44 (0)1481 723723, or by email at [corporate@aohall.com](mailto:corporate@aohall.com) or [disputeresolution@aohall.com](mailto:disputeresolution@aohall.com). Members of our Corporate and Dispute Resolution teams, together with their contact details, are listed on our website at [www.aohall.com](http://www.aohall.com).*

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