

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 11 March 2020

## 54. Dissolved companies

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## Introduction

### 54.1 General

Dissolution marks the end of a company's life. This guidance deals with the circumstances in which the Registrar of Companies may dissolve a company, both before and after the making of a winding-up order; the circumstances in which the official receiver would apply for the dissolution of a company to be deferred once

they have completed the administration of the liquidation; the legal position regarding any company assets after the date of dissolution, i.e. bona vacantia; when a company may be restored to the register and the action needed by the official receiver to cause a company to be restored to the register.

## Dissolution Prior to Winding-up

### 54.2 Company not carrying on business

Where dissolution occurs prior to or without the Registrar being aware of the winding up it will be in accordance with either section 1000 or section 1003 Companies Act 2006. Section 1000 details the procedure available to the registrar of Companies to enable them to remove a company from the Register where they have reason to believe it is not carrying on business or is not in operation. The procedure takes approximately six months during which time two letters are sent to the company and a notice of intention to strike the company off the Register is published in the London Gazette with a similar notice being sent to the company. At the end of the period of three months from the date of the notice, the Registrar may strike the company's name off the Register, notice of which is published in the London Gazette. On the publication of that notice the company is dissolved. A final notice giving the dates the company was struck off the Register and then dissolved is placed on the Registrar's file. If approached by a creditor, the Registrar may delay striking the company's name off the Register to enable a claim to be pursued or winding-up proceedings brought.

### 54.3 Company application for dissolution

Under the provisions of the Companies Act 2006 both a private and public company may apply to the registrar to be struck off the register providing they satisfy the criteria for striking off<sup>1</sup>. There are a number of circumstances in which an application should not be made, including when the company is being wound up<sup>2</sup>. It may be an offence for a person to make an application in these circumstances<sup>3</sup>.

1. Companies Act 2006 section 1003

2. Companies Act 2006 sections 1004 and 1005</sup>

3. Companies Act 2006 sections 1004(7) and 1005(6)

### 54.4 Who receives notice of the application?

Within 7 days of making the application the applicant must send a copy of the application to anyone who, on the day the application was made was, a member, creditor, employee, manager, or trustee of any employee pension fund and to any directors who have not signed the application form. The directors are also required to give a copy of the notice to anyone who becomes a member, creditor, employee, manager, director, or trustee of any employee pension fund and to any directors before the application for striking off is concluded or withdrawn. It may be an offence if a person fails to perform these duties<sup>1</sup>.

1. Companies Act 2006 sections 1006(4) and 1007(4)

## 54.5 Company application for dissolution

Sections 1003 – 1011 Companies Act 2006 set out the procedure which enables a private company which is not trading and satisfies the conditions in section 1003 to apply to the Registrar of Companies to be struck off the Register. The application must be made on the company's behalf by its directors, or by a majority of them. An application should not be made when a company is being wound up or a winding-up petition has been presented or other formal insolvency process is in train and may not be made under section 1003 if, at any time in the 3 months preceding the application, it has changed its name or traded or otherwise carried on business (note: paying a liability does not constitute trading). A copy of the application must be sent to all members, creditors, employees, managers or trustees of any employee pension fund and to any directors who have not signed the application form. The Registrar will publish a notice in the London Gazette advertising the proposed striking off and inviting objections. If cause to the contrary is not shown and the application is not withdrawn, the Registrar will strike the company off the Register not less than three months thereafter. The Registrar will publish a notice to that effect in the London Gazette and the company is thereby dissolved.

## 54.6 Company struck off and dissolved prior to presentation of petition

In order to bring winding-up proceedings against a company which has been struck off and dissolved it is necessary to have it restored to the Register. The petitioner should be alerted to the dissolution, if previously unaware, when they make a search of the company's file to obtain the current registered office to effect service of the petition. The application for restoration should be included in the petition for winding-up.

## 54.7 Company dissolved subsequent to presentation of petition but prior to making of winding-up order

If the petitioner has not included in the petition an application for the restoration of the company or it is subsequently discovered that it has been dissolved the petitioner should be asked to seek leave of the court to amend the petition to include an application for the restoration of the company to the Register. On hearing that petition the court will then be able to make the usual “double-barrelled” order, restoring the name of the company to the Register and then winding it up. Care should be taken to ensure that Forms 4.13 and the winding up orders issued by the court actually reflect this in such cases. If restoration does not occur, the official receiver will be unable to file the documents at Companies House. If a winding-up order is made prior to it becoming apparent that the company has been dissolved, the official receiver should not proceed with the winding-up until the company has been restored to the Register, a winding-up order against a dissolved company being a nullity. Enquiries should be made to ensure that it has been dissolved as a winding-up order may validly be made against a company which has merely been “struck off” as it is still in existence, dissolution having not yet occurred, its name merely having been removed from the Register. However, steps will need to be taken to “restore” the company to the Register as dissolution automatically follows striking off. It is considered that it is for the petitioner to take the appropriate action to rectify the position following notice (confirmed in writing) from the official receiver<sup>1</sup>.

1. Companies Act 2006 section 1003

## 54.8 Oversea company

An overseas company which has traded in Great Britain may be wound up in Great Britain as an unregistered company, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country where it was incorporated<sup>1</sup>.

1. Section 225(1)

## 54.9 Procedure to follow on discovering that the company has been dissolved prior to the making of the winding up order

When it is discovered that a winding-up order has been made against a dissolved company (without restoration), the usual notices and advertisement of the winding-

up order should not be issued. If the company is restored to the register the official receiver should generate a Gazette notice advertising the making of the winding-up order.

## 54.10 Winding-up order made after a company has been dissolved

If a winding-up order is made after the company has been dissolved, the official receiver should not proceed with the winding-up until the company has been restored to the register. However it is necessary to ensure that the company has been dissolved, as a winding-up order may validly be made against a company which has merely been “struck off” as it is still in existence although its name has been removed from the Register<sup>1</sup>.

1. Companies Act 2006 section 1000 (7)(b)

## 54.11 Contact with petitioning creditor’s solicitor

The official receiver must immediately contact the petitioner’s solicitors by telephone advising them of the dissolution and requesting that they make an application to the court for the restoration of the company to the register to enable the proceedings to continue<sup>1</sup>.

1. Companies Act 2006 section 1029

## 54.12 Petitioning creditor’s application to restore the company

The petitioning creditor’s solicitors should be directed to the [Company Restoration Guide](#). Notice of the application must be given to the registrar and The Treasury Solicitor (BV) or the relevant Duchy Solicitor. This can be effected by serving a copy of the application together with a covering letter. A letter from the Solicitor concerned will be required by the court to enable it to be satisfied that the bona vacantia rights to any assets have been waived (Government Department petitioners have a blanket authority to apply and therefore do not need to obtain such letters).

## 54.13 Restoration to the register

If notice has been given that the registrar intends to strike off the company or the company has been “struck off” but not yet dissolved, steps need to be taken to

“restore” the company to the register as dissolution will automatically follow. The official receiver should inform the petitioner by telephone, and confirm in writing, that they should apply to the court to have the company restored to the register<sup>1</sup>.

1. Companies Act 2006 sections 1000(3)-(6)

## 54.14 Failure of petitioning creditor to apply to restore the company to the register

If an application for restoration is not made within fourteen days of the winding-up order Form PSCD Follow Up Letter should be sent to the petitioning creditor’s solicitors. If no response is received within ten days the official receiver should consider restoring the company to the register.

## 54.15 Official Receiver’s application to restore the company

If the petitioning creditor is unwilling to restore the company to the register the official receiver should consider making an application to the court in certain circumstances, i.e. where there are realisable assets above the grant limit set by The Treasury Solicitor (BV) (see paragraph 38.59) or where it is in the public interest to do so. If the official receiver decides not to restore the company they should inform the petitioning creditor’s solicitor and confirm that an application to rescind the winding-up order will be made.

## 54.16 Company restored to the register

Once a company has been restored to the register it is regarded as having continued in existence as if it had never been dissolved or struck off the register. As a consequence at the date of the winding-up order the company would not be considered dissolved and the order would be valid<sup>1</sup>. The official receiver should then complete their duties and administer the estate as normal.

1. Companies Act 2006 section 1032(1)

## 54.17 Where there is no application to restore the company to the register

If neither the petitioning creditor or the official receiver applies to the court to restore the company to the register, the company will remain dissolved. In these circumstances an application to restore the company, which might be made a

number of years after the winding up-order, would result in the order becoming valid and the official receiver becoming liquidator. To avoid this happening the official receiver should apply to the court for the winding-up order to be rescinded rather than for a stay of proceedings.

## 54.18 Application for rescission

An application for rescission of a winding-up order should normally be made within seven days of the making of that order but the court does have discretion to extend the period<sup>1</sup>.

1. Rule 12.59

## 54.19 Official receiver's application for rescission

As soon as it becomes apparent that there will be no attempt to restore the company and there is no benefit to seeking restoration an application for rescission should be made. The application should set out clearly the circumstances leading up to the dissolution, the dates Forms PSCD were sent to the petitioning creditor's solicitor and the date the official receiver decided that it was unlikely that the company would be restored to the register.

# Dissolution after winding-up

## 54.20 Introduction

It is important the official receiver provides early notification to the registrar on the making of a winding-up order to avoid the company being struck off and dissolved. Failure to notify the registrar could lead to additional costs being incurred by the official receiver if they need to restore the company to the register. If the notification of the winding-up order is received after the gazette notice of intention to strike off the company has appeared but before the instruction to gazette the notice of striking off has been issued, the dissolution process will not proceed.

## 54.21 High Court Cases

Where the winding-up order is made in the High Court or the District Registries the Petition and Transfers team will receive the sealed copies of the order before sending them to the local official receiver. The official receiver will be responsible for

filing the order with the registrar of companies. To do so the official receiver should enter the CRO number on ISCS within 48 hours of receiving notice of the winding-up order.

## 54.22 County Court Cases

In the County Court the official receiver is responsible for notifying the registrar of the winding-up order.

## 54.23 Procedure begun prior to the winding-up order

It is possible that dissolution proceedings may have started before the winding-up order has been made. The official receiver on receiving notice of the order should check the company's public file at Companies House to see whether the company is in the process of being dissolved and, if so, follow the guidance in paragraph 2.24 of Chapter 2. If the company has already been dissolved the official receiver should follow the advice in paragraphs 54.25 and 54.26.

## 54.24 Lodging an objection to the dissolution of the company

Where the company is in the process of being dissolved the official receiver should lodge an objection to the dissolution with the registrar of companies pursuant to section 1000 of the Companies Act 2006. The objection letter should be sent by email to [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk) and marked for the attention of the Dissolution Section. The objection should include a copy of either, the winding-up order, winding-up petition or Secretary of State's order appointing the official receiver. The objection should include the statement that "the official receiver has only just commenced their duties as liquidator and the company will continue to be in "operation" until its winding-up is complete". The official receiver may include any other relevant matters, for example where the company is still trading.

## 54.25 Company dissolved – no further enquiries

Where the official receiver has completed their enquiries and all the following criteria are met:-

- a) there are no assets to be realised

b) the official receiver is reasonably satisfied that all creditors and employees are aware of the winding-up proceedings

c) the directors have complied with their obligations with regard to the winding up, and

d) further enquiry, prosecution and/or disqualifications are not proposed

The case should be processed quickly and closed. If the case is passed to Estate Accounts Services, Birmingham the fact that the company has been dissolved should be drawn to that Section's attention to prevent notice of the conclusion of the liquidation being sent to Companies House.

## 54.26 Company dissolved – further investigation

On the making of a valid winding-up order against a company the official receiver has a general duty to investigate its affairs<sup>1</sup>. Although there is doubt as to whether the official receiver can investigate the affairs of a company which has been dissolved, it would appear that they can act upon this general duty and complete their enquiries. Legal advice obtained states that offences survive dissolution and disqualification action can be taken against the directors of a company that has been subject to a valid winding-up order. However, the Insolvency Act 1986 precludes the taking of enforcement action, such as the calling of a public examination, after the company has been dissolved<sup>2</sup>. Neither the official receiver nor an insolvency practitioner can act as liquidator of a company which has been dissolved. Where enforcement action or any action which involves some form of asset recovery is to be taken, for example, misfeasance, which requires the company to be on the register before damages can be awarded, the official receiver should apply for the company to be restored to the register<sup>3</sup>.

1. Section 132(1)

2. Section 133(1)

3. Companies Act 2006 section 1029

## Early dissolution

### 54.27 Official receiver's ability to apply for early dissolution

When the official receiver is liquidator the may at any time apply to the registrar for the early dissolution of the company where it appears:-

- a) the realisable assets are insufficient to cover the expenses of the winding-up, and
- b) the affairs of the company do not require any further investigation. The making of the application, including the raising and sending of form NOTCH to the Registrar of Companies, will be dealt with by Estate Accounts Services, Operations and Customer Support, Releases

## 54.28 Identification of early dissolution cases

Early dissolution is intended to save time in case administration. Suitable cases may be identified at the PTA stage, that is up to eight weeks after the making of the winding-up order. Any assets having a net realisable value should be realised before the dissolution to defray the costs of the proceedings. The early dissolution procedure should not be used in cases where there is a prospect of disqualification and/or criminal proceedings or an immediate or foreseeable need to defer the dissolution of the company.

## 54.29 Administrative receiver in office

The official receiver should not invoke the early dissolution procedure when there is an administrative receiver in office as it is likely that the administrative receiver will require the company to remain on the register pending the completion of the receivership. The dissolution of the company would result in the company's assets becoming "bona vacantia" thus preventing the administrative receiver from dealing with them. When applying for release the RELADR should be sent to the administrative receiver.

## 54.30 Law of Property Act receiver in office

The Insolvency Act is silent in regard to Law of Property Act receivers. However, early dissolution of a company would create additional work for such a receiver and as a result, generally, early dissolution should not be applied for where a Law of Property Act receiver is in office.

## 54.31 Administration of estate when Administrative receivers or Law of Property Act receivers are in office

In these cases the official receiver should proceed with the winding up without invoking early dissolution and apply to the Secretary of State to issue directions for the deferral of the company's dissolution when they apply for their release. That is unless the administrative receiver or Law of Property Act receiver agrees, in writing, to the use of the early dissolution provisions.

## 54.32 Sending notice of early dissolution

The official receiver must give at least 28 days notice of their intention to apply for early dissolution to the creditors and contributories and any administrative receiver in office. The legislation does not require notice to be given to a Law of Property Act receiver who is still in office, however a notice should be sent<sup>1</sup>.

1. Section 202(3)

## 54.33 Notice of early dissolution

Early dissolution is likely to be rarely used as few cases would be expected to be considered as appropriate for this process. The form used for this purpose is called NED and can be sent with the report to creditors and contributories. Where the official receiver has notified the creditors of their intention to apply for the early dissolution of the company, there is no obligation to give creditors notification of their intention to apply for release.

## 54.34 Official receiver's privilege

If the report to creditors is sent out after the notice of the intention to apply for early dissolution, the official receiver may not be covered by privilege as their only duty after giving such notice is to continue the application for early dissolution<sup>1</sup>.

1. Section 202(4)

## 54.35 Consequence of notice under s202

Following notice of intention to seek early dissolution under section 202 the official receiver, any creditor or contributory or the administrative receiver may apply to the Secretary of State for directions on the grounds that:-

- a) the realisable assets of the company are sufficient to cover the expenses of the winding up
- b) That the affairs of the company require further investigation; or
- c) that for any other reason the early dissolution of the company is inappropriate<sup>1</sup>

The Secretary of State may issue a direction:

- a) such as they think fit to enable the winding up to continue as if no notice of intention to apply for early dissolution had been given, or
- b) where an application for early dissolution has already been received by the registrar that the date of dissolution be deferred for such a period as they think fit<sup>2</sup>

1. Section 203

2. Section 203(3)

## 54.36 Right of Appeal

Under section 203 an appeal may be made to the court regarding any decision of the Secretary of State on an application for directions<sup>1</sup>. A copy of any directions issued or the determination of an appeal should be delivered to the registrar by the applicant or the person in whose favour an appeal is determined within 7 days of the direction or determination of the appeal. This will ensure the registrar is fully informed of the position and that the company is not inadvertently dissolved<sup>2</sup>. Anyone who fails to deliver such a copy, without reasonable excuse, is liable to a fine<sup>3</sup>.

1. Section 203(4)

2. Section 203(5)

3. Section 203(6)

## 54.37 Application for release

In practice official receivers no longer undertake the formal release process in most cases therefore we no longer notify creditors (or the court) of the intention to release. When a case is closed, 28 days need to elapse before a workflow automatically gives SoS release and, thereafter, EAS are triggered to inform Companies House. Dissolution takes place three months later.

An application for early dissolution does not require the official receiver to give creditors notification of their intention to apply for release therefore the official receiver should consider only issuing notice of early dissolution to keep administrative costs to a minimum.

# Dissolution after completion of winding-up

## 54.38 Dissolution after liquidator released

This occurs when the registrar receives:-

- a) a notice served for the purposes of section 172(8) (final meeting of creditors and vacation of office by liquidator) or
- b) a notice from the official receiver that the winding up of a company by the court is complete<sup>1</sup>

1. Section 205(1)

## 54.39 Notice of dissolution after release

The notice of dissolution is raised and sent by Estate Accounts Services following the official receiver's release as liquidator or the administrative closing of a case by the official receiver. The registrar registers the notice on receipt and at the end of 3 months from the date of registration the company is dissolved<sup>1</sup>.

1. Section 205(2)

## 54.40 Receivers and dissolution after release

There is no legal requirement to inform an administrative receiver or a Law of Property Act receiver of the official receiver's intention to apply for release. However in all cases where an administrative receiver or Law of Property Act receiver is in office before applying for release the official receiver should inform the receiver of their intention to apply for release, and enquire whether they wish to have the dissolution of the company deferred.

# Deferred Dissolution

## 54.41 Introduction

The official receiver, or any other interested party, may apply to the Secretary of State to give directions to defer the date of dissolution. The Secretary of State may direct the deferral of the dissolution of the company for such a period as they think fit<sup>1</sup>. An appeal to the court may be made against any decision of the Secretary of State on an application for directions given under this section<sup>2</sup>. A copy of the directions or the determination of an appeal is to be provided to the registrar within 7 days by the person seeking the directions or in whose favour any appeal is decided<sup>3</sup>.

Failure to deliver such a copy, without reasonable excuse, will result in liability to a fine <sup>4</sup>.

1. Section 205(3)

2. Section 205(4)

3. Section 205(6) and Rule 7.119

4. Section 205(7)

## 54.42 Circumstances where the official receiver would apply for a deferred dissolution

The official receiver may make an application to the Secretary of State to defer dissolution in circumstances where they think it is necessary to continue the life of the company after the administration of the liquidation has been completed. This will include cases where an administrative receiver or Law of Property Act receiver have been appointed, where there are further enquiries, where an insurance claim is in progress which requires the company to remain on the register but does not stop the liquidator's release, where there is a pension scheme which has not been finalised () or where there is a claim for personal injury.

## 54.43 Deferral where administrative receiver or Law of Property Act receiver in office

The official receiver should apply to Estate Accounts Services, who act on behalf of the Secretary of State, for the dissolution to be deferred where an administrative or Law of Property Act receiver is in office at the conclusion of the winding up. The dissolution should be deferred for 2 years unless the administrative or Law of Property Act receiver has asked for a longer period of deferral to be applied. In this instance the period of deferral should be agreed with the administrative or Law of Property Act receiver. If the Secretary of State gives directions deferring the date of dissolution, the administrative or Law of Property Act receiver should be notified of the deferral and informed that any subsequent application to extend the period of the deferral should be made by them to the Secretary of State, Estate Accounts Services, Birmingham before that period ends.

## 54.44 Deferral in prosecution and disqualification cases

The official receiver should apply for the deferral of the dissolution of companies in all cases where prosecution or disqualification proceedings have been or are to be brought. The usual period of deferral to be sought is 6 years, although a longer period may be sought if merited. Although offences survive dissolution companies should not be dissolved as it may create difficulties in taking enforcement action and realising assets arising from such action.

There may be times when a lead company in a disqualification action has been dissolved prior to the case coming to court, for example where an insolvency practitioner has filed a s172(8) notice and the company has been dissolved. The Company Directors Disqualification Act 1986, as amended by the Insolvency Act 2000, allows for disqualification proceedings against a director or directors in cases where the lead company has been or is being dissolved<sup>1</sup>. As a result an application to restore the company to the register solely to issue disqualification proceedings is not required.

1. Company Directors Disqualification Act 1986 section 6(3)(a)

## 54.45 Deferral in personal injury cases

Where the official receiver is aware of any potential claims against the company for personal injury they should also apply for the deferral of the dissolution of company when the liquidation is complete. Claims arising from personal injuries must be made within 3 years from the date of the injury or first knowledge of the effect of the injury i.e. when the full extent of an injury becomes apparent. It may be that the full extent of any injuries do not become apparent for many years. The official receiver should use their judgement in determining the length of deferral of dissolution required. That said any person<sup>1</sup> pursuing a claim for personal injury may make an application to the court for restoration of the company to the register at any time<sup>2</sup>.

1. Companies Act 2006 section 1029(2)(f)

2. Companies Act 2006 section 1030(1)

## 54.46 Period of deferral

The dissolution of the company should be deferred to a specific date, which Departmental lawyers have advised, may be extended, for example where disqualification proceedings have not been completed. Any further deferral of dissolution also should be to a specific date. In these cases the official receiver should apply for an extension of the period no later than 3 months prior to the expiry of the original deferred date of dissolution.

## 54.47 Period of deferral cannot be shortened

A deferred period may not be shortened. The notice of directions deferring the dissolution to a specific date is registered on the company's file with the registrar. This is a public file and any person searching the company's entry should be entitled to rely on the company remaining on the register until the deferred date disclosed on the file.

## Bona vacantia

### 54.48 Introduction

Bona vacantia, defined as "goods found without any apparent owner"<sup>1</sup>, is the term given to assets of dissolved companies. The ownership of any assets held by a company passes on its dissolution to the Crown, or the Duchies of Cornwall or Lancaster where the company's registered office is in Cornwall or Lancashire<sup>2</sup>. As a result of recent changes in county boundaries the official receiver should check with the Duchy Solicitor if they feel that a company's registered office may be in the area covered by the Duchy. The web site of the Treasury Solicitor (BV) is at <https://www.gov.uk/government/organisations/bona-vacantia>.

The Solicitor for the affairs of the Duchy of Cornwall is Farrer & Co 66 Lincoln's Inn Fields London WC2A 3LH and the web site for the Duchy of Lancaster is <https://www.duchyoflancaster.co.uk/about-the-duchy/duties-of-the-duchy/bona-vacantia/>.

1. Mozley & Whiteley's Law Dictionary

2. Companies Act 2006 section 1012

### 54.49 Sale of assets after dissolution

Where any assets of the company are inadvertently realised after dissolution the net proceeds should be paid to The Treasury Solicitor (BV) or the Duchy Solicitor. The official receiver should provide details of the agent's charges deducted from the sale proceeds to enable the Solicitor to decide whether or not to challenge these costs. The official receiver should not charge any fees in relation to these bona vacantia monies.

### 54.50 Method of paying over bona vacantia monies

The official receiver on discovering that they have sold assets after dissolution should pay the funds into the Insolvency Service Account. Once in the Insolvency Service Account the monies are then paid into the estate account, which is re-opened if necessary. Estate Accounts Services then pay the monies into an Insolvency Service Treasury Solicitor account where a bulk payment is made to the relevant Solicitor every 6 months.

## 54.51 Bona Vacantia – application for restoration

The official receiver should apply to the court (see paragraph 54.80) for the restoration of the company to the register where the assets of the dissolved company are in excess of £3,000. Where the assets have not been realised or amount to a long-term realisation it is unlikely that The Treasury Solicitor (BV) will make a grant as there are no liquid funds available. The official receiver will therefore need to make an application for the restoration of the company. Once the company has been restored the official receiver will automatically become liquidator and may then deal with the realisation and distribution of the assets.

## 54.52 Discretionary grants - where the dissolved company can be restored

Where a dissolved company has assets valued at less than £3,000 and can be restored to the register<sup>1</sup>, the official receiver, as the former liquidator, may apply to The Treasury Solicitor (BV) for a discretionary grant. The Treasury Solicitor (BV) will usually only consider making a grant from monies already received. The Treasury Solicitor (BV) will only make one grant in respect of the dissolved company.

1. Companies Act 2006 Section 1030

## 54.53 The official receiver's application

The official receiver's application must be supported by a Statutory Declaration which includes all of the following:

- a) that the official receiver was liquidator at the date of dissolution
- b) an undertaking that the official receiver will not apply for the company to be restored
- c) that any grant will be distributed as if the official receiver was still liquidator of the company

d) that the official receiver acknowledges that The Treasury Solicitors (BV) proper legal costs plus disbursements will be deducted from any grant

e) that a 5% reservation (where the grant is over £750) will be deducted from any grant, and

f) who the cheque should be made payable to

The Statutory Declaration must be witnessed by a practising solicitor or commissioner of oaths.

## 54.54 Additional information that must be included in the application

The official receiver's application must also include:

a) the full registered name and number of the dissolved company

b) the last registered office of the company

c) the date of dissolution of the company

d) if the asset is not money, full details of the type of asset, and evidence that the company owned it at the date of dissolution

e) evidence of appointment as liquidator

f) the necessary proof of identity, e.g. a copy of the winding-up order

## 54.55 Other matters to be considered when making an application

If there is cash at bank the official receiver should also provide details of the company's bank account, including the sort code, account number and address.

If the official receiver has any claim against a third party for losses suffered as a result of the dissolution then the application will not be considered until the matter has been resolved.

Finally, whether any tax would be payable if the asset had been dealt with during trading or in the process of winding-up.

## 54.56 The Treasury Solicitor's decision

The official receiver's application will be considered on its merits and if The Treasury Solicitor (BV) is not satisfied no grant will be made. If a grant is made the official receiver will be required to pay the costs of The Treasury Solicitor (BV); VAT is not

charged on these costs which are currently £300. The official receiver may check <https://www.gov.uk/guidance/apply-for-a-discretionary-grant-where-the-dissolved-company-can-be-restored-cb2> for details of the current charges.

## 54.57 Other matters considered by the Treasury Solicitor

In deciding whether or not to make a grant The Treasury Solicitor (BV) will consider

- a) the size and nature of the bona vacantia asset
- b) what other remedies may be available to the official receiver,
- c) the extent the official receiver contributed to the asset becoming bona vacantia
- d) whether there would have been any tax payable if the asset had been dealt with during trading or in the process of winding-up
- e) any third party rights to the asset, and
- f) who (if anyone) is in possession of the asset

## 54.58 Restoration to the Register

Although the official receiver will have given an undertaking not to restore the company to the register, this does not preclude an application being made by another interested party<sup>1</sup>. If the company is restored to the register, The Treasury Solicitor (BV) will be called upon to account for the assets to the official receiver as liquidator. The Treasury Solicitor (BV) therefore makes a reservation of 5% of the value of the grant (after deducting costs), which is not repayable, to enable them to account for the assets in the event of restoration.

1. Companies Act 2006 section 1029 (2)

## 54.59 Grant approved

If The Treasury Solicitor (BV) approves the official receiver's application the monies should be dealt with as a normal asset realisation. The official receiver should ensure that the appropriate fees are charged, that all their costs are paid and any surplus monies distributed to creditors in the usual way.

## 54.60 Discretionary grants where the dissolved company cannot be restored to the register

When a dissolved company cannot be restored to the register<sup>1</sup>, the official receiver, as the former liquidator, may also apply to The Treasury Solicitor (BV) for a discretionary grant. The application for the discretionary grant is made in the same way as in the case where the company can be restored. The £3,000 limit does not apply, however the Treasury Solicitor (BV) will usually consider only making a grant from monies already received. The Treasury Solicitor (BV) will only make one grant in respect of the dissolved company.

1. Companies Act 2006 sections 1030 and 1031

## 54.61 Conditions in which a discretionary grant may be made in these circumstances

The Treasury Solicitor (BV) will make a grant to alleviate hardship, it would otherwise be unreasonable or unconscionable for the Crown to keep the assets or where there is a compelling public interest in making the grant.

# Administrative restoration to the register

## 54.62 Introduction

The Companies Act 2006 introduced a new administrative restoration procedure which enables, in certain circumstances, an application to be made to the registrar to restore a company without a court order<sup>1</sup>.

1. Companies Act 2006 section 1024

## 54.63 Who can apply for administrative restoration

An application to the registrar may only be made by a former director or a former member of the company<sup>1</sup>. It is not possible for the official receiver or liquidator to apply for the administrative restoration of a company.

1. Companies Act 2006 section 1024(3)

## 54.64 Circumstances in which an application may be made

An application to restore the company administratively may be made where the company has been struck off the register pursuant to the power of the registrar to strike off non-trading companies<sup>1</sup>. An application can be made whether or not the company has been dissolved<sup>2</sup>. The application must be made within 6 years from the date of dissolution<sup>3</sup>.

1. Companies Act 2006 section 1024(1)

2. Companies Act 2006 section 1024(2)

3. Companies Act 2006 section 1024(4)

## 54.65 Conditions for administrative restoration

The registrar must restore the company if, and only if, the following conditions are met:

- a) the company was carrying on business or in operation at the time it was struck off<sup>1</sup>
- b) the Treasury Solicitor (BV), or the Duchies of Lancaster or Cornwall have consented, in writing to the Registrar of Companies, to the restoration<sup>2</sup>
- c) the applicant has delivered to the registrar such documents as are necessary to bring the company's records up to date<sup>3</sup>, and
- d) paid any penalties that were outstanding at the date of dissolution or striking off<sup>4</sup>

1. Companies Act 2006 section 1025(2)

2. Companies Act 2006 section 1025(3)

3. Companies Act 2006 section 1025 (5)(a)

4. Companies Act 2006 section 1025 (5)(b)

## 54.66 Statement of compliance

The application must be accompanied by a statement of compliance. The statement must include confirmation that the person making the application has standing to apply. The statement must also include confirmation that the requirements have been met (see paragraph 54.68). The registrar may accept the statement of compliance as providing sufficient evidence to accept the application<sup>1</sup>.

## 54.67 The decision of the registrar

The registrar must give notice to the applicant of their decision. If the application is accepted then the restoration takes effect from the date that notice is sent<sup>1</sup>. Where the registrar agrees to the restoration they must make an entry in the register showing the date the restoration takes effect. The registrar must publish notice of the restoration in the Gazette<sup>2</sup>.

1. Companies Act 2006 section 1027(2)

2. Companies Act 2006 section 1027(3)

## 54.68 Effect of administrative restoration

Once the company has been restored to the register it is deemed to have continued in existence as if it had not been dissolved or struck off. However the company is not liable to a penalty imposed by the registrar for any failure to file accounts and reports after the date of dissolution or striking off and before the date of restoration. An application may be made to the court at any time within 3 years after the date of restoration to make such provision as seems just for placing the company and all other persons in the same position (if possible) as if the company had not been dissolved or struck off<sup>1</sup>.

1. Companies Act 2006 section 1028

# Restoration to the register by the court, the legislation

## 54.69 Introduction

If the company has been dissolved and not administratively restored an interested party may apply to the court for its restoration to the register<sup>1</sup>. A company may be restored to enable it to be wound up, to take enforcement action in connection with prosecution or disqualification proceedings, to take action in relation to any misfeasance, to enable assets to be realised or to enable an action to be brought for damages arising from personal injury or death.

1. Companies Act 2006 section 1029

## 54.70 Application to the court for restoration to the register

An application can be made to the court to restore a company dissolved after winding up<sup>1</sup>, dissolved after administration<sup>2</sup>, or dissolved after being struck off the register voluntarily or by the registrar<sup>3</sup>.

1. Companies Act 2006 section 1029(1)(a)

2. Companies Act 2006 section 1029(1)(b)

3. Companies Act 2006 section 1029(1)(c)

## 54.71 Who can make the application

An application pursuant to Section 1029 of the Companies Act 2006 may be made by;

- a) the Secretary of State
- b) any former director of the company
- c) any person having an interest in land in which the company had a superior or derivative interest
- d) any person who but for the company's dissolution would have been in a contractual relationship with it
- e) any person with a potential legal claim against the company
- f) any manager or trustee of an employee pension fund
- g) any former member, or their personal representative(s), of the company
- h) any person who was a creditor of the company at the time of its striking off or dissolution
- i) any former liquidator of the company
- j) where the company was voluntarily struck off the register<sup>1</sup>, any person entitled to the notice of application<sup>2</sup>, or
- k) any other person appearing to the court to have an interest in the matter<sup>3</sup>

1. Companies Act 2006 section 1003

2. Companies Act 2006 sections 1006(1)(f) and 1007(2)(f)

3. Companies Act 2006 section 1029(2)

## 54.72 When can the application be made

An application to restore the company to the register may be made at any time for the purpose of bringing proceedings in respect of damages for personal injury<sup>1</sup>. In any other case except in the instances mentioned below, an application for restoration may not be made after the end of a period of 6 years from the date of dissolution<sup>2</sup>.

An application for restoration can no longer be made in respect of a company dissolved before 1 October 2007<sup>3</sup>. Previously, if the company was struck off under the provisions of section 652 or 652A of the Companies Act 1985, an application could be made up to 1 October 2015 or the expiration of the period of 20 years from publication in the Gazette of notice under the relevant section or Article, whichever occurs first<sup>4</sup>.

The 6 year limitation does not apply where a non-trading company was struck off by the registrar and an application for administrative restoration was made but refused within the time limits allowed<sup>5</sup>. In such circumstances an application could be made to restore the company within 28 days of the notice of the registrar's decision being issued, even if the 6 year limitation period has expired<sup>6</sup>.

1. Companies Act 2006 section 1030(1)

2. Companies Act 2006 section 1030(4)

3. Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 paragraph 91(4)

4. Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 paragraph 91(5)

5. Companies Act 2006 section 1030(5)(b)

6. Companies Act 2006 section 1030(5)(c)

## 54.73 The court's decision

Where the registrar has struck a non-trading company off the register the court may order its restoration on the following grounds:

- a) it was carrying on business or in operation at the time, or
- b) it was struck off the register voluntarily and had engaged in any activity not associated with the application<sup>1</sup>, or
- c) any proceedings had not been concluded<sup>2</sup>, or
- d) notice of the application had not been properly sent to all parties<sup>3</sup>, or
- e) the company had grounds to withdraw the application<sup>4</sup>, or
- f) the court considers it just to do so<sup>5</sup>

1. Companies Act 2006 section 1004

2. Companies Act 2006 section 1005

3. Companies Act 2006 sections 1006, 1007 and 1008

4. Companies Act 2006 section 1009

5. Companies Act 2006 section 1031(1)

## 54.74 When is the company restored?

The restoration of the company takes effect from the date a copy of the court order is delivered to the registrar. On receiving a copy of the order restoring the company, the registrar must publish notice in the Gazette<sup>1</sup>. The notice must contain the name of the company, or if the company is restored under a different name, that name and its former name, the registered number of the company and the date restoration took effect<sup>1</sup>.

1. Companies Act 2006 section 1031(2) and (3)

## 54.75 The effect of restoration to the register

Once a company has been restored to the register it is deemed to have continued in existence as if it had not been dissolved or struck off the register. The company is not liable for any civil penalty for failing to deliver returns or accounts for a financial year ending after the date of dissolution or striking off and before the restoration to its register. The court may give such directions for placing the company and all other persons in the same position (as far as possible) as if the company had not been dissolved or struck off. This provision can be used to include the provision that the period between dissolution and restoration shall not be counted for the purpose of any statute of limitations<sup>1</sup>. The court may also order that all outstanding returns, accounts, etc. are filed with the registrar, that the applicant pays the registrar costs, and that the applicant pays the costs of The Treasury Solicitor (BV), or the relevant Duchy Solicitor, for dealing with any property vested as bona vacantia and dealing with the application<sup>2</sup>.

1. Re: Donald Kenyon Ltd (1956) 1WLR 1397

2. Companies Act 2006 section 1032 CA2006

## 54.76 Company's name on restoration

A company will be restored to the register with its original name unless another company with the same name has been registered<sup>1</sup>. If another company with the same name is registered, the company must be restored under another name

specified in either the application, in the case of administrative restoration, or in the court order, or as if the registration number was also its name<sup>2</sup>.

1. Companies Act 2006 section 1033(1)

2. Companies Act 2006 section 1033(2)

## 54.77 Company restored under another name

If the company is restored to the register by administrative application or court order the provisions relating to the registration and issue of a new certificate of incorporation<sup>1</sup> and the effect of a change of name<sup>2</sup> apply as if the application or court order were notice of a change of name<sup>3</sup>.

1. Companies Act 2006 section 80

2. Companies Act 2006 section 81

3. Companies Act 2006 section 1033(3) and (4)

## 54.78 Company restored under its registered number

If the company is restored to the register as if its registered number was also its name it must change its name within 14 days of being restored. The change of name may be made by directors' resolution, without prejudice to any other method, and notice must be given to the registrar. The notice of the change of name ensures the provisions relating to the registration and issue of a new certificate of incorporation and the effect of a change of name apply. If the company fails to change its name or notify the registrar, the company and every officer who is in default commits a criminal offence. Any person summarily convicted of this offence is liable to a fine<sup>1</sup>. The official receiver should not apply for the restoration of the company under its registered number, (see paragraphs 54.81 and 54.82) for details on how to proceed.

1. Companies Act 2006 section 1033(6)

## 54.79 Bona vacantia

The Treasury Solicitor (BV) or the relevant Duchy Solicitor can dispose of any property, right or interest vested in them despite the fact that the company may be restored to the register. If the company is restored it does not affect the disposition. However, The Treasury Solicitor (BV) or the relevant Duchy Solicitor shall pay to the company the amount of any consideration received or the value of such consideration at the time of disposition. If no consideration has been received The Treasury Solicitor (BV) or the relevant Duchy Solicitor must pay an amount equal to

the value of the property, right or interest disposed of. The Treasury Solicitor (BV) or the relevant Duchy Solicitor may deduct the reasonable costs of the disposition unless they have already been paid as a result of the application for administrative restoration or as a result of a court order<sup>1</sup>.

1. Companies Act 2006 section 1034

# Official receiver's application for restoration

## 54.80 Introduction

There are number of occasions where the official receiver will need to restore the company. This will usually be achieved with an application for restoration to court. However, in a small number of cases the registrar may restore the company to the register at the request of the official receiver

## 54.81 System error by Companies House

Companies House may make an administrative mistake, known internally as a system error, when dealing with the dissolution process. In these instances the registrar can restore the company to the register without the need for an application to court. The official receiver should ask the registrar to restore the company to the register in these circumstances. If the registrar does not make a system error the official receiver will need to make an application to the court to restore the company to the register.

Where notification of the winding-up order is received by the registrar in the interim period between the issuing of an instruction to gazette a notice of the company's name having been struck off the register and the actual publication of the notice, then dissolution will occur<sup>1</sup> and the registrar should be considered to have acted appropriately.

1. Companies Act 2006 section 1000(6)

## 54.82 Change of company name

If it is not possible to restore the company under its original name the official receiver must ensure that its name is changed. The official receiver should include the new company name in their application to the court together with a request for restoration under this name.

