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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
on ~~17<sup>th</sup> June~~30<sup>th</sup> September 2014

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**Arthur Cox**

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## PART 12

### STRIKE OFF AND RESTORATION

#### Chapter 1

##### Strike off of company

###### When Registrar may strike company off register.

[725]. (1) Except in the case of an application by a company to be struck off the register, the Registrar may strike a company off the register if -

- (a) there exists one or more of the grounds for striking off set out in *section [726]* – “involuntary strike off”; and
- (b) the Registrar has followed the procedure set out in *sections [727], [728], [730] and [733](1)*.

(2) In the case of an application by a company to be struck off the register, the Registrar may strike the company off the register if -

- (a) the conditions for striking off set out in *section [731]* have been satisfied – “voluntary strike off”; and
- (b) the Registrar has followed the procedure set out in *sections [732] and [733](2)*.

###### Grounds for involuntary strike off.

[726]. The grounds referred to in *section [725](1)(a)* are:

- (a) the company has failed to make an annual return as required by *section [343]*;
- (b) the Revenue Commissioners have given a notice under section 882(3) of the Taxes Consolidation Act 1997 to the Registrar of the company’s failure to deliver the statement required under section 882 of that Act;
- (c) the Registrar has reasonable cause to believe that *section [137](1)* is not being complied with in relation to the company;
- (d) the company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting;
- (e) the company is being wound up and the Registrar has reasonable cause to believe that the affairs of the company are fully wound up and that the returns required to be made by the liquidator have not been made for a period of 6 consecutive months;
- (f) there are no persons recorded in the office of the Registrar as being current directors of the company.

###### Registrar’s notice to company of intention to strike it off register.

[727]. (1) The Registrar may give notice in accordance with *section [728]* of the Registrar’s intention to strike a company off the register on a ground set out in any of *paragraphs (a) to (f) of section [726]*.

(2) The Registrar shall send the notice by registered post -

- (a) except where *paragraph (b)* applies, to the company at its registered office;

- (b) if the ground for striking off is that set out in *section [726](d)* or *(e)* and an individual is recorded in the office of the Registrar as the liquidator of the company, to the liquidator.

(3) The Registrar shall also send a copy of the foregoing notice by prepaid ordinary post to such persons, if any, as are recorded in the office of the Registrar as being current directors of the company but non-compliance with this subsection does not affect the validity of a notice that otherwise complies with *subsection (1)*; the address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

(4) Instead of giving a notice under *subsection (1)*, the Registrar may publish a notice in the CRO Gazette containing the information required by *section [728]* if -

- (a) the company has not, for 20 or more consecutive years, made an annual return as required by *section [343]* or the corresponding provision of the Act of 1963; and
- (b) no notice of the situation of the registered office of the company has been given to the Registrar as required by *section [50]* or the corresponding provision of the prior Companies Acts.

#### **Contents of Registrar's notice to company.**

**[728].** (1) The Registrar's notice under *section [727]* shall -

- (a) state that the issue of the notice is the first step in a process that may lead to the company being struck off the register;
- (b) state the ground or grounds for striking off being invoked by the Registrar;
- (c) state that the company will be dissolved if it is struck off the register;
- (d) if *subsection (3)* applies, set out the information required by that subsection;
- (e) specify the remedial step;
- (f) specify the date on or before which the remedial step must be taken; and
- (g) state that failure to take the remedial step on or before the date so specified may result in the Registrar giving public notice of an intention to strike the company off the register.

(2) The date to be specified for the purposes of *subsection (1)(f)* shall be a date falling not less than 28 days after the date of the notice.

(3) Except where the ground for striking off is that set out in *section [726](d)*, *(e)* or *(f)*, the notice shall also state that each director of the company at the date that the notice is sent is liable for disqualification under *section [842](h)* if the company is struck off the register.

#### **Meaning of remedial step.**

**[729].** For the purposes of *sections [728]*, *[730]* and *[733]*, the remedial step is whichever of the following applies:

- (a) in the case of the ground for striking off set out in *section [726](a)*, the delivery to the Registrar of all annual returns as required by *section [343]* that the company has failed to make;
- (b) in the case of the ground for striking off set out in *section [726](b)*, the delivery to the Revenue Commissioners of the statement that the company is required to deliver under section 882(3) of the Taxes Consolidation Act 1997;

- (c) in the case of the ground for striking off set out in *section [726](c)*, the provision to the Registrar of evidence that *section [137](1)* is being complied with in relation to the company;
- (d) in the case of the ground for striking off set out in *section [726](d)* or *(e)*, the provision to the Registrar of the details of the liquidator and of up to date periodic statements having been furnished under *section [681]*;
- (e) in the case of the ground for striking off set out in *section [726](f)*, the notification to the Registrar under *section [149](8)* of the appointment of a director of the company.

**Public notice of intention to strike company off register.**

[730]. (1) If the Registrar has given a notice under *section [727]* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *section [728](1)(f)*, the Registrar may, by publishing a notice in the CRO Gazette that complies with *subsection (2)*, give public notice of the Registrar's intention to strike the company off the register.

(2) The notice shall -

- (a) specify the ground for striking the company off the register;
- (b) specify the remedial step;
- (c) specify the date on or before which the remedial step must be taken; and
- (d) state that, unless that remedial step is taken on or before the date so specified, the Registrar may strike the company off the register and, if the Registrar does so, the company will be dissolved.

(3) The date to be specified for the purposes of *subsection (2)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.

**Conditions for voluntary strike off.**

[731]. (1) A company may apply to the Registrar to be struck off the register if the following conditions are satisfied:

- (a) the circumstances relating to the company are such as to give the Registrar reasonable cause to believe that it has never carried on business or has ceased to carry on business;
- (b) the company has, within 3 months before the date of the application, by special resolution -
  - (i) resolved to apply to the Registrar to be struck off the register on the ground that it has never carried on business or has ceased to carry on business; and
  - (ii) resolved that pending the determination (or, should it sooner occur, the cancellation, at its request, of this process) of its application to be struck off, the company will not carry on any business or incur any liabilities;
- (c) the company has delivered to the Registrar all annual returns required by *section [343]* that are outstanding in respect of the company as at the date of the application;
- (d) the company has delivered to the Registrar a certificate in the prescribed form signed by each director certifying that as at the date of the application -

- (i) the amount of any assets of the company does not exceed €150;
  - (ii) the amount of any liabilities of the company (including contingent and prospective liabilities) does not exceed €150; and
  - (iii) the company is not a party to ongoing or pending litigation;
- (e) the Registrar has received from the Revenue Commissioners written confirmation dated not more than [3 months]<sup>409</sup> before the date on which the Registrar receives the application that the Revenue Commissioners do not object to the company being struck off the register; and
  - (f) the company has caused an advertisement, in the prescribed form, of its intention to apply to be struck off the register to be published within 30 days before the date of the application in at least 1 daily newspaper circulating in the State.

(2) Where an application under this section by a company to be struck off the register is made within one year after the date on which the company has changed its name or its registered office (or both), then, as the case may be –

- (a) the former name of the company, as well as the existing name of the company; or
- (b) the former address, as well as the current address, of the company's registered office; or
- (c) both its former name and the former address of its registered office, as well as the existing name of the company and the current address of its registered office,

shall be stated in the advertisement referred to in *subsection (1)(f)*.

**Public notice in case of voluntary strike off.**

[732]. (1) As soon as practicable after the receipt of an application by a company to be struck off that satisfies the conditions set out in *section [731]*, the Registrar shall, by publishing a notice in the CRO Gazette that complies with *subsection (2)*, give public notice of the Registrar's intention to strike the company off the register.

(2) The notice shall -

- (a) state that the company has applied to be struck off the register;
- (b) state –
  - (i) that any person may deliver to the Registrar an objection to the striking off of the company in the prescribed form; and
  - (ii) that any such objection must be confined to the ground that one or more of the conditions set out in *section [731]* have not been satisfied;
- (c) specify the period within which such an objection may be delivered to the Registrar; and
- (d) state that, unless the Registrar has received –

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<sup>409</sup> Substituted by point 176 of Report Amendments.

- (i) an objection to the striking-off of the company within that period, being an objection that the Registrar sustains; or
- (ii) a request for the cancellation of the process of strike off in accordance with *subsection (4)*,

the Registrar may strike the company off the register and, if the Registrar does so, the company will be dissolved.

(3) The period to be specified for the purposes of *subsection (2)(c)* shall be the period ending 90 days after the date of publication of the notice.

(4) Within the period specified for the purposes of *subsection (2)(c)*, the company may request of the Registrar, by delivering to the Registrar a notice in that behalf in the prescribed form, the cancellation of the process of its being struck off the register.

#### **Striking off (involuntary and voluntary cases) and dissolution.**

[733]. (1) If the Registrar has given a notice under *section [730]* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *section [730](2)(c)*, the Registrar may strike the company off the register.

(2) If the Registrar has given a notice under *section [732]* and –

(a) no objection referred to in *section [732](2)(b)* has been delivered to the Registrar within the period specified in that notice for the purposes of *section [732](2)(c)* or the Registrar is of opinion that there is no reasonable basis to such an objection that has been so delivered; and

(b) the company has not requested, in accordance with *section [732](4)*, the cancellation of the process of its being struck off the register,

the Registrar may strike the company off the register.

(3) The Registrar shall publish in the CRO Gazette a notice of the striking of a company off the register.

(4) The company is dissolved on the date of publication by the Registrar of the notice in the CRO Gazette of its being struck off the register and that date is referred to subsequently in this Part as the “date of dissolution”.

#### **Effect of removal and dissolution.**

[734]. (1) The liability, if any, of a director, other officer or a member of a company that has been dissolved under *section [733](4)* shall continue and may be enforced as if the company had not been dissolved.

(2) Nothing in this section or in *section [733]* shall affect the power of the court to wind up a company that has been struck off the register or dissolved under that section.

(3) For the purposes and the purposes only of –

(a) an application for the restoration of the company to the register under *section [737]* or *[738]*; or

(b) in so far as is necessary for the making of such an application (or the doing of anything required by or under *Chapter 2* to be done consequent on the making of it),

a company shall be deemed not to have been dissolved under *section [733]*.

(4) *Subsection (3)* shall not be read as authorising the dealing with, or the exercising of control over, any property that has become the property of the State pursuant to Part III of the State Property Act 1954.

**Power of Director to obtain information.**

[735]. (1) Where a company has been struck off the register under *section [733](1)* on any of the grounds set out in *section [726](a)* to (c), the Director may, by notice to the directors of the company, require those persons to produce to the Director a statement of affairs of the company in accordance with this section.

(2) The persons to whom a notice is sent under *subsection (1)* shall, within the period specified in the notice in that behalf, produce to the Director a statement of affairs of the company that complies with *subsection (3)*.

(3) The statement of affairs shall -

- (a) be in the prescribed form (if any);
- (b) be verified by an affidavit;
- (c) contain the following information in respect of the company as at the date of dissolution:
  - (i) particulars of its assets, debts and liabilities;
  - (ii) the names and addresses of its creditors;
  - (iii) particulars of securities given by the company, including the name of the secured creditor in each case and the date on which the security was given;
  - (iv) such further or other information as may be prescribed or that the Director may reasonably require.

(4) On the application of the Director, the court may require a person who has made a statement under *subsection (2)* to appear before it and answer on oath any question relating to the content of the statement.

(5) A person who fails to comply with *subsection (2)* shall be guilty of a category 3 offence.

## Chapter 2

### Restoration of company to register

**Application of Chapter.**

[736]. This Chapter applies to a company that has been struck off the register under *Chapter 1*.

**Restoration on application to Registrar.**

[737]. (1) On an application by a person specified in *subsection (3)*, the Registrar may restore a company to the register if -

- (a) the Registrar has reasonable cause to believe that the strike off of the company has disadvantaged the applicant;
- (b) the application is made in the prescribed form;
- (c) the application is received by the Registrar within the period of 12 months after the date of dissolution of the company; and

(d) the requirements of *subsection (2)* have been satisfied within the period of 15 months after the date of dissolution of the company.

(2) ~~The~~Subject to *subsection (3)*, the<sup>410</sup> requirements referred to in *subsection (1)(d)* are the following:

(a) the Registrar has received from the company all annual returns outstanding, if any, being annual returns prepared in accordance with *Part 6*;

~~[(b) — the Registrar has received written confirmation from the Minister [for] Finance and the Revenue Commissioners that they have no objection to the company being restored to the register under this section;~~<sup>411</sup>]<sup>412</sup>

~~[(be)]~~ the Registrar is satisfied that *section [137](1)* is being complied with in relation to the company; and

~~[(cd)]~~ the Registrar is satisfied that no notification required by *section [149](8)* remains outstanding in relation to the company.

[3] If the ground, or one of the grounds, on which the company had been struck off the register is that referred to in *section 726(b)*, *subsection (2)* shall have effect as if the following paragraph were inserted after *paragraph (a)* of that subsection:

“(aa) the Registrar has received written confirmation from the Revenue Commissioners that they have no objection to the company being restored to the register under this section;”<sup>413</sup>

~~[(43)]~~ The Registrar may restore a company to the register on the application of a person who was a member or an officer of the company at the date of its dissolution.

~~[(54)]~~ On the registration of an application under this section and on payment of such fee as may be prescribed, the Registrar shall restore the company to the register and the company shall be deemed to have continued in existence as if it had not been struck off the register.

~~[(65)]~~ Subject to any order made by the court in the matter, the restoration of a company to the register under this section shall not affect the rights and liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company between the date of its dissolution and the date of restoration.

#### **Restoration on application to court.**

**[738].** (1) On an application in accordance with *section [739]* by a person specified in *subsection (2)*, the court may order that a company that has been struck off the register be restored to the register if -

(a) the striking off of the company has disadvantaged the applicant;

(b) the application is made within the period of 20 years after the date of dissolution of the company; and

(c) it is just and equitable to do so.

(2) The court may make the order on the application of -

(a) the company;

<sup>410</sup> Substituted by point 69 of Seanad Report Amendments.

<sup>411</sup> Substituted by point 116 of Seanad Committee Amendments.

<sup>412</sup> Deleted by point 70 of Seanad Report Amendments.

<sup>413</sup> Inserted by point 71 of Seanad Report Amendments.

- (b) a creditor of the company;
- (c) a person who was a member or an officer of the company at its date of dissolution; or
- (d) a person who, at the date of its dissolution, had an entitlement (disregarding any right of the directors to decline to register the person as such) to be registered as a member of the company by virtue of –
  - (i) the execution, in the person's favour, of an instrument of transfer of a share; or
  - (ii) the transmission, by operation of law, to the person of a right to a share.

(3) Subject to a supplementary order made under *section [742](c)*, the company shall be deemed to have continued in existence as if it had not been struck off the register upon the Registrar receiving a certified copy of the order under *subsection (1)* within 28 days after the date of its perfection.

**Requirements for application to court under *section [738]*.**

**[739].** (1) An application under *section [738]* shall be made on notice to the Registrar, the ~~[Minister for Finance]~~[Minister for Public Expenditure and Reform](#)<sup>414</sup> and the Revenue Commissioners.

(2) In the case of an application under *section [738]* by a creditor, the application shall in addition be made on notice to -

- (a) such officers of the company at the date of dissolution whose names are known, or ought reasonably to be known, by the creditor; and
- (b) such other members or officers of the company at the date of dissolution as the Registrar, the Revenue Commissioners or the ~~[Minister for Finance]~~[Minister for Public Expenditure and Reform](#)<sup>415</sup>, upon being notified of the application, indicate in writing should be joined as notice parties to the application.

**Terms of court order on application under *section [738]*.**

**[740].** (1) In making an order under *section [738]* on the application of a member or an officer of the company, the court shall, unless reason to the contrary is shown to the satisfaction of the court, make it a term of the order that the order shall not have effect unless, within a specified period, there is done each of the things (save where it has already been done) that are set out in *subsection (2)*.

(2) Those things are :

- (a) all outstanding annual returns in relation to the company are delivered, in accordance with *Part 6*, to the Registrar;
- (b) all outstanding statements as required by section 882 of the Taxes Consolidation Act 1997 in relation to the company are delivered to the Revenue Commissioners;
- (c) the company appoints a director and delivers to the Registrar the notification and consent required by *section [149](8) and (10)*, respectively, and –
  - (i) the person so appointed is resident in an EEA state; or
  - (ii) unless a certificate under *section [140]* in relation to the company has been granted by the Registrar and is in

<sup>414</sup> [Substituted by point 72 of Seanad Report Amendments.](#)

<sup>415</sup> [Substituted by point 117 of Seanad Committee Amendments.](#)

<sup>416</sup> [Substituted by point 73 of Seanad Report Amendments.](#)

force, the company provides the Registrar with a bond in accordance with *section [137]*.

(3) For the avoidance of doubt, *subsection (1)* requires, unless reason to the contrary there mentioned is shown, the order of the court to specify that a thing set out in *subsection (2)* is to be done (save where it has already been done) notwithstanding that the ground on which the company had been struck off the register did not relate to that thing.

(4) In making an order under *section [738]* on the application of a creditor of the company, the court shall direct that, within a specified period (save where the particular thing has already been done) –

- (a) there is procured by one or more specified members or officers of the company the delivery by the company of all outstanding annual returns, in accordance with *Part 6*, to the Registrar;
- (b) there is delivered by such specified members or officers all outstanding statements as required by section 882 of the Taxes Consolidation Act 1997 in relation to the company to the Revenue Commissioners;
- (c) such specified members or officers take all reasonable steps to ensure that the company appoints a director and delivers to the Registrar the notification and consent required by *section [149](8)* and *(10)*, respectively, and either that –
  - (i) the person so appointed is resident in an EEA state; or
  - (ii) unless a certificate under *section [140]* in relation to the company has been granted by the Registrar and is in

force, the company provides the Registrar with a bond in accordance with *section [137]*.

(5) For the avoidance of doubt, *subsection (4)* requires the order of the court to specify that a thing set out in that subsection is to be done (save where it has already been done) notwithstanding that the ground on which the company had been struck off the register did not relate to that thing.

(6) In making an order under *section [738]* on the application of a creditor of the company, the court may award the applicant the costs of the application against the company.

**Court order for restoration on application of Registrar.**

[741]. (1) On an application by the Registrar in accordance with *subsection (2)*, the court may order that a company that has been struck off the register be restored to the register if -

- (a) the application is made within the period of 20 years after the date of dissolution of the company; and
- (b) it is just and equitable to do so.

(2) An application under this section shall be made on notice to each person who, to the knowledge of the Registrar, was an officer of the company at the date of its dissolution.

(3) On the making of the order, the company shall be deemed to have continued in existence as if it had not been struck off the register.

(4) In making an order under this section, the court may award the Registrar the costs of the application against the company restored to the register.

### **Supplementary court orders.**

[742]. In ordering that a company be restored to the register under *section [738] or [741]*, the court may -

- (a) except to the extent that the court makes an order under *paragraph (c)*, give such directions as it thinks fit for placing the company and all other persons as nearly as possible in the same position as if the company had not been struck off the register;
- (b) direct the company to change its name if the name of the company is too similar to the name of another company already on the register or a name that has been reserved in accordance with *section 28*;
- (c) if and to the extent that it thinks fit, order that the officers of the company, or any one or more of them as specified in the order, shall be liable for a debt or liability incurred by or on behalf of the company during the period when it stood struck off the register;
- (d) make any other order that it thinks fit.

### **Meaning of court.**

[743]. (1) For the purposes of an application under *section [738] or [741]* by a creditor or the Registrar, in this Chapter “court” means either the High Court or the Circuit Court.

(2) In the case of an application under *section [738]* by a creditor to the Circuit Court, the application shall be made to the judge of the Circuit Court -

- (a) for the circuit in which the registered office of the company was situated immediately before the company was struck off the register; or
- (b) if there was no registered office of the company at that time, for the circuit in which the creditor resides; or
- (c) if there was no registered office of the company at that time and the creditor resides outside the State, for the Dublin Circuit.

(3) An application under *section [741]* to the Circuit Court shall be made to the judge of the Circuit Court for the Dublin Circuit.

### **Transitional provision for companies struck off register before commencement of this Chapter.**

[744]. (1) Subject to *subsection (3)*, *sections [736] to [743]* shall apply to a company that has been struck off the register under any former enactment relating to companies (within the meaning of *section 5*) before the commencement of this Chapter.

(2) For that purpose –

- (a) references in the foregoing provisions of this Chapter to a company that has been struck off the register under *Chapter 1* shall be read as references to a company that has been struck off under the former enactment relating to companies (within the foregoing meaning);
- (b) references in the foregoing provisions of this Chapter to the date of dissolution of the company shall be read as references to the date of its dissolution under the former enactment relating to companies (within the foregoing meaning); and
- (c) the foregoing provisions of this Chapter shall apply with other necessary modifications.

(3) Neither *subsections (1) and (2)* nor any other provision of this Chapter applies if, before the date of the commencement of this

Chapter, an application has been made under any former enactment relating to companies (within the foregoing meaning) to restore the company to the register and, in such a case, that former enactment shall apply notwithstanding the repeal of it by *section 4*.

### **Chapter 3**

#### Miscellaneous

#### **Disclosure of information by Revenue Commissioners to Registrar**

[745]. (1) This section applies if the Registrar, for the purpose of exercising any of his or her powers under this Part, is required to determine whether a statement that a company has failed to deliver to the Revenue Commissioners in accordance with section 882(3) of the Taxes Consolidation Act 1997 has or has not been subsequently delivered to them.

(2) In any case to which this section applies, the Revenue Commissioners may, notwithstanding any obligations as to secrecy or other restriction upon the disclosure of information imposed by or under statute or otherwise, disclose to the Registrar any information in their possession required by the Registrar for making the determination.

