

Guernsey companies: striking off and voluntary winding up

Service area / [Corporate, Restructuring and Insolvency](#)

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Introduction

This briefing note provides an outline of the different processes of voluntary winding up and striking off under the Companies (Guernsey) Law, 2008 (as amended) (the "Law"). It does not cover compulsory winding up or the specific provisions on winding up of protected cell companies and incorporated cell companies. Further information on the effect of the Law on the winding up of these company structures can be found in our separate briefing notes on those subjects.

Voluntary winding up

A Guernsey company may be voluntarily wound up by means of a special resolution of its shareholders (passed by a majority of 75%). A copy of the special resolution must be filed at the Guernsey Companies Registry within 30 days who will publish notice on its website. A copy of the special resolution must also be sent to the Guernsey Financial Services Commission ("GFSC") within 30 days of the special resolution being passed if the company is supervised by the GFSC. Under certain circumstances an ordinary resolution may be sufficient.

From the commencement of a voluntary winding up the company ceases to carry on business save in so far as may be expedient for the beneficial winding up of the company.

The company must appoint a liquidator by ordinary resolution (passed by a majority of 50%) to wind up the affairs of the company and fix his remuneration. This can be done in the same special resolution resolving to wind up.

The costs and expenses incurred in the winding up, including the fees of the liquidator, are payable from the company's assets in priority to all other claims.

Upon the appointment of a liquidator the powers of the directors cease save to the extent that the company by ordinary resolution or the liquidator sanctions their continuance.

The liquidator realises the assets of the company and discharges its liabilities. Having done so, he distributes any surplus amongst the shareholders according to their respective entitlements.

On the expiry of one year and on each anniversary thereof the liquidator must summon a general meeting of the company if the winding up is not complete at which an account of his dealings and conduct must be tabled.

As soon as the company's affairs are fully wound up the liquidator prepares an account of the winding up giving details of the conduct of the liquidation and disposal of assets and calls a general meeting of the company at which the account is presented. The members of the company may grant the release of the liquidator.

Following such meeting the liquidator gives notice to the Registrar of Companies in Guernsey that the final meeting has been held and its date which the Registrar publishes stating that the company is to be dissolved.

On the expiry of 3 months from the date of delivery of the notice of the final meeting, the company is dissolved.

All property rights (if any) remaining in the company or held on trust for it become bona vacantia belonging to the Crown.

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There is the ability to apply to the Guernsey courts to restore a company to the Register of Companies in Guernsey within certain time periods and subject to observing certain requirements.

Voluntary striking off

On application by a company, the Registrar of Companies in Guernsey may strike a company off the Register of Companies in Guernsey.

The application must:

- be made by the board of directors;
- be accompanied by a declaration of compliance confirming that all requirements of Guernsey law have been complied with;
- contain such information as the Registrar of Companies in Guernsey may require.

The Registrar of Companies in Guernsey must give notice stating that on the expiration of 2 months the company will be struck off the Register of Companies in Guernsey and will be dissolved unless cause is shown to the contrary.

Within 7 days of the application, a copy of the application must be served on every person who is a shareholder, employee, creditor, director manager or trustee of any pension fund established for the benefit of employees of the company.

A copy of the application must also be given to the GFSC within 7 days if the company in question is supervised.

At the expiration of the 2 month period, the company is struck off (assuming no cause has been shown to the contrary) and is dissolved.

An application to voluntarily strike off a company cannot be made where, during the preceding 3 month period, the company has:

- changed its name;
- traded or otherwise carried on business;
- made a disposal for value of property or rights that it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business; or
- engaged in any other activity except one necessary or expedient for the purpose of (i) making an application for striking off; (ii) concluding the affairs of the company; or complying with the requirements of any enactment.

A company is not treated as trading or otherwise carrying on a business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on a business.

In addition an application cannot be made if the company has any outstanding liabilities or is a party to any ongoing proceedings or if proceedings connected to insolvency have not been concluded.

Notwithstanding that the company has been struck off:

- the liabilities of all officers and shareholders continue and may be enforced;
- the Court retains the power to wind-up the company;
- all property rights then vested in the company or held on trust for it become bona vacantia belonging to the Crown.

There is the ability to restore a company to the Register of Companies in Guernsey within certain time periods and subject to observing certain requirements.



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