

Restoration: administrative vs ordered by the court

A Cyprus company that has been struck off the Cyprus Registry either voluntarily or involuntarily, can be restored, depending on the circumstances, either through an application to the Registrar of Companies or through an application to the District Courts of Cyprus. In both instances, the company once restored, will be considered to continue to exist as if it had never been struck off.

Administrative Restoration

This option was brought to life with Article 327A of the Cyprus Companies Act, following the adoption of the Companies (Amending) Law of 2018 (N. 149 (I) /2018). It is provided to companies which have been struck off the Registry by the Registrar of Companies for the following reasons:

- non-submission with the Department of the Registrar of Companies of any documents required by law such as for example of the Annual Return;
- non-payment of the annual government levy;
- the Registrar of Companies has reasonable grounds to believe that the company did not conduct any businesses and was not operating.
- all forms, annual returns, financial statements which were due before the strike off;
- payment of all annual government levies due, fines or other charges that were imposed or incurred prior to strike off;
- confirmation that the company was active or was carrying on businesses;

payment of the fee for the restoration.

Administrative restoration within 24 months from day of strike off, whereas through the court within 20 years from day of publication.

If the Registrar of Companies is satisfied that the above have been fulfilled, he will restore the company.

Restoration through the court

Article 327(7)(a) of the Cyprus Companies Act provides that a company or a company's member or creditor who feels aggrieved by the company having been struck off the register, or any other person who has suffered damages by actions of the company before its strike off, may apply to the District Courts of Cyprus for restoring the company, within twenty (20) years from the publication date of the strike off.

It is worth noting that whilst in the case of an administrative restoration only a director or a member can apply for this, in the case of a court restoration the option is wider.

If the court is satisfied that the company at the time of its strike off was carrying out businesses and was in operation or that it is otherwise fair to be restored, will issue a court order restoring the company to the Cyprus Registry. Once the court order is submitted to the Registrar of Companies and the company is restored, it will be deemed to continue in existence as if it was never struck off.

Additionally the court with the order may, inter alia, order the filing of specific documents which will update the corporate register, the payment of fees, levies due and the appointment of any person in the same position that he held before the strike off.

It is worth noting that whilst the spectrum of applicants is wider for restoration through the court, the law is silent as to what circumstances must exist for a person to feel "aggrieved" or having "suffered". Therefore it is on the Cyprus Courts to decide whether an order will be granted on such grounds and they will base their judgement on the evidence and documentation laid before them.

In the case where the applicant is a creditor or any other third party who obviously will not have the capacity to prepare financial statements to date, then it will be even more difficult to prove aggrievance, hence the application must be well prepared and relevant documentation must be presented as supporting evidence.

Conclusively, it is important to consider each option carefully, and take into account the time constraints, the capacity and interest of a potential applicant, the merits of each option and the specific requirements.

TOTALSERVE MANAGEMENT LIMITED

Written by

Melina Dionysiou, LL.B., Dipl., TEP
Director / Head of Corporate

melina.dionysiou@totalserve.eu

