

Administrative strike off of a British Virgin Islands company

Service area / [Corporate](#)

Location / [British Virgin Islands](#)

Date / [August 2019](#)

The office of the Registrar of Corporate Affairs (the “**Registrar**”) in the British Virgin Islands (the “**BVI**”) has responsibility for the incorporation, striking-off and restoration of struck off companies to the register of companies (the “**Register**”).

Administrative strike off of a British Virgin Islands company

The Registrar may strike a company off the Register for a number of different reasons, including:

- the failure of a company to appoint a registered agent in the BVI;
- the failure of a company to file any return, notice or document that it is required to file under the BVI Business Companies Act (as amended);
- the failure of the company to pay to the BVI Registry of Corporate Affairs (the “**Registry**”) its annual Registry fee or any late penalty payment by the due date (the “**Registry Fees**”);
- where the Registrar is satisfied that the company has ceased to carry on business or that the company is carrying on business without the requisite licence, permit or authority required under the laws of the BVI; or
- if the company is regulated under the BVI financial services legislation and has its licence (“**FS Licence**”) cancelled or revoked by the BVI Financial Services Commission (the “**BVIFSC**”).

The Registrar may decide not to strike off a company from the Register if the Registrar has reason to believe that the company should not be struck off, for example because the company is trading or has property. In such circumstances, the Registrar has the power to refer the company to the BVIFSC for further investigation.

Procedure for administrative strike off

If the Registrar intends to strike a company off the Register, the Registrar must:

- send the company a strike off warning notice (the “Warning Notice”), to notify the company that unless the company shows cause to the contrary, it will be struck off the Register on a date specified in the Warning Notice, being not less than 30 days after the date of the Warning Notice; and
- publish a notice of her intention to strike the company off the Register in the BVI Gazette.

If the Registrar does not receive a satisfactory response from the company to the Warning Notice within the time period stipulated in the Warning Notice, the company will be struck off the Register effective from the date the Registrar publishes a notice of the striking of a company from the Register in the BVI Gazette.

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The Registrar is not required to send a Warning Notice to a company that has failed to pay its Registry Fees or had its FS Licence revoked or cancelled by the BVIFSC. If a company fails to pay its Registry Fees, the Registrar has the power to strike the company off the Register six months from the date the annual Registry fee was due for payment. The Registrar may also strike the name of a company off the Register upon notification that a company's FS Licence is cancelled or revoked by the BVIFSC.

Effect of striking off

A company that is struck off the Register is not immediately dissolved. The company retains its legal status but is incapacitated. Other than the limited exceptions noted below, whilst a company is struck off the Register, the company and the directors, members and any liquidator or receiver of the company may not:

- commence or defend any legal proceedings in the name of the company;
- carry on any business or deal with the assets of the company or act in any way with respect to the affairs of the company; or
- make any claim or claim any right for, or in the name of, the company.

Notwithstanding the restrictions noted above, where a company is struck off the Register, the company or a director, member, liquidator or receiver of the company may:

- make an application to the Registrar to restore the company to the Register;
- continue to defend proceedings commenced against the company prior to the date of strike off; and
- continue to carry on legal proceedings commenced by the company prior to the date of strike off.

The fact that the company is struck off the Register does not stop the company incurring liabilities or prevent any creditor from making a claim against the company. The strike off of a company does also not affect the liability of the members, directors, officers or agents of the company.

Appeal against the striking-off a company

Any person aggrieved by the striking of a company off the Register by the Registrar, may within 90 days from the date of strike off, appeal to the BVI court. Notice of the appeal must be served on the Registrar who is entitled to appear and be heard at the hearing of the appeal. The Registrar may suspend the operation of the striking off upon such terms as she considers appropriate, pending the determination of the appeal.

Dissolution

A company that has been struck off the Register is automatically dissolved seven years after it is struck off the Register, provided that it has not been restored to the Register in the meantime. For further information on the dissolution of a company, please refer to Carey Olsen's guide on "[Dissolution of a BVI company](#)".

Restoration of a company struck off but not yet dissolved

Where a company has been struck off the Register but is not yet dissolved, the Registrar may upon receipt of an application in the approved form and payment of the restoration fee and all outstanding Registry Fees, restore the company to the Register.

If a company was struck off for not having a registered agent, or the struck off company no longer has a registered agent, the Registrar will only restore the company to the Register if a licensed person has agreed to act as registered agent. The Registrar must also be satisfied that it would be fair and reasonable for the name of the company to be restored to the Register.

An application to restore a company to the Register that is struck off but not dissolved may be made by the company, a creditor, a member or liquidator of the company within seven years from the date of strike off. For further information on restoring a company to the Register, please refer to Carey Olsen's guide on "[Restoration of a BVI company](#)".

Restoring a company administratively struck off and dissolved

Where a company has been dissolved, an application to restore the company to the Register may be made to the Court by a creditor, a former director, a former member or a former liquidator of the company or any person who can show an interest in having the company restored. An application to restore a dissolved company must be made within ten years of the date on which the company was dissolved. For further information on restoring a dissolved company to the Register, please refer to Carey Olsen's guide on "[Restoration of a BVI company](#)".

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Potential problems arising out of administrative strike off

There are a number of implications that arise following the striking off of a company from the Register:

Property of the company A company that is struck off the Register will not legally be able to sell or pass title to its assets. If a company is then subsequently dissolved after it is struck off, any property that a company owns at the date of dissolution is transferred into the ownership of the Crown (i.e. the BVI Government), although the property should be returned to the company if it is subsequently restored.

Continuing liability for fees and penalties The striking off of a company does not relieve the company from the payment of its Registry Fees. If there is a need to restore the company at some point in the future, all back fees and penalties will have to be paid to the Registrar as well as the restoration fee. If the company has not filed its register of directors with the Registrar, all fees and penalties (which can be substantial) for non-filing will also need to be paid to the Registrar to restore the company.

Continuing liability of members and directors As indicated above, any liabilities of the members and directors of a company continue, even though the company has been struck off.

Advantages of solvent voluntary liquidation

Directors of a company may actively resolve to stop paying a company's annual Registry fee in order for the company to be administratively struck off the Register. However, for the reasons noted above, there are inherent risks associated with taking such steps. Despite the additional costs associated with solvent voluntary liquidations, when a company's purpose comes to an end, it is advisable that a company is voluntarily liquidated and dissolved, rather than waiting for the company to be struck off the Register. When a company is voluntarily liquidated its assets are dealt with properly and the voluntary liquidator can commence (and defend) legal proceedings in the company's name (if needed). In addition, upon the liquidation and dissolution of the company, any directors' and members' statutory duties and liabilities will come to an end. The company will be dissolved shortly after the liquidation has concluded. For further information on the solvent voluntary liquidation process, please refer to Carey Olsen's guide on "Solvent Voluntary Liquidations".



FIND US

Carey Olsen
Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands

T +1 284 394 4030
E bvi@careyolsen.com



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Visit our corporate team at
careyolsen.com



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