



GUIDANCE NOTE 13

Striking off a company under sections 411, 412 and 413 of the Companies Act 2014

Under section **411** of the Companies Act, the Registrar may strike off the register the name of any company (other than a public limited company) in respect of which no annual return has been filed for the previous 3 calendar years.

Under section **412** of the Companies Act, the Registrar has a discretionary power to strike off defunct companies from the Register.

The procedure is instigated by the Registrar if he believes that the company is not carrying on business or in operation. A company which is in liquidation may also be struck off under this section if it appears that the liquidation has lapsed, that no liquidator is acting, that the affairs of the company are fully wound up, but the returns required to be made by the liquidator have not been made for six months.

Under section **413** of the Companies Act, the striking-off procedure may be applied for by the Company itself. The application must be made in writing by the Company's directors on behalf of the Company or by a majority of them, and must state that the Company has no assets or liabilities.

The Striking Off procedure may provide an alternative to a Voluntary Liquidation, particularly when the Company has no assets or liabilities. However, unlike the Liquidation procedure, striking off a Company is at the Registrar's discretion and therefore no assurances can be given as to when the procedure of striking a Company off the Register will be completed.

It should be noted that the action could be halted if any written objection is received from an interested party.

Although a company may be dissolved under this section, the liability of every director, managing officer and member or shareholder will continue and may be enforced even after the Company has been struck off.

- **Filing A Request for a Voluntary Striking Off (Section 413 of the Act)**

An application to strike off a Company must be made using the prescribed form and must contain the following: -

1. Name of the Company

2. Incorporation Number of the Company
3. Date of Incorporation of the Company
4. The Directors of the Company must request the Registrar to exercise his discretion under section 413 of the Companies Act to strike off the Company from the Register.
5. The Directors of the Company must state that the Company is free from charges or mortgages and/or liabilities and has no assets in Gibraltar or abroad (any assets the Company may have owned will become bona vacantia upon Striking Off).
6. The application must be dated and signed by the Directors of the Company or the majority of them.
7. In deciding whether or not to exercise his discretion, the Registrar reserves the right to request further information, evidence or confirmation from all or any of the officers of the Company that the Company has no assets or liabilities.

- **Filing Fee**

A statutory filing fee of £35.00 sterling is payable for filing a request to Strike off the company.

Payment Method – UK clearing cheques should be crossed and made payable to Companies House (Gibraltar) Limited

First Notice

The request for striking off is entered on to the Database and the Computer will then print the **First Notice**, which states that: -

"upon the expiration of three months from the date of this notice the name of the under mentioned company will, unless cause be shown to the contrary, be struck off the Register of Companies and the Company will be dissolved subject to the provisions of Section 413 of the Companies Act."

A copy of the First Notice is produced for each individual company manager with a summary listing all the companies which the particular manager has requested for striking off.

Striking Off Pending

Once the process to strike off a company has been commenced the Company Name is flagged on the Registry's database with "Striking Off 411 / 412 / 413 Pending." This gives notice that the Company will be struck off at a future date.

Striking Off

After the expiry of the statutory three months, the companies appearing in the First Notice will automatically be struck off unless the Registrar has received any objections.

Final Notice

A Final Notice will then be issued stating that : -

"pursuant to the provisions of Section 411 / 412 / 413 of the Companies Act, on the date of this notice, the names of the under mentioned companies have been struck from the Register of Companies and that the said companies are hereby dissolved."

A copy of the Final Notice of strike off will be sent to every company that has been struck off under sections 412 or 413 and will be published in the Seventh Supplement to the Gibraltar Gazette.

Once the company has been struck off the company name will be flagged on the database at the Registry with "Struck off under section 411 / 412 / 413".

Publication of Notices

All notices required to be published by the Registrar under sections 411, 412 or 413 appear in the Seventh Supplement to the Gibraltar Gazette. Companies House online service subscribers may download these free of charge in pdf format from the 'e-Registry' section in our website (www.companieshouse.gi). Individual Notices may also be purchased at Companies House at a cost of £5.00 per Notice.

Section 411

Under section 411, the Registrar has the power to strike from the register of companies any company that has not filed annual returns in the previous three calendar years.

The name of any company to be struck off under section 411 will be published in:-

1. The 7th Supplement to the Gibraltar Gazette; and
2. It may also be viewed at The Registry, 1st Floor, The Arcade, 30-38 Main Street, Gibraltar; and
3. Companies House online service subscribers may download these free of charge in pdf format from the 'e-Registry' section in our website (www.companieshouse.gi).

Reinstatement of Struck Off companies under Section 414 of the Companies Act 2014 or Section 332(1) of the Companies Act 1930

Pursuant to section 414 of the Companies Act 2014, the Registrar has a discretionary power to restore a company to the Register of Companies if the company has been struck off under either of sections 411, 412 or 413 of the Companies Act 2014 before the expiry of 10 years from the publication of the Final Notice to strike off the company.

Similarly, under section 332(1) of the Companies Act 1930 the Registrar has that same discretionary power to restore companies that have been struck off under either of sections 267A or 331 of the Companies Act 1930 before the expiry of 10 years from the publication of the Final Notice to strike off the company.

A form of Application to Restore a company to the Register may be obtained from Companies House or downloaded from our web site www.companieshouse.gi in the "Forms", "Companies" section, "Miscellaneous" section.

The application must be accompanied by an affidavit stating the applicant's interest in the matter and the facts on which the application is based; and, in respect of a company licensed under the Financial Services (Banking) Act, 1992 or the Financial Services (Markets in Financial Instruments) Act, 2006 or in accordance with another Community requirement, evidence of the consent of the competent authority under the relevant legislation to the restoration of the company to the register.

Should the Registrar not exercise his discretion to reinstate a company under section 414 of the 2014 Act or 332(1) of the 1930 Act, or be unable to do so because more than 10 years have elapsed since the company was dissolved, an application is to be made to court to restore the company to the register.

- **Guidance only**

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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