

GUIDANCE NOTE 1 OF 2011

10-MAY-2011

RESTORATION OF COMPANIES BY THE REGISTRAR OF COMPANY HAUS

Background

1. The Companies Act 2009 (the “Act”) requires every local company registered prior to 1 July 2010 to re-register with Company Haus. Overseas companies are not required to re-register.
2. The Act came into force on 1 July 2010. Companies were given 9 months from the commencement date of the Act to re-register. The initial deadline of 31 March 2011 has already lapsed.
3. The Registrar of Companies has extended the re-registration deadline to 30 June, 2011, pursuant to powers conferred on him by the Companies Act Regulations 2010 (the “Regulations”). Further extensions may be granted in limited circumstances.
4. Re-registration is free. Applications for re-registration can be submitted online (and also offline) at the Company Haus website - www.companyhaus.gov.sb. An authorized person of the company (usually a director, company secretary or agent) creates a login account on the website, enters the requisite company details onto the online database, and then uploads a copy of:
 - i. the original certificate of incorporation; and
 - ii. the company rules (if they differ from the model rules).
5. Any local company that fails to re-register by the new re-registration deadline is deemed to have been removed from the company register. As it is automatic and immediate, removal will be effected by the Registrar without prior notice as soon as the re-registration deadline expires.
6. Under the Regulations, the Registrar may restore any company which has been removed for failure to re-register under the Act, and has the discretion to determine any notices to be given and fees, if any, for such restoration.
7. This guidance note outlines the procedure and the grounds for restoration of companies by the Registrar.

Procedure

8. Restoration is not automatic and can only be effected by the Registrar on the written application of one or more of the persons listed in paragraph 19 below.
9. The application must be made within a period of 6 months from the date of removal of the company. Applicants are encouraged to use the application for restoration form attached to these guidance notes. The form is also available at www.companyhaus.gov.sb.
10. The application is constituted by either the application form referred to in the preceding paragraph or a letter addressed to the Registrar and stating the following matters:
 - a. the name and CRO number of the company to be restored;
 - b. the name and contact details of the applicant(s);
 - c. the relationship of the applicant to the company; and
 - d. the ground(s) for the application, together with support evidence, if any.
11. Any application which does not comply with the requirements set out in paragraph 10 above will be rejected by the Registrar and the decision of the Registrar in this respect is final.

Grounds for restoration

12. Without limiting the general discretion of the registrar, the following matters will be taken into consideration in determining whether or not a company should be restored:
 - a. the company is still carrying on business, or another reason existed for the company to continue in existence; or
 - b. the company is a party to legal proceedings; or
 - c. the company is in receivership, or liquidation; or
 - d. the applicant for restoration of the company is a creditor, or a shareholder, or a person who has an undischarged claim against the company; or
 - e. the applicant for restoration of the company believes on reasonable grounds that a right of action exists, or provides satisfactory proof of an intention to pursue a right of action, on behalf of the company under the liquidation provisions of Part 6 of the Companies Act 2009; or

- f. it is just and equitable to restore the company to the Solomon Islands register.
- 13. Each of the grounds set out in paragraph 12 above are alternatives and any one of them is sufficient for restoration.
- 14. If the application is in order and establishes a valid ground for restoration, then the Registrar will restore the company to the register. A notice to this effect will be published on the Company Haus Website and the applicant(s) will be notified of the outcome by mail.
- 15. On the publication of the restoration notice, the company is restored. Company Haus staff will load it back onto the online register. This may take some time so the company may not be immediately available on the website for verification. However, the restoration notice is adequate proof of restoration.
- 16. Once the company is loaded back onto the website its status will change from "removed" to "registered".
- 17. If the application is rejected, the applicant(s) will be notified accordingly by mail. The reason(s) for rejection will be stated in the notification letter.
- 18. The decision of the Registrar does not affect the rights of an applicant to apply to the court under s150 of the Act. Any order of the Court will override the decision of the Registrar.

Who may apply to have a company restored

- 19. Without limitation to the general discretion of the Registrar to restore a company for any reason, the Registrar will accept applications from an applicant who at the time of removal for failure to re-register (taking guidance from s150 of the Act):
 - a. was a shareholder or director of the company;
 - b. was a creditor of the company;
 - c. was a party to any legal proceedings against the company;
 - d. had an undischarged claim against the company; or
 - e. was the liquidator, or a receiver of the property of, the company; and
 - f. any other person whose interests have been jeopardised by the removal of the company.

Fees for restoration

20. The fee payable for an application for restoration is \$1000.
21. The fee is payable if the application for restoration is made by a shareholder or director, liquidator, or receiver of the company.
22. The fee is not payable if the application is made by creditors, parties to legal proceedings against the company or those with an undischarged claim against the company.

Removal of a company for failure to file an annual return

23. The Registrar must remove a company under section 140(a) if it has failed to file an annual return within 6 months of its allocated annual return date. Companies which have been re-registered on grounds listed in this guidance note, but which otherwise appear inactive, may fail to submit their annual return within this period. Procedures for restoration by way of court order of a company in this case are described in section 150 of the Companies Act 2010.

A copy of this Guidance Note will be published on the website at www.companyhaus.gov.sb, or may be obtained directly from the Company Haus office.

**Edwin Saramo
Registrar of Companies
10-May-2011**