
Part A12 – Strike-Off and Restoration

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Part A12 – Strike-Off and Restoration

Chapter 1

Interpretation

Head 1 Interpretation of Part A12

In this Part, unless the context otherwise requires—

“appropriate response” has the meaning assigned to it by Part A12, Head 4 (2);

“date of dissolution” means the date of publication in the CRO Gazette of the notice referred to in Part A12, Head 6 (1) [equivalent of section 12(3) of Companies (Amendment)(No.2) Act 1999], or where the company was struck off under the former strike-off provisions, the date of publication in Iris Oifigiúil of notice of dissolution of the company;

“deadline date”, in relation to a process of strike-off has the meaning assigned to it by Part A12, Head 4 (3) (c);

“former strike-off provisions” means those provisions of the Companies Acts, 1963 to 2005 under which a company could be struck off the register and dissolved;

“incomplete liquidation induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (1) (d);

“non-residency induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (c) [equivalent of section 43 (15) of Companies (Amendment) (No.2) Act 1999];

“no returns induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (a) [equivalent of section 12 (1) of Companies (Amendment) Act 1982];

“Revenue induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (b) [equivalent of section 12A(1) of Companies (Amendment) Act 1982, as inserted by section 46 of Companies (Amendment) (No.2) Act 1999];

“no directors induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (e) [equivalent of section 48 of Companies (Amendment) (No.2) Act 1999];

“strike-off” means the process provided for in Part A12, Head 3 [new], Part A12, Head 4 [new], Part A12, Head 5 [new] and Part A12, Head 6 [new] and cognate words or phrases shall be construed accordingly;

“voluntary strike-off” means a process of strike-off pursuant to Part A12, Head 7 [new].

Explanatory note

This head is a new head. The definitions are all new definitions which have been compiled in this section in order to create a comprehensive list of the defined terms for the purposes of the Part.

Head 2 Instances of dissolution generally

Without prejudice to other provisions which provide for the dissolution of companies, a company may be dissolved following a process of strike-off initiated by the Registrar under this Part.

Explanatory note

This head is a new head. It is intended to put the process of strike-off in context and to act as a sign-post for dissolution provisions in the context of winding-up.

Chapter 2

Strike-off and Its Consequences

Head 3 Instances of strike-off

A process of strike-off may be commenced in relation to a company in circumstances where—

- (a) the company does not, in respect of one or more years, make an annual return required by Part A6, Head 52 [equivalent of section 125 of Companies Act 1963]; or,
- (b) the Revenue Commissioners give a notice under subsection (3) of section 882 (inserted by the Finance Act, 1999) of the Taxes Consolidation Act, 1997, to the Registrar stating that the company has failed to deliver a statement which it is required to deliver under that head; or,
- (c) the Registrar has reasonable cause to believe that Part A4, Head 11(1) [equivalent of section 43(1) of Companies (Amendment) (No.2) Act 1999], is not being complied with in relation to the company; or
- (d) the company is being wound up and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound-up and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months; or
- (e) there are no persons recorded in the office of the Registrar as being directors of the company; or
- (f) an application for voluntary strike-off has been received by the Registrar which satisfies the requirements of Part A12, Head 7.

Explanatory note

This head is a new head. It is a consolidated interpretation of several different strike-off provisions included in the Companies Acts 1963-2003. Some provisions have been newly inserted in accordance with the recommendations of the Company Law Review Group.

The initial notification procedure whereby the Registrar is required to send notice of the commencement of the strike-off process to the company has not been restated for each of the circumstances of strike-off envisaged here. Instead it is provided for, generally, in the next provision.

All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill.

Paragraph (a) is taken, in substance, from section 12(1) of the Companies (Amendment) Act, 1982.

Paragraph (b) is taken, in substance, from section 12A(1) of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act 1999.

Paragraph (c) is taken, in substance, from section 43(15) of the Companies (Amendment) (No.2) Act, 1999. The reference to section 43(2) has been removed since that subsection has not been re-enacted as it is obsolete.

Paragraph (d) is taken, in substance, from section 311(3) of the Companies Act, 1963.

Paragraph (e) is taken, in substance, from section 48 of the Companies (Amendment) (No.2) Act, 1999. The Review Group was of the opinion that it was not necessary to continue to restrict the scope of the provision to situation arising in consequence of sections 195(11A) or 195(11B) of the Companies Act, 1963, as is the case in section 48 of the Companies (Amendment) (No.2) Act, 1999. Such a situation arises where the company fails to send notification to the Registrar of the fact that a person has ceased to be a director or secretary, for whatever reason, despite that person’s request to the company to send notification of his resignation to the Registrar. Section 48 artificially deemed such circumstances to be sufficient evidence that the company had ceased to trade and could therefore be struck off the register under section 311 of the Companies Act, 1963. The new provision instead elevates such a situation to be an independent ground for strike-off in itself.

Paragraph (f) is new. It has been inserted in accordance with the recommendation of the Review Group to give the current system of voluntary strike-off a statutory basis.

Head 4 Initial notification of commencement of strike-off process

- (1) Subject to Subhead (5), except in the case of voluntary strike-off, on the commencement of a strike-off process the Registrar shall send a notice by registered post:
 - (a) to the company at its registered office; or
 - (b) in the case of an incomplete-liquidation induced strike-off, to the individual recorded at the CRO as liquidator of the company, save that where no liquidator is recorded in relation to the company, the notice shall be sent to the company at its registered office.
- (2) Without prejudice to the validity of the notice in Subhead (1), the Registrar shall send a copy of the notice to such persons, if any, as are recorded in the office of the Registrar as being current directors of the company.
- (3) The notice for the purpose of Subhead (1) shall contain—
 - (a) a statement by the Registrar that he or she has commenced a process of strike-off in relation to the company which has the potential to lead to its name being struck off the register and the company being thereby dissolved; and
 - (b) a statement of the circumstance which has led to the commencement of the process of strike-off; and
 - (d) a stipulation of a deadline-date (which shall be at least 1 month subsequent to the date of the warning letter) and a statement that the next phase of the strike-off process may be commenced on or after that date and will consist of the publication of a notice in the CRO Gazette with a view to striking the name of the company off the register; and
 - (e) an invitation to the company to avert the continuance of the strike-off process by means of an appropriate response being—
 - (i) in the case of a no-returns induced strike-off, the delivery to the Registrar on or before the deadline-date of all annual returns which are outstanding in relation to the company as required by Part A6, Head 52 [equivalent of section 125 of Companies Act, 1963];
 - (ii) in the case of a Revenue induced strike-off, the delivery to the Revenue Commissioners on or before the deadline-date of the statement which the company is required to deliver under subsection (3) of Section 882 (inserted by the Finance Act, 1999) of the Taxes Consolidation Act, 1997;
 - (iii) in the case of a non-residency induced strike-off, the furnishing to the Registrar on or before the deadline-date of evidence that Part A4, Head 11 (1) [equivalent of section 43(1) of Companies (Amendment) (No.2) Act, 1999] is being complied with in relation to the company;
 - (iv) in the case of an incomplete-liquidation induced strike-off, the furnishing to the Registrar, on or before the deadline-date, of details of the identity of the liquidator together with up-to-date liquidation accounts; and
 - (v) in the case of a no-directors induced strike-off, the notification to the Registrar pursuant to Part A4, Head 19 (6) [equivalent of section 195(6) of Companies Act, 1963] of the appointment of a person as director of the company
- (4) Except in the case of an incomplete-liquidation induced strike-off, the notice for the purpose of Subhead (1) shall, in addition, contain a warning that in the event that the name of the company is so struck off the register, each person who was a director of the company at the time the notice is sent may be at risk of having a disqualification order made against him or her pursuant to Part A13, Head 40 [equivalent of section 160(2)(h) of Companies Act, 1990].
- (5) Where —
 - (a) a company does not, for 20 or more consecutive years, make an annual return required by Part A6, Head 52 [equivalent of section 125 of Companies Act 1963]; and

- (b) no notice of the situation of the registered office of the company has been given to the Registrar as required by Part A2, Head 33 [equivalent of section 113 of Companies Act, 1963],

the Registrar may, instead of sending in accordance with Subhead (1) a notice to the company at its registered office, publish a notice in the CRO Gazette containing the information that would otherwise be contained in the notice.

Explanatory note

This head is new. It provides the structure of the initial notification procedure whereby the Registrar is required to send notice of the commencement of the strike-off process to the company. It has not been restated for each of the circumstances of strike-off envisaged in the preceding section. Instead a general procedure has been provided for here.

The head is taken, in substance, from the procedure for notification as provided for in section 311 of the Companies Act, 1963, section 12 of the Companies (Amendment) Act 1982, section 12A of the Companies (Amendment) Act 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act 1999, and section 43(15) of the Companies (Amendment) (No.2) Act 1999. Some provisions have been inserted in accordance with the recommendations of the Company Law Review Group in its First Report.

All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill.

Subhead (1)(b) has been newly inserted in accordance with the recommendation of the Review Group that, at the commencement of the strike-off process, the Registrar should write to the directors of the company at their home address (as per CRO records) enclosing a copy of the strike-off notice which is being sent to the company at its registered office.

Subhead (2)(b) has been newly inserted in accordance with the recommendation of Review Group. This subhead requires the initial warning letter to highlight the circumstances which led to the commencement of the strike-off process.

Subhead (2)(e)(v) has also been newly inserted in accordance with the recommendation of the Review Group. This subhead provides that, in the situation of a no-directors induced strike-off provided for in the preceding head, the initial notification shall invite the company to avert the strike-off process by means of the appointment of a director.

Subhead (5) is an amended restatement of section 65 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. Under the 1963 Act, (311(9)), where a company had not notified a registered office to the CRO it was necessary to issue strike-off notices to the last known officers of the company or to the subscribers. For companies that had not filed an annual return for many years that was a fruitless and time consuming exercise. At the time of drafting there were still a number of companies that had not notified a registered office and had not filed an annual return for more than 20 years. The CRO proposed to clear as many of these as possible in advance of this Bill being enacted. There may be a few anomalous cases left that had not filed a registered office but had filed an annual return within the 20 years preceding the enactment of this Bill, in which case a provision of this type is necessary.

BEFORE ENACTMENT IT WILL BE NECESSARY TO CONFIRM WHETHER THIS PROVISION REMAINS NECESSARY

Head 5 Continuation of the strike-off process and further notifications

- (1) On or after the deadline-date the Registrar may publish in the CRO Gazette a notice—
- (a) indicating the circumstances which form the basis for a process of strike-off having been commenced in relation to the company; and
 - (b) stating that at the expiration of one month from the date of that notice, the name of the company will be struck off the register and the company thereby dissolved, unless within the said period of one month an appropriate response has been made, and describing said appropriate response.
- (2) In the case of a voluntary strike off—
- (a) the notice provided for in Subhead (1)
 - (i) shall be published forthwith upon delivery of the application pursuant to Head 7 (c); and
 - (ii) shall invite any person to show cause as to why the Registrar should not strike the name of the company off the register;

- (b) the period of one month in paragraph (b) shall be replaced by a period of three months; and
 - (c) the appropriate response shall be the delivery to the Registrar on or before the expiry of the period provided for in paragraph (b) of a notice from the company in the prescribed form requesting the cancellation of the strike-off process.
- (4) Except in the case of an incomplete-liquidation induced strike-off or a voluntary strike-off, the Registrar shall, upon striking the name of a company off the register pursuant to Subhead (1), forthwith inform the Director of Corporate Enforcement of the name of the company.
 - (5) The Director of Corporate Enforcement may require the directors of a company to which Subhead (4) applies, to produce by a specified date a statement to the affairs of the company as at the date of dissolution, in such form as may be prescribed, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names and residences of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Director of Corporate Enforcement may reasonably require.
 - (6) The court may, on the application of the Director of Corporate Enforcement, require a director of a company who has made a statement under Subhead (5) to appear before it and answer on oath any question pertaining to the content of the statement.
 - (7) A person who fails to comply with a requirement under Subhead (5) shall be guilty of a category three offence.

Explanatory note

This head is new. It is taken, in substance, from section 311 of the Companies Act, 1963, section 12 of the Companies (Amendment) Act, 1982, section 12A of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999, and section 43(15) of the Companies (Amendment) (No.2) Act 1999.

All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.

It provides for the continuation of the strike-off process by means of the publication of the notice period by the Registrar in the CRO Gazette. Following the expiration of this period, the company is struck off unless an appropriate response has been made.

Head 6 The act-of strike-off and its consequences

- (1) Subject to Subheads (2) and (3), at the expiration of the time mentioned in the notice, the Registrar may, unless there has been an appropriate response by the company, strike its name off the register, and shall publish notice thereof in the CRO Gazette and on the publication in the CRO Gazette of this notice, the company shall be dissolved.
- (2) The liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (3) Nothing Subheads (1) or (2) shall affect the power of the court to wind up a company, the name of which has been struck off the register or dissolved.

Explanatory note

This head is new and it states when the company is struck-off and elaborates on the consequences thereof. The head is comprised of amended re-enactments of various provisions of the Companies Acts 1963-2003 and new provisions inserted in accordance with the recommendations of the Company Law Review Group in its First Report.

All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.

Subhead (1) is an amended re-enactment of section 311(5) of the Companies Act, 1963.

Subhead (2) is a re-enactment of section 311(6) of the Companies Act, 1963.

Subhead (3) is an amended re-enactment of section 311(7) of the Companies Act, 1963.

Subhead (4) is a new provision inserted in accordance with the recommendation of the Review Group in its First Report.

[The text deleted from this subhead gave effect to the

recommendation of the CLRG that in circumstances of strike-off (excluding incomplete-liquidation strike-off), the Registrar should be required to notify the Director of Corporate Enforcement of the names of the persons who were recorded in the CRO as being the directors of the company as at the date of initiation of the strike-off process. The purpose of this is to facilitate the discretion of the Director of Corporate Enforcement to apply to the court for the restriction or disqualification of directors, or take an action against them for fraudulent or reckless trading, in relevant circumstances.].

Subheads (5), (6) and (7) are newly inserted in accordance with the recommendations of the Review Group in its First Report. The Review Group gave consideration as to what extent and in what circumstances the principle of limited liability should be deemed to be superceded by the personal liability of directors in the event of strike-off. This would be achieved under the fraudulent and reckless trading provisions, where necessary.

The Review Group therefore recommended that it would be important to give the Director of Corporate Enforcement powers such that, in the event of a strike-off, he could require a director of a company to produce a statement of affairs as at a date preceding the commencement of the strike-off of the company. Upon examination of such statement the Director of Corporate Enforcement would then decide whether an investigation and subsequent application to court for disqualification or loss of limited liability was warranted.

The requirement to produce a statement of affairs of the company is analogous to the examination as to the solvency status of a company under section 183A of the Companies Act, 1963, as inserted by section 40 of the Company Law Enforcement Act, 2001, and the requirement to file a statement of the affairs of the company under section 224 of the Companies Act, 1963 where the company is being wound up.

Head 7 Voluntary Strike-off

A company may apply to the Registrar to have its name struck off the register where it satisfies the following conditions:

- (a) The company has, within the preceding period of three months, resolved by special resolution that—
 - (i) by reason of never having carried on business or having ceased to carry on business, as applicable, it should seek to be dissolved by means of a voluntary strike-off;

- (ii) pending the determination or withdrawal of its application for voluntary strike-off, the company will not carry on any business or incur any liabilities;
- (b) All outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963 and section 126 of the Companies Act, 1963] as at the date of application for voluntary strike off have been delivered by the company;
- (c) A document in the prescribed form has been delivered to the Registrar, signed by each of the company's directors to certify that, as at the date of application to the Registrar, the company has no assets or liabilities that are in aggregate greater than €100 (including any contingent or prospective liabilities) and that there is no litigation ongoing or pending involving the company;
- (d) The company has caused the Registrar to be furnished with confirmation from the Revenue Commissioners dated not more than one month prior to the date on which the application for voluntary strike-off is received by the Registrar, that they have no objection to the company being the subject of a voluntary strike-off;
- (e) The company has satisfied the Registrar that, within the preceding period of one month, it has caused an advertisement in the prescribed form to be published in at least one daily newspaper circulating in the State.

Explanatory note

This head is new and governs the process for voluntary strike-off of companies. Voluntary strike-off is available to companies under section 311(1) of the Companies, Act 1963. This involves the company taking the initiative to be struck off by approaching the Registrar to exercise his powers under section 311(1) by being tendered "reasonable cause to believe that the company is not carrying on business".

In practice, the Registrar has made it clear that this is a discretionary power which he/she is prepared to use only if a director of a company furnishes a statement to the effect that the company has ceased trading or has never traded, that it has no assets or liabilities and that it wishes that its name be struck off the register.

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In addition, such a statement must be accompanied by all outstanding annual returns (including accounts, filing fees and late filing fees where applicable), a letter of no objection from the Revenue Commissioners and a copy of an advertisement in the prescribed form, published in one daily newspaper indicating the intention to have the company struck off the register.

The Company Law Review Group took note of such procedure and recommended that it be put on a statutory basis, albeit with some amendments.

Subhead (1) sets out the conditions to be satisfied before a company may apply to the Registrar to have the company struck off. It is now required that the company pass a special resolution to such effect within the 3 months preceding the application. All the other conditions prescribed in Subhead (1) are those used in practice, set out previously.

The Review Group accepts that it is implicit that the company has a “shadow existence” for the purpose of achieving restoration. It recommended, however, that such an implicit position be made explicit in the restoration process. Accordingly, all actions necessary for the restoration process may be taken on the basis that, for this purpose only, as if the company has, in fact, an existence.

NB – subhead (2) may not be necessary.

Head 8 Post-Dissolution Capacity

- (1) Notwithstanding Part A12, Head 6 (1) [equivalent of section 311(5) of the Companies Act, 1963] but subject to subhead (2), a company, the name of which has been struck off the register and dissolved, shall be deemed not to have been dissolved solely in the context of such actions, steps or processes which are required to be taken, and are stated to be being so taken, for the purpose of enabling or facilitating an intended application under Part A12, Head 9 [equivalent of section 311A of the Companies Act, 1963, as inserted by section 246 of the Companies Act, 1990] and Part A12, Head 10 [equivalent of section 311 of the Companies Act, 1963].
- (2) Subhead (1) shall not be construed to authorise the dealing with, or exercise of control over, any property which has become the property of the State, pursuant to Part III of the State Property Act, 1954.

Explanatory note

This head is a new head which implements the recommendations of the Company Law Review Group in its First Report. The Review Group noted that where a company has been struck off the register and purports to be re-instated, one of the difficulties facing the directors and auditors of the company is that, although an application may be successful and the company will be deemed to have never been struck off, at the time of the purported re-instatement the company will not, in fact, exist.

Chapter 3

Restoration of Companies to the Register

Head 9 Administrative Restoration

- (1) Without prejudice to the provisions of Part A12, Head 10 [equivalent of section 311(8) of the Companies Act, 1963 and section 12B of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999], if a member or officer of a company feels disadvantaged by the company having been struck off the register, the Registrar, on an application made in the prescribed form before the expiration of twelve months after the date of dissolution, may restore the name of the company to the register where, before the expiration of fifteen months from the date of dissolution, the Registrar—
- (a) has received all annual returns outstanding, if any, from the company;
 - (b) has received confirmation from the Minister for Finance and the Revenue Commissioners that they have no objection to the name of the company being restored to the register pursuant to this head;
 - (c) is satisfied that Part A4, Head 11 (1) [section 43(1) of the Companies (Amendment)(No.2) Act, 1999] is being complied with in relation to the company (that the company has a resident director); and
 - (d) is satisfied that no notification required by Part A4 Head 19 (6) [equivalent of section 195(6) of the Companies Act, 1963] (notice of change of directors/secretary) remains outstanding in relation to the company.
- (2) Upon the registration of an application under Subhead (1) the company shall be deemed to have continued in existence as if its name had not been struck off.
- (3) Subject to any order made by the court in the matter, the restoration of the name of a company to the register under this head shall not affect the rights and liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company between the date of such restoration.

Explanatory note

This head is an amended re-enactment of section 311A of the Companies Act, 1963, as inserted by section 246 of the Companies Act, 1990 and amended by section 50 of the Companies (Amendment) (No.2) Act, 1999.

All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.

Subhead (1) is an amended re-enactment of section 311A(1) of the Companies Act, 1963. A lacuna exists under section 311A(1) of the Companies Act, 1963 whereby administrative restoration is only possible following the delivery of outstanding annual returns to the Registrar, even where the strike-off occurred for reasons other than the failure to make annual returns to the Registrar, i.e one of those grounds now listed in Head 3 of this Part.

For this reason the requirements are now stated cumulatively, including those which were not the basis of the original strike-off. Further, the word “aggrieved” has been replaced by the word “disadvantaged”. This is to make the position more certain where the person making the application for the restoration caused the dissolution in the first instance.

The application for restoration may no longer be made by “a company” that feels aggrieved by the strike-off, as is the case under section 311A(1) of the Companies Act, 1963. It is now to be made by a member or officer of the company who feels disadvantaged by the company having been struck off the register.

Subhead (1)(c) has been newly inserted to deal with the anomaly whereby at present the Minister for Finance becomes unknowingly divested of property which was earlier vested in him by virtue of the State Property Act, 1954. It has been drafted in terms such that the restoration will be effected unless there is some objection by the Minister for Finance. In the event of such objection by the Minister for Finance, the issue should be dealt with by the court under Head 9 of this Part.

Subheads (2) and (3) are re-enactments of Sections 311A(2) and (3) of the Companies Act 1963 respectively.

Head 10 Restoration by the Court

- (1) If any person who, but for the dissolution of the company, would have been a member, officer or creditor of the company is disadvantaged by the company having been struck off the register of companies, the court, on an application made by the member, officer or creditor before the expiration of 20 years from the date of dissolution of the company may, if satisfied that it is just that the company be restored to the register, order that the name of the company be restored to the register, and, subject to subhead (3) of this head, upon an office copy of the order being received by the Registrar for registration within 28 days of its perfection, the company shall be deemed to have continued in existence as if its name had not been struck off and the court may by the order:
 - (a) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck-off;
 - (b) direct the company to change its name if it is too similar to the name of a company already on the register;and/or
 - (c) make such other order as seems just (and such other order is referred to in subhead (3) of this head as an "alternative order").
- (2)
 - (a) An application under subhead (1) shall be made on notice to the Registrar, the Revenue Commissioners and the Minister for Finance;
 - (b) In the case of an application by a creditor, the application shall additionally be made on notice—
 - (i) to such officers of the company whose identities are known, or ought reasonably to be known, to the creditor; and
 - (ii) to such other members or officers of the company as the Registrar, the Revenue Commissioners and/or the Minister for Finance, upon being notified of the application, may seek to have joined as notice parties.
- (3) An alternative order may, if the court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or a part (as the court thinks just) of the debt or liability.
- (4) The court shall, unless cause is shown to the contrary, include in an order under subhead (1) of this head, being an order made on the application of a member or officer of the company, a provision that the order shall not have effect unless, within a specified period—
 - (a) if the order relates to a no-returns induced strike-off, all outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963] are delivered to the Registrar;
 - (b) if the order relates to a Revenue induced strike-off, all outstanding statements required by Section 882 of the Taxes Consolidation Act, 1997 in relation to the company are delivered to the Revenue Commissioners;
 - (d) if the order relates to a no-directors induced strike-off, deliver to the Registrar any notification required by Part A4, Head 19 [equivalent of section 195(6) of the Companies Act, 1963];
 - (e) if the order relates to a non-residency induced strike-off, an Irish residency director is appointed or a bond is furnished to the Registrar by the company.
- (5) In making an order under Subhead (1) of this head, being an order that is made on the application of a creditor of the company, the Court shall—
 - (a) direct that one or more specified members or officers of the company shall, within a specified period—
 - (i) if the order relates to a no-returns induced strike-off, deliver all outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963] to the Registrar; and

- (ii) if the order relates to a Revenue induced strike off, deliver all outstanding statements or returns required by Section 882 of the Taxes Consolidation Act, 1997 in relation to the company to the Revenue Commissioners;
- (iii) if the order relates to a no-directors induced strike-off, deliver to the Registrar any notifications required by Part A4, Head 19 [equivalent of section 195(6) of the Companies Act, 1963];
- (iv) if the order relates to a non-residency induced strike-off, deliver notification of appointment of an Irish director or a bond to the Registrar;
- (b) award the applicant the costs of the application against the company, unless to do so would conflict with the constitutional rights of any person (in which case the court shall make such order as to costs as it would have made if this sub-paragraph had not been enacted).
- (6) The court, on an application by the Registrar (on notice to each person who, to his knowledge, but for the dissolution would be an officer of the company) before the expiration of 20 years from the date of dissolution, may, if satisfied that it is just that the company be restored to the register, order that the name of the company which has been struck off the register be restored to the register and, upon the making of the order by the court, the company shall be deemed to have continued in existence as if its name had not been struck-off and the court may by the order—
- (a) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off;
- (b) direct the company to change its name if it is too similar to the name of a company already on the register; and/or
- (c) make such other order as seems just (and such other order may, if the court considers it appropriate that it should do so, include a provision of the kind referred to in Subhead (3) of this head).
- (7)
- (a) Notwithstanding Part A1, Head 2 [equivalent of section 2(1) of the Companies Act, 1963], in the case of an application under this head that is made by a creditor of the company or by the Registrar, “the court”, for the purposes of this head, means either the High Court or the Circuit Court;
- (b) An application under this head to the Circuit Court by a creditor of the company concerned shall be made to the judge of the Circuit Court for the circuit in which the registered office of the company was, immediately before it was struck-off the register, situated, or, if no office was registered at that time, for the circuit in which the creditor resides, or, in case the creditors reside outside the State, for the Dublin Circuit.
- (c) An application under this head to the Circuit Court by the Registrar shall be made to the judge of the Circuit Court for the Dublin Circuit

Explanatory note

This head is new. It is comprised of various provisions of the Companies Acts, 1963-2003. Some provisions have been newly inserted in accordance with the recommendations of the Company Law Review Group in its First Report.

All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.

Subhead (1) is taken in substance from section 311(8) of the Companies Act, 1963 and section 12B(3) of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999. As in Head 98 above, the word “aggrieved” has been replaced by the word “disadvantaged”. This is to make the position more certain where the person making the application for the restoration caused the dissolution in the first instance. An application is now allowed to be brought by “any member, officer or creditor who is disadvantaged by the company having been dissolved”. This accords with section 12B of the Companies (Amendment) Act, 1982 as opposed to section 311A(8) of the Companies Act, 1963 which provided that an application may be brought by “the company, or any member or creditor thereof, who feels aggrieved by the company having been struck-off the register”.

Part A12 - Strike-Off and Restoration

Under section 311(8) of the Companies Act, 1963 application for restoration was made on notice only to the Registrar and in practice, to the Minister for Finance. Section 12B of the Companies (Amendment) Act, 1982 also required that notice be given to the Revenue Commissioners. It is provided for all three to be statutory notice parties in all instances in a later subsection.

[Restoration under section 311(8) of the Companies Act, 1963 is contingent on proof that the company was actually trading at the time of strike-off or otherwise that it is just that the company be restored to the register. However section 12B of the Companies (Amendment) Act, 1982 requires simply that it be just that the company be restored to the register. The option for the "just ground" simpliciter has been preferred here.

Suhead (2) is new. Subhead (2)(a) provides for the Registrar, the Minister for Finance and the Revenue Commissioners to be statutory notice to parties in all instances of court restoration. The requirement to give notice to the Registrar was provided for in section 311(8) of the Companies Act, 1963 and to notify the Revenue Commissioners was in section 12B of the Companies (Amendment) Act, 1982. The process of notifying the Minister for Finance had no statutory basis previously - it had merely developed in practice.

Subhead (2)(b) is new and is designed to ensure that, in a creditor's application, the parties who ought to be subject to the restoration order are notified of the application.

Subhead (3) is a re-enactment of section 311(8A) of the Companies Act, 1963 and subsection 12B(4) of the Companies (Amendment) Act, 1982. It is presumed that persons potentially entitled to benefit under such order (creditors) would be afforded an opportunity to be before the court and the Rules of Court (e.g. advertisement of a petition) would adequately deal with such a scenario.

Subhead (4) is an amended re-enactment of section 12B(5) of the Companies (Amendment) Act, 1982. It is now provided that there must be compliance with all the circumstances that can justify strike-off and not merely the circumstances that led to the company being struck off the register. Furthermore, the "one-month period" is replaced with a "specified period".

Subhead (5)(a) is an amended re-enactment of section 12(b)(6) of the Companies (Amendment) Act, 1982. It has been amended in light of the fact that there must be compliance with all the circumstances that can justify strike off and not merely the circumstances that led to the company being struck-off the register. Accordingly, paragraph (iii) has been newly inserted.

Subhead (5)(b) has been newly inserted in accordance with the recommendations of the Review Group in its First Report concerning the award of costs to the applicant against the company.

Subhead (6) is a slightly amended re-enactment of section 12B(7) of the Companies (Amendment) Act, 1982.

*Subhead (7) is an amended re-enactment of subsection 12B(9) of the Companies (Amendment) Act, 1982. It has been amended to clarify the uncertainty which arose following the Supreme Court decision in *Re Deauville Communication Worldwide Ltd.* (15th March 2002, unreported). It was held by the Supreme Court in that case that although the language used in section 12B(9) of the Companies (Amendment) Act, 1982 was capable of being construed so as to make it obligatory that an application for restoration be brought in the Circuit Court as opposed to the High Court, a creditor was still permitted to bring an application for restoration was in the High Court.*

Head 11 Application of this Part to companies struck-off under former strike-off provisions

Part A12, Heads 9 and 10 shall apply to a company struck off under the former strike off provisions as if such company had been struck off under this Part.

Head 12 Disclosure of information

If the question of whether a statement, which a company has failed to deliver to the Revenue Commissioners in accordance with section 882(3) of the Taxes Consolidation Act, 1997, has or has not been subsequently delivered to them falls to be determined for the purpose of the exercise by the Registrar of any of the powers under this Part, the Revenue Commissioners may, notwithstanding any obligations as to secrecy or other restriction upon disclosure of information imposed by or under statute or otherwise, disclose to the Registrar any information in their possession required by the Registrar for the purpose of that determination.

Explanatory note

This head is an amended re-enactment of section 12D of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999. References to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill

Head 13 Devolution of property of struck-off company; determination of claims by the State to such property; waiver of rights of the State to such property

- (1) Where the name of a company is struck off the register pursuant to this Part, all property which was vested in or held in trust for such company immediately before its dissolution (other than property held by such company upon trust for another person) shall, immediately upon such dissolution, become and be the property of the State, subject however to any encumbrances or charges affecting the property immediately before such dissolution.
- (2) Subhead(1) of this head shall have effect subject to and without prejudice to any restoration by the Registrar under Part A12, Head 9 [equivalent of section 311A of the Companies Act, 1963] or any order made by a court under Part A12, Head 10 [equivalent of section 311 of the Companies Act, 1963].
- (3)
 - (a) Whenever the Minister for Finance claims that any property (including land) has become the property of the State by virtue of Subhead (1), the Minister may, if he so thinks fit, apply to the High Court for an order declaring that such property has so become the property of the State.
 - (b) Every application to the High Court under paragraph (a) of this Subhead shall in the first instance be made ex parte and the High Court shall thereupon give such directions as it thinks proper in regard to service or publication of notice of such application and shall not finally determine such application unless or until the directions so given have been complied with and such time as the Court shall consider reasonable in the circumstances has elapsed since such compliance.

- (c) An order made by the High Court on an application under paragraph (a) of this subhead declaring that any property has become the property of the State by virtue of subhead (1) shall (subject to appeal to the Supreme Court) be conclusive evidence binding on all persons whatsoever (whether they had or had not notice of such an application) that the said property has so become the property of the State in accordance with such declaration.
- (d) Whenever any property of whatsoever nature or kind has becomes the property of the State by virtue of subhead (1), the Minister for Finance may, if he thinks proper so to do, waive, in whole or in part and in favour of such person and upon such terms (whether including or not including the payment of money) as he thinks proper having regard to all the circumstances of the case, the right of the State to such property.

Explanatory note

This head is new. These provisions have been imported from the State Property Act, 1954 for the purpose of clarity and completeness in accordance with the view of the Company Law Review Group.

Subhead (1) is taken, in substance, from sections 28(1) and (2) of the State Property Act, 1954.

Subhead (2) is taken, in substance, from section 28(3) of the State Property Act, 1954. It has been amended to include references to administrative restoration.

Subhead (3)(a)-(c) is taken, in substance, from section 30 of the State Property Act, 1954.

Subhead (3)(d) is taken, in substance from section 31 of the State Property Act, 1954.

N.B – it is probably necessary to repeal the relevant provisions of the State Property Act, in an appropriate fashion, as a result.

