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Juliana Okegbile

Procedure for the Restoration of the Name of a Company Struck off the Register of Companies by the Corporate Affairs Commission (CAC)¹

1. Introduction

The Corporate Affairs Commission (“the Commission”), published a final list of 91,194 companies to be struck off the register of companies by a notice dated 5th December 2023.² This came after the commission had previously issued a notice dated 31st July 2023³ on its intention to commence striking off about 92,649 companies that continuously failed to file the mandatory annual returns under Section 417 of the Companies and Allied Matters Act 2020⁴ (“the Act”). The Commission took this initiative to ensure that dormant or inactive companies, and going concerns that have habitually failed to fulfil obligations under the Act are properly sanctioned as provided under Section 692 of the Act.

This article will examine the instances when a company will be struck off the register of companies and highlight the remedial steps for companies that have been struck off the register.

2. Instances where the Name of a Company will be Struck off the Register of Companies in Nigeria

Section 692 of the Act provides two broad situations that will lead to the striking off of a company’s name from the register of companies. The first is by special resolution⁵

¹ **Juliana Okegbile, Associate, Cross-Departmental, S.P.A. Ajibade & Co., Abuja, Nigeria.**

² Corporate Affairs Commission, “Notice - Publication of Names of Companies to be Struck Off the Register of Companies”, available at <<https://www.cac.gov.ng/publication-of-names-of-companies-struck-off-the-register-of-companies/>> accessed on 29th May 2024.

³ Corporate Affairs Commission, “Notice – Commencement of Striking-Off Companies from the Register”, available at <<https://www.cac.gov.ng/public-notice-commencement-of-striking-off-companies-from-the-register/>> accessed on 19th May 2024.

⁴ Companies and Allied Matters Act, 2020. Gazette No. 124 (volume 107).

⁵ A resolution passed by at least three-fourths of the votes cast by members OR a resolution passed by members who together hold at least 95% nominal value of shares or total voting rights,

passed by the company and an advertisement published within 28 days of passing the resolution in three national daily newspapers and a subsequent application⁶ made to the Commission to strike off the company from the register.⁷ For the Commission to exercise its powers in this situation, it must be satisfied that all the following conditions are met:

- a. Sufficient reasons have been provided to justify the striking off;
- b. The company has not commenced business and has no undischarged obligations; and
- c. No reasonable objection was received within 28 days of publishing the advertisement in the newspapers.⁸

This provision creates a window for defunct companies to dissolve voluntarily, and cease to exist on the register of companies.⁹

The second instance, which is the focus of this article, is where the commission observes or has reason to believe that a company has not been carrying on business or has not been in operation, or has not complied with the provisions of the Act for a consecutive period of 10 years.¹⁰ When the commission takes note of such a company or companies, Section 692(3) of the Act provides that the commission may publish a notice of its intention to strike off the company or companies in at least 3 national daily newspapers. Upon the expiration of 90 days from the publication of this notice, the company/companies may be struck off the register of companies which is to be followed by a publication in at least three national daily newspapers indicating the name of the company struck off the register and the date of striking off.

3. Procedure for Restoration of the Name of a Company Struck off the Register

In both situations, where a company has been struck off the register of companies, either the company, or a member or a creditor aggrieved by the striking off, may apply to the Federal High Court for an order of the court restoring the company to the register. However, this application must be brought before the expiration of 2 years from the date of striking off, where the striking off was occasioned voluntarily by the company through a special resolution. On the other hand, where the decision to strike off was made by the commission based on reasonable belief that a company is

after a 21 days' notice of intention to propose the resolution has been duly given. See, Section 258(2) of the Act.

⁶ Application is to be made in Form CAC 13.

⁷ Section 692(1) (a) – (c) of the Act.

⁸ Section 692(1)(d) of the Act.

⁹ ALN Aluko & Oyebode, "Striking Off of Companies Names under the Companies and Allied Matters Act 2020", available at <<https://www.aluko-oyebode.com/insights/striking-off-of-companies-names-under-the-companies-and-allied-matters-act-2020/>> accessed on 22nd May 2024.

¹⁰ Section 692(3) of the Act.

not carrying on business or has not been in operation for a period of 10 years, or has failed to comply with provisions of this Act for a consecutive period of 10 years, then such an application for restoration must be brought within 10 years from the publication of the names and dates of the striking off of the company in at least three national daily newspapers.¹¹

By virtue of Rule 2 of the Companies Proceedings Rules,¹² such application for restoration of the name of a company to the register of companies, is to be brought by way of an Originating Summons as in Form 1 of the Schedule to the said Rules. There is, however, an exception contained in Rule 4(j) of the Companies Proceeding Rules, to the effect that where an application seeking an order of court to restore the name of a company to the register is made in conjunction with an application for the winding up of the company, then it is to be brought by way of Petition as would ordinarily be the case for winding up proceedings.¹³

When an application is brought before the Federal High Court for the grant of an order restoring the company's name, the Court may grant such an application where it is satisfied:

- a. That at the time of striking off, the company was carrying on business or in operation; or
 - b. That it is just to restore the company to the register.¹⁴
- a. Section 692(6) the Act further provides that such an order for restoration of the name of a company may include any directions as the court deems fit to restore the company. In addition, the court may make provisions that place the company and all other persons in the same position, as if the company was not struck off the register. It is worthy to note that although a company is struck off the register of companies by the commission, the liabilities of every director, officer and member of the company remain intact and enforceable against them as if the company was not struck off.¹⁵ This is to ensure that creditors and members of the company are not prejudiced merely by the failure of the company to fulfil its obligations under the Act.

Upon delivering an office copy¹⁶ of the order to the Commission, the order shall be registered by the Commission, subject to the payment of administrative fees to relist the company as follows: ₦50,000 for companies

¹¹ Section 692(6) of the Act.

¹² Companies Proceedings Rules, Cap C20, LFN 2004.

¹³ Section 692(5)(b) of the Act provides that "nothing in this subsection shall affect the power of the court to wind up a company in the name of which has been struck off the register".

¹⁴ Section 692 (6) of the Act.

¹⁵ Section 692(5)(a) of the Act.

¹⁶ An original copy of the court order or certified true copy of the court order.

limited by guarantee, ₦25,000 for small companies, ₦50,000 for private companies that are not small companies, ₦100,000 for public companies, and payment of all outstanding returns.¹⁷

4. **Legal Effect of Striking off The Name of a Company**

- a. The company may not continue to do business as this would amount to an illegality punishable under the Act and the officers of the company would be liable upon conviction to a daily fine of ₦200.00 for every day during which the default continues.¹⁸
- b. Assets and properties held in the name of the company which are not held in trust for any other beneficiary will be declared as vested in the state (*bona vacantia*).¹⁹

5. **Conclusion**

The power of the Commission to strike off a company from the register of companies is not irreversible but is rather a means to decongest the register of companies that have ceased to be going concerns, sham companies and to penalise active companies for refusing to comply with obligations under the Act.

Companies should expect that the Commission will most likely continue to strike off defaulting companies from the register of companies going forward. Existing corporate entities should be mindful of fulfilling their obligations under the Act and take immediate steps to rectify defaults. Furthermore, those that have already been struck off should suspend all business activities and if they so desire, promptly enlist a legal practitioner to approach the Federal High Court on their behalf for an order for restoration of the company.

For further information on this article and area of law,
Please contact **Juliana Okegbile** at:
S. P. A. Ajibade & Co., Lagos by
Telephone (+234 1 472 9890), Fax (+234 1 4605092)
Mobile (+234 801 024 7252)
Email: jokegbile@spaajibade.com
www.spaajibade.com

¹⁷ Corporate Affairs Commission, "Summary of Fees" available at https://www.cac.gov.ng/?page_id=3498 accessed on 20th May 2024.

¹⁸ Section 863(2) of the Act.

¹⁹ Section 693 of the Act.