



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 83

# Reinstatement of companies

March 2018

## About this guide

This guide is for company officeholders, third parties and liquidators who want a company to be reinstated.

It explains:

- how to apply for reinstatement of a company;
- when ASIC will reinstate a company; and
- the consequences of reinstating a company deregistered under the *Corporations Act 2001* (Corporations Act) and under previous legislation.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in March 2018 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Policy Statement 83, issued 20 March 2006, rebadged as a regulatory guide 5 July 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>A</b>	<b>Overview .....</b>	<b>4</b>
<b>B</b>	<b>Deregistration of companies .....</b>	<b>6</b>
	When we will deregister a company .....	6
	Consequences of deregistration .....	7
<b>C</b>	<b>Administrative reinstatement .....</b>	<b>8</b>
	When we may reinstate a company .....	8
	How to apply for administrative reinstatement.....	9
	When ASIC may not administratively reinstate a company.....	11
	Company name .....	12
<b>D</b>	<b>Applying to a court for reinstatement .....</b>	<b>13</b>
	Who can apply to a court for reinstatement.....	13
	How to apply for court reinstatement.....	13
	Requirements for making a reinstatement application to a court ....	14
	Relevant considerations .....	15
	ASIC's role in a court proceeding .....	15
	Requirements following a court reinstatement order.....	15
<b>E</b>	<b>Consequences of administrative and court reinstatement .....</b>	<b>16</b>
	Requirements of directors, secretaries and members following a reinstatement application.....	16
	Effect of reinstatement.....	16
	Property .....	16
	Directors.....	17
	Liquidator and winding up.....	17
	<b>Key terms .....</b>	<b>18</b>
	<b>Related information.....</b>	<b>19</b>

## A Overview

### Key points

This guide explains:

- our approach to deregistration of companies;
- when ASIC may reinstate a company, and how to apply;
- when a court may reinstate a company, and how to apply; and
- the consequences of reinstatement.

### Deregistration of companies

RG 83.1 We may deregister a company if the conditions set out in the Corporations Act have been met (see Section B).

RG 83.2 We must deregister a company in certain circumstances, such as a court order or when the liquidator lodges an end of administration return on the basis that the affairs of the company are fully wound up.

### Administrative reinstatement

RG 83.3 ASIC may reinstate a company's registration if we are satisfied that the company should not have been deregistered. We refer to this as an 'administrative reinstatement' (see Section C).

RG 83.4 We may also reinstate a company's registration if the company was deregistered for non-payment of the levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017* and we have received an application for reinstatement and payment of the company's outstanding levy and related penalties.

RG 83.5 A person who was a director, secretary or member of a company at the time of deregistration, or a third party, may apply to ASIC for reinstatement of a deregistered company.

### Applying to a court for reinstatement

RG 83.6 Regardless of whether ASIC can reinstate a company, an application may be made to a court for reinstatement. This is referred to as a 'court reinstatement' (see Section D).

- RG 83.7 A former liquidator of the company or a person who is aggrieved by the deregistration of the company may make the court application.
- RG 83.8 Generally, we will not object to an application if the requirements for court reinstatement of a company are met.
- RG 83.9 If a court makes an order to reinstate a company, a copy of the order must be served on ASIC to ensure the reinstatement takes place.

## **Consequences of administrative and court reinstatement**

- RG 83.10 When a company is reinstated it is taken to have continued in existence as if it had not been deregistered and is subject to all the requirements of the Corporations Act (see Section E).

## B Deregistration of companies

### Key points

We may deregister a company if the conditions set out in the Corporations Act are met. We must deregister a company in certain circumstances, such as a court order or when the liquidator lodges an end of administration return on the basis that the affairs of the company are fully wound up.

### When we will deregister a company

RG 83.11 We may deregister a company if the conditions set out in the Corporations Act are met (see Table 1).

**Table 1: When we may deregister a company**

Circumstances	Corporations Act
All the following circumstances apply: <ul style="list-style-type: none"> <li>the response to a return of particulars given to the company is at least six months late;</li> <li>the company has not lodged any other documents under the Corporations Act in the last 18 months; and</li> <li>we have no reason to believe that the company is carrying on business.</li> </ul>	s601AB(1)
The company's review fee for a review date has not been paid in full at least 12 months after the due date.	s601AB(1A)
The company has not paid the following in full at least 12 months after the due date: <ul style="list-style-type: none"> <li>the levy imposed by the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i>;</li> <li>any related late payment penalty; and</li> <li>any related shortfall penalty.</li> </ul>	s601AB(1B)
The company is being wound up and we have reason to believe that: <ul style="list-style-type: none"> <li>the liquidator is no longer acting;</li> <li>the company's affairs have been fully wound up and a return to be lodged by the liquidator is at least six months late; or</li> <li>the company's affairs have been fully wound up under Pt 5.4 and the company cannot cover the costs of obtaining a court order for its deregistration.</li> </ul>	s601AB(2)
On application by the company, a director or member of the company or a liquidator of the company. A person may apply only if: <ul style="list-style-type: none"> <li>all the members of the company agree to the deregistration;</li> <li>the company is not carrying on business;</li> <li>the company's assets are worth less than \$1,000;</li> <li>the company has paid all fees and penalties payable under the Corporations Act;</li> <li>the company has no outstanding liabilities; and</li> <li>the company is not a party to any legal proceedings.</li> </ul>	s601AA

RG 83.12 We must deregister a company if the liquidator of the company lodges an end of administration return on the basis that the affairs of the company are fully wound up or if ordered by the court (see Table 2).

**Table 2: When we must deregister a company**

Circumstances	Corporations Act
After the liquidator of the company lodges an end of administration return on the basis that the affairs of the company are fully wound up.	s509(1)
When the court has ordered that ASIC deregister the company on a specified day.	s509(2)
When a court order has been lodged to deregister the company and release the liquidator.	s481(5)(b)
When a court order has been lodged to deregister the company in relation to a compromise or arrangement.	s413(3)

## Consequences of deregistration

RG 83.13 When a company is deregistered it is recorded on ASIC's companies register as a deregistered company and ceases to exist—it cannot commence or continue legal proceedings and its property vests in ASIC.

## C Administrative reinstatement

### Key points

We may reinstate a company's registration under s601AH(1) of the Corporations Act if we are satisfied that the company should not have been deregistered.

We may also reinstate a company's registration under s601AH(1A) if the company was deregistered under s601AB(1B) and we have received an application for reinstatement and payment of the company's outstanding levy and related penalties.

A person who was a director, secretary or member of a company at the time of deregistration, or a third party, may apply to ASIC for reinstatement of a deregistered company.

Regardless of whether ASIC can reinstate a company, an application may be made to a court for reinstatement.

The requirements for administrative reinstatement are set out in Table 3.

### When we may reinstate a company

- RG 83.14 We may reinstate a company's registration under s601AH(1) of the Corporations Act if we are satisfied that the company should not have been deregistered, even if at the time of deregistration we were satisfied that the company met the requirements of s601AA, s601AB(1) or s601AB(1A).
- RG 83.15 We may reinstate a company's registration under s601AH(1A) if:
- (a) the company was deregistered under s601AB(1B) for non-payment of the levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017*; and
  - (b) ASIC receives an application to reinstate the company's registration; and
  - (c) the levy and any late payment or shortfall penalties are all paid in full.
- RG 83.16 We may also reinstate a company's registration if we are satisfied that a company should not have been deregistered under former s574 of the Corporations Law. That is, we may reinstate companies that were deregistered between 1 January 1991 and 30 June 1998.
- RG 83.17 To be satisfied that a company should not have been deregistered, we must consider whether an error was made in the circumstances of its deregistration.

- RG 83.18 Some instances where ASIC may reinstate a company's registration are:
- (a) there was a procedural defect or oversight in the procedure leading to the deregistration. For example, if a company was deregistered for unpaid review fees and the review fee had actually been received by ASIC before the company was deregistered;
  - (b) not all members agreed to deregistration of the company as a voluntary deregistration;
  - (c) the company had assets of more than \$1,000 at the time of voluntary deregistration,
  - (d) the company had outstanding liabilities at the time of voluntary deregistration,
  - (e) the company was carrying on a business at the time of deregistration; and
  - (f) legal proceedings were underway at the time of deregistration.
- RG 83.19 A person who was a director, secretary or member of a company at the time of deregistration may apply to reinstate a company where the company was deregistered:
- (a) at ASIC's initiation; or
  - (b) voluntarily, by the company or a representative lodging a [Form 6010 Application for voluntary deregistration of a company](#).
- RG 83.20 A third party may apply to reinstate a company where, for example:
- (a) the applicant is a third party who had started legal proceedings against the company before its deregistration; or
  - (b) the company had outstanding debt(s) at the time of deregistration.

## How to apply for administrative reinstatement

- RG 83.21 A Form 581 *Application for ASIC reinstatement* must be completed, including making the relevant declarations.
- RG 83.22 Reasons and supporting documentation must be provided to demonstrate that the company should not have been deregistered.
- RG 83.23 Examples of supporting documentation that may be provided are:
- (a) a letter from a person who was a director, secretary or member of the company at the time of deregistration declaring that not all members agreed to the voluntary deregistration;
  - (b) a bank statement or contract entered into by the company that demonstrates the company was carrying on a business at the time of deregistration;

- (c) land title documentation in the company's name or motor vehicle registration papers that demonstrate the company had assets of more than \$1,000 at the time of voluntary deregistration;
- (d) company invoices or bank statements that demonstrate the company had outstanding liabilities at the time of deregistration; and
- (e) court documents showing that legal proceedings were underway at the time of deregistration.

RG 83.24 An application for administrative reinstatement must be accompanied by evidence that all persons who were directors of the company at the time of deregistration have been notified about the reinstatement application.

RG 83.25 The requirements for ASIC reinstatement are set out in Table 3 below.

**Table 3: Requirements for ASIC reinstatement**

Requirement	Description
<b>Application</b>	Form 581 <i>Application for ASIC reinstatement</i> , including the relevant declarations, must be completed.
<b>Reasons and supporting documentation</b>	Reasons and supporting documentation must be provided to support the view that the company should not have been deregistered.
<b>Statement that all former directors have been notified</b>	<p>A statement that all persons who were directors at the time of deregistration have been notified about the reinstatement application and the consequences of reinstatement if the application is successful must be provided.</p> <p>Note: Reasons must be provided if all persons who were directors at the time of deregistration have not been notified about the reinstatement application.</p>
<b>Application fee</b>	<p>The application fee for the reinstatement application must be paid to ASIC: see <a href="#">Information Sheet 4 Reinstating a deregistered company</a>.</p> <p>Note: If the company was deregistered because of an administrative oversight on ASIC's part, this fee may not be charged.</p>
<b>Outstanding fees</b> (former director, secretary or member applications only)	All money owing to ASIC at the time of deregistration and annual review fees since the date of deregistration must be paid to ASIC.
<b>Outstanding penalties</b> (former director, secretary or member applications only)	All outstanding penalties due under penalty notices issued to the company must be paid to ASIC.
<b>Legal costs</b> (former director, secretary or member applications only)	All legal costs ordered by a court to be paid to ASIC by the company in proceedings conducted before the company's deregistration must be paid to ASIC.

## Where to send your reinstatement application

RG 83.26 Initial steps for [applying to ASIC for reinstatement](#) are set out on our website. The subsequent written applications and supporting documentation for reinstatement by ASIC should be addressed to:

Reinstatement Applications  
 Australian Securities and Investments Commission  
 PO Box 4000  
 Gippsland Mail Centre VIC 3841

## When ASIC may not administratively reinstate a company

### The company was wound up by a liquidator

RG 83.27 We will not ordinarily reinstate a company that was wound up before its deregistration, as reinstatement of a company that was under external administration does not automatically restore a liquidator.

RG 83.28 In this case, the former directors of the company would be restored to manage the company's business. In these circumstances, it is appropriate for a court to consider the application and decide whether the reinstatement of a company registration is just.

RG 83.29 An application may be made to a court to reinstate the company and appoint a liquidator: *JP Morgan Portfolio Services Ltd v Deloitte Touche Tohmatsu* (2008) 167 FCR 212.

### The company was deregistered under the Companies Codes or previous legislation

RG 83.30 We cannot reinstate a company that was deregistered under the Companies Codes of the relevant states and territories (see *Re Jury & Spiers Pty Ltd* [2016] NSWSC 900), or previous companies legislation (see *Re Rocha Pty Ltd* [2016] NSWSC 899).

### The company would have no directors

RG 83.31 We will not ordinarily reinstate a company where, on reinstatement, the company would not have a director, as there would be nobody to manage the company's business. For example, this may be because the previous company director has been disqualified from managing corporations under the Corporations Act or because the director(s) are now deceased.

- RG 83.32 An application may be made to a court to reinstate the company, and on the making of a reinstatement order ASIC must be notified of any new director(s) by updating the company details online.

## Company name

### When the company name is no longer available

- RG 83.33 If the company name is no longer available, we will reinstate the company with its name as the Australian Company Number followed by the legal elements (e.g. ACN 901 901 901 Pty Ltd). After being reinstated, the company may change its name by passing a special resolution in accordance with the Corporations Act and lodging a [Form 205](#) *Notification of resolution*.

### Reservation of the company name

- RG 83.34 If the former name of the company is available at the time of lodging a reinstatement application with ASIC, a [Form 410](#) *Application for reservation of a name* may be lodged to reserve the former name. This will prevent another entity from selecting and using the former name during the period between lodgement and reinstatement. The reservation lasts for two months from the date when the application is lodged.

## D Applying to a court for reinstatement

### Key points

Where a company was deregistered under the Corporations Act, an application for reinstatement may be made to a court under s601AH(2).

A former liquidator of the company or a person who is aggrieved by the deregistration of the company may make the application.

The requirements for court reinstatement are set out in Table 4. Generally, we will not object to an application if these requirements are met.

If a court makes an order to reinstate a company, a copy of the order must be served on ASIC to ensure the reinstatement takes place.

### Who can apply to a court for reinstatement

- RG 83.35 A reinstatement application may be made to a court for an order that ASIC reinstate a company by:
- (a) a former liquidator of the company; or
  - (b) a person who is aggrieved by the deregistration of the company.

### How to apply for court reinstatement

#### Companies deregistered under the Corporations Act

- RG 83.36 For companies deregistered under the Corporations Act, an application to a court for reinstatement is made under s601AH(2).
- RG 83.37 The rules of the relevant court should be checked before drafting the court documents for the application. In some jurisdictions, ASIC is required to be named as a respondent.

#### Companies dissolved under the Companies Code or previous companies legislation

- RG 83.38 Section 601AH(2) does not apply to companies dissolved under the state and territory Companies Codes or previous companies legislation: *Re Rocha Pty Ltd* [2016] NSWSC 899; *Re Jury & Spiers Pty Ltd* [2016] NSWSC 900.
- RG 83.39 For these companies, it may be possible to seek reinstatement under the laws of the relevant state or territory. The position may differ depending on when the company was deregistered, whether the relevant legislation is still in

force in some way and whether there are any applicable savings and transitional provisions. You should consider seeking professional advice.

## Requirements for making a reinstatement application to a court

RG 83.40 The requirements for making an application to a court for reinstatement under the Corporations Act are listed in Table 4 below and can generally be addressed in affidavits filed in support of the application.

**Table 4: Requirements for court reinstatement application**

Requirement	Description
<b>Made in the appropriate court</b>	The application must be to a court as defined in s58AA(1) of the Corporations Act, which means it must be a superior court such as the Supreme Court, the Federal Court or the Family Court.
<b>Meets legislative requirements</b>	The applicant must be the liquidator who was appointed at the time of deregistration or a person aggrieved by the deregistration of the company.
<b>Grounds are stated</b>	The application must state the grounds on which it is made to satisfy the court that it is just that the company's registration be reinstated. The application should include satisfactory material to support the grounds.
<b>If the company's name is not available</b>	If the company name is no longer available, the application must seek an order that ASIC reinstate the company with its name being the Australian Company Number followed by the legal elements.
<b>Sufficient information about solvency</b>	The application must provide sufficient information to satisfy the court that the company would be solvent if its registration was reinstated.  If you are a creditor or liquidator you do not need to give this information.
<b>Appointment of liquidator</b>	The application must seek the appointment of a liquidator if the company was being wound up prior to its deregistration, unless the reinstatement application also seeks an order terminating the liquidation of the company under s482 of the Corporations Act at the same time.
<b>Directors are aware of application</b>	The applicant must produce evidence that all persons who were directors at the time of the deregistration of the company have been notified of the court application and that, if the application for reinstatement is successful, their roles and responsibilities as officeholders will resume.
<b>Copy of the application is served on ASIC</b>	A copy of the reinstatement application should be served on ASIC so the court can seek ASIC's position before it decides the application.

## Relevant considerations

- RG 83.41 In deciding whether to reinstate a deregistered company, the court may consider:
- (a) the circumstances in which the company came to be dissolved;
  - (b) whether good use could be made of the order if granted;
  - (c) whether any person was likely to be prejudiced by the reinstatement; and
  - (d) the public interest (see *Australian Competition and Consumer Commission v Australian Securities and Investments Commission* (2000) 174 ALR 688).

## ASIC's role in a court proceeding

- RG 83.42 A copy of the application should be served on ASIC as a court generally seeks ASIC's position on an application for reinstatement before making a decision: *Reid v Action Insulation Engineers Pty Ltd* [2009] NSWSC 1182.
- RG 83.43 Generally, we will not object to an application if the requirements listed in Table 4 are met.
- RG 83.44 The fact that we do not object to the reinstatement of a company's registration does not mean a court will necessarily approve the reinstatement application.
- RG 83.45 ASIC will not usually appear at the hearing of an application for a reinstatement to which we do not object. Instead, we will advise the applicant in writing that we have no objection to the application.

## Requirements following a court reinstatement order

- RG 83.46 Following a court order to reinstate a company, you must notify ASIC by lodging the order(s) with us.
- RG 83.47 You must include a [Form 105](#) *Cover page for an office copy of a court order* that identifies:
- (a) the legislative provision under which the order was made; and
  - (b) the nature of the order.
- RG 83.48 After we have reinstated the company's registration, we will publish a notice of the reinstatement in the Commonwealth of Australia ASIC Gazette.

## E Consequences of administrative and court reinstatement

### Key points

When a company's registration is reinstated, the company is taken to have continued in existence as if it had not been deregistered and is subject to all the requirements of the Corporations Act.

### Requirements of directors, secretaries and members following a reinstatement application

- RG 83.49 Where a reinstatement application is made by, or on behalf of, a person who was a director, secretary or member of the company at the time of deregistration, either the applicant or the relevant officeholders must ensure the following within 14 days of lodging the reinstatement order with ASIC:
- (a) lodge notification of the company's registered office, change of officeholders and any other company details that need to be updated on our companies register;
  - (b) pay all outstanding fees and penalties payable to ASIC; and
  - (c) meet all outstanding judgments against the company or any officer of the company about failure to lodge documents with ASIC.

### Effect of reinstatement

- RG 83.50 Under s601AH(5), if a company is reinstated, it is taken to have continued in existence as if it had not been deregistered.
- RG 83.51 The company and officeholders of a reinstated company must follow the requirements set out in the Corporations Act. These include keeping records, paying fees and updating changes to company details with ASIC.

### Property

- RG 83.52 On reinstatement, property of the company that was vested in ASIC as a result of deregistration, and that has not been disposed of or otherwise dealt with by ASIC under its powers, vests again in the company.

## Directors

- RG 83.53 Persons who were directors at the time of deregistration become directors from the time the company is reinstated. However, if the company was in liquidation at the time of deregistration, it will be taken to have continued in liquidation before and after its reinstatement unless the court orders that the liquidation be terminated under s482 of the Corporations Act at the time of the company's reinstatement.
- RG 83.54 A director is **not** deemed to have remained in office during the period that a company is deregistered. This means that the conduct of a person purporting to be a director during the period of deregistration may be invalid and agreements purportedly entered into during the period of deregistration by a director on behalf of the company may not be valid. You should seek legal advice if you think you may be affected by this issue. An administrative reinstatement may not be appropriate in these circumstances, as only a court can make orders to rectify such deficiencies.

## Liquidator and winding up

- RG 83.55 When applying for a court reinstatement, orders can be sought to place the reinstated company immediately into liquidation under s459A or s461 of the Corporations Act. Under s489EA(3), ASIC may order the winding up of a company if we have reinstated the registration of the company in the last six months and it is in the public interest to do so: see [Regulatory Guide 242](#) *ASIC's power to wind up abandoned companies* (RG 242).
- RG 83.56 Where a company was wound up before its deregistration and a liquidator is reappointed, or a new liquidator appointed upon reinstatement of the company, the commencement date for the appointment or winding up is the date of the court order and is the relevant date for the purposes of the liquidator's lodgement obligations under section 70–5 of Sch 2 of the Corporations Act.
- RG 83.57 The liquidator appointed under the court order must consider all other obligations under the Corporations Act and relevant regulations, then finalise the liquidation when the affairs of the company are fully wound up.

## Key terms

Term	Meaning in this document
administrative reinstatement	Reinstatement of a company's registration by ASIC
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
court reinstatement	A court order that ASIC reinstate a company's registration
liquidator	A person appointed to wind up the affairs and distribute the property of an externally administered company
s601AB (for example)	A section of the Corporations Act (in this example numbered 601AB), unless otherwise specified

## Related information

### Headnotes

administrative reinstatement, court reinstatement, deregistration

### Regulatory guides

[RG 242](#) *ASIC's power to wind up abandoned companies*

### Information sheets

[INFO 4](#) *Reinstating a deregistered company*

### Legislation

*ASIC Supervisory Cost Recovery Levy Act 2017*

Companies (New South Wales) Code

Companies (Northern Territory) Code

Companies (South Australia) Code

Companies (Tasmania) Code

Companies (Victoria) Code

Companies (Western Australia) Code

Corporations Act s58AA(1), 413(3), 459A, 481(5)(b), 482, 489EA(3), 509(1), 509(2), 601AA, 601AB(1), 601AB(1A), 601AB(1B), 601AB(2), 601AH(1), 601AH(1A), 601AH(2), 601AH(5)

Corporations Law former s574

### Cases

*Australian Competition and Consumer Commission v Australian Securities and Investments Commission* (2000) 174 ALR 688

*JP Morgan Portfolio Services Ltd v Deloitte Touche Tohmatsu* (2008) 167 FCR 212.

*Re Jury & Spiers Pty Ltd* [2016] NSWSC 900

*Re Rocha Pty Ltd* [2016] NSWSC 899

*Reid v Action Insulation Engineers Pty Ltd* [2009] NSWSC 1182

## **Forms**

[Form 105](#) *Cover page for office copy of a court order*

[Form 205](#) *Notification of resolution*

[Form 410](#) *Application for reservation of a name*

Form 581 *Application for ASIC reinstatement* (see [Applying to ASIC for reinstatement](#))

[Form 6010](#) *Application for voluntary deregistration of a company*