



# DISTRICT COURT APPLICATION

## Extension of time to file an Annual Return

### Background

The Companies Act 2014, commenced on 1<sup>st</sup> June 2015, introduced a new procedure for companies who have missed, or know they will miss, their annual return filing deadline in the CRO. A company can now make an application to the District Court for an Order to extend the time for delivery of the annual return. If the company then subsequently delivers the annual return, for the year in question, to the CRO within the extended time period specified by the Court, the annual return will be deemed to have been delivered on time and as such late filing penalties will not apply and the company will avoid losing audit exemption (if applicable).

### How does the process work?

The company cannot represent itself so it must have the appropriate legal representation in Court. The main steps of the procedure can be summarised as follows:

- An application for a Court date must be made to the District Court in which the company's registered office is situated
- A copy of the above notice of application and a copy of the Affidavit must be served on the CRO
- The application and a declaration of service to the Registrar are then filed with the Court no later than four days before the date fixed for the hearing.
- Upon completion of the hearing, if the Order is granted it should be filed at the CRO (usually within 28 days) and the B1, accounts and standard filing fee should be delivered to the CRO no later than the date to which the extension has been granted.

### Which District Court should my application be made to?

The company must make the application at the District Court where the registered office is situated. We make most of our applications to the Dublin District Court, as the Judges sitting here are becoming increasingly familiar with this new procedure and the issues that can arise. As such, our legal team can anticipate the questions which the Judge may ask and prepare accordingly. If your company has a registered office outside Dublin, we recommend a temporary change of Registered Office to our address – which is included in our service, for this purpose. Upon completion of the hearing and the issuing of the Order, the registered office will be immediately changed back.

We can of course make application to other District Courts around the country but please note that this may affect the cost and timescale of the application.

### What explanations will the Court accept for missing my Annual Return filing deadline?

There are no 'standard' excuses and indeed Judges tend to react negatively when they heard the same explanation time after time. As such we ask that the facts of each case are given as comprehensively as possible. Our solicitors will then distil this information down to the key points for presentation to the Court. If there is any independent third party documentation such as a sick certificate, a doctor's letter, a death certificate etc. in support of the reason for late filing, this will help considerably.

The Registrar has however stated that they reserve the right to object to any application for such an Order where, in the opinion of the Registrar, the reason provided in the Affidavit and the supporting facts do not explain or verify why it was **not possible** to deliver the annual return to the CRO within the time permitted by the Act. The following reasons will therefore no longer be accepted in terms of excusing the delay to file:

- (a) Oversight
- (b) Inadvertence
- (c) Breakdown in Communication

### Is there a guarantee that the application will be successful?

Unfortunately it is not possible to give an absolute guarantee that any application which goes before the Courts will be successful. However, thus far the Courts have been very supportive of such applications.

**Will the extension of the time to file change my Annual Return Date?**

No, the extension of time relates to the 28 days after the company's ARD that it has to file with the CRO. The Court Order extends these days and not the ARD itself.

**How long after the company has missed its deadline can it get an extension?**

There is no limit to the timeframe for making the application as long as the company is still on the Register (i.e. it has not been struck off) and the Annual Return in question has not been filed.

**My company is strike-off listed, will I still be able to make an application?**

Yes - as long as the company is still on the Register then it can make an application. However, it is important to ensure that the Directors act quickly to guarantee that the application can be made before the Company is actually struck off. Where a strike-off is pending and the CRO have been formally served a copy of the notice of application to the Court for an extension, the strike-off will be temporarily deferred pending the application being heard.

**My company has been struck-off, can I still make an application to extend my time for filing?**

If a company has already been struck off the Register then they cannot make an application under this particular section of the legislation. Instead they will need to undertake either a H1 (Administrative Restoration) or High Court Restoration (depending on whether they have been struck off for more than 12 months). Under either of these processes the Company will have to file audited financial statements and pay the relevant late filing penalties. For more information on our restoration services please contact Karen Corcoran, [karen@formations.ie](mailto:karen@formations.ie)

**I have already filed my annual return and paid the penalties, can I make an application in respect of this?**

Unfortunately applications can only be made where a company has *not* already filed its annual return.

**Can I include multiple years in the same application?**

Yes – it is possible to include multiple years for which annual returns are outstanding in the same application. However, you can only apply *once* to the Court for any given outstanding year.

**How long does the process take?**

As you can imagine this can vary from case to case. However, the majority of Orders will be issued within 8-10 weeks from receipt of the completed application form and payment of our fees.

**How can CFI assist?**

CFI has over 25 years' experience in Company Secretarial work and access to information on every single company incorporated in the State. We can offer you a friendly and professional service which will take you through every step of this process and arrange for legal representation to be engaged on your behalf.

The fee for making a District Court application is just €790 + VAT + €150 in disbursements (to include stamp duty payable to the Courts and swearing fees) and this is payable on receipt of instructions. *\* Please note that if the case is adjourned for any reason, we reserve the right to make further charges for additional attendance at Court.*

In addition to this, CFI can also assist with the preparation of any outstanding Annual Returns as part of this application and we can even provide dormant accounts if the company has never traded. If you would like further information on this service, please contact **Sue Jesper** or **Sean Kavanagh** on +353 1 664 1177 or email us directly at [sue@formations.ie](mailto:sue@formations.ie) or [sean@formations.ie](mailto:sean@formations.ie)

***Very Important note:***

*The information in this document is of a general nature only and is not intended to address the circumstances of any particular person, corporation or entity. There is no guarantee that the information in this document is accurate as of the date it is received, or that it will continue to be accurate in the future. No individual or entity should act on the contents herein without first taking appropriate legal, accounting and taxation advice that is specific to their circumstances.*



22 Northumberland Road, Ballsbridge, Dublin 4, D04 ED73  
Ph: +353 1 664 11 77 Fax: +353 1 664 11 00  
Email: [cfi@formations.ie](mailto:cfi@formations.ie) Web: [www.formations.ie](http://www.formations.ie)