
[LEGAL NOTICE NO. 135]

COMPANIES ACT 2015

Companies (Effect of Deregistration) Regulations 2021

IN exercise of the powers conferred on me by section 713 of the Companies Act 2015, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Companies (Effect of Deregistration) Regulations 2021.

(2) These Regulations come into force on 1 January 2022.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Companies Act 2015;

“bank” has the meaning given in section 2(1) of the Banking Act 1995;

“credit institution” has the meaning given in section 2(1) of the Banking Act 1995; and

“financial institution” has the meaning given in section 2(1) of the Banking Act 1995.

PART 2—DEALING WITH PROPERTY VESTED UNDER SECTION 605

Appointment of person to deal with property

3.—(1) If property vests in the Government under section 605(2) of the Act, the Minister may appoint a person as the Minister thinks fit, to act on behalf of the Government to—

- (a) in the case of money, credit the amount of the money to a special account established by the Minister for this purpose alone; or
- (b) otherwise—
 - (i) sell or dispose of the property; and
 - (ii) if the person does so, credit the amount of the proceeds to a special account.

(2) If property vests in the Registrar under section 605(3) of the Act, the Registrar may appoint a person as the Registrar thinks fit, to act on behalf of the Registrar to—

- (a) dispose of or deal with the property; and
- (b) apply money received to defray expenses incurred by the Registrar or the person in exercising the powers of the Registrar in relation to the deregistered company.

Dealing with property vested in the Government or the Registrar

4.—(1) In selling, disposing of or dealing with property vested in the Government or the Registrar under section 605 of the Act, the Minister, the Registrar or other person appointed under regulation 3 must do all things necessary including—

- (a) conduct a company search at the office of the Registrar to determine the officers and registered office of the deregistered company;
- (b) liaise with banks, credit institutions and other financial institutions to determine the total assets and liabilities of the deregistered company;
- (c) liaise with the Fiji Revenue and Customs Service, the office of the Registrar of Titles and the iTaukei Land Trust Board to determine the total assets and liabilities of the deregistered company;
- (d) advertise in a daily newspaper and on an official government website a notice for a meeting with the creditors of the deregistered company; and
- (e) hold meetings with the creditors of the deregistered company to determine the debt owed by the deregistered company to each creditor.

(2) If, for the purposes of regulation (1)(b) and (c), the Minister, the Registrar or other person requires any document or information that the deregistered company would have had access to, or been provided with, had the company not been deregistered, the bank, credit institution or other financial institution, the Fiji Revenue and Customs Service, the office of the Registrar of Titles and the iTaukei Land Trust Board must provide such document or information to the Minister, the Registrar or other person no later than 6 months after the request for the document or information is made.

(3) If the Registrar or other person appointed under regulation 3 has determined the total assets and liabilities of the deregistered company, the Registrar or other person must—

- (a) seize all the assets of the deregistered company;
- (b) sell or dispose of all the assets; and
- (c) subject to regulation 5, pay the creditors.

Preferential payments

5.—(1) In selling, disposing of or dealing with property vested in the Government or the Registrar under section 605 of the Act, the Registrar or other person appointed under regulation 3 must pay in priority to all other debts—

- (a) all Government taxes and local rates due from the company at the date of deregistration and having become due and payable within 12 months next before that date, not exceeding in the whole one year's assessment and all Government taxes legally withheld by the company from payments made by it to employees, members, and others;
- (b) all Government issued rents not more than one year in arrears;
- (c) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant (not being a director) in respect of services rendered to the company during 4 months next before the date of deregistration and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;
- (d) unless the company has, at the time of deregistration, under any contract with insurers, rights capable of being transferred to and vested in the worker, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act 1964, being amounts which have accrued before the date of deregistration;
- (e) all amounts due in respect of contributions payable during the period of 12 months immediately preceding the date of deregistration by the company as the employer of any person under the Fiji National Provident Fund Act 2011.

(2) Notwithstanding anything in subregulation (1)(c), the sum to which priority is to be given under that paragraph must not, in the case of any claimant, exceed \$6,000, provided that, where a claimant under that subregulation is a labourer in husbandry who has entered into a contract for the payment of a portion of his or her wages in a lump sum at the end of the year of hiring, that person has priority in respect of the whole of such sum, or a part of the compensation, as the court may decide to be due under the contract, proportionate to the time of service up to the date of deregistration.

(3) Where any compensation under the Workmen's Compensation Act 1964, is a weekly payment, the amount due in respect of the compensation is, for the purposes of subregulation (1)(d), taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed, if the employer has made an application for that purpose under the said Act.

(4) Where any payment has been made to any clerk, or servant (not being a director) or to any workman or labourer in the employment of a company, on account of wages or salary, out of money advanced by some person for that purpose, the person by whom the money was advanced has a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the clerk, servant, workman or labourer would have been entitled to priority has been diminished by reason of the payment having been made.

(5) The above debts must—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case, they must abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the seizure, sale or disposal of the assets, the above debts must be discharged so far as the assets are sufficient to meet them.

(7) In the event of a landlord or other person distraining or having distrained any goods or effects of the company within 6 months next before the date of deregistration, the debts to which priority is given by this regulation must be a first charge on the goods or effects so distrained on, or the proceeds of the sale, provided that, in respect of any money paid under any such charge, the landlord or other person have the same rights or priority as the person to whom the payment is made.

(8) For the purposes of this regulation, any remuneration in respect of a period of absence from work through sickness or other good cause is deemed to be wages in respect of services rendered to the company during that period.

PART 3—REINSTATED COMPANIES AND FOREIGN COMPANIES TO REREGISTER

Reinstated companies and foreign companies required to reregister

6.—(1) If a company had been deregistered for failure to reregister under section 759 and the company is to be reinstated under section 609, the company must, within 60 days from the date of reinstatement, apply for reregistration of the company in accordance with section 754, and sections 755 to 760 apply *mutatis mutandis* to the company.

(2) If a foreign company had been struck off the register for failure to reregister under section 767 and the foreign company is to be reinstated under section 609, the foreign company must, within 60 days from the date of reinstatement, apply for reregistration of the foreign company in accordance with section 762, and sections 763 to 768 apply *mutatis mutandis* to the foreign company.

Made this 22nd day of December 2021.

A. SAYED-KHAIYUM
Attorney-General and Minister for Justice