VOISIN LAW

Jersey Company Reinstatements – recent analysis by the Jersey Courts | 1

Can a Jersey company be reinstated?

There are a number of ways in which a Jersey company can be dissolved. For example, a summary winding up is the procedure used to wind up a solvent Jersey company.

Alternatively, a company may be dissolved if it is subject to a declaration of désastre, which involves the Viscount (being the head of the executive arm of the courts of Jersey) being appointed to wind up the company and distribute its assets.

A third common scenario in which a company may be dissolved is where a company is struck off the register by the Jersey Company Registry, which often occurs in cases where there has been a non-filing of an annual confirmation statement (or, historically, an annual return).

In cases where a company has been dissolved, pursuant to article 213 of the Companies (Jersey) Law 1991 (the "Companies Law") the Royal Court has the power at any time, within 10 years of the date of dissolution on the application of an interested party, to declare the dissolution void and order the reinstatement of the company, so that the company is returned to the position it would have been in if the company had not been dissolved.

The Royal Court is further empowered to give such directions and make such provisions as it sees fit for placing a company and all other persons in the same position as if the company had not been dissolved.

Summary of the reinstatement process

In order for a reinstatement to proceed, the Jersey Company Registry and the Comptroller of Revenue must both be contacted and their consent to the reinstatement obtained.

Prior to the Jersey Company Registry providing its consent, it would require, amongst other things, any annual returns (or more recently, annual confirmation statements) to be filed together with payment of any outstanding fees and confirmation of the registered office address upon reinstatement to be provided. A draft of the Representation and Affidavit would also need to be provided to the Jersey Company Registry for its consideration.

Prior to the Comptroller providing its consent, it would require any outstanding tax returns for the company to be filed and any unpaid tax liabilities or penalties to be paid in full.

Once the Jersey Company Registry and Comptroller consent has been obtained, an application can be brought before the Judicial Greffier to reinstate the company, which would include making a representation to the Judicial Greffier by a liquidator of the company or any other person appearing to be interested. Interested persons would include, by way of example, a former shareholder, a beneficial owner, a director or a secretary of the company.

If the Royal Court consents to the application, it will make an order declaring the company's dissolution void. The applicant must then file a copy of the order with the Jersey Company Registry within 14 days of the order and, upon receiving a copy of the court order, the Jersey Company Registry will register it and

restore the dissolved company's name to the register of companies.

Application by a creditor to reinstate a Jersey company

A creditor may also be an interested person who is entitled to make an application to reinstate a company. Such applications can be made ex parte (i.e. without notice being provided to other parties).

Can court papers be served at the original registered office address?

This issue was considered in the case of JSC Commercial Bank Privat Bank v St John Ltd and Ors [2021] JRC 189 ("JSC Commercial v St John").

In this case, the application for reinstatement was made ex parte and court papers which related to proceedings in Israel regarding alleged large scale fraud were served at the last known registered address of St John Limited ("St John").

In relation to the service of court papers at the registered office address, interestingly, the Court was "completely satisfied from every perspective" that the registered address of St John was the address which the company had held at the date of its dissolution and accordingly that service has been properly effected. The Court noted, in particular, that at no stage prior to service had St John's corporate service provider, Lutea Trustees Limited ("Lutea"), given notice that its address could no longer be used nor had St John given notice of a change of address.

Does the role of a corporate services provider survive the dissolution and subsequent reinstatement of a company?

Prior to the dissolution of St John, Lutea had provided to St John, the usual corporate services, including provision of its registered office, directors, secretary, and nominee shareholders.

JSC Commercial Bank Privat Bank, which had made the application to reinstate St John sought to argue that Lutea's consent to act as corporate services provider to St John (including as registered office provider) survived the dissolution and subsequent reinstatement of St John, whereas Lutea initially refused to co-operate with the service of papers on the basis that it no longer provided any services to St John.

Although the Court was clear that the service of court papers at the registered office address of St John had been properly effected, regarding the wider issue of whether Lutea's consent to act as corporate services provider had survived the dissolution and subsequent reinstatement, the Court declined to offer a definitive view and held that this was an academic issue which did not need to be resolved to provide the relief sought in this particular case.

Are ex parte applications acceptable or is it best practice for notice of the reinstatement application to be served on any interested parties?

The issue of whether ex parte applications for the reinstatement of a Jersey company were appropriate was considered in two recent Jersey cases namely In the matter of Hunters Investments Limited [2020] JRC 256 ("Hunters Investments") and the aforementioned case of JSC Commercial v St John.

In the case of JSC Commercial v St John, the Court noted in particular that article 213 of the Companies Law gave the Court a discretion as to whether it should or should not make an order declaring the dissolution of the company to have been void. Therefore, after considering the application, if the Court decides that it is right to make such an order, then the consequence is that the company is reinstated and is placed back in the same position as if the dissolution had never occurred.

The Court further noted that pursuant to article 213 of the Companies Law, the Court had the power to give further directions and make such further orders as seem just and that the nature of those orders will affect who it is the Court considers ought to be convened to the application to reinstate the company, if anyone.

In the case of Hunters Investments, the question as to who should be convened was considered in detail by the Court. In this case the Court identified that a number of persons who before dissolution had been both directors and shareholders in the company were interested persons for the purposes of the Companies Law. However, as the majority of these former directors and shareholders had indicated they did not intend to oppose or appear in response to the application, the Court held that it was not necessary to convene any of the former directors and shareholders and that it was appropriate for the majority view to be ordinarily followed by the Court (as in this case only a small minority were opposed to the application).

Of course, in order to reach a conclusion that the majority of shareholders were either in favour of or not opposed to the reinstatement, those persons had to be given notice of the application and the Court in JSC Commercial Bank v St John Ltd held that in the ordinary course of events the party which ought to be convened to an application for reinstatement is the company itself, with the application for reinstatement to be served on the company at its last known registered address.

The Court held that reasons for providing notice of the reinstatement application included:

(a) allowing those who are legally interested in the reinstatement of a company to consider what the consequences might be for any contracts or arrangements in place at the date of the dissolution;

(b) providing the occupier of premises where the registered office is situated with the opportunity to file a notice with the Jersey Financial Services Commission confirming it did not authorise its premises to be the registered office of the company in question; and

(c) providing directors and/or other officers of the company with the opportunity to consider their position, as in the ordinary course of events, the reinstatement of the company will result in the dissolution being void and placing the relevant officers back into the same position they had been in prior to the dissolution.

However, the Court did note that whilst in the majority of cases it was desirable that the company should be given notice of the application by service as if it were a party, the Court did recognise that there may be circumstances in particular cases which would justify not
giving the company such notice, which included cases:

(a) where the applicant wishes to obtain ex parte relief in Jersey (or any other jurisdiction) against persons

who may, upon becoming aware of the application for reinstatement, take steps to frustrate or pre-empt any relief granted on an ex parte basis; or

(b) where time limits for the service of fresh proceedings are about to expire, and the immediate reinstatement of the company may be necessary to defeat limitation arguments.

Helpfully, the Court also noted that although the starting point should be that notice to the company should be given, if the applicant wishes to persuade the Court that notice is not appropriate, suitable evidence by way of affidavit should be put before the Court when the representation is presented.

Conclusion

In cases where all the interested parties are supportive of the reinstatement, the reinstatement process is usually a very straightforward process, following a well-trodden path and notice of the reinstatement process should not prove controversial.

It is clear from the cases examined above, that in most circumstances, the Court will view it as necessary that the company should be given notice of the reinstatement application, as this would help ensure, amongst other things, that any disputes as to whether there is continuing agreement to act as corporate services provider or whether the consent to do so lapsed with the dissolution can be identified and resolved at an early stage.

Indeed, on a practical level, in cases where the previous company service provider is unlikely to provide its consent, it is common place to source a new service provider willing to take on the registered office address prior to the reinstatement application being made.

However, there will still be cases where ex parte reinstatement applications will be permitted and given the uncertainty as to whether a corporate services provider role survives dissolution and subsequent reinstatement, it will be important that those who provide financial services in the Island pay careful regard to the potential consequences of reinstatement where a company has been dissolved (for example, its ability to comply with the relevant money laundering legislation) and should take such steps prior to dissolution as may be necessary to ensure that any adverse consequences to them might be mitigated or avoided.