



Background

Jersey companies can be dissolved either through (i) formal procedures contained in the Companies (Jersey) Law 1991 (the “**Companies Law**”) or the Bankruptcy (Désastre) (Jersey) Law 1990 which provide for the solvent and insolvent winding up of Jersey companies or (ii) as a result of being “struck off” under the provisions of Article 205 of the Companies Law following, for example, a failure to submit the annual fee and file the annual return to the Registrar of Companies (the “**Registrar**”) in Jersey. If the Registrar has not received the necessary payment/annual return filing by the end of February in each year following the incorporation of the company, then a notice will be sent to the registered office of that company and if there is continued non-compliance for a further period of three months then, at the end of that period, the company will be “struck-off” the Register of Companies pursuant to Article 205 of the Companies Law. A gazette notice is subsequently published in Jersey which discloses the list of delinquent companies.

Whether a company has been dissolved through a formal procedure or as a result of the application of Article 205, it is recognised that there will be circumstances when it is necessary for an interested party to seek the reinstatement of a dissolved Jersey company. This briefing note deals with the process which is provided for by Article 213 of the Companies Law.

Typical situations that give rise to an application for reinstatement under Article 213 are as follows:

- the company being inadvertently “struck-off” (often because the company administrators have not been provided with funding for the annual fee in good time);
- the discovery of further assets owned by a company that was dissolved under a solvent winding up procedure (a summary winding up) under the Companies Law; or
- an application by a creditor of a company that has been dissolved where it is perceived that property is held by that company and available to satisfy their claim.

Application

Following an application by way of Representation (a form of court pleading further details of which are explained below) to the Royal Court and pursuant to Article 213 of the Companies Law, the Royal Court may declare the dissolution void and order that the company be reinstated.

Who may apply?

The liquidator of the company as well as “*any other person appearing to the court to be interested*” may make an application for reinstatement. Both shareholders and creditors of the company would be interested parties under Article 213 of the Companies Law.

Pre-application matters

In advance of the formal application to the Royal Court for reinstatement, the Jersey Financial Services Commission (the “**JFSC**”) must be notified of the proposed reinstatement and confirmation sought as to whether it has any objection to the application. The JFSC will also confirm whether there are any outstanding filing fees and late penalty fees which need to be satisfied. Such fees are payable before the



reinstatement can occur.

In order for the JFSC to consider the matter and confirm that it has no objection to the application, it will request, amongst other things, the following:

1. a draft of the Representation;
2. in the case of an application made by a shareholder/beneficial owner of the company, a signed letter of confirmation by the beneficial owner confirming certain matters in relation to the company, including any change in its beneficial ownership;
3. submission of all annual returns of the company that should have been filed but for the dissolution of the company together with outstanding annual filing fees and fines; and
4. evidence that the provider of the company's registered office address prior to its dissolution or a new registered office provider (whichever is the case) consents to the company's use of the provider's address as its registered office address.

Confirmation will also need to be obtained from the Comptroller of Income Tax that he has no objection to the application. If there are Income Tax liabilities owed by the company, then they will have to be discharged before the Comptroller will provide his confirmation that he has no objections to the reinstatement.

Where the applicant is a creditor, the JFSC will require an undertaking over the discharge of its fees and costs from the creditor and the Comptroller of Income Tax will need to be contacted in order that any tax claims against the company are considered as part of the approval process for the application.

Representation to the Royal Court and Supporting Affidavit

Following approval by the JFSC, the Representation is filed by the applicant (known as the "**Representor**") or on its behalf by their legal advisers with the Judicial Greffe (an administrative organ of the court) for consideration by the Royal Court.

Inter alia the Representation must include:

1. details of how the company came to be dissolved;
2. why it is now needed to be reinstated; and
3. information concerning the current activities of the company (if any).

The Representation must be accompanied by copy letters received by the applicants from the Income Tax Department and the JFSC confirming that they have no objection to the application (see above) and court stamps amounting to £120 which represents the fee charged by the Judicial Greffe for processing the reinstatement.

The application is made *ex parte* and does not require an appearance before the Royal Court. The resulting Court order which will be in the form of an "Act of Court" is a public document that may include detailed information in respect of the beneficial ownership of the company.



As well as the Representation, the Judicial Greffe requires that a supporting Affidavit (a written statement confirmed by oath or affirmation) from the Representor is also filed. The purpose of the Affidavit is to confirm the details contained in the Representation and so contains much of the same information.

Effect

The reinstatement will come into effect on the date that the Act of Court is issued by the Royal Court. The Representor must send a copy of the Act of Court to the Registrar for registration by the Registrar within 14 days, otherwise the Representor will be guilty of an offence.

Upon the issuing of the Act of Court, the dissolution of the company will be declared void. The reinstated company shall keep the registered office address it held at the time that it was struck off unless directed otherwise.

Power of the Court to make additional orders

The Court has the power to include in the Act of Court such orders and directions and make such provisions as seem just for placing the company and all other persons in as much of the same position as possible as they would have been in had the company not been dissolved.

Limitation Period

Article 213(1) of the Companies Law provides that the application for reinstatement must be brought within a 10-year period commencing from the date that the company was dissolved. There is an absolute bar on the reinstatement of the company after this time.

Assets held by dissolved Companies

During the 10 Year Limitation Period

In circumstances where a Jersey company has been dissolved still owning assets held within Jersey, Her Majesty's Receiver General ("**HMRG**"), on behalf of the Crown, will be entitled to claim those assets as *bona vacantia* (ownerless assets).

During the 10 years following the dissolution of the company, HMRG will receive in such assets as can be ascertained and hold them '*par voie de garde*' pending any application under Article 213 for reinstatement of the company. The assets will only vest in the Crown absolutely after the lapse of 10 years on the basis that the company might be reinstated within 10 years of dissolution.

Subject to receiving a full history of any assets that have been transferred to him, HMRG will provide an indemnity to the transferor in respect of such assets to the extent of their value or condition at the date of their transfer to HMRG as transferee. The terms of the indemnities given by HMRG are dealt with on a case-by-case basis.

After the 10 Year Limitation Period



Despite the time bar on the reinstatement of a Jersey company whereby the company cannot be reinstated after 10 years, the beneficial owners of the company may be able to seek to reclaim the assets of the company held by HMRG. It is understood that there is no limitation period applicable to the making of such a claim, given that the same represents a concession on the part of HMRG.

One particular point of note is that HMRG will give particular consideration as to whether the claimant, as beneficial owner of the company, would be gaining an unfair advantage as a result of the transfer of former company assets to him with the company having been dissolved for such a length of time. HMRG would not want to be seen to be encouraging shareholders to allow companies acting, for example, as property holding vehicles to be intentionally struck-off, thereby avoiding the relevant statutory fees, charges, expenses and other liabilities that would otherwise have been payable during the dissolution period.

For further information on the reinstatement of Jersey Companies, please contact [Daniel Walker](#) of Voisin.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.