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PRACTICE NOTE

PN2/2014

Date: 7th Jan 2014

The Companies Acts 1931-2004

Restoring a Dissolved Company to the Register Under Section 273B of the Companies Act 1931

Introduction

This Practice Note replaces Practice Note PN1/2012 "Restoring a Dissolved Company to the Register under Section 273B of the Companies Act 1931" issued on 28th March 2012. The Practice Note updates paragraph 1.2 to reflect advice received in respect of the effect of a judgement delivered in the High Court of Justice.

This Practice Note sets out the procedure for applying to the Department for Enterprise - Companies Registry for a Direction to restore a dissolved company to the Register under Section 273B of the Companies Act 1931.

It is intended as a general guide only and must be read in conjunction with the relevant legislation. This Practice Note has no legal status and should not be used as a substitute for legal advice.

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1. The Application Form and associated actions

- 1.1 This revised procedure for restoring a company is effective from 1st April 2004. It must be noted that the procedure applies to companies that have been struck off under Section 273 or dissolved under Section 273A within the previous 12 years **only**. The Department for Enterprise has no power to administratively restore a company in any other circumstances.
- 1.2 An application under s. 273(6) of the Companies Act 1931 to restore a company to the register, can be made by
 - the company (through those who held appropriate corporate office(s) at the time of dissolution); or

- a member of the company at the date of dissolution (or a deceased member's personal representative at the date of dissolution); or
 - a creditor of the company
- 1.3 The application for restoration cannot be made by someone who would have been a member had the company not been struck off, since such a person cannot be considered a member of the company under s. 25 of the Companies Act 1931. See in particular the judgment of Deemster Cain (In the Matter of the Petition of Morris and Rushbrook (17 September 2001) 2001-03 Manx Law Reports N-14¹.
- 1.4 A creditor must seek legal advice before applying to restore a company, in particular with regard to the need to appoint a liquidator to take effective control of the company. A creditor is not an officer or shareholder and has no authority to appoint new officers or to dispose of the companies assets without the agreement of the Courts. The Companies Registry will not accept forms appointing new officers from a creditor who has restored a company.
- 1.5 Before making an application, the applicant must have posted a notice to each director, the secretary and each member of the company and published such notice in one newspaper published and circulating in the Isle of Man, stating that the applicant proposes to apply to the Department of Economic Development for a Direction restoring the company to the Register and that, unless written objection is made to the Department within 30 days of the date the notice was published or posted, the Department may make a Direction to restore the company.
- 1.6 In addition, the applicant must obtain from the Attorney General, the Assessor of Income Tax and the Collector of Customs & Excise written confirmation stating that they have no objection to the restoration of the company to the register.
- 1.7 Applicants should be aware that the Assessor of Income Tax and the Collector of Customs & Excise will require all matters outstanding with their respective departments to be settled to their satisfaction before issuing such written confirmation.
- 1.8 The application to restore the company must be made on the prescribed form "273B", which is downloadable from the Department's website www.companiesregistry.gov.im. This consists of a single page document to be completed by the applicant.
- 1.9 The application requires to be accompanied by a copy of the notice published in a locally published and circulating Isle of Man newspaper and of EACH of the notices sent to the directors, secretary and members as described in paragraph 1.5 above, and by the written confirmations described in paragraph 1.6. Please note that photocopies or faxes of the written confirmations are not acceptable.
- 1.10 There is a prescribed fee (**currently £1,185**), which must be paid at the time the application is submitted for registration.

2. Duties of the Companies Registry on receipt of an application

- 2.1 Once the application has been accepted, the Companies Registry will publish on its website and in an index available for inspection at its public counter, a notice to the effect that an application for restoration has been received.
- 2.2 **Applicants are advised that, should any objection be received, no Direction for Restoration will be made until either the objection is withdrawn, or the Department decides that the objection is completely without justification.**
- 2.3 Once 30 days have passed since the notice given in paragraph 1.3 was last published, and if no objection has been received, the Department may direct that the name of the company be restored to the register, and a certified copy of the direction will be posted to the applicant.
- 2.4 The direction may also include such further directions or provisions as may be thought just. The most common conditions imposed are for the filing of all outstanding documents, with payment of all fees due at the rates applicable under the current fees order.

¹ http://www.judgments.im/content/CP2001_61%20Morris%20and%20Rushbrook%2017_09_01.pdf

- 2.5 A company applying to be restored may be directed to change its name on restoration where, for example, another company has taken a similar or identical name to that of the dissolved company during the period it was dissolved.

3. Restoring the Company

- 3.1 In order to complete the restoration, applicants should ensure that any conditions attached to the direction described in paragraph 2.3 to restore the company have been met, or that they can be met on registration, before submitting the certified copy of the direction to the Companies Registry. However, if these documents are not produced or the conditions are not met, this will delay the restoration of the company to the register.
- 3.2 There is no time limit for submission of the certified copy of the direction to the Companies Registry. It is up to the applicant to decide how quickly the restoration is to take effect.
- 3.3 If the application is made by a creditor of the company, the creditors will not be required to file any outstanding documents due under the Companies Acts as a creditor is not in a position to complete statutory documents. On restoration, however, the company may be in default will its statutory filing obligations and action may be started at any time under Section 273 with a view to striking the name of the company off the register. Persons having an interest in the affairs of the company should seek legal advice as to the courses of action open to protect their interest.**
- 3.4 In order to speed up the process of restoration, the Companies Registry will accept the filing of all outstanding documents, together with the relevant current filing fees, at the same time as the application for restoration is submitted.
- 3.5 If all the submitted documents are in order, and no other conditions for restoration require to be made, the Companies Registry will register the certified copy of the direction without further reference to the applicant.
- 3.6 Applicants are advised that no notice is required, nor will any be given, when a company has been restored. Finally, applicants should also be aware that the Department is not obliged to make a direction to restore a company, and any refusal to make such a direction does not affect any right to petition the High Court of the Isle of Man for an order for restoration.
- 3.7 The restoration of a company will be delayed until any cheque exceeding £1,000 is cleared, unless the cheque is drawn on the account of a licence holder

4. Further Information

The administrative process for restoration of a company under s. 273B is dependent upon compliance with all administrative requirements for the time being in place at the Companies Registry. In difficult cases or where there is any doubt about paperwork, the application for restoration may be refused and/or that applicant for restoration advised to seek an order from the Court under s. 273 (6).

Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice.

If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: 01624 689389 and the e-mail address is: companies@gov.im

Statutory forms and practice notes are available free of charge from the website: www.companiesregistry.gov.im/Forms.

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licence holders is available on the web site of the Financial Supervision Authority at www.iomfsa.gov.im/Licenceholders.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

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27 Hope Street
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Website: www.iomlawsociety.co.im

Documents may be submitted at any time during office hours (9.00am to 4.30pm Monday to Thursday and 9.15am to 4.00pm on Friday) 'over the counter' in the Companies Registry.

Submission of documents may also be effected by post or after office hours by way of the letterbox located in the main door of the registries building on Deemsters Walk, Bucks Road, Douglas. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be left in the letterbox.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank Holiday will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

It is the responsibility of those presenting documents to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

Please note: The Department does not currently accept statutory documents by fax or E-Mail.
