

Restoration of a British Virgin Islands Company: do you qualify as an interested person?

BVI companies are regularly struck off the Register of Company and subsequently dissolved. BVI companies are also dissolved following the completion of a liquidation process.

On occasion, there is a subsequent need to have a dissolved company restored to the Register. This is usually required when certain assets were inadvertently left in the ownership of the company prior to the company being dissolved. It is not possible for a dissolved BVI company to deal with its assets and an application to the BVI Court is therefore required to restore the company to the Register before assets can be transferred or otherwise dealt with.

Under the BVI Business Companies Act, 2004, a creditor, former director, former member or former liquidator may apply to the BVI Court to restore a dissolved company to the Register of Companies. A further category of persons who can "*establish an interest in having the company restored to the Register*" may also apply. It was this somewhat undefined term that the BVI Court turned its mind to in the recent case of *Trade Management Ltd v The Registrar of Corporate Affairs* BVIHC (COM) 2021/0219.

When determining the issue of the Claimant's standing, Justice Jack decided that "*All that is required is an interest in the Company, which will exist after restoration; it is not necessary that the*

interest be specifically in the Company's restoration". In considering whether to exercise its discretion to restore as conferred by section 218A of the Act, the Court granted the restoration on the basis that the Company had valuable assets in Hong Kong, the failure to pay the regulatory fees was an oversight and the application to restore was supported by the Company's shareholders.

This again shows the BVI Court's flexible and commercially-minded approach to matters such as restoration by helping to overcome an administrative error that could have had dire consequences had the company in question not been restored to the Register.

British Virgin Islands

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