

Collas Crill explains... Reinstating a dissolved Jersey company

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Jersey is a popular place to establish an asset holding company because the **Companies Law** is modern, flexible and modelled on English companies legislation.

The **Companies Law** and the **Disclosure Law** contain a procedure that allows a Jersey company which has been dissolved to be reinstated. This guide looks at the key things you need to know about reinstating a dissolved company.

Words in bold text are defined at the end of this guide.

Why are companies dissolved?

A company may have been dissolved for a range of reasons, including that it:

- was no longer needed and was wound up on a solvent basis;
- was wound up on a just and equitable grounds (eg as a result of a shareholder dispute);
- became insolvent and was liquidated; or
- was struck off by the **registrar** for failing to comply with an administrative requirement under the **Companies Law** or **Disclosure Law** (eg to file an annual confirmation statement or to have a nominated person).

Once a company is dissolved, its name is removed from the register of companies kept by the **registrar**.

Why reinstate a dissolved company?

The **Companies Law** and the **Disclosure Law** allow an **eligible person** to apply to the **Court** within the **eligibility period** for an order declaring the dissolution of a company void. The process is colloquially known as a reinstatement because the dissolved company's name will be reinstated on the register of companies if the **Court** makes the order.

An applicant will typically want to reinstate a dissolved company because:

- the company was struck off for a breach of the **Companies Law** or the **Disclosure Law** and the breach has been remedied;
- it has been discovered that the company owns assets of which it was unaware at the time of its dissolution so they have not distributed to its shareholders or creditors; or
- the applicant is a creditor that wishes to make a claim against the company or its directors.

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Who may make a reinstatement application?

Only an **eligible person** may apply to reinstate a dissolved company.

The **Court** has said that, where an applicant wants to make a claim against the company, the applicant is only required to satisfy the **Court** that its claim is more than merely shadowy.

When may a reinstatement application be made?

An application to reinstate a dissolved company may only be made during the **eligibility period**.

What orders may be made?

If an application is successful, the **Court** will declare the dissolution of the dissolved company to be void. The **Court** has the power to:

- make any order on any terms it thinks fit for the purpose of reinstating the dissolved company;
- give any directions and make any arrangements that seem just for placing the company and all other persons in the same position (as nearly as possible) as though the company had not been dissolved; and
- order a **potential contributory** to contribute to the assets of the company in the circumstances described under Application for contribution by creditor below.

What is the effect of reinstatement?

If a dissolved company is reinstated:

- its dissolution is declared to be void so that it is treated (to the extent possible) as though it had not been dissolved;
- its name will be reinstated on the register of companies; and
- any proceedings may be taken against it that could have been taken if it had not been dissolved.

A reinstatement can also have significant impact on the service providers and directors of the relevant company at the point of its dissolution.

When does the reinstatement take effect?

A dissolved company is reinstated with effect from the date on which the order declaring its dissolution to be void is made.

How long does the reinstatement process take?

An application is normally considered by the Judicial Greffier in chambers rather than being heard in the **Court**. If an application is relatively straightforward, once it is filed with the **Court**, it is normally considered and (if successful) orders made within seven days.

What is the reinstatement process?

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Preliminary steps:

Before making an application to reinstate a dissolved company, the applicant must take the following steps.

Write to the company's registered office provider at the time of its dissolution and ask whether it:

- will allow the company to use its address as the company's registered office address (and if relevant, obtain the same confirmation from any new registered office provider); and
- it has any fees unpaid by the company and (if so) pay them.

Write to the **Comptroller** to obtain confirmation that the **Comptroller** has no objection to the company being reinstated. The **Comptroller**:

- must be given a draft of the application;
- may require (among other things) financial statements for the company to be filed; and
- will give the confirmation if:
 - the applicant files any outstanding tax returns for the company; and
 - the company does not have any unpaid tax liabilities or owe any penalties or (if it does) the applicant has paid them in full.

Write to the **JFSC** to obtain confirmation that the **JFSC** has no objection to the company being reinstated. The **JFSC**:

- must be given a draft of the application;
- may require information regarding the ownership of the company to be filed; and
- will give the confirmation if the applicant:
 - files any outstanding annual confirmation statements for the company;
 - pays any outstanding fees and penalties;
 - makes arrangements to comply with the nominated person requirements; and
 - provides evidence that the company's registered office provider at the time of the company's dissolution (or a new one) authorises the company to use its address as the company's registered office address.

Application

The application process is as follows:

- A written application is made to the Judicial Greffier.
- The application comprises a representation (which is like a petition) and an affidavit which confirms the details in the representation. The representation and affidavit explain why the:

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- company was dissolved; and
- applicant would like the company reinstated,

and the affidavit attaches a letter from each of the **Comptroller** and **JFSC** confirming that it has not objection to the company being reinstated.

- If the **Court** grants the application, it will make an order declaring the company's dissolution void. The applicant must file a copy of the order with the **registrar** within 14 days of an order under the **Companies Law** or within 28 days of an order under the **Disclosure Law**.
- On receiving a copy of the court order, the **registrar** will register it and restore the dissolved company's name to the register of companies.

Application for contribution by creditor

If:

- the **Court** orders the reinstatement of a dissolved company that was dissolved by way of summary (solvent) winding up;
- the company's assets were not, in fact, sufficient to discharge its liabilities at the time it was dissolved; and
- a creditor asks the **Court** to do so,

the **Court** may order a **potential contributory** to contribute to the assets of the company to enable the insufficiency to be met.

The **Court** may order:

- a **recipient** to contribute an amount up to the amount or value of the assets that were distributed to the **recipient**; and
- an **officer**, jointly and individually with any other person who is liable, to contribute an amount up to the amount of the insufficiency in the company's assets.

An **officer** will not be liable to contribute if the **officer** can show that the **officer** had reasonable grounds for being satisfied when signing the solvency statement that the dissolved company had no liabilities.

Where a **potential contributory** has contributed to the assets of a dissolved company after being ordered by the **Court** to do so, the **Court** may order any other person who is jointly and individually liable to contribute to the company's assets pay to the **potential contributory** any amount the **Court** thinks just and reasonable.

Terms used

Companies Law means the Companies (Jersey) Law 1991.

Comptroller means the Jersey Comptroller of Revenue.

Court means the Royal Court of Jersey.

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Disclosure Law means the Financial Services (Disclosure And Provision Of Information) (Jersey) Law 2020.

Eligible person means:

- under the Companies Law;
- a liquidator of a company; or
- any other person appearing to the **Court** to be interested in the reinstatement of the company.

Under the Disclosure Law:

- a significant person of the company;
- a nominated person for the company;
- the company;
- the Attorney General;
- any other person as may be prescribed.

Eligibility period means the period of 10 years starting on the date on which a company was dissolved.

JFSC means the Jersey Financial Services Commission.

Officer means a director or liquidator of a company who signed a solvency statement delivered to the **registrar** in connection with the company's summary winding up stating that the company had no liabilities.

Potential contributory means an **officer** or a **recipient**.

Recipient means a person to whom any assets of a company were distributed in its summary winding up.

Registrar means the Jersey registrar of companies.

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