22 DECEMBER 2023

LEGAL ALERT

THE REVIVAL OF A WOUND-UP COMPANY

Introduction

At first glance and upon the reading of the plain language of section 320 (1) of the Companies Act 2001 (the "**CA 2001**"), the Supreme Court of Mauritius (the "**Court**") does not have the power to restore a company which has been wound up and dissolved. However, in a judgement delivered on 20 November 2023 in the case of *Christopher Peter Van Zyl & Ors V The Registrar of Companies [2023 SCJ 473],* the Court has created a precedent in relation to the restoration of a such a company to the register of companies on the ground that it is just and equitable to do so.

The Case

The applicants in this matter made an application under section 320(1) of the CA 2001 to restore Square Rock Ltd (the "**Company**") to the register of companies. Such application was resisted by the Registrar of Companies (the "**Respondent**"). At the time of the application, the Company was already voluntarily wound up, had been dissolved and had ceased to exist. The Respondent resisted the application on the ground that section 320 of the CA 2001 provides for the restoration of a company which has been removed from the register and does not provide for the restoration of a company which has been wound up and dissolved under the Insolvency Act 2009.

Although the learned Judge was of the opinion that section 320 of the CA 2001 does not cater for the restoration of companies that have been wound up and dissolved, the application was granted on the ground that it would be just and equitable to do so.

Rationale

This point in law has never been debated before a court of competent jurisdiction in Mauritius. Hence in the absence of local case law on the matter, the Court sought guidance from the Companies Act in New Zealand and New Zealand case law. The learned Judge rightly pointed out that sections 309 and 320 of the CA 2001 are akin to sections 318 and 329 of the New Zealand Companies Act 1993. Section 329 of the New Zealand Companies Act 1993 also does not provide for the restoration of a voluntarily would up company.

In reaching its conclusion, the Court relied heavily on the New Zealand case *100 Investments Ltd & Ors v Registrar of Companies [2020] NZHC 880* whereby a company that had been placed in liquidation by special resolution of its sole shareholder was restored to the register on the ground that claim appears to be genuine, and the court does not require a high standard of proof.

Analysis

The effect of such a restoration to the register of companies is that the restored company is deemed to have continued in existence as if it had never been removed from the register.

It is worth highlighting that the Court when applying its discretion has not provided for a substantive test to be applied although it takes the view that there is not an "*automatic formula*" to be applied for dissolved companies to be revived upon the mere asking.

The Court has however invited the Law Reform Commission "*to consider carrying out a study as to whether there needs to be specific provisions laid down in the law as to the requirements needed in order to pursue an application for the revival of a company that has already been wound up and dissolved*".

Concluding remarks

The question which now arises is whether the Court has, by virtue of this judgement, provided a leeway for applicants, including those of bad faith, to entertain applications for restoration before the Court. Caution should therefore be key to prevent spurious applications from taking advantage of this novel avenue.

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