

UPDATE

The End of a Liquidation: Dissolution- The Missing Link

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Introduction

In a recent unreported judgment in the matter of Dynasty Line Limited (In Liquidation), made by the Honourable Justice Chivers QC, his Lordship endorsed the correct procedure for the termination of a liquidation when the liquidation has come to its natural end and the simultaneous release of the liquidator from acting.

His Lordship also identified a lacuna in the law, noting that there are no provisions under the Insolvency Act 2003 (**the Act**) nor the Insolvency Rules 2005 (**the Rules**) that consider the dissolution of a company after an insolvent liquidation process.

Termination and Release

A common practice for liquidators in this territory is to seek a release of the liquidator and a court order terminating the liquidation simultaneously. However, section 232 of the Insolvency Act, 2003 (**the Act**) provides that:

"The liquidation of a company terminates on the first occurring of:

- (a) the making by the Court of an order terminating the liquidation under section 233, or such later date as may be specified in the order;*
- (b) the filing by the liquidator of a certificate of compliance with the provisions of section 234(2), as modified by the Court under section 234(4), if appropriate; or*
- (c) the making by the Court of an order under section 234(4) exempting the liquidator from compliance with 234(2), or such later date as may be specified in the order.*

Section 243(2) of the Act states:

(2) As soon as practicable after completing his duties in relation to the liquidation of a company, the liquidator shall

- (d) prepare and send to every creditor of the company whose claim has been admitted and to every member of the company*
- (e) his final report, complying with subsection (3), and a statement of realisations and distributions in respect of the liquidation, and*
- (f) a summary of the grounds upon which a creditor or member may object to the striking of the company from the Register; and*
- (g) file with the Registrar a copy the final report and the statement of 193 realisations and distributions sent to the creditors and members of the company.*

The Act stipulates that the liquidation of a company will be terminated by the liquidator filing a certificate of compliance stating that:

- (i) every creditor of the company whose claim has been admitted and every member of the company has been sent: (a) the liquidator's final report; (b) a statement of realisations and distributions and;

- (c) a summary of the grounds upon which a creditor or member may object to striking the company off the Register; and
- (ii) the final report and statement of realisations and distributions was filed with the Registrar of Corporate Affairs **(the Registrar)**,

Therefore where a liquidation has come to its natural end, there is no formal requirement to file an application to the court for an order terminating the liquidation. The Court found that the proper procedure was to apply to the Court for a release which would then be made conditional on the filing of the liquidator's certificate of compliance (**the Certificate**) with the Registrar in compliance with section 234(2) of the Act.

Dissolution after Involuntary Liquidation

Section 236 of the Act stipulates that "*the Rules shall provide for the dissolution of a company on the termination and completion of the liquidation of the company*". However, there are no applicable sections in the Rules which deal with the dissolution of a company after an involuntary liquidation.

Counsel for the Liquidators made the following submissions to the Court in support of her arguments that dissolution after the liquidation process occurred as a matter of practice:

1. Section 208 of the Business Companies Act 2004, provides that upon completion of a voluntary liquidation, the liquidator files the necessary statement that the liquidation has been completed and, upon receiving that statement, the Registrar shall (a) strike off the company; and (b) issue a certificate of dissolution. Counsel submitted that in practice this is done as at the date on which the liquidators' statement was filed and therefore there is no time gap between the end of the liquidation and the date of strike off and dissolution. Counsel submitted that same procedure occurred in an insolvent liquidation.
2. Whilst the Rules do not expressly provide for the dissolution of liquidated companies under the Act, the same practice takes effect, namely:
 - (a) the liquidators file the Certificate as required by Section 234 of the Act; and
 - (b) upon receiving the Certificate, the Registrar changes the company status, so that it is dissolved,
3. Although the Rules themselves do not give a definitive response:
 - (a) Section 234(3) of the Act requires the liquidator's final report to contain a statement that there is no reason why, in his or her opinion, the company should not be struck from the Register and dissolved. Therefore the strike off and dissolution of the company is clearly envisaged as being part of the process.
 - (b) Section 234(2)(a)(ii) of the Act requires the liquidator to file, with the Certificate, a summary of the grounds upon which a creditor or member may object to striking the company from the Register.

Conclusion

His Lordship's concerns that a company could be restored to the Register of Companies were alleviated in light of the above submissions. Unfortunately, although envisaged by the Act, the Rules do not provide any clear guidance for the dissolution of a company at the end of the liquidation process. However, it is clear that dissolution occurs in practice.

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