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The Second Act: Resurrecting Dissolved Companies in the BVI and Cayman Islands to Address Post-Voluntary Liquidation Surprises

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In the British Virgin Islands (**BVI**) and Cayman Islands, as with other common law jurisdictions, voluntary liquidation is regarded as the 'final act' in the corporate life cycle. However, unexpected or overlooked assets or liabilities – including outstanding obligations and claims by or against the company – can emerge long after the curtain has fallen and launch stakeholders into the complex legal terrain of corporate resurrection. This article examines the mechanisms available for reinstating BVI and Cayman Islands companies that are dissolved following a voluntary liquidation and offers practical insights for dealing with post-voluntary liquidation surprises.

The certainty and finality of voluntary liquidation

Voluntary liquidation is underpinned by the legislative policy of certainty and finality that the affairs of the company are fully wound up. In both the BVI and Cayman Islands, the process is governed by prescriptive statutory regimes in respect of the appointment of a voluntary liquidator and the formal steps to be taken by the voluntary liquidator to wind-down the company's affairs, identify and pay all creditors and make distributions to contributories in accordance with their entitlements. Upon completion of a voluntary liquidation, the company is dissolved and is thereafter struck off the corporate register, completing its 'corporate death'. Any remaining assets that were not distributed or otherwise dealt with during the voluntary liquidation ultimately vest in the Crown as *bona vacantia* (i.e. ownerless property).[1] By operation of law, such assets revest in the company upon restoration.[2]

Mechanisms for corporate resurrection

It is possible for stakeholders who can establish standing to apply to the BVI High Court or the Cayman Islands Grand Court, as applicable, to restore a company that has been dissolved following a voluntary liquidation. While the jurisdictional basis for restoration differs between the two jurisdictions, a common thread is that the threshold test for restoration is high: applicants must demonstrate far more than mere commercial convenience to justify revival.

BVI

Under BVI law, the High Court has a discretionary statutory jurisdiction to restore a company that has been dissolved following the completion of its voluntary liquidation. The statutory framework grants standing to a wide range of stakeholders, including creditors; former directors, members or liquidators; persons who, but for the dissolution, would have been in a contractual relationship with the company; individuals with a potential legal claim against the company, its former directors or members, or in respect of its assets or issued shares; and any other person able to demonstrate a legitimate interest in the company's

[1] s. 153(2) of the Cayman Islands Companies Act, 2025 Revision (As Amended) (**Cayman Islands CA**) and s. 220(1) of the BVI Business Companies Act, Revised Edition 2020 (As Amended) (**BVI BCA**)

[2] s. 220(2) s. 220(3) BVI BCA and *In the Matter of Churchill Graham Holdings Limited (a dissolved BVI company)* BVIH(COM) 0280 of 2024 (Unreported, 31 July 2025) per Webster J at [27]

restoration.[3] Any such application must be made within 5 years from the date of dissolution.[4] Subject to the imposition of any conditions as the Court considers appropriate, the effect of the restoration is that the company is deemed never to have been struck off the corporate register and dissolved and is restored as a company in liquidation.[5]

The Court exercises its statutory discretion to restore dissolved companies with great caution, consistently emphasising that liquidation is intended to be terminal[6] and restoration is '*the course of last resort*' even where issues were inadvertently overlooked during the winding up or have arisen unexpectedly after dissolution.[7] The following decisions illustrate the Court's restrained approach and underscores the high threshold applicants must meet:

- Administrative error: In *Dedyson Enterprises Limited v Registrar of Corporate Affairs* BVIHCV 2011/0008 (17 February 2011), a former director applied to restore a BVI company that had been mistakenly liquidated due to an administrative error during a group restructuring. The supporting evidence was that the company held significant assets and liabilities with the effect that the Registrar of Corporate Affairs was misled that the winding up of the company had been completed. Although the Court granted the application, it did so reluctantly and imposed certain conditions, emphasising that the restoration was justified only due to the '*extraordinary circumstances*' of this case and the incorrect invocation of the statutory voluntary liquidation process.[8]
- Emergence of an enforceable contingent right: In *Jason Hughes v Registrar of Corporate Affairs* BVIHCOM 2020/0078 (10 September 2020), the Court refused an application to restore a BVI company that had been dissolved following voluntary liquidation, despite the emergence of a contingent right that had become enforceable post-dissolution. The application was refused on the basis that the company's active subsidiary had certain rights under the agreement that it was able to pursue and therefore restoration was not necessary. Additionally, the Court observed that even if the company were restored, it had no funds to enforce its rights and it would have to borrow funds from its subsidiary which would therefore be prejudiced by the restoration. There were therefore no exceptional circumstances that justified the restoration of the company.[9]
- Overlooked creditor obligations: In *Yeung Kwok Mung v Attorney General* BVIHCM 2011/0002 (23 February 2011), an application by former directors to restore a company to meet an overlooked creditor obligation was similarly refused. The Court held that the company had no means of discharging the liability if restored and that it was open to a related group company to directly discharge the liability. The Court noted that the position might have been different if an application was made by the company's creditors and there was evidence that those formerly behind the company were resisting payment. In such circumstances the creditors might seek to have the company restored in order to challenge the distributions which reduced the company's net assets to nil.[10]

  However, in *Global Diversity Opportunity II Ltd and PA-LF2 Secretaries Ltd v Registrar of Corporate Affairs* BVIH(COM) 2020/0176 (12 March 2021) the Court granted an application to restore two dissolved BVI companies, with the imposition of certain conditions, to remedy the '*catastrophic*' result of the dissolution – which on the facts amounted to a breach of trust – and the prejudice to third parties. The Court exercised its discretion notwithstanding the existence of an alternative remedy which involved the appointment of a replacement trustee in place of the companies which could, subject to certain steps being taken by the new trustee, enable the new trustee to discharge the obligations held by the companies. The Court took into account the fact that the alternative remedy was not straightforward and would involve further substantial delay and therefore further prejudice to third parties.[11]

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[3] s. 218(2) BCA

[4] s. 218(5) BCA, although there is one known instance of the BVI High Court granting an application to restore a dissolved BVI company after the expiration of this statutory limitation period in the context of a significant fraud

[5] s. 218A(1A), s. 218B(3), s. 218B(6) BCA

[6] *Jason Hughes v Registrar of Corporate Affairs* BVIHCOM 2020/0078 (10 September 2020) per Jack J at [6]

[7] *Yeung Kwok Mung v Attorney General* BVIHCM 2011/0002 (23 February 2011) per Bannister J at [12] – [13]

[8] Per Bannister J at [24] – [26]

[9] Per Jack J at [10] – [12]

[10] Per Bannister J at [11]

[11] Per Jack J at [7], [24] – [28]

Cayman Islands

There is no equivalent statutory regime under Cayman Islands law. The jurisdiction of the Grand Court to set aside the dissolution of a Cayman Islands company following its voluntary liquidation arises from an inherent jurisdiction conferred by legislation and the common law.[12] The application can be made by any person who can show a direct and substantial interest in reopening the liquidation and that the setting aside of the dissolution will result in their obtaining practical relief.[13] The jurisdiction is '*an exceptional one*'[14], and the Court will need to be satisfied on the evidence that there has been a fatal non-compliance with the statutory voluntary liquidation provisions such that the company should not have been voluntarily liquidated or wound up.[15] The Court will also have regard to whether the applicant has been guilty of acquiescence or delay.[16] The parameters of this jurisdiction is illustrated by the following decisions of the Grand Court:

- In *In the Matter of Real Estate and Finance Fund (dissolved)* FSD 135 of 2022 (Unreported, 24 August 2022), the Court made an order setting aside the dissolution of a Cayman Islands company following its voluntary liquidation on the basis that it was very strongly probable, in the context of the '*extraordinary combination of factual circumstances*', that the winding-up and dissolution of the company was carried out in such a fraudulent way as to not amount to a winding-up at all.[17]
- In an earlier decision of the Grand Court *Schramm and Hiscox Syndicate 33 v Financial Secretary* 2004-05 CILR 39 (29 March 2004)[18], the Court refused an application to restore a company on the grounds that the company had both an outstanding asset and a contingent liability that was known at the time of the voluntary liquidation. In the absence of any allegation of fraud, the Court held that the mere fact of an incomplete winding-up was not a sufficient basis to order restoration and that the legislation did not confer the same broad discretion on the Court to restore a company dissolved following a winding up as it explicitly did in the case of a company which had been administratively struck off the register.

Unlike the express provisions under BVI law, it is noteworthy that the Cayman Islands Court has a discretionary power to order that a company restored following dissolution be deemed to have continued in existence as if it had never been dissolved.

Best practices

The following best practices are drawn from the above judicial guidance:

1. Identify and address unfinished business early: Engage with directors and management at the outset to identify contingent assets, liabilities or other potential unfinished business. This ensures that a decision to file for voluntary liquidation is fully informed.
2. Stakeholder and risk management: Proactively identify and consult all relevant stakeholders. Where concerns arise that the voluntary liquidation may give rise to any actionable claims against the company's directors for breach of duties, seek legal advice to assess exposure and manage risk.
3. Don't sit on your rights: If unexpected matters surface after dissolution, seek legal advice promptly. Consider whether alternative remedies are available and, if not, whether there are sufficient grounds to apply for the restoration of the company or setting aside of the dissolution. Timely action is critical, particularly where statutory time limits apply.
4. Consent(s) to act: If appropriate, engage with the former voluntary liquidator to ascertain whether they are prepared act as the voluntary liquidator following any reinstatement of the company into voluntary liquidation.

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[12] s. 11(2) of the Grand Court Act, 2015 Revision and *In the Matter of Real Estate and Finance Fund (dissolved)* FSD 135 of 2022 (Unreported, 24 August 2022)

[13] *In the Matter of Real Estate and Finance Fund (dissolved)* FSD 135 of 2022 (Unreported, 24 August 2022) per Kawaley J at [42]

[14] *Ibid.* at [42]

[15] *Ibid.* at [20]

[16] *Ibid.* at [40]

[17] Per Kawaley J at [52] - [53]

[18] Upheld on appeal to the Court of Appeal: 2004-05 CILR 104 (5 August 2004)

Conclusion

While voluntary liquidation is typically undertaken as an administrative process to conclude a company's affairs, stakeholders should approach it with diligence and foresight. Although there are pathways to restore dissolved companies under BVI and Cayman Islands law, such remedies are an exceptional measure reserved for exceptional circumstances. In the event of unexpected post-liquidation developments, stakeholders should promptly seek legal advice to assess available remedies and navigate the applicable thresholds.

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