

Dissolution of a Company

A dissolved company cannot own property but it may do so up to the moment of its dissolution.

There are a number of ways by which a company can be dissolved:

(A) After a Voluntary or Compulsory Winding Up

Sections 94(3)/172(8) of the Insolvency Act 1986 provides that when the affairs of the company have been completely wound-up the liquidator/Official Receiver should submit a Return of Final Meeting/Notice of Completion of Winding Up to the Registrar of Companies. Sections 201/205 provide that on the expiry of 3 months from the date of registration of the Return/Notice the company is deemed to be dissolved.

In this case under Section 651 of the Companies Act 1985 (the Act)¹ the Court can declare the dissolution of the Company void on an application made by the liquidator or "any other person appearing to the Court to be interested" (e.g. creditors, members, directors etc) within 2 years of the date of dissolution. On such an Order being made the company once more owns any property vested in it immediately prior to dissolution. Under Section 651 (5) of the Act there is no time limit for seeking an Order declaring the dissolution of a company void if the purpose is to pursue a personal injury claim. No order will however be made if it appears to the Court that the proposed proceedings would fail due to a statutory time limit.

(B) By the Registrar of Companies

Section 652 of the Act allows the Registrar of Companies to strike a defunct company off the Register with the result that it is dissolved. This occurs when the Registrar has reasonable cause to believe that the company is not carrying on business or in operation, usually because it has not filed its

annual returns and/or accounts.

Under Section 653 the company can be restored to the Register on the application of a member or creditor within 20 years of the date of dissolution. On the making of such an Order any property held by the company immediately before dissolution is automatically re-vested. This remedy is only available to members or creditors of the company.

(C) At the Company's Own Request

Section 652 (A) – (F) of the Companies Act 1985 allows a company, by the majority of its directors, to apply to the Registrar of Companies for its voluntary dissolution.

The company can be restored to the Register within 20 years of the date of dissolution on the application of a notifiable person. A list of the notifiable persons is set out in Section 652B (6).

(D) After the making of an Administration Order

Section 8 of the Insolvency Act 1986, as amended by Section 248 of the Enterprise Act 2002 Schedule B1 paragraph 84, provides that where an Administrator considers that a company has no property that will permit a distribution he can give notice to that effect to the Registrar of Companies. On the expiry of 3 months from the date of registration of the notice the company is deemed to be dissolved.

As in case (A) above the Court can declare the dissolution of the company void on an application made within 2 years of the date of dissolution and, this being done, the company once more owns any property vested in it immediately prior to dissolution.

In view of the time limits set out above it is possible that a company may immediately before its dissolution have owned property which cannot be recovered by obtaining a restoration/dissolution void Order.

¹ *The Companies Act 2006 provides a new procedure for reviving dissolved companies. These provisions are due to come into force on the 1st October 2008.*

Result of Dissolution

Section 654 of the Act provides that all property and rights whatever vested in or held in trust for a company immediately before dissolution including leasehold property *but not including property held by the company on trust for any other person* are deemed to be bona vacantia.

Person includes a body corporate, e.g. another company or unincorporate, Section 19 of the Interpretation Act 1889.

Grounds for seeking a Vesting Order

If it can be shown that property held by the company immediately before dissolution was held on trust, it can be recovered by obtaining a Vesting Order. It is not unusual for a company to hold property on trust at the time of its dissolution. This may happen because it has contracted to sell the property prior to dissolution but did not execute a formal transfer or conveyance. It also happens when a company agrees to distribute its assets in specie² to its members but did not execute a formal transfer or conveyance, see *Re: Strathblaine Estates Limited* (1948) Ch 228.

Section 44 (ii) of the Trustee Act 1925 (the Trustee Act) allows the Court to make a Vesting Order in respect of land or any interest in land after the dissolution of a corporate trustee and Section 51 (1) (ii) (c) makes similar provisions in respect of stocks and shares and chooses in action³.

Procedure

Applications for Vesting Orders are dealt with in the Chancery Division, SC93.4 of the Civil Procedure Rules 1998, under the Part 8 procedure, Practice Direction Part 8B, Section A.1 (3). Drafts of the Claim Form and supporting evidence can be found in *Atkins Court Forms Volume 9(1) 2004 issue* at pages 497 to 500.

The Claim Form generally asks for an Order that property formally belonging to the dissolved company be vested in the Claimant. The principle case on such matters is *Re: Strathblaine Estates Limited*. These applications are discussed in greater detail in *Lewin on Trusts* 16th edition chapter 27, *Ing on Bona Vacantia* Chapter 13 and note 93/4/14 to the old Order 93 Rule 4 of the Rules of the Supreme Court 1965, now SC93.4 but without the helpful notes.

Most applications are issued in the Chancery Division of

the High Court, but some are issued out of District Registries or County Courts. Certain, but not all, District Registries have Chancery jurisdiction and so can deal with these applications. The District Registries that have the necessary jurisdiction are Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle Upon Tyne and Preston.

If the application is issued in a County Court the usual formalities need to be observed, i.e. in order to have jurisdiction the registered office of the dissolved company must have been within the area covered by the County Court and its issued share capital must not exceed £120,000-00.

In the type of case under consideration the property for which a Vesting Order is sought is vested in the Crown and the Crown must accordingly be made a party so as to be divested of that property. *Ex hypothesi* the property is not bona vacantia and accordingly the proper Defendant is the Attorney General as the representative of the Crown.

If the property is land or an interest in land the Crown, represented by the Attorney General, is the proper Defendant, as land that is otherwise ownerless is vested in the Crown as paramount lord.

No such principle is discernable in the case of personality, e.g. stocks, shares and more recently domain names but the same practice has been followed without dissent. In this case it will normally be enough to show that the property is described with sufficient certainty to identify it beyond doubt.

In practice, the Attorney General is the sole Defendant and the Treasury Solicitor acting on his behalf considers the evidence and, if satisfied that a trust is established informs the Claimant that no claim to the property as bona vacantia will be made. If, however, the Attorney-General is not satisfied that the evidence establishes a trust the Court will be asked to amend the Claim Form to add the Treasury Solicitor, as the Crown's nominee for bona vacantia. The matter will then be adjourned into Court for argument as to whether the property was held on trust or is bona vacantia.

The Attorney General must remain a Defendant because if the Claimant succeeds in establishing that the property is not bona vacantia, a Vesting Order is still required and such an Order cannot be made against the Treasury Solicitor whose function is limited to asserting a claim to bona vacantia.

This guidance is not concerned with the law relating to trusts but it should be noted that a trust of land must comply with Section 53 of the Law of Property Act 1925,

² *in its own form not an equivalent e.g. coin as opposed to paper money*

³ *a thing which a person has no means of possessing but has a right to claim, if withheld*

see *Re: Strathblaine Estates Limited*. Particular attention should be given to Section 53 (2) of this Act which provides that "This section does not affect the creation or operation of resulting, implied or constructive trusts." In *Re: Strathblaine Estates Limited* the Court accepted the company's minutes, signed by the chairman, as sufficient written evidence of a trust coupled with the fact that the deeds to the property had been handed over to the putative beneficiaries, in that case the former shareholders of the company.

The role of the Attorney General

The role of the Attorney General is more that of an amicus (someone who assists the Court), *Orwin – V – Her Majesty's Attorney General* (1998) FSR 415, though he is a party, than of a person making competing claims against the Claimant. He does not oppose the making of the Vesting Order, so long as the Court is satisfied that it is a proper case. His role is to assist the Court on the evidence and the law to ensure that an Order is not made unless it is justified under the provisions of the Act.

The Claim Form

The form of relief sought in the Claim Form needs consideration to assist the Court and ensure uniformity of practice. In the case of land or interest in land it is not the practice of the Court to investigate the title of the dissolved company to the land but to vest the property in the Claimant for all the estate and interest therein vested in the dissolved company immediately before its dissolution. So a Claim Form asking the Court to vest the land in the Claimant in fee simple⁴ is incorrect. In some cases Claimants have sought an order that the property be vested in them for all the estate and interest, which would be vested in the dissolved company if it had not been dissolved. This is unsatisfactory because it is not possible to know what estate or interest would at the date of the application be vested in the dissolved company if it had not been dissolved. In practice many variations are found in the Claim Form. Claimants' solicitors should be persuaded to amend the Claim Form to adopt the accepted form, it being pointed out to them that the Court will no doubt allow amendment at the hearing, and, in an uncontested case, dispense with re-service.

In a case under Section 51 of the Trustee Act the Court may instead of making a Vesting Order appoint some proper person to make or join in making the transfer. In the case of stocks or shares that person should be

some proper officer of the bank, company or society to which the stock is to be transferred.

Evidence

The commonest case of an application for a Vesting Order is where, after dissolution it is found that property has not been dealt with. Where it is possible to restore the dissolved company or have its dissolution declared void this may well be a cheaper, quicker and more certain option to obtaining a Vesting Order. The evidence in such a case is frequently that the dissolved company had contracted to sell all its assets to a new company but conveyance of a particular piece of property was overlooked although the consideration for the same was paid or that there had been a resolution of the dissolved company for division of assets in specie. If the consideration for the property has not been paid to the company prior to its dissolution then the right of the company to be paid is a "right" that would vest in the Crown as bona vacantia. The purchase price, or the balance, must therefore be paid to the Treasury Solicitor (BV) before a Vesting Order is made.

Service of Proceedings

The Claim Form and supporting evidence should be served on the Treasury Solicitor who acts for the Attorney General. The Attorney General and the Treasury Solicitor, if joined, should be described by their proper titles, namely "Her Majesty's Attorney General" and "The Solicitor for the Affairs of Her Majesty's Treasury" respectively.

Costs

It is the practice for the Claimant to pay the costs of the Attorney General, *Heywards Chancery Practice* page 208, even if he opposes the application, *C E M Day Limited – V – Her Majesty's Attorney General*. The Treasury Solicitor will also require his costs of dealing with the property up to the date of the Vesting Order to be paid by the Claimant.

The Duchies of Cornwall and Lancaster

If the property, which is the subject of the application, is in the Duchy of Cornwall or Lancaster, then the Attorney General for the appropriate Duchy will deal with the matter.

(see useful addresses overleaf).

⁴ *the most absolute interest a person can possess in land, equivalent to full ownership*

Property in Scotland

Any applications dealing with property in Scotland should be referred to the Queen's and Lord Treasurer's Remembrancer. (see useful addresses below).

Useful Addresses

The address for service of Her Majesty's Attorney General and the Solicitor for the Affairs of Her Majesty's Treasury is:

TSol
One Kemble Street, London WC2B 4TS
www.tsol.gov.uk
www.bonavacantia.gov.uk Treasury Solicitor's Bona Vacantia Division

The address for service of Her Majesty's Attorney General for the Duchy of Lancaster/Duke of Cornwall is:

Messrs Farrer & Co
66 Lincoln's Inn Fields
London WC2A 3LH
DX: 32 Chancery Lane
Tel: 020-7242 2022 Fax: 020-7242-9899
www.farrer.co.uk e-mail: enquiries@farrer.co.uk

The address of Crown Estate is:

Crown Estate Office
16 New Burlington Place London W1S 2HX
Tel: 020-7851-5000
www.thecrownestate.co.uk e-mail: enquiries@thecrownestate.co.uk

The address of the Queen's and Lord Treasurer's Remembrancer is:

25 Chambers Street
Edinburgh EH1 1LA
www.crownoffice.gov.uk/departmental/queens_lord_treas.htm
