



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2017/03/01

Number: PD - 53

Title:

Practice Direction

Restoration of Dissolved Company under the *Business Corporations Act*

Summary:

The process for applying to court for the restoration of a dissolved company involves a number of steps. This Practice Direction describes the steps in the process and the information required by the court on such applications.

Direction:

1. Practice Direction PD - 41 - Restoration of Companies and Societies (*Business Corporations Act* and *Society Act*) dated July 1, 2010 is rescinded.
2. The process for applying to court for the restoration of a dissolved company has a number of requirements which must be met. Some of the requirements are prescribed by the *Business Corporations Act*, S.B.C. 2002] c. 57 and some by the Supreme Court Rules.
3. This Practice Direction applies to applications for a full or limited restoration of a company under s. 360 of the *Business Corporations Act*, and to applications to extend a limited restoration or to convert a limited restoration to a full restoration under s. 361 of the *Business Corporations Act*.

Step One: Complete Requirements of s. 355 of the *Business Corporations Act*

4. Before making an application to the court for restoration of a dissolved company, an applicant must complete the requirements of s. 355 of the *Business Corporations Act* and must:
 - a. publish notice of the application in the Gazette
 - b. mail notice of the application to the last address shown in the corporate register as

- i) the address or mailing address as the case may be, of the registered office of the company, and
 - ii) the address or prescribed address for each of the individuals who were directors of the company at the time of the dissolution
- c. reserve a name for the company under section 22 of the *Business Corporations Act* unless the company is to be restored with the name created by adding “B.C. Ltd.” after the incorporation number of the company or in the case of an unlimited liability company, “B.C. Unlimited Liability Company”.

Step two: File Requisition and Initial Affidavit in Court Registry

5. After completing step one above, the applicant must file a requisition in Form 31 and an initial affidavit which sets out the following information:
- a. the date the company was dissolved
 - b. the reasons why the company was dissolved
 - c. the identity of the person applying for restoration and their reasons and interest in doing so
 - d. where the application is for full restoration or to convert a limited restoration to a full restoration, that the person applying for the restoration is a related person as defined in section 354 of the *Business Corporations Act* or the reasons why the court should order that the applicant is an appropriate person to make the application pursuant to section 354 of the *Business Corporations Act*
 - e. where the application is for full restoration or to convert a limited restoration to a full restoration, the mailing address and delivery address of the proposed registered and records office of the restored company, and the mailing address and delivery address of the office at which the dissolved company’s records are being kept or if those records are not available, a statement to that effect
 - f. where applicable, the reason(s) why the order should contain retrospective terms and conditions
 - g. the date on which the notice required under s. 355(2)(a) of the *Business Corporations Act* was published in the Gazette. (Attach as an exhibit to the affidavit, a copy of the page from the Gazette showing the date of publication of the notice.)
 - h. the latest date on which the notice required under s.355(2)(b) was mailed in accordance with that provision. (Attach as an exhibit to the affidavit, a copy of the letter and the envelope in which the letter was mailed.)

- i. the name reserved for the company and the reservation number given for that name, or a statement that the name by which the company is to be restored is the name created by adding “B.C. Ltd” or “B.C. Unlimited Liability Company” after the incorporation number of the company;
- j. any translation of the company’s name, set out in the prescribed manner, that the company intends to use outside Canada
- k. the reason(s) why it is appropriate that the company be restored to the register
- l. if the application is for a limited restoration under s. 360 of the *Business Corporations Act*, a statement specifying the proposed limited period of the restoration.

Step Three: Complete Requirements of s. 360 of the Business Corporations Act

6. After completing step two above, the applicant must complete the requirements set out in s. 360 of the *Business Corporations Act* as follows:
 - a. provide the registrar of companies (“the registrar”) with a copy of the requisition and initial affidavit
 - b. obtain the written consent of the registrar to the restoration.

Step Four: File Subsequent Affidavit and Draft Order

7. After completing step three above, the applicant must file in the court registry:
 - a. a subsequent affidavit
 - b. a draft order;
8. The subsequent affidavit must contain the following information:
 - a. a statement that the registrar was provided with notice of the application and with a copy of the requisition and the initial affidavit
 - b. a statement that the registrar has consented to the restoration and any terms and conditions the registrar consider appropriate. (Attach as an exhibit to the affidavit a copy of the written consent of the registrar.)
 - c. any other information the applicant considers relevant or necessary for the court’s consideration.

Step Five: Court May Make an Order for Restoration

9. Pursuant to s. 360(5) of the *Business Corporations Act*, if the court is satisfied that it is appropriate to restore the company under s. 360 or to restore the company for a limited

period under s. 361, the court may make an order to restore the company on terms and conditions, if any that the court considers appropriate.

Step Six: File Restoration Application and Copy of Entered Order with the Registrar

10. Promptly after an order is made by the court under section 360 or 361 of the *Business Corporations Act*, the applicant must file with the registrar a restoration application in the form established by the registrar and any other records the registrar may require.

Chief Justice C.E. Hinkson