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Title:

Practice Direction

Restoration of Companies and Societies pursuant to *Business Corporations Act* and *Society Act*

Summary:

The application process for restoring a company under the *Business Corporations Act* or a society under the *Society Act* has two steps. This Practice Directions describes the process and the information required by the court on such applications.

Direction:

Restoring a company

1. An application for restoration of a company must meet the relevant requirements of the *Business Corporations Act* and the Rules of Court.

Pre-requisites to application

2. Before making an application to the court for restoration of a company, the applicant 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 the address or mailing address of the registered office of the company; and
 - c. reserve a name under section 22 of the *Business Corporations Act* for the company unless the company is to be restored with the name created by adding "B.C. Ltd." after the incorporation number of the company.

Application procedure

3. The procedure for making an application to court for restoration of a company has two steps.

Step one: filing of Requisition and initial affidavit

4. An application to the court for the full or limited restoration of a company pursuant to section 360 of the *Business Corporations Act* may be made by filing a requisition in Form 31.
5. An application to the court to extend a limited restoration, or to convert a limited restoration to a full restoration under section 361 of the *Business Corporations Act*, may also be made by filing a requisition in Form 31, so long as the application is brought within the limited period of the restoration.
6. The material filed in support of the application must include:
 - a. when the application is for full restoration, an affidavit of a person related to the company, as defined in section 354 of the *Business Corporations Act*; or
 - b. when the application is for limited restoration or to extend a limited restoration, an affidavit of the person making the application, or of a lawyer or other person who has reviewed the corporate records and the records of the Registrar of Companies. (“the Registrar”).
7. The affidavits referred to in paragraph 6 must be based on personal knowledge of the deponent, must include information sufficient to satisfy the court that the requirements of sections 355 and 357 of the *Business Corporations Act* have been complied, and if applicable, must establish the following facts:
 - 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 address of the proposed registered and records offices of the company, and the mailing address and delivery address of the office at which the dissolved

company's records, within the meaning of section 351 of the *Business Corporations Act*, 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. evidence that notice of the application was published in the Gazette (for example, the entire page of the Gazette showing the date of publication attached as an exhibit and marked in such a way to identify the relevant announcement);
- h. evidence that notice of the application was mailed to the last address shown as the registered office of the company (a copy of the corporate search conducted in the Corporate Registry should be attached as an exhibit as well as a copy of the letter and the envelope in which the letter was mailed), as well as the date on which the notice was mailed;
- i. the name reserved for the company and the reservation number given for it, or a statement that the name by which the company is to be restored is the name created by adding "B.C. Ltd." 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.

Step Two: Filing of subsequent affidavit and draft order

- 8. After filing the Requisition in Form 31 and initial affidavit, the applicant must file:
 - a. a subsequent affidavit; and
 - b. a draft order.
- 9. The subsequent affidavit must establish, by personal knowledge of the deponent, that notice of the application for restoration or for the conversion of a limited restoration to a full restoration and a copy of any documents filed in court, was sent to the Registrar.
- 10. The subsequent affidavit must also include the Registrar's consent to the restoration or conversion, and information as to any terms and conditions that the Registrar considers appropriate. The consent of the Registrar should be attached to the subsequent affidavit along with any information as to any terms and conditions the Registrar considers appropriate.
- 11. Promptly after an order is made 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.

Restoring a society

Pre-requisites to application

12. Despite the repeal of the *Company Act*, R.S.B.C. 1996, c. 62, Part 9 of that Act continues to apply to a society and an extraprovincial society as though it had not been repealed. Accordingly, an application for restoration of a society must satisfy the requirements of section 71 of the *Society Act* and Part 9 of the *Company Act*, insofar as they apply to a society.
13. Before applying for restoration, a society that has as a purpose one of those mentioned in section 2(1) of the *Society Act* must:
 - a. obtain written consent as required by that section; and
 - b. apply for approval and reservation of a name in accordance with section 3(6) of the *Society Act*, Division 2, Part 2 of the *Business Corporations Act*, and section 264 of the *Company Act*.

Application procedure

14. The procedure for application to court for restoration of a society has two steps.

Step one: Filing of Requisition and initial affidavit

15. An application for the restoration of a society or an extraprovincial society under section 71(1) of the *Society Act* may be made by Requisition in Form 31, and must be brought within the time limits provided for in section 262 of the *Company Act*.
16. An application for restoration may be made by the liquidator, a member, a creditor of the society or extraprovincial society, or any other interested person.
17. The applicant must file an affidavit based on personal knowledge, which must include the information required under section 262 of the *Company Act* and, if applicable, establish the following facts:
 - a. the date the society was dissolved or the registration of the extraprovincial society was cancelled (a copy of the search conducted in the Corporate Registry should be attached as an exhibit);
 - b. the identity of the person applying for restoration and their reasons and interest in doing so;
 - c. why the society or extraprovincial society was struck from the register;

- d. reason(s) why it is just that the society or extraprovincial society be restored to the register;
- e. if required, that written consent pursuant to section 2(1) of the *Society Act* has been obtained (the original letter signifying consent should be attached as an exhibit);
- f. the name reserved for the society and the reservation number given for it;
- g. reason(s) why an order should be made retrospectively pursuant to section 263 of the *Company Act*; and
- h. if the application is for a limited restoration under section 262(3) of the *Company Act*, an indication of the length of time the restoration is for.

Step Two: Filing of subsequent affidavit and draft order

- 18. The Registrar of Companies (“the Registrar”) must be provided with notice of the application for restoration of the society, and a copy of any documents filed in court must be sent to the Registrar.
- 19. The Registrar must consent to the restoration.
- 20. The applicant must publish notice of the application in the Gazette.
- 21. The applicant must mail a notice of the application to the last address shown as the registered address of the Society or in the case of an extraprovincial society to the last address for an attorney authorized and directed on its behalf to receive all lawful notices to the society.
- 22. After completing these steps, the applicant must file:
 - a. a subsequent affidavit; and
 - b. a draft order.
- 23. The subsequent affidavit must establish, by personal knowledge of the deponent that:
 - a. notice of the application was sent to the Registrar and the Registrar consented to the application (the consent of the Registrar should be attached as an exhibit to the affidavit);
 - b. notice of the application was published in the Gazette at least one week prior to the filing of the affidavit (the entire page of the Gazette showing the date of publication should be attached as an exhibit); and
 - c. the application was mailed to the last address shown as the registered address of the society or in the case of an extraprovincial society to the last registered address for an

attorney authorized and directed on its behalf to receive all lawful notices to the society, at least one week prior to the filing of the affidavit (a copy of the search conducted in the Corporate Registry should be attached as an exhibit as well as a copy of the letter and the envelope in which the letter was mailed).

24. A certified copy of the resulting court order must be filed with the Registrar including proof that any terms and conditions precedent in the order have been complied with and that any requirements imposed by the Registrar have been satisfied.

Robert J. Bauman
Chief Justice