# In The Supreme Court of Bermuda

**CIVIL JURISDICTION**
**2025 Nos: 168 and 169**

**IN THE MATTER OF SECTION 261 OF THE COMPANIES ACT 1981**

**AND IN THE MATTER OF MAJA HOLDINGS LTD.**

**AND IN THE MATTER OF ABBOTT HOLDINGS LTD.**

## REASONS

Dates of Hearing: Friday 22 August 2025 and Friday 29 August 2025

Date of Decision: Friday 29 August 2025
Date of Reasons: Tuesday 09 December 2025

Plaintiffs: Mr. Trevor Goulet (Walkers (Bermuda) Limited)

Appearing on Notice for the Registrar of Companies: Ms. Wendy Greenidge (Crown Counsel for the Attorney General)

*Judgment Creditor's Petition to Restore companies Struck-off the Company Register for the purpose of securing a winding up order- Distinction between sections 260 and 261 of the Companies Act 1981- Court's Power to declare dissolution of company void- Directions on Payment of Outstanding Annual Fees and Penalty Charges*

RULING of Shade Subair Williams J

## Introduction

1. Clarien Bank Limited is the Petitioner in this case (the "Petitioner" / "Clarien"). In an application before this Court, Clarien sought to restore two companies to the company register, namely Abbott Holdings Limited ("Company A") and Maja Holdings Ltd ("Company M") (collectively, the "Companies"). Company A was incorporated in Bermuda under the Companies Act 1981 (the "CA 1981") on 8 June 1992. Company M was incorporated in Bermuda under the CA 1981 on 15 August 2008. On 6 October 2021 both Company A and Company M were struck off the Register.

2. Clarien filed two Petitions under which it sought both an order to restore the Companies to the register and for the Companies to be made the subject of a winding up Order. The Petition in respect of Company A (the "Company A Petition) is dated 24 July 2025 as is the Petition in respect of Company B (the "Company B Petition).

3. Clarien's filing of the Petitions was primarily driven by its pursuit for winding up orders against the Companies. The aim was to liquidate the Companies' assets so that they could be applied against the debts owed to Clarien. Those debts arise out of previous mortgage proceedings in which Clarien was the mortgagee and judgment creditor over the Companies.

## Background

4. The relevant factual background is set out in the Petitions filed on 14 July 2025 in these proceedings and in the affidavit evidence of Ms. Mary Hogan, a Credit Recovery Manager in the Asset Remediation Department at Clarien. That evidence before the Court was unchallenged.

5. Company A and the Petitioner entered into a mortgage agreement dated 15 September 2008 and a Deed of Further Charge dated 31 July 2010 (the "Mortgage").

6. Company M was the Guarantor for the Mortgage and by a Memorandum of Deposit of Deeds dated 15 September 2008 to the Petitioner (the "Deposit of Deeds"), Company M deposited three properties as collateral security for the mortgage granted to Company A by the Petitioner. Those properties were commercial properties located at 13, 14 and 40 North Street Hamilton (collectively, the "Collateral Properties"). Company M had purchased 13 and 14 North Street from Company A. The North Street property at number 40 North Street had been purchased

by Company M from the late Mr. Arthur Hodgson. It is explained in Ms. Hogan's evidence that the Collateral Properties in the Deposit of Deeds were used as collateral security by Company M for securing payment and discharge up to the sum of $3,250,000.00 together with charges for interest discount commission and other banking charges in the Mortgage.

7. Company A defaulted on the Mortgage which resulted in the commencement of the mortgage recovery proceedings against Company A as the mortgagor and Company M as the mortgagee (Case No. 440 of 2017). Judgment for the mortgage debt claimed was made on 12 April 2018 for the sum of BD$10,763,860.71 together with interest at the rate of 7% per annum from 13 April 2018 until the date of payment. A separate order of 12 April 2018 was made by the Court (Case No. 441 of 2017) granting judgment against Company A in respect of a second mortgage debt owed to the Petitioner in respect of the sum of BD$1,273,511.43 together with interest at the rate of 7% per annum from 13 April 2018 until the date of payment.

8. Writs of *fieri facias* were issued in both Cases No.440 and 442 of 2017 for instructions to the Provost Marshall to seize any goods, chattels, lands, houses and other property of the Companies in order to satisfy the mortgage debts. The Collateral Properties which were delivered by Company M to secure the mortgage were placed on the open market for sale in 2018. After an approximate seven-year dormant period in the sale process, a potential purchaser interested surfaced to make a viable offer on or about 15 February 2024.

9. During the sales process, it was discovered that neither of the Companies had obtained the requisite Ministerial consent for the purchase of the Collateral Properties. The Petitioner accordingly intervened to apply for the Minister's retroactive consent pursuant to section 120 and the Eleventh Schedule of the CA 1981.

10. The issue which arose during the application for retroactive Ministerial consent was that the Companies had been struck off the company register on 6 October 2021 for non-payment of annual Government fees. The outstanding fees owed by each of the Companies for the period of 2019 to 2025 came to $6,530.00. So, in aggregate, Company A and Company M owe the sum of $13,060.00 in fees owed to the Bermuda Government.

## The Application to restore the Companies to the Register

11. The application before the Court is brought under section 260(1) of the CA 1981 for an Order declaring the dissolution of the Companies void. The Petitioner's application to restore Company A to the Register for it to be immediately wound up thereafter is explained at paras [18] and [19] of the Company A Petition. Those paragraphs provide as follows:

"*Without prejudice to the foregoing and in addition to seeking an order that the dissolution of the Company is void under section 260 of the CA 1981, it is the Petitioner's intention to seek an order that the Company be put immediately into liquidation pursuant to sections 161(b), 161(c) and 161(g) of the CA 1981 and that the Official Receiver be appointed for the purpose of dealing with the sale of the Collateral Properties. As a consequence, the Petitioner is responsible for and will pay the Registrar the relevant Annual Government taxes, fee and charges (penalties for late filing in respect of the year 2025 once the same is confirmed* []].

*The Petitioner's position, which is consistent with the English case of Re Cambridge Coffee Room Association Ltd [1951] WN 621, is that where the restored company will be immediately placed into liquidation only the annual return for the current year, apart from the other returns are payable."*

12. The above passage also appears and applies in respect of the Company B Petition.

13. Although the application brought by the Petitioner was made under section 260(1) of the CA 1981, the relief claimed in the Petition was pleaded under section 261(6). In putting the claim this way, the Petitioner implicitly advanced an alternative case under section 261(6). Further below, I address the differences between section 260(1) and section 261(6).

## The Objections to the Application

14. Crown Counsel, Ms. Wendy Greenidge, appeared on behalf of the Registrar of Companies (the "Registrar") who was on notice of these proceedings. In summary, Ms. Greenidge objected to Clarien's application on two primary grounds:

    (i) That the restoration procedure for the Companies ought not to differ from the normal restoration procedure applicable to companies which seek to be restored in order to resume the operation of their businesses. Specifically, Ms. Greenidge argued that the application should be held in abeyance pending consideration from the Bermuda Monetary Authority (the "BMA") in exercise of its regulatory functions.

    and

    (ii) A condition of restoration of the Companies should be receipt of immediate payment of the entire portion of the outstanding annual fees and penalty charges accrued covering the period of delinquency resulting in the Companies being struck off the register through to the current year.

## The Relevant Law

15. Clarien's application for an Order of this Court declaring the dissolution of the Companies to be void was made under section 260(1) of the CA 1981. Section 260 provides:

> "***Power of Court to declare dissolution of company void***
> *260 (1) Where a company has been dissolved the Court may—*
>
> *(a) in the case of a dissolution pursuant to section 213, at any time not later than ten years from the date of such dissolution; and*
>
> *(b) in any other case, at any time not later than five years from such date,*
>
> *on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void.*
>
> *(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do he shall be liable to a default fine.*
>
> *(2A) Where an order is made and registered pursuant to this section, the company shall be deemed to have continued in existence as if it had not been dissolved.*
>
> *(3) Where the Court makes an order under subsection (1), the Court may make such consequential orders, or impose such terms and conditions, as to the Court may seem appropriate in the circumstances*."

16. An application under section 260(1) may be made by a liquidator or on any other person who appears to be interested in the company in question. Where the application is made successfully, the Company is deemed to have continued in existence as if it had not been dissolved pursuant to section 260(2A).

17. Section 261(6), while offering the same form of relief as that provided by section 260(2A), generally applies to applications grounded on circumstances under which the Registrar of Companies (the "Registrar") has reasonable cause to believe that a company is not carrying on business or is not in operation. In such cases, subject to requisite investigatory steps, the Registrar is empowered to have the company in question struck off the register and dissolved.

18. However, section 261(6) of the CA also confers a broad and unfettered discretionary power on the Court to order the restoration of a company in circumstances where the Court is satisfied that the company was in fact in business operation immediately before it was struck off the register or if the Court deems that it is otherwise just that the company be restored to the register. Where such an order is made, the company shall be deemed to have continued in existence as if its name had not been struck off.

19. Section 261 provides:

"***Registrar may strike defunct company off register***
*261*

*(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company a letter inquiring whether the company is carrying on business or is in operation.*

*(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in an appointed newspaper with a view to striking the name of the company off the register.*

*(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in an appointed newspaper, and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.*

*(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in an appointed newspaper and send to the company or the liquidator if any, a like notice as is provided in subsection (3).*

*(5) At the expiration of the time mentioned in subsection (3) the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in an appointed newspaper, and on such publication the company shall be dissolved:*

*Provided that—*

*(a) the liability, if any, of every officer, manager and member of the company shall continue and may be enforced as if the company had not been dissolved;*

*(aa) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (5A) to keep such records for the period referred to in that subsection; and*

*(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.*

*(5A) Every person who was a director or an officer of a company at the date upon which the company is struck off the register pursuant to this section shall ensure that—*

*(a) the records of account of the company referred to in section 83 that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and*

*(aa) the beneficial ownership register of the company referred to in section 98H that is in existence on that date is kept for a minimum of five years from the date on which the company is struck off the register;*

*(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.*

*(5B) A person who fails to comply with subsection (5A) shall be liable to a default fine of five hundred dollars.*

*(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of twenty years from the publication of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon* [a] *copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such*

*provisions as seems just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.*

*(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum*."

20. Some of the principal differences between section 260(1) and 261(6) are as follows:

(i) An application brought under section 261(6) applies to companies which were dissolved in circumstances under which the Registrar had cause to believe that the company was no longer carrying on with its business or was no longer in operation. Section 260(1), however, is not restrictive to applications in respect of companies dissolved on those grounds. Section 260(1) applies whenever a company is dissolved, no matter the reason or factual background culminating in the company's dissolution.

(ii) An application under section 260(1) may be brought by a liquidator or any other person who appears to the Court to be interested. Section 261(6), however, specifies that an application may be brought by the company (i.e. a representative of the company's board of directors immediately prior to dissolution), or a member of the company (i.e. a shareholder) or a creditor of the company (who presumably does not have security or access to security). "Creditor" has also been broadly construed in previous cases to apply to contingent creditors. (see *In re Harvest Lane Motor Bodies Ltd*. [1969] 1 Ch. 457)

(iii) An application brought under section 260(1) must be made within 5 years (or 10 years for members voluntary winding up under section 213 of the CA) of the date on which the company was dissolved. However, under section 261(6) the timeframe for bringing the application is set at 20 years from the date of the publication notice announcing that the company was struck off the register.

(iv) For applications made under section 260(1), where the company is to be subsequently put under liquidation, it is a matter of best practice for the Registrar to be put on notice of petition for restoration. However, the Registrar will necessarily be named as a Respondent in an application commenced under section 261(6).

21. Mr. Goulet referred the Court to the English law position which similarly allows for a company to be restored to the register for the purpose of putting it into liquidation. He pointed to the following passage from Volume 1 of Buckley on the Companies Act (Fourteenth Edition) ("Buckley") [footnotes omitted]:

"***Going company*** *If the company is a going company, it will normally have been struck off for failure to make annual returns. In such a case the company should be joined as a petitioner to undertake to bring the returns up to date. It is not usual in such a case for the company to be the sole petitioner; a member or creditor should be joined so as to be responsible for the costs of the registrar of companies, upon whom notice should be served. Notice should also be given to the Treasury Solicitor, an affidavit being filed by the applicant proving such notice and that the Treasury Solicitor has stated that no objection is taken on behalf of the Crown to the order prayed for being made. The present practice is to make the order upon the terms of all overdue returns being made and the costs of the registrar being paid. It is also the practice, where the company is not carrying on business and the only object of the petition is to enable assets to be collected and distributed, for the registrar to ask for an undertaking to have the company put in voluntary liquidation or an undertaking to present a petition for its winding up by the court. In such a case, only the annual return for the latest year is asked for (apart from other returns)*."

22. Mr. Goulet also relied on the English High Court decision in *Cambridge Coffee Room Association* [1951] WN 621 by way of illustration that restoration orders may be made for the purpose of a winding up order. In that case, the management committee of a company sought to wind up the company only to discover that it had already been struck off the company register. An application was made under section 352(1) of the UK Companies Act 1948[1] (the "UK CA 1948") for a declaration that the dissolution of the company was void. Section 352(1) is the corresponding provision to section 260(1) of the CA 1981. And section 353(6) of the UK CA 1948 is the corresponding provision to section 261(6) of the CA 1981. Against that background Wynn-Parry, J found:

"*In all circumstances it appears desirable that the petition in such cases should follow the form of this amended petition which asks that the name of the company be restored to the register and then that the company be wound-up*."

23. Citing another English High Court decision from the Chancery Division, Counsel referred to Megarry J's decision in *In Re Test Holdings (Clifton) Ltd and In Re General Issue and Investment Co. Ltd*. [1969] 3 W.L. R. 606; [1970] Ch. 285. This decision, by Megarry J's

[1] In the United Kingdom, the Companies Act 1948 was repealed by sections 28, 29 and 31(9) of, and schedule 1 to, the Companies Consolidation (Consequential Provisions) Act 1985. The current governing legislation is the Companies Act 2006.

reference to Wynn-Parry J's decision in *In re Belmont & Co. Ltd* [1952] Ch. 10, provides some explanatory insight into the interrelation of the procedures applicable under sections 352(1) and 353(6) of the UK CA 1948. As noted earlier herein, these sections correspond to sections 260(1) and 261(6) of the CA 1981. Here, I would observe that neither section 260(2A) nor 260(3) were mirrored by any provision under section 352 of the UK CA 1948.

24. In *In re Test Holdings (Clifton) Ltd* Megarry J was concerned with two separate restoration applications. The first one was brought by a creditor who was also a principal shareholder of the company to be restored and in the second case the applicant was a person claiming for a liquidated sum from the company pursuant to an agency agreement. In both cases, the restoration applications were commenced under section 352(1), which provided:

"***352 Power of court to declare dissolution of company void.***
*(1)Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved*."

25. Having engaged in a comparative analysis between sections 352(1) and 353(6) of the UK CA 1948 as it relates to the role of the Registrar in litigation of this kind, Megarry J considered the position on costs and concluded that the Registrar is as entitled to recover costs on a 352(1) application as he or she is entitled to do so on an application commenced under section 353(6). Megarry J held at [7]:

"*…He who seeks the revival of a defunct company must, I think face the prospect of hearing the costs of whatever has to be done to ensure that the restoration is properly effected. In the absence of anyone against whom he can seek an order for costs, he must bear them himself. The registrar is a public officer, discharging public functions, and in a case under section 353(6) the normal course is for his costs to be paid by the applicant. I see no reason why the same principle should not apply under section 352(1). The two applicants in this case may, perhaps, consider themselves unlucky in being the first to be caught by what they may understandably regard as a new requirement; but I do not think that this is a sufficient ground for leaving the registrar to bear his own costs. In In re Test Holdings (Clifton) Ltd., too, I can see no reason why the applicant should be immune from paying the costs of the officer whose intervention has extracted from the applicant an undertaking to put right the defaults in making returns in respect of his company.*

*Accordingly, I direct that in each case the registrar be treated as a party to the application and that his costs be borne by the applicant. Subject to that, I make the order sought by the applicant in each case*."

26. Of particular assistance to this Court was the Cayman Islands Grand Court decision of Kawaley J in *In the Matter of Mango Jam Charters Ltd* FSD 122 of 2022. I am grateful to Mr. Goulet for having placed this decision before me for my consideration.

27. In that case the petitioner sought to restore Mango Jam Charters Ltd ("Mango Jam") to the register. Mango Jam had been struck off the register on 30 April 2021. The specific aim of the restoration application was to enable the petitioner to bring a personal injuries claim against Mango Jam which caused life-altering injuries and substantial loss suffered by the petitioner. The accident had also caused the tragic death of two other persons. This all occurred during the course of a serious accident between a vessel known as "Godfrey Hurricane" and another vessel "Pepper Jelly". The latter was operated by Mango Jam.

28. Adopting a stance similar to that taken on behalf of the ROC in the present case, the Registrar in *Mango Jam Charters Ltd* objected to any restoration absent prior payment of the restoration and penalties fees. Those objections were put before the Court in the form of a letter to the Court. Setting out the statutory position in the Cayman Islands, Kawaley J referred to section 159 of the Companies Act 2022 (Revision) (the "CI CA") which provides:

"*159. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register in accordance with this Law, the Court on the application of such company, member or creditor made within two years or such longer period not exceeding ten years as the Cabinet may allow of the date on which the company was so struck off, may, if satisfied that the company was, at the time of the striking off thereof, carrying on business or in operation, or otherwise, that it is just that the company be restored to the register, order the name of the company to be restored to the register, on payment by the company of a reinstatement fee equivalent to the original incorporation or registration fee and on such terms and conditions as to the Court may seem just, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may, by the same or any subsequent order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off*."

29. In *Mango Jam Charters Ltd* Kawaley J cited the previous Grand Court decision of Justice Quin in *In the Matter of OVS Capital Management (Cayman) Limited*, FSD 207/2016 (CQJ) which in turn quoted from the English High Court decision in *Re Priceland Ltd, Waltham Forest*

*London Borough Council v Registrar of Companies* [1997] 1 BCLC 467. In that case Laddie J set out the following guiding principles:

"…

*(a) Before the Court can exercise its discretion to restore a company, it must first be satisfied that either the company was carrying on business or in operation or alternatively, that it is otherwise just to restore the company;*

*(b) Whether the company was carrying on business or in operation has to be considered by reference to the time of dissolution;*

*(c) The words 'in operation' should be given a broad meaning in order to give the Court the widest possible powers to restore. However, if the company is completely dormant, this particular avenue for founding jurisdiction is not made out;*

*(d) In considering whether it was just to restore a company to the register, the Court is entitled to look at all circumstances of the case and is not limited to any particular date;*

(e) *In an application to restore under either limb, absent special circumstances, restoration should follow, and exercising the discretion against restoration should be the exception, not the rule*."

30. Construing section 159 of the CI CA, Kawaley J found that there was no statutory requirement for the entirety of the fees to be paid, observing that such fees would usually reflect the fees that should have been paid before the company in question was struck off and the fee that would cover the period between the striking-off and the restoration. Kawaley J's finding was rooted in his interpretation of the wording in section 159 which provides "*…on payment by the company of a reinstatement fee equivalent to the original incorporation or registration fee and on such terms and conditions as to the Court may seem just…*".

31. Of the usual fees that would normally be payable on a restoration application, Kawaley J said at para [10]:

"*That practice must yield in the face of special circumstances, and it seems to me that the usual practice probably derives from cases where there is no question about the ability of the petitioner to pay the fees*."

32. Giving strong consideration to the question of a petitioner's ability to pay the fullness of the penalty fees, Kawaley J concluded his decision as follows [12]-[13]:

"*Taking those concerns into account, it seems to me that the appropriate way to deal with the question is that I will make a Restoration Order today and will adjourn for separate hearing, if necessary, on notice to the Registrar of Companies, the question of what order, if any, should be made in respect of the payment of penalty fees. As I understand it, it is accepted that the restoration fee should be paid*.

*But in adjourning the question of penalty fees, I record my very strong provisional view that under no circumstances should the Petitioner be required to pay the penalty fees save in circumstances where she has been able to make a recovery in respect of such liabilities from the proceedings that she proposes to commence against the Company post-restoration*."

## Decision

Whether section 260(1) or 261(6) applications require regulatory approval or support

33. Ms. Greenidge contended that the restoration procedure for the Companies ought not to differ from the normal restoration procedure applicable to companies which seek to be restored for the purpose of business and or operational resumption. She submitted that the application should thus be stayed pending consideration by the BMA.

34. I was not persuaded by this submission, as the restoration application was purposed for the making of a winding up order against the Companies, not to provide the Companies with any opportunity to resume their business operations. As the role of the BMA is of a regulatory nature, its interest and supervisory function would relate only to the business operations of the Companies, not the liquidation process. For that reason, I was bound to reject any application to adjourn based on pending consideration by the BMA.

Whether payment of outstanding annual fees and penalties should be a condition of restoration

35. Ms. Greenidge also argued that restoration of the Companies should be contingent on immediate payment of the entire sum of the outstanding annual fees and penalty charges.

36. In considering this point, I was guided by Kawaley J's construction of section 159 of the CI CA in the *Mango Jam Charters* Ltd. case. Section 159 empowers the Court to make directions on terms and conditions for payment by the company of a reinstatement fee.

37. For applications brought under section 260(1), section 260(3) applies to allow the Court to exercise an unfettered discretionary power by issuing consequential orders and directions on the terms and conditions which the Court sees fit.

38. Notably, section 261(6) of the CA 1981 is of similar effect. It does not expressly measure or require payment of a restoration fee as a condition of reinstatement. Instead, the section confers a broad and unfettered discretion on the Court to give directions and make the provisions it deems just for reinstating the company as closely as possible to the same position it was in prior to being struck from the register.

39. In my judgment, what was fair and just required the outstanding annual fees and penalties owed by the Company to be paid in priority to payment to Clarien and any other creditor. Further, and in any event, it seemed to me that annual fees and penalties imposed by the ROC ought to be captured, as a matter of construction, by section 236(1)(a) which deals with preferential distributions of the assets of a company under liquidation. Section 236(1)(a) provides:

> "*236 (1) In a winding up there shall be paid in priority to all other debts—*
> *(a) all taxes owing to the Government and rates owing to a municipality at the relevant date*"

40. Thus, the Order made by this Court on 29 August 2025 provided:

> "*pursuant to section 236(1)(a) of the Act, any annual fees and penalties owed and owing by the Company* [Companies] *to the ROC shall be paid out of the assets of the Company in priority to any other creditor of the Company*"

The Granting of the Petitioner's Application for Restoration and a Winding Up Order

41. Standing for the making of an application under section 260(1) is conferred on a liquidator or on any other person who appears to be interested in the company in question. As a creditor of the Companies, I had no cause to doubt Clarien's standing to bring the application in its capacity as a party interested in the Companies.

42. The factual circumstances leading to the dissolution of the Companies were not deposed before this Court. That is of no consequence to an application brought under section 260(1) as that section applies to applications to restore a company, whatever may have been the reason or cause for the dissolution of the company. Apart from any question of standing, the principal condition precedent for the making of an application under section 260(1) is that the application is brought within the requisite timeframe. The Companies were struck off the register on 6 October 2021. So, the statutory timeframe for the making of an application for an Order declaring the dissolution void had not yet expired, whether the dissolution fell within section 260(1)(a) or 260(1)(b) which impose a 10-year and 5-year deadline, respectively.

43. Under both Bermuda law and English law there is clear provision for dissolved companies to be restored for the purpose of making the company's assets available to contingent creditors and unsecured creditors in the course of a liquidation of the company in question.

44. Where the restoration application is purposed to make the assets of the dissolved company available to a creditor, a winding up order should be made to take immediate effect upon the making of the restoration order. In my judgment, it was appropriate that Clarien be granted the application for the restoration of the Companies. Clarien was an unsecured creditor to the extent that there was no realistic prospect of the Companies satisfying the debts owed to Clarien out of the net proceeds from the sale of the Collateral Properties.

45. In the end, I found that it was just that the Company be restored to the register as a means of enabling Clarien to gain access to the secured assets which, when realised, will undoubtedly fall far short of satisfying the full sum of the debt owed.

46. While the petitioner pleaded its relief under section 261(6), the application was granted pursuant to section 260(1) of the CA 1981 making section 260(2A) operative for the reinstating of the Companies. Section 260(2A) allowed the Companies to be deemed to have continued in existence as if they had not been dissolved. Again, the effect of this provision was to enable the Court to make winding up orders against the Companies. These orders would have been out of the reach of the Court if the dissolutions had not been declared void.

The Registrar's Costs of the Application for Restoration

47. Having considered the previous caselaw of the English High Court and the Cayman Islands Grand Court, it seems that the general position is such that the Registrar's litigation participation in restoration applications is key. That is so, whether the application is made under section 260(1) or 261(6) of the CA.

48. For applications made under section 260(1), where the company is to be subsequently put under liquidation, it is a matter of best practice for the Registrar to be put on notice of petition for restoration. And, as I have noted earlier herein, the Registrar will necessarily be named as a Respondent in an application commenced under section 261(6).

49. In England the usual position will be for both the Registrar General and the Treasury Solicitor to appear. The latter appears as the Crown's nominee for the administration of the estates of persons who die intestate and without known kin so to secure the collection of the assets of dissolved companies which are thereby rendered *bona vacantia*. Here in Bermuda, Counsel of the Attorney-General's Chambers generally represent both functions. So, the appearance of Crown Counsel in this case is on behalf of the Registrar General.

50. In all such cases, the Registrar's costs should be paid by the Petitioner. That was the position taken by Megarry J in *In re Test Holdings (Clifton) Ltd* and I see no compelling reason to depart from that reasoned view, subject to any further submissions from Counsel.

51. That being the case, the issue of costs was not addressed by Counsel during the hearing before me. On that basis, I give the Clarien and the Registrar liberty to be heard on the question of costs, should either one or both of them consider such an application necessary. In any such circumstances, either party may address the issue of costs upon filing a Form 31TC within 21 days of the date of this Ruling. Otherwise, the Petitioner is ordered to pay the Registrar's costs on a standard basis to be taxed if not agreed.

Dated this 9th day of December 2025


**HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS**
**PUISNE JUDGE OF THE SUPREME COURT**