

CAYMAN ISLANDS GRAND COURT

In the matter of Sections 94 and 159 of the Companies Law (2012) Revision; And in the Matter of Grencorp Ltd FSD 42 of 2013; Foster J, 15 August 2013

RESTORATION OF COMPANY TO THE REGISTER OF COMPANIES - CONDITIONS WHICH COURT MAY IMPOSE FOR RESTORATION

On 1 April 2013, the Judge made an order that Grencorp Ltd (the “Company”), an exempted company, be restored to the register of companies and that the petitioning Creditor pay the re-instatement fee equivalent to the original incorporation fee and on the condition that the annual return fees and penalties as specified by the Registrar also be paid. By this Ruling the Judge gave his reasons for the Order as it was questioned whether the Court may or should order such restoration on condition of payment by the petitioning creditor of the arrears of annual fees and penalties.

The Judge rejected the Petitioner’s various arguments including that Section 159 of the *Companies Law* did not expressly make payment of arrears and penalties a requirement for reinstatement by a petitioning creditor and that the Registrar should rank as a preferred creditor in respect of the arrears and penalties in the winding up of the Company, which the Court had also ordered.

The Judge considered the Section 159 provision in its entirety and noted that it empowered the Court with discretion to order restoration “on such terms and conditions as the Court may seem just”. Further, that Section 159 provides that upon restoration, a company is deemed to have continued in existence as if it had not been struck off and empowers the Court to make such provisions as seem just to place the company in the same position as if it had not been struck off.

In view of this, and relying on *Re: Haltone (Cork) Limited* [1996] 1 IR 32 and *Re: Test Holdings (Clifton) Ltd* [1970] Ch 285 which were based on similar statutory provisions, the Judge concluded

that for the Company to be properly restored, it would have to be in good standing and not in default of its obligations and therefore held that restoration was ordered on the condition of payment of the arrears and penalties pursuant to its general discretion.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.