



Supreme Court clarifies International Business Companies Act



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🔗 Business Companies Act amendments

🔗 Comment

In its decision in *In the Matter of the International Business Companies Act 2000 and Benton Management Ltd v the Registrar General*🔗 (1) the Supreme Court clarified amendments made by the International Business Companies (Amendment) Act 2010.

The court held that there is no statutory bar preventing the applicant applying for the restoration of an international business company, even if the company was struck off before the commencement of the International Business Companies Act of 2000.

Business Companies Act amendments

Amendments made to the Business Companies Act in 2010 stipulate that notwithstanding that an international business company has been struck off the Companies Register for non-payment of fees for a period exceeding five years, an application can be made to the court for the company to be restored. Upon restoration, the name of the company shall be deemed never to have been struck off.

In *Tenesheles Trust v BDO Mann Judd*🔗 (2) the court held that under the 2000 act, if an international business company had been struck off the Companies Register for non-payment of fees, the registrar of companies had no power to restore it. Following *Tenesheles*, the 2010 act amended Sections 165, 169 and 176 of the 2000 act, and repealed and replaced its Section 166.

As a result of those amendments, the power to restore an international business company is retroactive and has the effect of saving all international business companies struck off the register from 2000 until the commencement of the 2010 act.

Furthermore, with respect to companies struck off before the commencement of the 2000 act, an entitlement to be restored under the 1989 act does not expire, despite the commencement of the 2000 act which repealed and replaced its predecessor. This is because the transitional provision in Section 196(2) of the 2000 act provides that "all benefits accruing to any International Business Company registered in The Bahamas prior to the commencement of this Act shall not be affected by the coming into force of this Act".

Comment

Section 166 of the 2010 act is retroactive and is deemed to have come into force at the time of the commencement of the 2000 act. Thus, international business companies struck off under the 1989 act may also apply to be restored to the Companies Register, so long as the 2000 act commenced less than three years from the date on which the company was struck off under the 1989 act.🔗 (3)

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Endnotes

(1) [2012] 1 BHS J, No 2.

(2)[2009] 2 BHS J, No 17.

(3) See *In the Matter of the International Business Companies Act 2000 v the Registrar General (supra)*.

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