

CHANNEL ISLANDS DOMAIN DISPUTES

C.I.D.D. DOMAIN DISPUTE SERVICE AND ARBITRATION
A TIMELY SERVICE

IN THE CASE OF THE DOMAIN NAME 2020.je and the dissolution/striking off of the company.

OPINION OF THE ADJUDICATOR

1. INTRODUCTION

This is a matter referred to the Adjudicator for a ruling on the process for the domain name shown above and its application in relation to the question on bona vacantia and escheat.

2. THE BACKGROUND

The domain name was originally registered in the name of the company.

That company has either been dissolved or struck off.

I have been referred to the Nominet "accepted practice" which would appear to be one where "...If the "owners" are still using the domain name then all they have to do to re-register it was prove that they owned the previous company."

The principle of "*Bona Vacantia*" literally means vacant goods or unclaimed goods or goods where no owner exists. It is the legal name for ownerless property and under *Bona Vacantia*, ownerless property automatically passes to the Crown upon striking off, dissolution or liquidation of the company.

(A separate adjudication advice note arises in relation to a) companies in the process of liquidation and b) companies that have been liquidated.]

It is my opinion that this "excepted practice" is incorrect and breaches the concept of *Bona Vacantia*.

It is clearly open to the crown, via the Treasury solicitor who operates the accounts of Bona Vacantia for the Crown, where the nominate practice has occurred and in relation to a valuable domain name,

to subsequently

- i) make a claim against the new domain name owners ("Interlopers") for its full value; or
- ii) to require the transfer of the domain name from the new owners to the Treasury solicitor who is then entitled to sell it at its full value, although they would have to account to the Interlopers for any domain registration fees paid since the company ceased to exist.

Technically upon a company being dissolved, under many registry terms and conditions, when the company is dissolved, the contract of registration automatically terminates and the domain should be returned to the pool for re-registration. In practice, many of the registries only do this at the end of the registration term that is current.

ESCHEAT AND FORFEITURE AND BONA VACATIA IN GUERNSEY

Historically, escheats and forfeitures historically were largely amounts devolving to the Crown (and in some situations before 1981 to certain private *seigneurs*) upon the deaths of persons leaving no known heirs or beneficiaries, and at the confiscation of the estates of persons executed or banished from the island. Escheats and forfeitures are now devolved to the Crown following the deaths of persons leaving no known heirs or beneficiaries, and also include any assets of companies that may remain at their dissolution.

*The claimed position of the Crown law Officers is that under s369 of the Companies (Guernsey) Law 2008 and s107(9) of the Companies (Alderney) Law, 1994 where a company has been struck-off or dissolved – ‘all property and rights then vested in it or held on trust for it (**but not property held by it on trust for another person**) shall, unless Her Majesty's Receiver General directs otherwise, become bona vacantia belonging to the Crown and that HMRG will only ‘direct otherwise’ when the property and/or rights are unsuitable for the Crown to hold, such as foreign realty. However, in all cases HMRG must be notified of the property and/or rights that would otherwise fall to be bona vacantia and must expressly disclaim, in order for the disclaimer properly to be given. Failure to notify HMRG of any such property and/or rights will mean that the property will be potentially bona vacantia and cannot be dealt with. If HMRG does not ‘direct otherwise’ then the property and/or rights will become bona vacantia belonging to the Crown. If the criteria for a discretionary grant are met, then a grant will only be made if the applicant agrees to pay HMRG's legal costs and disbursements for dealing with the application (this will usually be £300, so if the amount claimed for is less than this, then HMRG will not make a grant). If the amount claimed for is over £750, then HMRG will levy a fee of 5% of the amount, after deducting legal costs and disbursements.*

The position in relation to the domain name however falls into the exception for property that would technically be held in trust by HMRG. This is because the Memorandum of Distribution creates beneficial ownership of the domain name for the person specified in the Memorandum of Distribution and if actual distribution has not occurred at the time of the striking off or dissolution, then technically HMRG holds on trust for that person.

In practice, until the registry records are updated upon instruction (presumably by the Greffier or the former directors), then the area is a grey one, but the person entitled under the Memorandum

of Distribution can call for the registry to re-register in their own name under the process set out below.

In any event, as the domain name is a burdensome asset, in that it incurs a cost to HMRG of continued registration, it is unlikely that HMRC would accept or claim the asset, even if no beneficial owner existed, except for very valuable domain names.

Was there a Memorandum of distribution or proposed distribution?

In the normal process of a company being dissolved or struck off, the company is solvent at the time of dissolution or strike off and the normal process is that immediately prior to dissolution or strike off, there is a distribution of assets to the shareholders (or in the case of a partnership, to the partners).

[Note: Where a company is insolvent then there is usually a process of liquidation and the adjudication about liquidation notes should be referred to].

For the purposes of this adjudication, it is assumed that a solvent distribution occurred and that there was such a Memorandum. The Memorandum at Annex A appears to clarify that there was originally some form of Memorandum and this has now been reduced into writing, (It is unclear whether the original memorandum was only ever oral or whether an original written one was lost, but this is not relevant).

It is also assumed for the purposes of this adjudication, that there was an oversight of the formal transfer of the domain, but that it was intended that the domain should have been distributed to the shareholders/partners or one of them.

In the normal circumstances, the Memorandum of distribution (technically a memorandum of intended distribution) signed by at least one of the directors, can be relied upon by the registry.

The Registry should inform relevant party (TBA Ltd) that if it does not receive the signed documents and the outstanding registration fee and administration fee within 7 days then the domain name will be put back into the pool for re-registration at a date to be determined by the registry.

Recommendation

On the basis of the receipt by the registry of a letter in the form of a letter (Annex B) and or a copy of the memorandum at Annex A, it is my opinion that the registry can lawfully transfer the domain to the indicated company/entity and that the indicated company/entity is liable to pay the registry any outstanding fees.

Nick Lockett

Nick Lockett, Solicitor (213086) and ex-Barrister (30499 Inner Temple)
Adjudicator C.I.D.D.

Dated 27th May 2021

ANNEX A

REDACTED

Channel Names Ltd
The Channel Islands Domain Registry
ALDERNEY

To the Registry,

Dear Sirs,

We refer to previous correspondence regarding the 2020.je domain name.

The domain name was registered for Finance Publications Offshore Ltd. Prior to striking off/dissolution of the company, the Directors and Shareholders determined that the remaining assets of the company, should be transferred to other entities.

In relation to the domain name, the domain name was determined to be transferred to the transferee, as set out below and instructions were given to do this by the Directors. The transferee was also notified that transfer was in the process of being carried out and that the transferee was from that time, the beneficial owner of the domain rights as registrant and upon completion of transfer would be the legal owner of all domain rights as registrant.

We attach the Memorandum of Distribution and would request that the domain name is immediately transferred into the name of the transferee.

We confirm that the attached are accurate records of the company intentions prior to it striking off for dissolution and in consideration of the transfer set out below, and the payment by me/us of the outstanding registration fee and administration fee of £50,

We hereby undertake to indemnify the registry against all actions, proceeds, demands, costs, claims, losses and expenses (including legal costs) whatsoever which may be made or incurred by the registry in connection with the domain name transfer.

Original Registrant: **Finance Publications Offshore Limited**

Domain Name: **2020.je**

REDACTED

Signed For and On Behalf of
TBA LTD

REDACTED

Finance Publications Offshore Limited

Memorandum of Distribution

Made on 27th May 2021 and reducing into written form an oral decision of distribution made pre-dissolution

This Memorandum of Distribution records that the company is about to enter into solvent dissolution and that all of the assets of the company, will be transferred as follows:

General Assets: **TBA Limited**

Domain Name: **TBA Limited**

Signed

XXXXX
Company Director