

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

**IN THE MATTER OF THE BUSINESS COMPANIES ACT 2004
AND IN THE MATTER OF AN APPLICATION FOR THE RESTORATION OF HILLSHAM
LIMITED**

CLAIM NO. BVIHC(COM) 2025/0234

BETWEEN:

AS PNB BANKA (IN LIQUIDATION)

Claimant

and

**[1] REGISTRAR OF CORPORATE AFFAIRS
[2] VISTRA TRUST (BVI) LIMITED**

Defendants

AND HEARD TOGETHER WITH

IN THE MATTER OF THE INSOLVENCY ACT 2003

**AND IN THE MATTER OF AN APPLICATION FOR THE APPOINTMENT OF
LIQUIDATORS**

AND IN THE MATTER OF HILLSHAM LIMITED

CLAIM NO: BVIHC(COM) 2025/0540

BETWEEN:

AS PNB BANKA (IN LIQUIDATION)

Applicant

and

HILLSHAM LIMITED

Respondent

Appearances:

Ms. Jodi-Ann Stephenson and Mr. David Lim instructed by Ogier for the Claimant/ and Applicant.

Ms. Nellien Bute, instructed by the Financial Services Commission for the Registrar of Corporate Affairs, the Respondent

2026: February 16,¹
April 15.

JUDGMENT

- [1] **Mangatal J (Ag.):** The Claimant AS PNB BANKA (In Liquidation) (“**the Claimant**”) is itself in liquidation. The First Affidavit of Vigo Krastins, insolvency administrator of the Claimant explains that the Claimant was a joint stock company registered in Latvia and was engaged in the business of providing banking services. However, on 12th September 2019, the Claimant was declared insolvent, and Mr. Krastins was appointed as insolvency administrator with the capacity and power to instigate legal proceedings on behalf of the Claimant.
- [2] The Claimant avers that it has standing to make the applications herein as it is a creditor of the Company Hillsham Limited (“**the Company**”). The Company was incorporated in the BVI on 4th September 2013. The Company was dissolved on 4th July 2023 because of non-payment of annual fees. The Claimant’s application is

¹ Further evidence, submissions and authorities filed March 6 and 13

made within 5 years of dissolution in accordance with s.218(5) of the BVI Business Companies Act 2004 ("**the BCA**").

- [3] The Claimant is a creditor of the Company pursuant to a loan agreement dated 6th May 2014 for EUR 11,400,000 between the Claimant and the Company and a pledge agreement between them of the same date. Mr. Krastins says that the Claimant has a legal claim against the Company in respect of assets of the Company and otherwise has an interest in having the Company restored.
- [4] The Claimant's application seeking the restoration of the Company to the Register has come before the Court on a number of occasions. On one previous occasion, on 31st August 2025, the Claimant obtained an *ex parte* order joining the Company's former registered agent Vistra (BVI) Limited ("**Vistra**"), a seal and gag order, and a Norwich Pharmacal order for Vistra to disclose certain records and information with respect to the Company within Vistra's possession and control.
- [5] It would seem that Vistra's compliance with the Court's order was either incomplete or incapable of providing the Claimant with all of the documentation needed, and the Claimant then filed its originating application seeking the appointment of liquidators over the Company on the grounds that the Company is insolvent. The 2nd affidavit of Mr. Krastins confirms that as at February 2026 the Company owes the Claimant, excluding accrued penalty interest, nearly EUR 16 million. Further, the Company has previously confirmed in writing that it is unable to pay.
- [6] The Claimant seeks an order restoring the Company to the Register pursuant to section 218 of the BCA and, as part of the same order, the appointment of liquidators under the Insolvency Act 2003 ("**the IA**") so that the Company immediately enters insolvent liquidation upon restoration. The Claimant has also put evidence before the Court that it has been in contact with a number of registered agents, none of whom are willing to act, for a number of reasons and/or will only act if the Claimant

can provide them with KYC and other information about the Company which the Claimant is unable to provide.

- [7] Whatever the practical difficulties that the Claimant may have encountered, I have handled a few applications seeking orders for both restoration and appointment of liquidators. However, in those matters, there were registered agents willing to provide services, and thus what was made was an order staggering the orders having to do with liquidation until the orders having to do with restoration were complied with.
- [8] Thus, when the matter first came up for hearing, I was minded to make a staggered order. I was satisfied that it was appropriate to make the order appointing the liquidators and placing the company into insolvent liquidation. However, the Claimant was insistent that the relevant sections of the BCA do not require the appointment of registered agents. I therefore gave directions for the filing of further evidence and of submissions with supporting authorities. The parties have asked for a written ruling which I now provide on what seems to be an issue increasingly likely to be coming before the Courts time and again.
- [9] The applications in the instant case in my view raise a focused question of statutory construction: whether section 218A of the BCA requires, in every case, the appointment of a registered agent as a precondition to restoration, even where a creditor seeks restoration solely for the purpose of placing a dissolved company immediately into insolvent liquidation.
- [10] The Claimant submits that it does not. Ms. Stephenson, on behalf of the Claimant submitted that, properly construed, and read in the context of the wider statutory framework governing registered agents and liquidation, section 218A does not require the appointment of a registered agent in circumstances where restoration is sought solely for the purpose of immediate entry into liquidation.

- [11] The Claimant contends that section 91(5) of the BCA was intended by the legislature to provide a coherent solution in circumstances where section 218A cannot practically be satisfied. Where restoration and liquidation are sought together, and the company will enter insolvent liquidation immediately upon restoration, section 91(5) operates such that no registered agent is required. Section 218A must therefore be construed, Ms. Stephenson forcefully argued, in a manner that gives practical effect to a creditor's statutory right to seek restoration rather than frustrating it. Failing to construe section 218A consistently with section 91(5) would risk attributing to the legislature an intention to place dissolved companies beyond the effective reach of creditors and, in some cases, to allow delinquent debtors or those responsible for fraud to avoid investigation or recovery by requiring creditors to provide information that would ordinarily be unavailable to them.
- [12] Ms. Bute, on behalf of the Registrar of Corporate Affairs, has argued that section 218 of the BCA sets out mandatory requirements for restoration and unless those requirements are satisfied, the Court has no basis upon which to exercise its discretion to restore a company to the register.
- [13] Counsel referred to sub-sections (1)(2),(4), and (6), of section 218, and indicated that in the case at bar, those sub-sections were all satisfied.
- [14] However, the Defendant's position is that there must be a registered agent in order for the Company to be restored before it goes into insolvent liquidation. It was submitted that the fact that in this case the company is to be placed immediately into insolvent liquidation does not dispense with the Claimant's obligation to comply with s.218A(1) of the BCA. Ms. Bute argued that the Claimant must comply with the requirement before the Court can grant the Claimant's application for the Company's restoration. Counsel also made reference to a number of cases concerning the Court's discretion but concluded that this was not an issue in relation to which the Court has any discretion.

The Relevant Sections of The BCA and of The IA 2003

[15] Section 91 of the BCA, in relevant part, provides as follows:

“91. Registered Agent

91(1) Subject to sub-section (5), a company shall at all times have a registered agent in the Virgin Islands.

(5) A company does not require a registered agent if it is in liquidation within the meaning of section 160 of the Insolvency Act.
(emphasis provided)

[16] Section 218A(1) and (1A) of the BCA provide as follows:

“218A. Court’s powers on hearing 218A(1) Subject to sub-section (2), on an application under section 218, the Court **may-**

- (a) make an order to restore the company to the Register if:
 - (i) the Court is satisfied that a licensed person has agreed to act as registered agent of the company;
 - (ii) the proposed registered agent makes:
 - (aa) a declaration in the approved form that the company’s records have been updated as required under section 213(3B); or
 - (bb) an undertaking in the approved form that the company’s records will be updated as required under section 213 (3B) or procured and maintained within 14 days from the date of restoration of the Company to the Register;
 - (iii) the company files, or makes an undertaking to file within 14 days from the date of restoration of the company to the Register, copies of its register of members and register of directors; and
 - (iv) subject to subsection (6), the company pays the restoration fee and any outstanding fees in relation to the company, and
- (b) give such directions and make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.

218A(1A) In making an order of restoration under subsection (1), the Court may impose such conditions as it considers appropriate.”
(emphasis provided)

[17] Section 160 of the IA 2003 provides as follows:

“160. Duration of Liquidation

The liquidation of a company commences at the time at which a liquidator is appointed as provided in section 159 and continues until it is terminated in accordance with section 232 and, throughout this period, the company is referred to in this Act as “in liquidation”.

- [18] The Claimant is correct that restoration is not an end in itself. In cases such as the present, it is the necessary juridical step to enable the appointment of liquidators. In **Global Diversity Opportunity II Ltd et al v Registrar of Corporate Affairs**,² the Court emphasised the breadth of its discretion under the BCA. That discretion I accept must be exercised in a manner consistent with commercial reality and in a manner that gives effect to the proper legislative intention and the statutory scheme as a whole.
- [19] As Ms. Stephenson points out, where restoration is sought solely for the purpose of immediate liquidation (a) the company will not resume trading; (b) control will pass immediately to independent insolvency practitioners; (c) the regulatory and supervisory framework of the IA will apply; and (d) the functions ordinarily performed by a registered agent in respect of an active company are practically and legally redundant.
- [20] The present application falls squarely within that category. The company would be restored and, by the same order, placed into insolvent liquidation. No interim period of corporate activity is contemplated and the statutory carve-out whereby a liquidator manages the affairs of the company would apply.
- [21] I accept that to read the BCA as requiring the appointment of a registered agent in those (and indeed all) circumstances would be to require compliance with a condition which the statute itself declares unnecessary once liquidation commences.
- [22] I note that Section 218A of the BCA is framed in permissive rather than mandatory terms: the Court “may” restore the company if satisfied of the listed matters. The provision does not state that restoration shall not occur unless those matters are satisfied. I have thought long and hard on this point, but at the end of the day, I

² BVIHC(COM) 2020/0176.

accept the Claimant's argument that the use of the word "may" indicates that the provision is intended to guide the exercise of the Court's discretion rather than convert each element into an inflexible jurisdictional precondition incapable of contextual interpretation.

The Evidence: The Registered Agent Impasse

- [23] It has been suggested that creditor restorations can succeed because some registered agents have been willing to act on the basis of proposed liquidators' KYC. However, as Ms. Stephenson counters, that observation does not resolve the statutory difficulty.
- [24] First, the ability of a creditor to exercise its statutory right under section 218 cannot depend upon the discretionary commercial risk appetite of private licensed entities. The legislature conferred standing on creditors as a class. It did not condition that right on persuading a regulated third party to assume regulatory exposure.
- [25] I further agree that the Court's task is one of statutory construction, not assessment of industry practice. The fact that in some cases registered agents have agreed to act does not cure the structural difficulty created by an over-literal reading of section 218A of the BCA in isolation.
- [26] The Claimant points to a further and distinct concern relating to cost. Even if a registered agent were prepared to act temporarily under the two-stage regime, the appointment would impose considerable additional cost on a creditor applicant and an insolvent estate. Fees for onboarding, compliance, annual maintenance and resignation are necessarily expenses of the creditor making the application and the estate. In an insolvent liquidation, every additional expense diminishes the return available to the general body of creditors.
- [27] It is contrary to the proper effect of both the BCA and IA to require an insolvent estate to incur registered agent costs merely as a formal and transitory precondition

to entering the very state of liquidation in which the statute declares no such appointment is required. In practical terms, the construction of the BCA requiring a two-stage regime creates a circular barrier to enforcement.

[28] Restoration is required in order to appoint liquidators. Yet the appointment of a registered agent, which may itself depend upon cooperation from those whose conduct may warrant investigation, becomes an indispensable threshold condition. Dissolution would thereby become an unnecessary obstacle to the exercise of creditor rights. The Defendant's construction would therefore produce a practical anomaly. A creditor could restore a company where cooperative directors remain available to satisfy registered agent onboarding requirements. Yet restoration would become impossible precisely in those cases where corporate management has disappeared or is unwilling to cooperate - circumstances which most strongly justify investigation through insolvency proceedings. I accept the Claimant's reasoning.

[29] The difficulty identified by the Claimant is therefore not one of inconvenience, but of statutory incoherence. A construction which makes creditor restoration dependent upon factors which are inconsistent with the requirements of the AML Code, and which also introduces unnecessary cost and arbitrariness into the insolvency regime, cannot be taken as the intention of the legislature.

[30] The Court's discretion under section 218 of the BCA is broad and guided by what is just and fair. In the present case the Company is insolvent. There is a legitimate purpose in placing it into liquidation, including investigation, recovery of books and records, and potential asset recovery. Dissolution should not operate as a substantive barrier to scrutiny merely because a creditor cannot satisfy compliance requirements, designed for active entities, particularly where, as here, the appointment of a registered agent would be unnecessary upon the Company's immediate entry into liquidation.

[31] Sections 218, 218A and 91(5) of the BCA can only have been intended to be read as part of a single statutory scheme. The modern approach to statutory interpretation requires the Court to construe statutory language in its full legislative context and in a manner which gives effect to the purpose of the legislation. As explained in **Bennion, Bailey and Norbury on Statutory Interpretation (8th ed)**, the task of the court is to interpret the language of an enactment, so far as possible, in a way which best gives effect to the legislative purpose. Individual provisions must therefore be understood not in isolation but in the context of the Act as a whole. In **R (Quintavalle) v Secretary of State for Health**³ Lord Bingham explained the role of purpose in the following terms:

"The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole"

[32] In **Benion**, at paragraph 12.3, in the Comment section, it is stated as follows:

"As stated in the Code s.11.3, the legislature is taken to be a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner."

[33] The present applications contemplate a single composite judicial act: restoration of the Company and, by the same order, the appointment of liquidators. Upon restoration, the Company would not return to commercial life under director control. It would immediately enter insolvent liquidation within the meaning of section 160 of the IA. Restoration and liquidation would therefore occur as part of one indivisible judicial determination.

³ [2003] 2 WLR at [8].

- [34] The Court should, therefore, in my view, be slow to recognise a purely conceptual interval between restoration and liquidation where doing so would frustrate the statutory purpose. Where restoration is sought solely for the purpose of immediate entry into insolvent liquidation, and liquidators are appointed by the same order, section 91(5) of the BCA operates immediately upon restoration. In such circumstances, the company never exists in a state in which the statutory requirement for a registered agent meaningfully arises.
- [35] This construction does not in my judgment dilute the AML objectives underpinning section 218A of the BCA. Those objectives remain fully operative in cases where a company resumes active existence. In the insolvency context, regulatory and investigative oversight is instead provided by court-appointed liquidators operating under the supervision of the Court and within the statutory framework of the IA.
- [36] The functions of a registered agent under sections 96 and 98A of the BCA are primarily administrative, including record-keeping, regulatory liaison, and compliance filings.
- [37] Similarly, the obligations imposed by sections 9 and 10(3) of the Beneficial Ownership Secure Search System Act, 2017 ("**the BOSS Act**") fall away in practical terms once a company is in liquidation, as the liquidator assumes control of the company's affairs and compliance obligations, and a creditors' committee may be constituted if necessary.
- [38] Further, section 6(1)(d) of the BOSS Act includes a liquidator within the definition of a beneficial owner of a company in insolvent liquidation, empowering the liquidator together with Schedule 2 of section 186 of the IA - to obtain and maintain the prescribed beneficial ownership information.

- [39] In these circumstances, the appointment of a registered agent would serve no practical purpose and would only increase delay and cost to a creditor seeking recovery, particularly where suitably qualified insolvency practitioners have consented to act.
- [40] It may be suggested that any difficulty arising from section 218A is solely a matter for legislative amendment rather than judicial determination. However, the legislature has already provided that a company in liquidation does not require a registered agent, and no amendment is required to read section 218A as subject to section 91(5). The issue is therefore not the creation of a new exception but the identification of the point at which that statutory exemption takes effect where restoration and liquidation occur pursuant to a single judicial act. Furthermore, the Claimant is not inviting the Court to use its inherent jurisdiction to disapply or rewrite section 218A. Rather, it is being asked to construe sections 218, 218A and 91(5) harmoniously to determine the narrow question of whether, where restoration and liquidation occur pursuant to the same order, the company ever exists in a state requiring a registered agent. I accept Ms. Stephenson's submission that this is an orthodox question of statutory interaction and interpretation which falls squarely within the judicial function. However, in any event, it is the case that legislative intervention could clarify this issue and put the matter beyond argument, and I suggest that this course be explored as soon as possible.
- [41] In my judgment, the Claimant's position is correct. There is in these circumstances no requirement of appointing registered agents. The parties are to let me have an order that corresponds with this Ruling.

[42] I thank Counsel for the clarity and helpfulness of their submissions. I would also add that I do not believe that leave to appeal is necessary in the instant case. However, as it concerns important issues that are likely to arise again, and the point is not free from difficulty, I also order that leave to appeal, if required, is granted to the Registrar of Corporate Affairs.

Ingrid Mangatal
High Court Judge (Ag.)

BY THE COURT

Registrar