

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
2007/CLE/gen/480**

**IN THE MATTER OF an application  
pursuant to section 166 of the  
International Business Companies  
Act, 2000**

**AND**

**IN THE MATTER OF an application by Barrow Holdings Corp**

**Before: The Honourable Mr. Justice Faizool Mohammed**

**Appearances: Mr. Sean Moree for the Applicant**

**R U L I N G**

**MOHAMMED J**

1. By originating summons filed 13 April 2007 an application was made by Barrow Holdings Corp. for an order that the company be restored to the Register of Companies pursuant to section 166 of the International Business Companies Act, 2000 (the Act) and additionally that the company be granted leave to replace its bearer shares with shares issued in accordance with the Act.

2. The application was supported by an affidavit deposed to by Pierre Pringuet as follows:

"1. That I am a Director of Pernod Ricard S.A. (hereinafter referred to as PRSA), and I am duly authorized to make this affidavit on behalf of PRSA. I depose as to the contents herein from my knowledge of the affairs of the Applicant and from the records of PRSA and verily believe the same to be correct and true.

2. On 26<sup>th</sup> February, 1996 PRSA purchased all (1,000) bearer shares of Barrow Holdings Company (hereinafter referred to as "the Applicant") from Mr. Anibal Gil Gamboa. There is now produced and shown to me and exhibited herewith and marked "BAR.1" and "BAR 2" copies of the Agreement of Sale, the former being the original Spanish format and the latter being a notarized English translation. Additionally, there is now produced and shown to me and exhibited herewith and marked "BAR.3" a copy of the bearer share certificate evidencing the acquisition of the shares by PRSA.

3. The Applicant was struck off the Register of International Business Companies (hereinafter referred to as "the Register" ) in 1998 due to the non payment of its annual licence fees for the year 1997, as required under the Section 175 of the International Business Companies Act, 2000.

4. The Company was incorporated as an International Business Company on the 6<sup>th</sup> of February 1996 as a company limited by shares. There is now produced and shown to me and exhibited herewith marked "BAR.4" copies of the Certificate of Incorporation and Memorandum of Association of the Company.

5. Following its name being struck from the Companies Register in 1998, the Applicant failed to apply to the Registrar of Companies within five years of being removed from the Register to have the Company restored. The Directors believed that they no longer had any use for the Company as shortly after its incorporation, all of the assets of the Company were sold. The Company presently holds no assets.

6. Due to the Applicant being struck off of the Register, PRSA failed to surrender its bearer shares in addition to failing to issue replacement shares, in accordance with the International Business Companies Act, 2000.

7. PRSA now wishes to liquidate the Applicant and in order to do so, the Applicant must be restored to the Register. The Applicant is willing to provide \$5,000.00 in Annual License and penalty fees required for settlement with the Registrar of Companies. The reasoning for the liquidation of the Company which holds no assets is that this Company was used as a vehicle to hold shares in another company. Once those shares were sold, the Company was of no use, but to conform to the accounting principles of the jurisdiction which PRSA are situate, namely France, a Certificate of Dissolution needs to be produced to validate the termination of the Company.

8. The Applicant's registered office is situate at Mckinney, Bancroft & Hughes Corporate Services Mareva House, George Street, Nassau, Bahamas.

9. In the circumstances the Applicant respectfully requests that:
- i. Its name be restored to the Companies' Register; and
  - ii. the Court grant it leave allowing the Company to reissue share certificates in accordance with the International Business Companies Act, 2000."

3. Subsections (1), (2) and (3) of section 166 of the International Business Companies Act, Ch. 309 Revised Edition of the Statute Law of The Bahamas 2000 (as amended) provide as follows:

"(1) If the name of a company has been struck off the Register under section 165, the company or a creditor, member or liquidator thereof, may

within five years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register and upon payment to the Registrar of the prescribed fee and all fees due under this Act, the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.

(2) If upon an application under subsection (1) the court is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register, the Court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3) If a company has been dissolved or the period of five years has expired under subsection (1) the company or a creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register.”

4. On reading the affidavit of Pierre Pringuet, I am satisfied that on payment of all outstanding fees it would be fair and reasonable that the name of Barrow Holdings Corp. be restored to the Register of Companies otherwise it would be unable to acquire a certificate of dissolution in order for it to conform to the accounting principles of the jurisdiction in which it is situate.

5. Furthermore, subsection (4) of section 196 of the Act provides as follows:

“(4) Every company which has issued bearer shares under the repealed Act shall recall such shares within six months from the date of commencement of this Act and the company shall cancel such shares and substitute therefor registered shares issued in accordance with this Act and the regulations made thereunder. Any bearer shares which have not been recalled and cancelled within the said period of six months shall thereafter be null and void and be without effect for all purposes of law.”

6. The company was struck off the Register of Companies in 1998 and the date of commencement of the Act was 29 December 2000. It was therefore impossible for the company to comply with section 196 and recall its bearer shares within the six months period. I would therefore apply the maxim *lex non cogit ad impossibilia* (the law does not compel the impossible) and permit the reinstated company to recall its bearer shares within six months from its reinstatement such shares to be cancelled and registered shares substituted therefor.

7. In the premises, the order is granted as prayed.

**Dated the 17<sup>th</sup> day of August, 2007.**

  
**Faizool Mohammed**  
**JUSTICE**