

Changes to Guernsey's Insolvency Regime

UPDATE

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The States of Guernsey have approved amendments to Guernsey's corporate insolvency legislation.

The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 implements improvements to Guernsey's insolvency regime, and stems from a wide-ranging consultation finalised in 2017.

The legislation was approved by the States of Guernsey on 15 January 2020, and will come into force on a date to be fixed, likely in early 2020.

The amendment ordinance introduces a number of key changes to the law:

Liquidation

- Grants the Guernsey Court the power to compulsorily wind up insolvent non-Guernsey companies. Until now, the Court has only had such power over Guernsey companies.
- Introduces a requirement that a liquidator of an insolvent company be independent (and so could not be for example a director or former director of the company).
- Exempts companies in liquidation from the requirement to have their accounts audited.
- Grants liquidators the power to disclaim onerous property.

Administration

- Provides that administrators must call an initial meeting of creditors, and send an explanation to creditors of the aims, and likely process of, the administration. Although this often happens in practice, there is currently no obligation to do so, and the change will give creditors greater comfort that their interests are being protected.
- Grants the Court the power to order dissolution of a company, following the discharge of an administration order, where it appears to the Court that a company has no assets that might permit a distribution to creditors. This will remove one stage in the administration process in this scenario, reducing time and cost.
- Gives administrators the power to make distributions to creditors where they think it likely to assist the achievement of any purpose for which the administration order was made.

Powers of liquidator/administrator

- Provides administrators and liquidators with more power to obtain information and documents from officers, employees and those involved in the formation of companies.
- Grants a liquidator or administrator the power to apply to the Court to set aside transactions at an undervalue, in addition to current powers of a liquidator to bring actions for misfeasance in office or the making of unfair preferences to creditors.

- Gives liquidators/administrators the ability to apply to the Court to set aside extortionate credit transactions, for example where a loan is provided on terms that are exorbitant or grossly unfair compared with the risk accepted by the creditor.
- Requires administrators and liquidators to report delinquent officers of insolvent companies to the Registrar of Companies or, in the case of supervised companies, to the Guernsey Financial Services Commission.
- Establishes an Insolvency Rules Committee, nominated by the Committee for Economic Development, which may make rules relating to the dissolution, winding up, liquidation and administration of companies. Key rules are likely to include provisions for a formal proof of debt process.

Conclusion

The amendments to the law follow a comprehensive consultation process that involved professional and industry stakeholders. They are aimed at further improving and updating Guernsey's corporate insolvency regime and filling perceived gaps in the current regime. They are not likely to radically change the approach taken to the conduct of insolvencies in Guernsey. Rather, the amendments provide clarity around many of the processes to be adopted and give statutory footing to the powers of officeholders to investigate and pursue misconduct of corporate officers. The changes are consistent with Guernsey's alignment to general principles of UK corporate insolvency processes, while providing welcome flexibility and simplification.

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