

UPDATE

Changes to Guernsey's insolvency regime in force from 1 January 2023

Update prepared by Abel Lyall and Iona Mitchell (Guernsey)

Amendments to Guernsey's corporate insolvency legislation will come into force on 1 January 2023.

Long-awaited amendments to Guernsey's insolvency law will come into force on 1 January 2023. Introduced by the Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020, the provisions are aimed at further improving and updating Guernsey's corporate insolvency regime. The amendments stem from a wide-ranging consultation finalised in 2017 and represent the most significant development of Guernsey's insolvency law since 2008.

The amendments introduce a number of key changes to the law:

Liquidation

- Grant 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.
- Introduce 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).
- Exempt companies in liquidation from the requirement to have their accounts audited.
- Grant liquidators the power to disclaim onerous property.

Administration

- Provide 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.
- Grant 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.
- Give 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

- Provide administrators and liquidators with more power to obtain information and documents from officers, employees and those involved in the formation of companies.
- Grant 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.
- Give 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.

- Require 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.
- Establish 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. A number of new rules have approved by the Committee for Economic Development and will come into effect on 1 January 2023.

The new provisions only apply to liquidations or administrations commenced on or after 1 January 2023.

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