

Winding up foreign companies in Guernsey

UPDATE

Update prepared by Abel Lyall and Iona Mitchell (Guernsey).

The Royal Court in Guernsey will soon be able to wind up foreign companies.

Recent changes to Guernsey's insolvency regime will mean that, for the first time, foreign companies can be compulsorily wound up in Guernsey.

The changes are contained in the Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020, which was approved by the States of Guernsey on 15 January 2020 and will come into force on 1 January 2023 further to regulations made by the Committee for Economic Development. The amendment introduces the concept of the 'non-Guernsey company' which applies to any overseas company (or other body prescribed for these purposes) but not a company registered in the Guernsey register of companies.

When can a foreign company be wound up in Guernsey?

Under section 418B(3) of the Companies (Guernsey) Law, 2008 (as amended) (the **Companies Law**) the circumstances in which a non-Guernsey company may be wound up by the Royal Court are:

- the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
- the company is unable to pay its debts within the meaning of the existing statutory test under section 407 of the Companies Law (i.e. it fails to comply with a statutory demand within 21 days or if it fails the solvency test); or
- the Court is of the opinion that it is just and equitable that the company should be wound up.

These are narrower than the circumstances in which a Guernsey company may be wound up by the Court under section 406 of the Companies Law, although the other parts of the Companies Law dealing with winding up of companies apply, with necessary modifications.

Although the precise parameters of the jurisdiction are yet to be tested, it is likely that Guernsey will follow the approach adopted in England & Wales that there must be a "sufficient connection" with Guernsey in order for the Royal Court to exercise its discretion to wind up the foreign company. This will mean that foreign companies having a place of business, a branch office or assets in the jurisdiction may be susceptible to winding up by the Guernsey Court. In addition, it is likely that those seeking to wind up the foreign company will need to show that they will benefit from the winding up.

Advantages

Guernsey-based fiduciaries and corporate service providers commonly administer companies incorporated in a variety of other jurisdictions. In many cases, the assets of the company will be located in or controlled from Guernsey, and as such the ability to wind up the company in this jurisdiction is a significant advantage.

The changes give foreign office-holders the ability to seek winding up orders in Guernsey and obtain an appointment in this jurisdiction, ancillary to the winding up being conducted in the company's own jurisdiction.

There is also the potential for creditors and shareholders to apply for a winding up of a foreign company in Guernsey unconnected with any foreign proceedings. This may be attractive way to shortcut the need to seek a winding up in the foreign jurisdiction and then recognition in Guernsey, where the business, the company's directors and managers or its assets are located in Guernsey.

Both circumstances allow the liquidator to use the full powers available to them under the Companies Law, including those to investigate the affairs of the company, rather than the more limited powers available by way of foreign recognition. It can also lead to far great efficiencies where large aspects of the companies, business are administered in Guernsey.

Conclusion

The new provisions are a welcome addition and reinforce Guernsey role as a leading international financial services centre. Members and creditors will have a much-improved ability to obtain efficient and effective relief where companies have business or assets in Guernsey.

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