

Administration orders in Guernsey

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Introduction

This Guide explains the procedure for administration order proceedings in respect of Guernsey companies.

Administration orders

The purpose of administration orders

The provisions for Guernsey companies to be placed into administration are set out in Part XXI of the Companies (Guernsey) Law, 2008 (the **Law**). Insolvency Rules contained in the Companies (Guernsey) (Insolvency Rules) Regulations, 2022 (the **Insolvency Rules**) provide more detail about certain aspects of Guernsey insolvency procedures, including administration orders.

Administration is an insolvency procedure that provides for the appointment of a person (the administrator) to manage the affairs of a company that is insolvent or likely to become insolvent. Administration has the potential to be used as a 'rescue' procedure, and is designed to give the company sufficient breathing space to maximise value or enabling better realisations for creditors. Unlike compulsory winding-up, it is not a terminal process. A significant feature of administration is the imposition of a moratorium against most types of creditor claims. This prevents those creditors from commencing proceedings or applying for the winding up of the company. However, the moratorium does not apply to claims of secured creditors whose security interests remain protected.

Commencement of administration

Guernsey does not have an 'out-of-court' process for appointing administrators, therefore an application for the appointment of an administrator must be made to the Royal Court of Guernsey (the **court**).

Applications can be made by the company itself, its directors and any member or creditor. If the company is supervised or engaged in financial services businesses, the Guernsey Financial Services Commission (the **GFSC**) may also apply to the court for the appointment of an administrator.

Notice of the application must be served on the company and, if the company is supervised or engaged in financial services business, on the GFSC. Notice should also be given to the Registrar of Companies at least two clear days before the application is made, who will give notice of the application as they think fit, normally by publication on the Registry website. The Court retains the discretion to order service on any other person as the court may direct, which may include any creditor.

Grounds for an administration order application

The court may grant an administration order if (i) the company does not satisfy or is likely to become unable to satisfy the **solvency test**; and (ii) the making of an administration order may achieve one of the statutory purposes.

A company fails to satisfy the **solvency test** when:

- it is unable to pay its debts as they become due (the **cash flow test**), or
- its liabilities exceed its assets (the **balance sheet test**).

In addition, a supervised company that has a capital adequacy requirement will fail the solvency test if it does not maintain the requisite capital adequacy.

The statutory purposes for which administration orders may be made are: (a) for the survival of the company (or cell of a protected cell company) and the whole or any part of its undertaking as a going concern, or (b) a more advantageous realisation of the company (or cell's) assets than would be achieved on winding up.

Making of the administration order

It is important to note that upon hearing an administration application the court exercises a discretion as to what action to take and may:

- grant the application on such terms and conditions as it thinks fit
- dismiss the application, and/or

- issue any other orders as it sees fit.

From the time of making an application for an administration order the moratorium will apply preventing any resolution being passed or order being made for the winding up of the company, or any proceedings being commenced against the company by creditors other than secured creditors. Where an administration order is made, the moratorium will continue for the duration of the administration. Claimants will be unable to commence proceedings against the company without the consent of the administrator or leave of the court. As noted above the moratorium does not interfere with security interests and the rights of secured creditors are unchanged.

Conduct of the administration

When the court makes an administration order, it will normally appoint an administrator at the same hearing. The administrator will be sworn into office and has the duty to take into their custody and control all the property of the company and to manage the affairs of the company in accordance with any directions of the court. The administrator has broad powers to do all such things as may be necessary or expedient for the management of the affairs, business and property of the company. These include the various specific powers set out in Schedule 1 of the Law. In addition, the administrator may make a distribution to a creditor of the company if the administrator thinks it likely to assist the achievement of any purpose for which the administration order was made. Administrators may also apply to the court for directions and the court has the power to make directions as to the extent for performance of any function or any other matter arising in the court of the administration.

The administrator needs to give notice of the making of the administration order to the registrar and the company 'forthwith' and, unless the court directs otherwise, to all known creditors within 28 days. The notice to creditors needs to include an invitation to an initial meeting of creditors and an explanation of the aims of and the likely process of the administration. The initial meeting of creditors must be within 10 weeks of the date of the administration order, or such other period as the court may direct.

The Insolvency Rules make provision for the functioning of creditor meetings including the notice period, notice content, location, quorum, chair, voting, suspension and adjournment, minutes and electronic communications.

The administrator may dispense with the requirement to call an initial meeting of creditors where there are no assets available for distribution to creditors and the administrator has given notice of this fact to all known creditors within 28 days of the administrator's appointment.

The liability of the administrator in their conduct of the administration is limited. The administrator acts as an agent of the company but does not incur any personal liability, except to the extent their actions have been fraudulent, reckless, grossly negligent or they acted in bad faith. The remuneration, costs, charges and expenses of administration are paid from the company's assets in priority to all other claims.

The company's directors remain in office during the administration but their powers are limited such that they may not exercise those powers where they interfere with the work of the administrator, save for when the administrator grants the directors permission to do so. Directors also have an obligation to provide the administrator, on request, with a statement of affairs setting out details of the company's assets, creditors, security and any other information the administrator may require. The administrator has the power to remove and appoint directors and call a meeting of any members or creditors.

Discharge of an administration order

There is no set time limit for an administration order to remain in effect, and the administration order may be discharged by the court at any time on the application of the administrator. However, once the administrator is satisfied that they have achieved the purpose for which they have been appointed, either by obtaining a maximum realisation of assets on behalf of the company or if the company has been restored to good financial health, or the purpose cannot be achieved, they are required to apply for the administration order to be discharged. Once discharged, the company's directors will resume day-to-day management.

Where the survival of the company was not achieved or was not the purpose for the administration, it is common that on discharge of the administration order the administrator will also apply for the company to be wound up. Where it appears to the court that the company has no assets which might permit a

distribution to its creditors, the court may order that the company is dissolved at the same time as it makes the order for discharge.

Contacts

A full list of contacts specialising in insolvency law can be found [here](#).