

Guernsey liquidations

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Introduction

This Guide explains the procedure for liquidation proceedings in Guernsey, which are separated into two types: (i) voluntary liquidation and (ii) compulsory liquidation.

The provisions are set out in 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, including the functioning of creditor meetings.

Liquidation proceedings

Voluntary liquidation

The provisions for the voluntarily winding up a company under Guernsey law are set out in Part XXII of the Law.

Solvent or insolvent liquidation

A distinction is drawn between solvent and insolvent voluntary liquidations. If the debtor is solvent, it may make a declaration of solvency in form prescribed by the Insolvency Rules which states that, in the opinion of the board, the company satisfies the solvency test. To be effective, the declaration must be made with the period of five weeks before, or on the same day as, the resolution for winding up. The declaration must be submitted to the Guernsey Registry within 30 days.

Commencement

A company may initiate voluntary winding up by passing a special resolution (of at least 75% of its members entitled to vote). If the company's memorandum or articles of association specify that it may be wound up voluntarily at the expiry of a certain period or upon the occurrence of a certain event, the company may be wound up by an ordinary resolution (of 50% or more of the members entitled to vote). The company's members can pass a winding up resolution even if the company is insolvent.

The resolution must be submitted to the Guernsey Registry within 30 days. Once the submission is processed, the Registry status of the company will change to '**Voluntary Winding Up Part 1 (liquidator appointed)**'. If the company is supervised, the winding up resolution should also be sent to the Guernsey Financial Services Commission (the **GFSC**) within 30 days.

Appointment of liquidator

Following the passing of the winding up resolution, the company must by ordinary resolution appoint a liquidator to realise the company's assets, discharge its liabilities and distribute the remaining amount of capital amongst the members. The ordinary resolution must also fix the liquidator's remuneration. The costs, charges and expenses incurred by this appointment (and the liquidation as a whole) are paid from the company's assets in priority to all other claims.

If no declaration of solvency is made, the liquidator must be independent. As such, a director or former director, company secretary or administrator of the company would be ineligible to be the liquidator.

If a declaration of solvency is made but it becomes apparent to the liquidator that the debtor does not satisfy the solvency test, subject to limited exceptions if the liquidator is not independent, they must convene a meeting of creditors to sanction their appointment or the appointment of an alternative liquidator or seek the court's sanction of their appointment.

Where a declaration of solvency has not been made, or the appointment of a liquidator has been sanctioned by a meeting of creditors or the court or an alternative liquidator has been appointed in the circumstances referred to above, the liquidator shall call at least one creditors' meeting within one month of the liquidator's appointment or (as the case may be) the sanctioning of their appointment. This requirement does not apply where, in the opinion of the liquidator, there are no assets available for distribution to the creditors. Notice of the meeting shall be sent to all the company's creditors at least seven days before the meeting and contain notice of the liquidator's appointment (or sanctioning thereof as the case may be) and an explanation of the likely process of the voluntary winding up. Upon the appointment of the liquidator, all powers of the directors cease, unless the liquidator or the company itself

(by ordinary resolution) approves for their powers to be continued. A director who purports to exercise powers is guilty of an offence.

During a voluntary liquidation the company can pass a special resolution to delegate to its creditors, or a committee thereof, the power to (i) appoint a liquidator; or (ii) enter into any arrangement that concerns the powers to be exercised by the liquidator and the manner in which they are exercised. It is also open to either the members or the liquidator to apply to the court for directions on any aspect of the winding up.

While the company continues to 'exist' as an entity until its dissolution, once it goes into liquidation it must cease to carry on business except in so far as may be expedient for the beneficial winding up of the company. The winding up resolution does not create a moratorium on actions being pursued against the company by its creditors, meaning that creditors may continue to commence or continue proceedings against the company or apply for the company to be compulsorily wound up.

Conclusion of liquidation

There are no specific time limits for the completion of a voluntary liquidation. However, should the process remain ongoing, the liquidator must call a general meeting one year from the date of winding up, with annual general meetings continuing until the company's affairs have been wound up. Each meeting must take place within three months immediately following the expiration of the relevant year. The purpose of these general meetings is for the liquidator to provide an account of their conduct of winding up during the year.

The liquidator will call a final meeting to present their final accounts after fully winding up the company's affairs. From here, it must notify the Guernsey Registry of the final meeting by way of an online '**Voluntary Wind Up**' submission. Once processed, the status of the company will change to '**Voluntary Winding Up Part 2 (liquidator final meeting)**' and a notice is published on the Guernsey Registry website. The company will be dissolved three months after the notice is published and its status will be changed for a final time to '**Dissolved (Voluntary Liquidation)**'.

Compulsory liquidation

The provisions for compulsory winding up of a company in Guernsey can be found in Part XXIII of the Law.

An application for the compulsory winding up of a company can be made to the Guernsey Royal Court (the **court**) by the company itself, any director, member or creditor of the company, or another interested party.

Grounds

The Law establishes nine grounds upon which a Guernsey company may be compulsorily wound up, the most common of which being when a company is **unable to pay its debts** or where it is **just and equitable** that the company is wound up.

In addition, the GFSC has the power to submit a winding up application in relation to companies that fall under its remit if it is in the interests of protecting the public or the reputation of the Bailiwick of Guernsey.

A company is deemed as unable to pay its debts in one of two circumstances:

- where a creditor who is owed more than £750 serves a written demand for payment and the company fails to pay within 21 days, save for when an alternative arrangement is made within that time period
There is no need to obtain a judgment debt or to register a foreign judgment in Guernsey before serving the written demand for payment, however it must be served to the company's registered office by the office of Her Majesty's Sergeant (a court official).
- where the company fails to satisfy the **solvency test** because:
 - it is unable to pay its debts as they become due (the **cash flow test**)
 - its liabilities exceed its assets (the **balance sheet test**), or
 - if it is a supervised company, it is failing to comply with all applicable regulatory requirements

A company's inability to pay its debtors can be established by applying the solvency test alone, without the need to serve a statutory demand. In practice, however, a statutory demand is often served by a creditor.

The Guernsey court also has the power to wind up a non-Guernsey company, where:

- the debtor is 'unable to pay its debts'
- it is 'just and equitable' that the debtor be wound up, or
- the debtor is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.

Winding up order

It is important to note that, upon hearing a compulsory winding up application, it is ultimately the court's decision as to what action to take. In arriving at its decision, the court will consider the interests of the company's creditors and:

- 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

Appointment of liquidator

When the court makes a compulsory winding up order, it will often appoint a liquidator at the same hearing. The liquidator will be sworn into office and make an oath as to their actions concerning the winding up of the company. It is common for the party applying for compulsory liquidation to nominate a liquidator, however, if not, the court will either appoint a liquidator or make an interim order for the appointment of a provisional liquidator. As with voluntary liquidation, the liquidator can seek the court's directions on any aspect of the winding up.

Within seven days of their appointment, the liquidator must send a copy of the winding up order to the Guernsey Registry who will publish the notice of winding up.

The powers of directors will cease upon appointment of a liquidator, unless the court or the liquidator requires otherwise. The company must discontinue any business activities except in so far as may be expedient for the beneficial winding up of the company. All costs, charges and expenses incurred in the course of compulsory winding up are paid from the company's assets in priority to all other claims.

Unlike many other jurisdictions, Guernsey does not have a formal 'proof of debt' procedure. In practice, this means that liquidators are required to contact known creditors of the company and advertise the liquidation in local newspapers to request that any other creditors make a claim in the liquidation. Whilst there is no set time limit in which claims should be lodged, it is generally advisable for creditors to do so as soon as possible when they realise that the debtor company is in liquidation.

Commissioner of court

Once the company's assets have been realised, the liquidator will apply for a Commissioner of the court (the **Commissioner**) to be appointed to adjudicate creditor claims.

The Commissioner must: (i) arrange a creditors' meeting to examine and verify the financial statements and creditors' claims and preferences and (ii) set a date for distribution of the company's assets. Notice of the date of the creditors' meeting or the distribution must be published in La Gazette Officielle on two occasions falling in successive weeks. The creditors' meeting or distribution cannot occur before the expiry of fourteen days after the publication of the second notice.

If any claim is disputed, the Commissioner must refer it to the court for a decision.

The Commissioner distributes the assets, paying all charges and expenses in relation to the winding up first. Any surplus from the liquidation is distributed amongst the members in accordance with the company's constitution.

Conclusion of liquidation

Within 15 days of making their final distribution the liquidator must apply to the court for an order declaring the company as dissolved.

Companies in liquidation (voluntary or compulsory) are exempt from the requirement to have their accounts audited.

Contacts

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

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at mourant.com. © 2024 MOURANT OZANNES ALL RIGHTS RESERVED