

Reforms to Guernsey's Insolvency Laws to be introduced

Service area / [Restructuring and Insolvency](#)

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With the States of Guernsey's approval yesterday of the Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 (the "Ordinance"), Guernsey took a step towards further enhancing its reputation as a robust jurisdiction for restructuring and insolvency.

While the previous regime served its purpose, supported by Guernsey's adaptable and practical judicial system, the new Ordinance should be welcomed by businesses and practitioners alike when it comes into force likely in the first quarter of 2020. After an extensive period of scrutiny and consultation, it had been recognised that there were several areas in which Guernsey's insolvency laws needed reform, including:

- The creation of a method to end an administration by dissolution. Until now, a liquidation has been needed if a company could not be rescued;
- The expansion of liquidators' and administrators' investigatory powers in respect of directors and officers, and an increase in their powers to pursue recovery action for stakeholders;
- An increase in the responsibilities on liquidators and administrators to report director misconduct to the Registrar and GFSC;
- Greater consultation with creditors in insolvent liquidations;
- Greater independence requirements for liquidators of insolvent companies;
- A proof of debt procedure;
- The creation of a basic set of insolvency rules to support the changes being introduced.

We look below at the key proposed changes and why each is important and beneficial to all stakeholders who may experience a corporate insolvency in Guernsey.

New powers for Administrators and Liquidators

Administrators and liquidators will now have a duty to report to the Registry and, where applicable, the GFSC if a disqualification order may be appropriate in respect of a delinquent director.

Among the new increased powers available to liquidators will be the power to compel the production of documents from directors and officers and to appoint an Inspector of the Court to examine directors and company officers.

Liquidators and administrators will now be able to pursue recovery of transactions at an undervalue and extortionate credit transactions – a power notable by its absence in the previous law.

Further new powers available to liquidators and administrators include the ability to require utility suppliers to continue supplying relevant companies even if they are in arrears, and to disclaim burdensome property.

Why is this important?

The ability to properly investigate the reasons for the failure of a company is vital for office holders when seeking to maximise the potential returns for creditors. Equally, external confidence that deliberate wrongdoing can and may result in disqualification acts as both a deterrent for delinquent behaviour but also enhances the Island's existing reputation as a jurisdiction in which to do business.

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Increased efficiency in administrations

It was recognised that there was a need to streamline administrations and avoid the need to enter liquidation unless really necessary. The new Ordinance will permit an administrator, in certain circumstances, to apply to the Court for distribution of assets to unsecured creditors. Further, when an Administration Order has been discharged and there are no further assets to realise or distribute, an administrator will now be able to apply for dissolution of the company without the company having to enter liquidation.

Subject to certain exceptions, administrators will also be required to hold an initial creditors' meeting and provide a creditors' report.

Why is this important?

Guernsey's existing administration regime only allows an exit from the process by survival of the company or through a subsequent liquidation. In cases where the facts are sufficiently clear, that additional cost and time burden can now be avoided, potentially leading to better returns to creditors and faster payment of them.

Compulsory winding up for foreign companies

Under the existing regime, there is no ability for the Royal Court to wind up a non-Guernsey registered company. In light of Guernsey's modern status as an international finance centre providing administration and asset management services to many foreign companies, this was a lacuna in the law which has now been filled.

Why is this important?

This change brings Guernsey in line with other major jurisdictions and will allow the Royal Court to apply the Guernsey regime to foreign companies where they have a sufficient connection to the jurisdiction. It provides comfort to those doing business with entities operating or with assets in Guernsey but not registered here, that they will have access to the jurisdiction's insolvency regime if necessary.

Delineation between solvent and insolvent voluntary liquidations

Voluntary liquidation in Guernsey is a useful tool for dealing with the affairs of companies at the end of their life but also, in certain circumstances, insolvent entities. The existing law contains no delineation between solvent and insolvent situations, leading to concerns about the protection of creditors. A mechanism has been needed to ensure the independence of liquidators of insolvent companies, and the new regime provides for this via its declaration of solvency requirements.

Under the new Ordinance, company directors seeking voluntary liquidation will need to declare whether the company in question satisfies the solvency test. If the company cannot declare itself solvent, a liquidator will be appointed with no links to the company in the form of current or past directorships. Aside from some limited exceptions, that independent liquidator will be required to report to creditors and hold a creditors' meeting.

Why is this important?

Voluntary liquidation is a popular tool that, when used properly, offers an effective mechanism for winding up the affairs of certain insolvent companies. The revisions offer a sensible compromise to reassure creditors as to the veracity of the process without removing it from the restructuring tool kit.

New insolvency rules

It has long been recognised that simple new insolvency rules would be needed to aid the implementation of reform. These are currently being drafted, and are expected at the outset to cover: creditors' meetings, resignation of liquidators; duty to report delinquent officers; the form of declaration of solvency; disclaiming assets and proof of debt procedure. These rules will supplement the existing Guernsey Insolvency Practice Statements which set out voluntary best practice.

Why is this important?

The creation of a fluid set of insolvency rules and a committee to keep them under review allows Guernsey to move quickly to address issues that arise in practice and to constantly update its procedures, increasing the efficiency of the regime.



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