

## Collas Crill guiding you through... Placing a Jersey company into UK administration

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Jersey is a popular place to establish an asset holding company because the **Companies Law** is modern, flexible and modelled on English companies legislation.

Where a Jersey company:

- holds real estate or assets located in the **UK**; and
- encounters financial difficulty or becomes **insolvent**,

one of the potential options available to the company and its creditors is to place the company into administration under the **UK Insolvency Act**.

This guide looks at the key things you need to know about placing a company into administration under the **UK Insolvency Act**.

Words in bold text are defined at the end of this guide.

### What is administration?

Administration is a corporate insolvency procedure available under the **UK Insolvency Act**. Its primary purpose is to rescue a company in financial difficulty by allowing it to restructure its business with a view to returning to profitability.

The procedure involves the appointment of a licensed insolvency practitioner (called an administrator) who will manage the company's business and assets instead of its directors, although the directors remain in office.

Immediately upon an administration application being filed with the **UK Court**, a statutory moratorium applies. The moratorium stops any creditor (including a secured creditor) from exercising its rights against the company and its assets during the administration without the approval of the **UK Court** or administrator. This means that a creditor cannot:

- start any insolvency proceedings against the company;
- enforce security over any of the company's assets; or
- start or continue any legal process or proceeding against the company or its assets.

The moratorium is fundamental to rescuing the company because it gives the company breathing space:

- to formulate and implement a restructuring plan to rescue the company; or

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- if the company cannot be rescued, to realise the company's assets to maximise value for its creditors as a whole,

by protecting the company's assets from creditor actions.

## Why place a Jersey company into administration?

### Limitations of Jersey insolvency procedures

Unlike some other jurisdictions, Jersey does not have a statutory rescue or reconstruction regime, like administration or Chapter 11 proceedings under the US Bankruptcy Code, that allows a company to be restructured and trade out of financial difficulty.

The two primary insolvency procedures under Jersey law are:

- *désastre* proceedings (for more information, see our guide [Désastre proceedings for a Jersey company](#)); and
- a creditors' winding up (for more information, see our guide [A creditors' winding up of a Jersey company](#)).

Neither of these procedures allows a company to trade out of insolvency.

Similarly, although the **Jersey Court** has allowed a winding up on just and equitable grounds to be used to facilitate an **insolvent** company continuing to trade for a limited period of time, ultimately, the procedure results in the company's dissolution (for more information, see our guide [Winding up a Jersey company on a just and equitable grounds](#)).

### Benefits of administration?

In contrast to the Jersey insolvency procedures, the aims of administration are:

- to rescue the company so that it can continue trading as a going concern;
- if that is not possible, to achieve a better result for the company's creditors as a whole than would be likely if the company were put straight into liquidation; or
- if that is not possible, to realise the company's assets to make a distribution to the company's secured or preferential creditors.

In the context of a company that holds **UK** real estate and is in default under its banking documents, its lender may not wish to sell the real estate if the:

- amount owed to the lender exceeds the value of the real estate; or
- prevailing market conditions are unfavourable for a sale of the real estate.

If a letter of request is made to the **UK Court**, it is possible to ensure that the administrator gives priority to any Jersey preferential creditors (like the Comptroller of Taxes).

In light of the above, it may be more beneficial for a company or its creditors to place the company into administration rather than use a Jersey insolvency procedure.

## How do you place a Jersey company into administration?

A company may be placed into administration by applying to the:

- **UK Court** for an order placing the company into administration if the company's **COMI** is in the **UK**; or
- **Jersey Court** for a letter of request which requests the **UK Court** to make an order placing the company into administration.

For the reasons given below, a letter of request is the option that is most frequently used.

## Application on basis of COMI in the UK

Under the **UK Insolvency Act**, the **UK Court** has the power to place an **insolvent** company incorporated outside the **UK** into administration if its **COMI** is in the **UK**.

However, there are a number of potential disadvantages to making an application to the **UK Court** to appoint an administrator on the basis of **COMI**, including the following.

- The administrator may need to take steps in Jersey (where assets like bank accounts, shares in subsidiaries and debts may be located) and will not be recognised by the **Jersey Court** unless it makes an application to be recognised.
- It leaves open the possibility that another creditor may try to start a rival Jersey insolvency procedure.
- Normally, a company is managed and controlled in Jersey to ensure that it is not treated as **UK** tax resident, so asserting that its **COMI** is in the **UK**, may expose it to the risk of being taxed in the **UK**.
- The introduction of the **Economic Substance Law** (which requires a company that is tax resident in Jersey to carry out its management, and have resources located, in Jersey) means that, in many cases, it is unlikely that a company's **COMI** will be in the **UK**.
- Where a creditor wants to make an application, it may be unable to obtain sufficient information to prove that the company's **COMI** is in the **UK**.

Therefore, unless it is clear that a company's **COMI** is in the **UK**, an applicant should apply to the **Jersey Court** for a letter of request.

## Letter of request

### Power of UK Court

The **UK Court** does not have the power under the **UK Insolvency Act** to appoint an administrator in respect of a Jersey company unless its **COMI** is in the **UK**.

However, if the **UK Court** receives a letter of request from the **Jersey Court** requesting it to appoint an administrator in respect of a Jersey company which has its **COMI** outside the **UK**, the **UK Court** may do so exercising its power under the **UK Insolvency Act** to assist a foreign court on insolvency matters.

## Power of Jersey Court

The **Jersey Court** does not derive its power to issue a letter of request from statute, but rather its inherent power in respect of a Jersey company.

Consequently, it is necessary to look to case law to determine the requirements that must be satisfied to make a successful application.

## Who may apply?

Only an **eligible person** may apply to the **Jersey Court** for a letter of request.

## Role of the Viscount

Before making an application, an applicant must consult with, and send a draft of the application to, the **Viscount** to:

- ensure that the **Viscount** does not object to the application; and
- address any issues raised by the **Viscount**.

The **Viscount** will scrutinise the application and will be primarily concerned to ensure that:

- administration (as opposed to a Jersey insolvency procedure) is the most appropriate insolvency procedure in the circumstances; and
- no Jersey creditors will be prejudiced if an administration order is made.

## Making an application

The application comprises a representation (which is like a petition) and an affidavit which confirms the details in the representation. The representation and affidavit must establish that:

- the applicant, if a creditor, has a liquidated claim (a debt to which there is no reasonably arguable defence) against the company;
- the company is **insolvent**;
- the company has substantial assets located in, and a substantial connection with, the **UK**; and
- administration is the most effective method of collecting and administering the company's assets in the interests of all its creditors.

The application must include (among other things):

- a draft of the letter of request; and
- an opinion of an English lawyer stating that in that person's opinion:
  - the **UK Court** would accept the letter of request;
  - the letter of request would allow the **UK Court** to consider whether to make an administration order; and
  - it is likely that the **UK Court** would agree to appoint an administrator and take the other actions sought in the letter of request.

## Hearing

An application is normally heard in open court, but can be made in private and without notifying Jersey creditors. The **Jersey Court** has, however, said that if an applicant knows there are Jersey creditors, the applicant should notify them if it is reasonably proportionate to do so.

Although the **Viscount** may discuss and comment on the application documents and form of the letter of request, the **Viscount** would not normally attend the hearing of the application.

## What factors does the Jersey Court take into account?

The factors the **Jersey Court** has taken into account when considering an application for a letter of request include the following.

- Does the applicant have a liquidated claim against the company?
- Is the company **insolvent**?
- Does the company have substantial assets located in, and a substantial connection with, the **UK**?
- Is the **UK Court** likely to make an administration order in respect of the company?
- Is administration the most effective method of collecting and administering the company's assets in the interests of all its creditors, for example, because:
  - it will facilitate a higher sale price being achieved by allowing **UK** real estate to be held until market conditions improve or to allow it to be developed;
  - an administrator has wider powers to manage the company's business than other potential officeholders (like a receiver or the **Viscount**);
  - it will achieve a better outcome for creditors than a Jersey insolvency procedure; and
  - if the assets of the company were declared en désastre:
    - the **Viscount** would need to seek recognition in the **UK** and employ **UK** agents which would incur additional costs; and
    - important contracts which may need to be assigned to a potential buyer may be terminated by the company's insolvency?

- Is administration in the interests of the company?
- Is administration in the public interest?
- Will administration allow the company to be sold as a going concern and safeguard the jobs of employees?
- Would there be duplication of costs if there were to be concurrent insolvency proceedings in respect of the company in Jersey and in the **UK**?

## Issue of letter of request

If the **Jersey Court** is satisfied that it is appropriate to do so in the circumstances, it will issue the letter of request.

The issue of a letter of request is a discretionary remedy, so even if all of the requirements necessary to make a successful application have been satisfied, the **Jersey Court** will only issue a letter if it thinks administration is appropriate in the circumstances.

The **Jersey Court** has, for example, refused to issue a letter of request where the **insolvent** company was not going to be rescued as a going concern, it was unclear whether the **insolvent** company had a substantial connection with the **UK** and the **Jersey Court** considered that *désastre* proceedings were more appropriate.

## Terms used

**COMI** means the centre of main interests of a body corporate as determined under the European Regulation (2015/848) on Insolvency Proceedings.

**Companies Law** means the Companies (Jersey) Law 1991.

**Economic Substance Law** means the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

**eligible person** means a company or a creditor of the company.

**insolvent** means a company is unable to pay its debts as they fall due.

**Jersey Court** means the Royal Court of Jersey.

**UK** means the United Kingdom of Great Britain and Northern Ireland.

**UK Court** means the High Court of England and Wales.

**UK Insolvency Act** means the Insolvency Act 1986 of the **UK**.

**Viscount** means the head of the executive arm of the courts of Jersey.

## **About Collas Crill**

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

## **About this guide**

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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