

Insolvency update to the Companies (Guernsey) Law 2008

April 2017

Last week, the States of Guernsey approved amendments to the Companies (Guernsey) Law 2008 that will modernise the corporate insolvency regime in Guernsey. The amendments will affect the liquidations and administrations of companies. Below is summary of the key amendments:

Administration

Creditors' Committee Procedures in Administration – there is currently no obligation in Guernsey to call a meeting of creditors when conducting an administration. The proposal is that administrators should be obliged to call at least one initial meeting of the company's creditors within a set number of days after appointment. They should also be required to send notice of their appointment to creditors with an explanation of the process and its aims.

Exit from Administration – only the Court can bring the administration to an end by either making a winding up order or discharging the administration. The amendment is that the Court should have the power to permit dissolution of the company at the same time as discharging an administration order. This reform will essentially streamline the current process by removing the step of liquidation.

Winding up

Requirement for independence in an insolvent voluntary winding up – there is no statutory restriction on who can be appointed as a liquidator of a Guernsey company. Whilst the Royal Court exercises a form of 'quality control' in making compulsory appointments, in a voluntary liquidation the liquidator could be anyone - including a director or shareholder. Given that Guernsey permits insolvent voluntary windings up, there is a clear risk for creditors here. It is proposed that a liquidator appointed to an insolvent company in a voluntary winding up must be independent, with the Court having a power to approve the appointment of a liquidator who does not meet the requirement of independence.

Voluntary winding up and creditor information – where an insolvent company is being voluntarily wound up, notice of a liquidator's appointment should be required to be sent to creditors with the aim of explaining the process. A liquidator should be required to call at least one initial meeting of creditors and there should be an ongoing statutory obligation to report to creditors and shareholders.

Winding up of foreign companies – as an offshore financial centre, a significant number of foreign companies which carry on business in Guernsey and/or have assets under control here. The amendment proposes that the Royal Court should have a statutory power to compulsorily wind up an insolvent foreign company, broadly reflecting the position in English Law.

Transactions at an undervalue and set aside of extortionate credit transactions – currently, express claw back mechanisms are limited to preference payments. It is proposed to address this with the creation of two new claw back options, bringing Guernsey into line with many other common law jurisdictions.

- It is proposed that liquidators and administrators should be permitted to “claw back” transactions at an undervalue via an application to Court. This will allow the Court to order that certain funds be refunded to the company such as gifts to unrelated parties, or commercial transactions where the consideration was significantly less than market value where these transactions took place during the run up to insolvency.
- It is also proposed that liquidators and administrators should be able to apply to Court to ask that extortionate credit transactions be set aside. These are credit transactions which the company enters into in the run up to insolvency, for instance where the company takes out a loan at an extortionate rate of interest which allows that loan creditor a greater recovery than they would be entitled to had the loan been on reasonable market terms.

The amendments are a welcome modernisation of the corporate insolvency regime. They will assist liquidators in extending their available powers and give greater rights to creditors. Further, the amendments will help ensure that the insolvency regimes in Guernsey are equitable and predictable when a business comes to the end of its life in Guernsey.

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