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A major development of the creditors' winding up regime in Jersey

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Currently, the only creditor-driven insolvency process for a Jersey company are désastre proceedings, where the Viscount (the head of the executive arm of the courts of Jersey) is appointed to wind up the company and distribute its assets. This is soon to change.

On 8 February 2022, the States Assembly of Jersey approved amendments to the Companies (Jersey) Law 1991 (the **Companies Law**) which introduce a mechanism that will enable a creditor of an insolvent company to apply to the Royal Court of Jersey (the **Jersey Court**) for that company to be placed into a creditors' winding up (**CWU**) and for a liquidator to be appointed (the **Amendments**).

The Amendments are due to come into force on 1 March 2022 and further demonstrate Jersey's position as a leading international finance centre. The Amendments enhance and protect the interests of creditors and are based upon principles and practices widely recognised in other insolvency regimes.

The material aspects of the Amendments are summarised below.

Applying for a CWU

An outline of the new process for applying for a CWU under the Amendments is as follows:

1. A creditor may apply to the Jersey Court for the commencement of a CWU (the **Application**) if the creditor has a claim against the company for not less than the prescribed minimum liquidated sum (£3,000); and
    1. the company is unable to pay its debts;
    2. the creditor has evidence of the company's insolvency; or
    3. the creditor has the consent of the company to make the Application.

2. A company is deemed unable to pay its debts for the purposes of 1 (above) if:
    1. the creditor served a statutory demand on the company; and
    2. the company has for 21 days since the service of the statutory demand failed to pay the debt or otherwise dispute the debt to the reasonable satisfaction of the creditor.

3. Except in exceptional circumstances, a creditor must provide the company with at least 48 hours' notice of the Application.

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4. A creditor must not make the Application if it has agreed not to do so and/or if the claim solely relates to the repossession of goods.

Provisional liquidation

The Court may, at any time after the Application is made, appoint a provisional liquidator and equip the same with specific powers. On the appointment of the provisional liquidator, no action must be taken or proceeded with against the company except with the permission of the Jersey Court and subject to such terms as the Jersey Court may impose.

Application successful

If the Application is successful, the Jersey Court will order that the company be placed into CWU and may:

- make an order that the CWU is deemed to commence from the date that the Application was made or such other date as the Jersey Court deems fit, and;
- appoint a person nominated by the creditor or the Jersey Court as the liquidator.

The liquidator must within 14 days of its appointment give notice of the appointment to the registrar of the Jersey Financial Services Commission, the Viscount and the directors and creditors of the company (to the extent known). The liquidator must also advertise the ordering of the CWU in the Jersey Gazette within the same period.

Creditor risk

It is worth noting that if, as a result of the Application, an order for a CWU is made and the company was not insolvent at the date of the Application, the company has a right of action against the creditor to recover damages for or in respect of any loss sustained by the company as a consequence of the ordering of the CWU.

However, the company will have no such right of action against the creditor if the creditor is held to have acted reasonably and in good faith.

Termination of the CWU

The company may, at any time during the CWU, apply to the Jersey Court for an order terminating the CWU.

The Jersey Court must refuse such an application if it is not satisfied that the property of the company is at the time of the application sufficient to pay in full all:

- claims filed with the liquidator: or
- claims which the liquidator has been advised will be filed within the prescribed time.

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If you would like to discuss any of the points covered in this briefing, please do reach out to one of the contacts listed or your usual Collas Crill contact.

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