

Guernsey Companies Law: voluntary winding up of companies

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Under the Companies Law winding up of a Company may be voluntary or compulsory. This memorandum has been prepared for the assistance of our clients in connection with the provisions relevant to voluntary winding up of Guernsey incorporated companies under the Companies (Guernsey) Law, 2008 (as amended) (the **Companies Law**). It is intended to provide only a summary of the main legal and general principles and it is not intended to be comprehensive in scope. It is strongly recommended that you seek specific legal advice on such matters and we would be pleased to assist in this respect. A series of briefings on other specific aspects of Guernsey companies has been produced by Ogier and is available on our website www.ogier.com.

The memorandum has been prepared on the basis of the law and practice in Guernsey as at the date of publication.

Introduction

The Companies Law contains provisions for winding up Guernsey incorporated companies, including limited liability companies, companies limited by guarantee, protected cell companies (PCCs), incorporated cell companies (ICCs), incorporated cells of ICCs (ICells), unlimited liability companies and mixed liability companies (**Companies** or **Company** as the context requires).

Winding up is the process by which the affairs of the Company are brought to an end, its assets realised, its liabilities determined and any available funds distributed to those legally entitled to them.

What is voluntary winding up?

A Company may be wound up voluntarily:

- if the period (if any) fixed by its memorandum or articles of incorporation for the duration of the Company expires; or
- on the occurrence of an event upon which the memorandum or articles provide that the Company shall be dissolved, provided that:
 - in each case the Company passes an ordinary resolution/resolves in general meeting that it be wound up voluntarily, or
 - if it passes a special resolution to that effect.

A copy of every resolution (ordinary or special) that a Company be voluntarily wound up must be delivered by the Company to the Registrar of Companies (the **Registrar**) and if the Company is a supervised company (e.g. a Guernsey licensee of a Guernsey regulated fund), to the Guernsey Financial Services Commission, within 30 days of it being passed. The Registrar shall give notice of the fact that the Company has passed such resolution in such manner and for such period as he thinks fit.

A voluntary winding up commences upon the passing of the resolution for voluntary winding up.

What happens after a company commences a voluntary winding up?

Once a voluntary winding up has commenced the Company shall cease to carry on business except as far as may be expedient for the beneficial winding up of the Company. In a voluntary winding up, the Company shall by ordinary resolution (i) appoint a liquidator to wind up its affairs and to realise and distribute its assets; and (ii) fix his remuneration. Upon the appointment of the liquidator the powers of the directors cease unless the liquidator or the Company in general meeting sanctions their continuance. Having realised the Company's assets and discharged its debt, the liquidator will distribute any surplus amongst the members according to their respective entitlements.

If for any reason no liquidator is appointed as set out above, an application may be made by any member or creditor for a liquidator to be appointed by the Royal Court.

The Companies Law contains provisions requiring the filing of accounts by the liquidator at general meetings on the expiration of each year after the commencement of the voluntary winding up and the holding of a final meeting to approve the liquidator's final accounts prior to the dissolution of the Company. Notice of the holding of the final meeting must be lodged at the

Companies Registry, and the Company is deemed to be dissolved three months after the date that the liquidator gives notice to the Registrar that the final meeting has been held and the date on which it was held.

Under the Companies Law, the Company may, by special resolution, delegate certain powers to its creditors, or a committee thereof, relating to the winding up subject to certain rights of appeal. A member of the Company which is being voluntarily wound up may apply to the Royal Court for directions in respect of any aspect of the winding up and upon such order the Royal Court can make such order as it deems fit.

All costs charges and expenses properly incurred in the voluntary winding up of the Company, including the remuneration of the liquidator, are payable from the Company's assets in priority of all other claims.

The Royal Court may, notwithstanding the passing of a resolution for the voluntary winding up of a Company, entertain an application for the compulsory winding up by the Company, by any director, member or creditor thereof or by any other interested party.

For further information in relation to the compulsory winding up of companies, please refer to our client briefing entitled "Guernsey Companies Law: Compulsory Winding up of Companies". In addition to voluntary and compulsory winding up of Companies, the Companies Law also provides for administration orders in relation to Companies and protected cells of PCCS (**PCells**) and receivership orders in respect of PCells. It is not possible either to voluntarily or compulsory wind up one or more ICells except in the course of the winding up of the whole of the ICC of which they form part.

Variation of the Rules for PCCs

PCCs are subject to modified liquidation procedures (compared to other types of Company).

Broadly this means that, notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a PCC the liquidator:

- is bound to deal with the scellular assets and to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells; and
- in discharge of the claims of creditors of the PCC, shall apply the s assets to those entitled to have recourse thereto in conformity with the relevant provisions of the Companies Law relating to PCCs and PCells.

There are also a number of special provisions in relation to the assets and liabilities of the PCells and PCC and the manner in which these are to be dealt with (please see the Ogier client briefing entitled "Guernsey Companies Law: Protected Cell Companies and Incorporated Cell

Companies".

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Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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Meet the Author



Bryon Rees

Partner

Guernsey

E: bryon.rees@ogier.com

T: [+44 1481 752312](tel:+441481752312)

Key Contacts



Christopher Jones

Partner

Guernsey

E: christopher.jones@ogier.com

T: [+44 1481 752337](tel:+441481752337)



Tim Clipstone

Partner

British Virgin Islands

Guernsey

E: tim.clipstone@ogier.com

T: [+44 1481 752265](tel:+441481752265)



Michelle Watson Bunn

Managing Associate

Guernsey

E: michelle.watsonbunn@ogier.com

T: [+44 1481 752220](tel:+441481752220)



Richard Sharp

Partner

Guernsey

E: richard.sharp@ogier.com

T: [+44 1481 752257](tel:+441481752257)

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