

Restructuring and Insolvency measures in Jersey – April 2020

Insights - 20/04/2020

Background

Jersey imposed travel restrictions in response to the Coronavirus crisis in March 2020 and has been operating a full lockdown for all residents, apart from essential workers, since 30 March.

The vast majority of employees in the Jersey financial services industry are now working from home and there has been no interruption to business continuity for the sector.

The Government, the Courts and the Jersey Financial Services Commission (the "JFSC") including the Companies Registry and the Security Interests Register are all operating using a mixture of remote working and essential worker presence. The JFSC have confirmed that while their physical premises are closed, a flexible business continuity strategy is being implemented and they intend to take a pragmatic approach when dealing with filings, submissions and responding to clients (with the vast majority of filings and submissions being done online).

In terms of the key components of the Jersey financial services sector, we would note the following as regards potential insolvency reforms.

Local Jersey Business

We understand that the Government's aim for business is to help preserve as many local jobs as possible, maintain Jersey's key economic infrastructure, and make sure Jersey will navigate the medical emergency and be in a strong position to recover quickly once the pandemic is over. As such, the priorities are to maintain cash flow so that people can remain in employment, businesses do not have to close permanently and businesses can restart trading as soon as social distancing and other containment measures ease.

With this in mind, the Government has announced various initiatives to support local business including the Coronavirus Government Co-Funded Payroll Scheme, the Business Disruption Loan

Guarantee Scheme, the Jersey COVID-19 Special Situations Fund (formerly the Jersey Recovery Fund), deferral of Social Security and GST payments, deferral or renegotiation of rent where the Government is a landlord, and issuing guidance to be followed by landlords and tenants of commercial property during the coronavirus crisis.

Please see the "International Jersey Business" section below regarding potential insolvency reforms.

Regulated Jersey Business

The JFSC is responsible for regulating and supervising Jersey's financial services industry, including Jersey entities which conduct regulated activities and non-Jersey entities which conduct regulated activities in or from within Jersey. Jersey does not have a special insolvency regime for regulated entities and it is unlikely that any financial resource/capital adequacy requirements will be relaxed by the JFSC at the present time.

However, the JFSC has announced that it is mindful of the disruption and challenges that regulated businesses are currently facing and has therefore extended various regulatory deadlines, including those relating to submission of audited and unaudited financial statements and other regulatory filings. The JFSC has also reminded regulated businesses of the importance of complying with their notification obligations under the JFSC Codes of Practice.

International Jersey Business

Recently the UK government announced proposals for a temporary suspension of wrongful trading provisions for directors with retrospective effect from 1 March 2020 and for accelerating proposed amendments to the UK's insolvency laws first announced in 2018 to include new restructuring tools and provide greater protection to companies in financial difficulty.

Jersey is a creditor friendly jurisdiction and does not impose a moratorium on enforcement of security following the commencement of insolvency proceedings. It is important that any insolvency measures introduced do not disturb any international financing transactions structured using Jersey entities and do not affect secured creditors' rights.

Although it is too early to say what insolvency measures may be adopted in Jersey in response to the coronavirus crisis, it is worth noting the following:

- Although Jersey's wrongful trading statutory provisions are similar to the UK equivalent provisions, one key difference is that in Jersey it is a defence to a wrongful trading claim if a director takes "reasonable steps" with a view to minimising potential loss to the company's creditors after the point at which there is no reasonable prospect of avoiding insolvent liquidation, whereas the UK equivalent defence requires the director to take "every step" to minimise potential loss to the company's creditors. UK case law on directors' duties

(including in relation to insolvency) is highly persuasive in Jersey;

- Jersey does not have an equivalent of English law administration or other rescue procedures (apart from schemes of arrangement) and its corporate insolvency procedures are focused on liquidation using winding up or *désastre* procedures, with secured creditors able to enforce their perfected security during those procedures; and
- There are proposals currently under discussion for the Companies (Jersey) Law 1991 to be amended to fill a gap and allow a creditors' winding up to be commenced by a creditor (via an application to the Jersey court) rather than this procedure always being commenced by special resolution of the shareholders.

Jersey will no doubt continue to monitor international developments with insolvency reform, while protecting its status as a leading international finance centre, a creditor friendly jurisdiction and a good place to do business.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



[Damian Evans](#)

Partner

Jersey

E: damian.evans@ogier.com

T: [+44 1534 514378](tel:+441534514378)

Key Contacts



Bruce MacNeil

Partner

Jersey

E: bruce.macneil@ogier.com

T: [+44 1534 514394](tel:+441534514394)

Related Services

Banking and Finance

Corporate

Dispute Resolution

Legal

Related Sectors

Restructuring and Insolvency