

Restructuring and Insolvency Jurisdiction Guide: Jersey

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| Domestic Procedures

What are the principal insolvency procedures for Companies in your jurisdiction?

Court-ordered creditors' winding up;
Shareholder-led creditors' winding up;
Désastre; Just and equitable winding up.
A Scheme of Arrangement procedure can also be used for a company to come to an arrangement with creditors.

Are any of the procedures available on a provisional basis?

No.

Court-ordered creditors' winding up

- A creditor, with a claim of not less than £3,000 against a Jersey company, may make an application to the Court for an order commencing a creditors' winding up.

creditors winding up.

- To make an application for a creditors' winding up, the creditor must establish that:
 - the debtor company is unable to pay its debts as they fall due
 - the creditor has evidence of the company's insolvency; or
 - the creditor has the consent of the company

(the Court-Ordered CWU Requirements)

- A company will be deemed to be "unable to pay its debts" pursuant to (a) above if within 21 days of the creditor serving a statutory demand (in the prescribed form) on the company it fails to either:
 - pay the debt it owes to the creditor; or
 - dispute the debt to the reasonable satisfaction of

the creditor

Shareholder-led creditors' winding up

- A special resolution of the shareholders of the company
- No declaration en désastre already been made
- The directors must give at least 14 days' notice calling a creditors' meeting to be held immediately after the shareholders' meeting
- At the creditors' meeting, the directors must give a statement of affairs of the company verified by affidavit

What requirements are to be satisfied for the procedures to be pursued?

Désastre:

- Application by the debtor; creditor; the JFSC
- The debtor must:
 - i) Be ordinarily resident in Jersey or at any time in the preceding 12 months
 - ii) Be carrying on business in Jersey or at any

Jersey or at any time in the preceding 3 years

iii) Hold immovable property in Jersey capable of realisation

iv) Be a Jersey company or limited partnership or limited liability partnership

- To have standing to apply, a creditor must have an unsecured net and undisputed debt of at least £3000
- A debtor is insolvent if it is unable to pay its debts as they fall due

Just and equitable winding up

- Application to the Royal Court by the company, a director, a shareholder, the Minister for External Relations, Minister for Treasury and Resources or the JFSC
- No declaration en désastre already made and;

- The court is of the opinion that it is just and equitable, or expedient in the public interest, to do so
- A wide jurisdiction and may be available if désastre or creditors' winding up not available/in the interests of creditors

Creditors' Scheme of Arrangement

- Court convened meeting of creditors
- Support of 75% in value of creditors or class of creditors

Court-ordered creditors' winding up

- The creditor must give the company 48 hours' notice before applying to the Court (except in exceptional circumstances).
- Notice of the application must be placed in the Jersey Gazette by the creditor no later than 24 hours before the application is heard by the Court.

- Application documents must be provided to the Bailiff's Chambers and the Judicial Greffe by 5pm on the Tuesday immediately preceding the Friday on which the application will be heard by the Royal Court.
- The Court will review the application to determine whether to approve or dismiss the commencement of the winding up process and the appointment of a liquidator.
- The Court may appoint a provisional liquidator at any time between the application being made and the winding up order, if necessary to prevent the dissipation of a distressed debtor's assets.
- At the hearing, if the Court is satisfied that at least one of the Court-Ordered CWU Requirements has been fulfilled, it may grant an order for winding up the

What is the procedure and how long typically does it take?

winding up the company and appoint a liquidator(s) effective from a time deemed fit by the Court.

- The Court will only appoint a liquidator who is a member of the "Register of Approved Liquidators," administered by the Viscount.

Shareholder-led creditors' winding up

- Members' meeting on at least 14 days' notice to pass special resolution to wind up the company and recommend a person to be appointed as liquidator
- Creditors' meeting convened to occur immediately following (on the same day) the members' meeting to appoint a liquidator and consider the company's statement of affairs
- Creditors to be given at least 14 days' notice by post of the meeting and an

advertisement is to be published in the Jersey Gazette a minimum of 10 days prior to the meeting

- The creditors may appoint a liquidation committee

Désastre

- Commenced by Demande supported by a standard form statement and affidavit
- Typically ex parte and so full and frank disclosure obligation
- The Viscount (Chief executive officer of Royal Court of Jersey) must receive at least 48 hours' notice of the application and be provided with the drafts of the order sought and the supporting documents
- Court has discretion whether to grant the declaration and can adjourn for notice to be given to the debtor

Time to make application varies but likely a number of weeks (depending on time to

(depending on time to prepare evidence)

Just and equitable winding up

- Application by Representation supported by affidavit
- Interested parties can be convened or directed to be given notice
- Court has discretion whether to order the winding up/appoint a liquidator

Creditors' Scheme of Arrangement

- Initial application to Court to convene meeting(s) of creditors or classes of creditors
- Holding of meeting(s) of creditors or class(es) of creditors
- Second hearing to obtain Court sanction for the arrangement

The time to complete the administration of a winding up or *désastre* will be fact specific and can be years.

<p>Can any procedures be pursued without the involvement of the Court?</p>	<p>Yes. Shareholder-led creditors' winding up.</p>
<p>What is the effect upon control of the company and its assets during those procedures?</p>	<p>Court-ordered and Shareholder-led creditors' winding up</p> <ul style="list-style-type: none"> • Powers of the directors will cease, (except so far as sanctioned by the creditors) upon appointment of a liquidator/committee • The liquidator/committee will have all the powers of the directors, which must be exercised as may be required for the company's beneficial winding up <p>Désastre</p> <ul style="list-style-type: none"> • All the property and powers of the debtor company, save property held on trust by the debtor for another person, will immediately vest in the Viscount • No transfer of the company's shares without the sanction of the Viscount; and • The Viscount will realise the

company's assets,
discharge its
liabilities and
distribute realisations
to the creditors

**Just and equitable
winding up**

- Court will direct the conduct of the winding up and often directs that general winding up provisions in the Companies Law will apply

Creditors' Scheme of Arrangement

- Dependent upon the terms of the arrangement

Court-ordered and shareholder-led creditors' winding up

- Yes. Upon the appointment of a liquidator no one may continue or commence an action against the company or in relation to its assets or enforce or continue to enforce any right against or over its assets, without the Court's sanction. This does not affect the rights of secured creditors

Is there an automatic moratorium and if so when does it come into effect and what is its effect?

Désastre

- Yes. Upon the appointment of the Viscount no one may continue or commence an action against the company or in relation to its assets or enforce or continue to enforce any right against or over its assets, without the Viscount's sanction. This does not affect the rights of secured creditors

Can companies be forcibly wound up other than when insolvent?	Yes. Just and equitable winding up.
To what extent are the procedures designed to facilitate a rescue of a company's business?	Jersey does not have a prescribed corporate rescue procedure. There has been an increasing use of the just and equitable winding up procedure (eg, pre-pack sale, complete contract, trade stock).
Can the procedures be used to facilitate the sale of all or part of the insolvent company's business?	Yes.

Cross Border

Statutory recognition:
Jersey can provide

To what extent do the Courts in your jurisdiction lend assistance to overseas appointees (through recognition) and in what circumstances?

assistance to
overseas
appointees
from
designated
“relevant”
foreign
jurisdictions,
being:
Australia,
Finland, the
UK, Guernsey
and Isle of Man
if requested by
way of a letter
of request. The
Royal Court
may still have
regard to
where the
debtor
company’s
centre of main
interest is as
well as to the
UNCITRAL
Model on Cross
Border
Insolvency Law
and is required
to regard to
the rules of
private
international
law.
**Common law
recognition:**
The Royal
Court has
inherent
jurisdiction

founded in comity and reciprocity to assist foreign courts. The Royal Court typically requires a letter of request from the foreign court and confirmation of reciprocity.

Are there any limitations typically imposed in respect of the recognition of an overseas appointee?

Under statutory recognition the overseas appointee may have the same powers as granted by the law of the requesting jurisdiction or pursuant to Jersey law. It is a matter for the Court as to which powers might be granted.

What kinds of overseas appointees have been recognised in your jurisdiction?

Foreign liquidators, administrators, trustees in bankruptcy, provisional liquidators and

fixed charge
receivers have
been
recognised in
Jersey.

Creditors

Immovable property

- Security over freehold property is taken by way of a registered encumbrance known as an hypothec. A judicial hypothec involves registering the obligation (e.g. a promissory note, a bond or a judgment debt) with the Public Registry; a hypothec conventionnelle results from agreement between the parties; a hypothec légale is constituted by operation of

What are the principle forms of security taken in your jurisdiction in respect of movable and immovable property?

law (e.g.
rights of
légitime)

Movable property

- Tangible
movable
property – a
pledge
(physical
delivery of the
tangible
movable
property)
- Intangible
movable
property – a
security
interest
created under
the Security
Interest
(Jersey) Law
2012 (various
conditions
must be
satisfied)

For a security
interest created
under the
Security Interest
(Jersey) Law 2012
which has been
perfected there is
no effect on the
power of the
secured part to
enforce.

<p>What is the effect on secured creditors of the commencement of an insolvency procedure?</p>	<p>Immovable property will vest in the Viscount or the Liquidator, as the case may be subject to any hypothec. The hypothec will be extinguished upon sale of the property by the Viscount or the Liquidator, as the case may be.</p>
<p>Which creditors are preferred and to what extent?</p>	<p>Secured creditors in respect of immovable property are paid first out of the proceeds of sale of the property against which the hypothec is registered.</p> <p>Employees (6 months' salary and holiday pay and bonus), health insurance, income tax, parochial rates and rent (to the extent permitted under customary law).</p>
	<ul style="list-style-type: none"> • Fees and expenses (including commissions

What is the position regarding the recoverability and quantum of liquidator's fees and expenses of the insolvency procedure?

in a désastre levied by the Viscount against the value of assets realised [up to 10%] and distributed [up to 2.5%]), are payable out of the estate

- Liquidator's fees are those as agreed with the liquidation committee or creditors or, failing agreement, as fixed by the Royal Court (typically by reference to market rates)

Avoidance transactions

Potentially "voidable transactions" comprise:

- preferences
- transactions at an undervalue
- extortionate credit transactions

Other than extortionate credit transactions, the transaction must be a transaction entered into when the company is insolvent or which causes the company to become insolvent, unless the transaction was with a connected person, in respect of whom the transaction, if within the relevant period, is voidable unless it is proved that the company was not insolvent or caused to become insolvent by the transaction.

The relevant period is:

- 12 months prior to the:
 - declaration of désastre; or
 - commencement of the creditor's winding up in the case of an unfair preference (either by special resolution for a shareholder-led creditor's winding up or by Court order in the case of a

What, if any, categories of transaction can be avoided/set aside?

court-ordered
creditor's
winding up)

- 5 years in the case of transactions at an undervalue or extortionate credit transactions

A “connected person” includes related companies, and directors and members of the company and related companies.

Who is responsible for seeking orders to set aside such transactions?

The Viscount or the liquidator.

Contributions to the liquidation estate and liability of officers

Yes, in the case of directors:

- Wrongful trading: director knew or ought to have known there was no reasonable prospect of avoiding insolvency (unless they also took every reasonable step to minimise loss to creditors) or
- Fraudulent

trading:
business carried
on with the
intention to
defraud
creditors or for
some other
fraudulent
purpose

Can directors or shareholders be required to contribute to the liquidation estate?

Yes, in the case of shareholders:

- To the extent of their liability in respect of capital contributions
- If the shareholder had received payment in respect of the redemption of shares within the 12 months prior to the désastre or passing of the special resolution commencing the creditors' winding up and such payment was not made from distributable profits/proceeds of a share issue

What liability can directors or other officers attract in respect of an insolvent company?

Directors may attract liability for:

- Wrongful trading – a director or officer could be held liable for debts of the company arising after the time where there was no reasonable prospect of the company avoiding winding up/désastre
- Fraudulent trading – a director or officer knowingly party to the fraudulent carrying on of business could be liable to contribute to the company's assets as the Court thinks proper

Where, upon an application by the Minister for External Relations, or the Attorney General, or the JFSC, the

In what circumstances can directors be disqualified as a consequence of a company being wound up?

Court is satisfied that the relation to a company makes the person unfit to be concerned in the management of a company.

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