

Restructuring and Insolvency Jurisdiction Guide: Jersey

Insights - 17/05/2024

Domestic procedures

	<p>Court-ordered creditors' winding up</p> <ul style="list-style-type: none">• 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.• to make an application for a creditors' winding up, the creditor must establish that:<ul style="list-style-type: none">(a) the debtor company is unable to pay its debts as they fall due(b) the creditor has evidence of the company's insolvency; or(c) the creditor has the consent of the company <p>(the Court-Ordered CWU Requirements)</p> <ul style="list-style-type: none">• A company will be deemed to be "unable to pay its debts" pursuant to above if within 21 days of the creditor serving a statutory demand (in the prescribed form) on the company it fails to either:<ul style="list-style-type: none">(a) pay the debt it owes to the creditor; or(b) 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

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 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 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 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

Court-ordered and Shareholder-led creditors' winding up

- 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

Désastre

- 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

	<p>Court-ordered and shareholder-led creditors' winding up</p> <ul style="list-style-type: none"> • 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 <p>Désastre</p> <ul style="list-style-type: none"> • 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

Cross border

	<p>Statutory recognition: Jersey can provide 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</p> <p>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</p>

Creditors

	<p>Immovable property</p> <ul style="list-style-type: none"> • 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 law (e.g. rights of légitime) <p>Movable property</p> <ul style="list-style-type: none"> • 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)
	<p>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> <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>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 in a <i>désastre</i> 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)
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Avoidance transactions

	<p>Potentially “voidable transactions” comprise:</p> <ul style="list-style-type: none"> • preferences • transactions at an undervalue • extortionate credit transactions <p>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.</p> <p>The relevant period is:</p> <ul style="list-style-type: none"> • 12 months prior to the: <ul style="list-style-type: none"> (i) declaration of <i>désastre</i>; or (ii) 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 court-ordered creditor's winding up) • 5 years in the case of transactions at an undervalue or extortionate credit transactions <p>A “connected person” includes related companies, and directors and members of the company and related companies</p>

Contributions to the liquidation estate and liability of

officers

	<p>Yes, in the case of directors:</p> <ul style="list-style-type: none"> • 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 <p>Yes, in the case of shareholders:</p> <ul style="list-style-type: none"> • 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
	<p>Directors may attract liability for:</p> <ul style="list-style-type: none"> • 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

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