Ogier welcomes Guernsey's new insolvency law

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Ogier welcomes the enactment on 8 December 2022 of Guernsey's new insolvency law and rules, due to come into force on 1 January 2023, which significantly modernise Guernsey's insolvency process.

The changes come at a time of increasing insolvency as a result of the ongoing impact of the pandemic, the war in Ukraine and resultant cost of living crises in many global economies.

The new law brings a significant set of reforms to Guernsey's insolvency legislation, which historically had limited operational provisions, bringing it in line with comparable jurisdictions such as England & Wales. It remedies issues in the previous regime such as the lack of creditor oversight in a voluntary liquidation and the lack of statutory claw-back provisions. The changes improve the assistance that Guernsey can provide to foreign insolvency office holders, especially those outside the UK. The Guernsey Royal Court also now has the ability to wind up foreign companies, which could be used in group-wide restructurings where the main proceedings are being run from Guernsey.

Ogier partner Alex Horsbrugh-Porter has played a key role in the development of the new insolvency regime as a member of the Insolvency Rules Committee, which has developed a set of rules to supplement and provide useful background and content to the changes implemented.

Alex Horsbrugh-Porter said: "The new legislation presents a wholesale modernisation of Guernsey's insolvency law, and the legislative tools are now in place to ensure that liquidators and administrators can quickly and efficiently gather in the assets of insolvent companies and return them to the creditors. Former directors can no longer refuse to provide documents or answer questions and third parties that hold diverted company assets can now be forced to return those assets. Administrations are also likely to be cheaper as administrators can now distribute assets to secured and preferential creditors and then place the company straight into dissolution, and liquidators can now rid themselves of unwanted contracts and property. All of this will likely save money and preserve assets for creditors, and is a welcome and substantive change which finally brings Guernsey into line with many other Commonwealth jurisdictions."

Mathew Newman, Global Head of Restructuring and Corporate Recovery at Ogier added: "Guernsey can be regarded as an "start/end of the line" jurisdiction in insolvency terms. It is the start of the line because insolvency proceedings are often commenced in the Royal Court of Guernsey, but much of the substantive activity during the insolvency process takes place elsewhere. Conversely, it is the end of the line because insolvency office holders appointed in other jurisdictions come to Guernsey to seek assets or information held in Guernsey, for the benefit of creditors. The new reforms have enhanced Guernsey's cross-border capability in respect of both points."

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