

Restructuring and Insolvency measures in Guernsey – April 2020

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Introduction

The States of Guernsey imposed enforced a 14 day self-isolation period for all entrants to the Bailiwick of Guernsey from 19 March, and imposed a lockdown system for all residents, apart from essential workers on 25 March. There are no now flights from or to the Bailiwick except for a daily flight to Southampton, primarily for medical needs. This will continue until 31 May 2020. The lockdown period has been extended to 23.59 on Saturday 18 April and will be reviewed after the Easter weekend. At present, whilst there are a number of COVID-19 cases on the island of Guernsey (and four COVID-19 related deaths so far) there are so far no cases at all in either Sark or Alderney.

Financial services firms are working remotely and there has been no business interruption, with the island's internet infrastructure seemingly able to cope with the different way of working. The various arms of government are also working remotely, with States of Guernsey meetings taking place observing social distancing measures when it meets. The Magistrate's Court continues to operate for urgent cases, and the Royal Court of Guernsey sits to hear urgent family/childcare cases, and sits remotely (using Microsoft Teams) to hear ongoing civil cases. Parties are encouraged to agree interlocutory directions where possible and, if appropriate, ask for a determination on the papers. The Guernsey Financial Services Commission also continues to operate as normal (albeit with remote working) with a number of minor derogations as detailed below.

Many of the key emergency legislative measures put in place by the States of Guernsey so far have been aimed at protecting the local economy, with the focus on prevention of insolvency rather than insolvency itself.

Domestic Guernsey Business

The key measures introduced by the States can be summarised as follows:

- A hardship fund, administered by the Guernsey social security department, for individuals with the greatest need who may not be able to claim income support or sickness benefit. It is designed primarily to assist seasonal workers whose livelihoods will be greatest affected by the current pandemic and to ensure that they do not leave their sectors (e.g. tourism).
- Support for workers has been offered, on an individual case-by-case basis for those who have been made redundant or who are struggling financially because they are caring for dependants or they are sick.
- The Coronavirus Payroll Co-Funding Scheme will assist employers by paying an amount equivalent to 80% of the minimum wage level, with employers having to meet the other 20% or greater if they are able to. There is a list of sectors to which this is applicable (all locally focussed), and there are conditions which must be met for employers to claim these benefits.
- A grant will be made available to small businesses and the self-employed. The grant will be a sum of £3,000 and again there are conditions attached to eligibility for the scheme.
- A guarantee scheme will see the States of Guernsey working with the high Street banks to provide loans to trading businesses with an annual turnover of less than £10m. Loans will be unsecured up to £250,000 and all loans will be guaranteed by the States of Guernsey.
- The States of Guernsey have suspended mooring fees for commercial fishermen in the harbours at St Peter Port and St Sampson to ease the burden on the fishing industry.
- Tax on real property (business rates) and social insurance payments have been deferred from Quarters 1 and 2 to Quarter 3 and rent due to the States of Guernsey from business tenants has also been deferred.

In addition, it is understood that the States are looking at various measures to prevent the insolvency of local businesses. These may include significantly increasing the minimum threshold for a statutory demand to be served under section 407 of the Companies (Guernsey) Law, 2008 from its current £750, and imposing a temporary moratorium on the presentation of winding up applications by creditors.

As Guernsey does not have a personal insolvency regime, measures may be put in place to make it more difficult for landlords to evict tenants and to prevent the enforcement of judgments over personalty on a temporary basis.

Regulated and International Guernsey Business

The Guernsey Financial Services Commission issued a statement on 24 March 2020 recognising that there would be difficulties for some entities to meet their regulatory obligations. However, the derogations permitted by the Commission are of a purely practical nature and do not permit regulated businesses to deviate from the substantive conditions of their licences. Thus, the

Commission has extended the deadline for audited financial returns, simplified the procedure for filing personal questionnaires for alternate directors, extended some time periods for dealing with statutory requirements and extended the period that regulated businesses will have to respond to letters from the Commission in relation to risk mitigation programmes.

In addition, there has been some guidance (read our briefing [Economic Substance, Corporate Tax residence and the implications of Coronavirus \(COVID-19\) in Guernsey](#)) that the rules in relation to economic substance will be relaxed in so far as the Guernsey Revenue Service will take a pragmatic view of the requirement to hold board meetings in Guernsey if this is not possible because of travel restrictions.

The potential measures in relation to statutory demands and winding up applications are equally applicable to regulated and international businesses, but note that it is unlikely that the measures would prevent the Commission, or indeed the directors, from initiating administration or winding up proceedings in relation to a distressed company.

It is not known whether Guernsey will follow the proposed measures in the United Kingdom by changing the rules in relation to wrongful trading and introducing legislation to allow the "cram down" of stakeholder rights in a scheme of arrangement, making re-organisations and restructurings easier in the short term. Given the nature of business in the Bailiwick, it is unlikely that such reforms would be introduced at short notice, with the principal objective of the emergency measures to protect the local economy, and local trading businesses, as far as possible.

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