

Snapshot: enforcement against personal property in Guernsey – arrêts and désastre

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In order to proceed against a debtor's personal property in Guernsey, customary law remedies are used which start with the arrest of a debtor's goods but which allow all creditors to share in the proceeds in the event that the monies owed are greater than the debtor's assets.

Arrêts

Once judgment is obtained against a debtor, the 'arresting creditor', will either:

1. provide a certified copy of the Act of Court to Her Majesty's Sheriff who will then arrest as much of the debtor's personal property as amounts to the debt value (Arrêt Execution); or
2. Prior to judgment obtain permission from the Bailiff to arrest goods. (Arrêt conservatoire)

The arrest is usually carried out by way of an inventory and the debtor's undertaking not to dispose of the assets listed. The arresting creditor will summons the debtor to court to confirm the arrêt, and for permission for the arrested goods to be sold at public auction after placing notices in La Gazette Officielle.

If no further creditors have come forward in response to the Gazette notice, once the sale of the goods has taken place, the arresting creditor actions HM Sheriff by summons to be paid the proceeds of the sales after costs have been deducted.

If there are other creditors who have responded to the Gazette notice, HM Sheriff will declares this in the reply to the arresting creditor's summons. Where there are several creditors and insufficient funds from the proceeds of the auction, désastre proceedings will commence.

Désastre

Désastre is a customary law procedure sharing features with bankruptcy such as the inability to pay one's debts, but does not in fact constitute bankruptcy. In Guernsey, when a person (or

corporate entity) has current liabilities exceeding the value of their assets, they are declared *en état de désastre*. The main difference with bankruptcy is that *désastre* does not constitute a discharge for the debtor of their liabilities; if a creditor uncovers more assets at a later point, new *désastre* proceedings may be started. Further, *désastre* applies only to the debtor's personalty arrested within Guernsey. Under *désastre*, the debtor can continue to do business and is not required to make a full disclosure of their assets.

In the event that the proceeds of the auction are insufficient to satisfy the arresting creditor's debt in full, the Court will order that notice is to be given for the arresting creditor, debtor and all other known creditors to appear before a Jurat acting as Commissioner of the Court to establish their claims and preferences.

The Commissioner will fix a date for the creditors' meeting. It is then the responsibility of the arresting creditor to publish in *La Gazette Officielle* and the Royal Court building notice of the time, place and date of the meeting for two consecutive weeks.

At the creditors' meeting, creditors present will submit their claims to the Commissioner who will then determine whether their debt is accepted, with any disputes being referred to the Royal Court. The Commissioner will verify the debts and once the accepted claims are established, the Commissioner will marshal them according to the preferences governed by the Preferred Debts (Guernsey) Law 1983, the Preferred Debts *Désastre* Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law 2006. Proceeds are generally paid as dividends in the order of:

1. costs of proceedings to HM Sheriff, the arresting creditor, and other creditors (including legal costs)
2. secured debts on the arrested personalty i.e. a security interest
3. landlord hypothecation (which may apply to any personal property found on the premises which appear to be owned by the debtor)
4. preferred debts (e.g. wages and tax contributions) - provided the proceeds from the sale of the seized assets are sufficient they are all paid in full. If there are not sufficient funds the debts will abate in equal proportions due to them all ranking equally; and
5. any unsecured debts

At the conclusion of the creditors' meeting, estimates will be provided of the dividends payable to the creditors as detailed above. The Commissioner will produce a report for the Royal Court, who will then provide orders to HM Sheriff to make the relevant payments.

Désastre proceedings do not remove the possibility of remedies relating to any realty belonging to the debtor via saisie proceedings. Although there will be clear financial consequences for the debtor due to their loss of assets, *désastre* does not hold any punitive repercussions for the debtor.

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