

Restructuring and Insolvency Jurisdiction Guide: Guernsey

Insights - 26/02/2024

Domestic Procedures

Answer

Liquidation (winding up) and administration.

A Scheme of Arrangement procedure can also be used for a company to come to an arrangement with creditors.

The main reasons are that a company is unable to pay its debts or that it is just and equitable to do so. A recent Guernsey case has also seen a company wound up because it failed to provide accounts to its members.

Voluntary liquidation - whether company is

whether company is solvent or insolvent

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Administration

The company must be insolvent and the Court must be satisfied that an administration order can either

- (a) Ensure that the company survives or can be sold as a going concern or
- (b) that there will be a more advantageous realization of the company's assets than on liquidation

Scheme of Arrangement

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- (a) Court to establish that it has jurisdiction to call meetings of creditors/members
- (b) Holding the meeting themselves in order to obtain the

75% approval of the scheme; and
(c) Seeking the court's sanction in respect of the scheme

Compulsory liquidation - no specific time and the Court does not tend to impose time limits.

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The liquidator:

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Voluntary liquidation - no specific time limits

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Administration - no timeframe as to how long an administration order remains in force. Court can set a time limit but rarely does so

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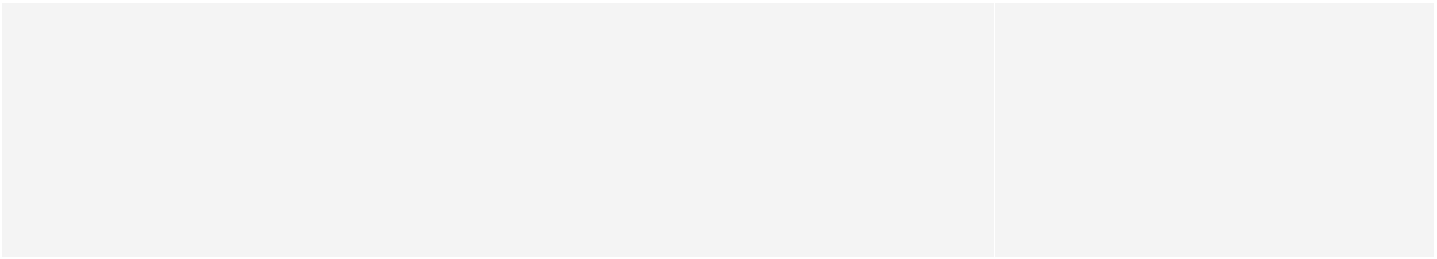
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The administrator:

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Scheme of Arrangement



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No. There is no moratorium in either a compulsory or voluntary liquidation. While the administration order is in force, no resolution may be passed or order made for the winding up of the company, and any application on foot for the company's winding up shall be dismissed. No proceedings can be commenced or continued against the company except with the consent of the administrator or the leave of the Court, and if the Court gives leave, to such terms and conditions as the Court may impose. This is a creditor-friendly moratorium so that creditors with security and creditors with set off may enforce those rights notwithstanding the moratorium in place.

Yes, if:

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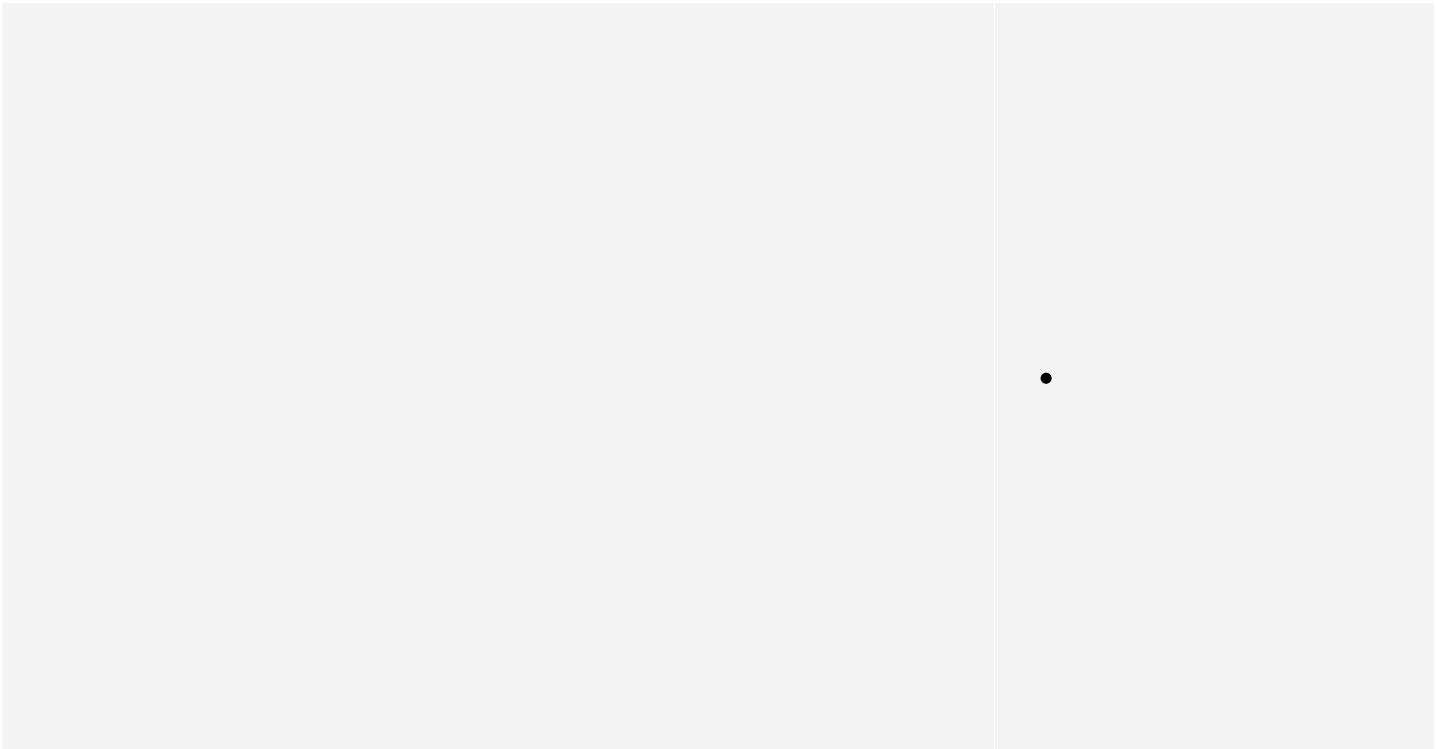
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The GFSC can make an application for the winding up of a company which will be granted if the Court is persuaded that the company should be wound up for the protection of the public or the reputation of the Bailiwick.

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Cross Border

Answer

Yes it can under new powers given to it in recent legislative changes. The company in question must have assets or be administered in Guernsey, so as to have a sufficient connection to it. These changes reflect the same powers that the English courts have to wind up foreign companies and will be a useful tool where a company, whilst not registered in Guernsey, is managed and

managed and operated from the island.

Statutory recognition: Guernsey will provide judicial assistance in relation to insolvency matters to the courts of England and Wales, Scotland, Northern Ireland, the Isle of Man and Jersey.

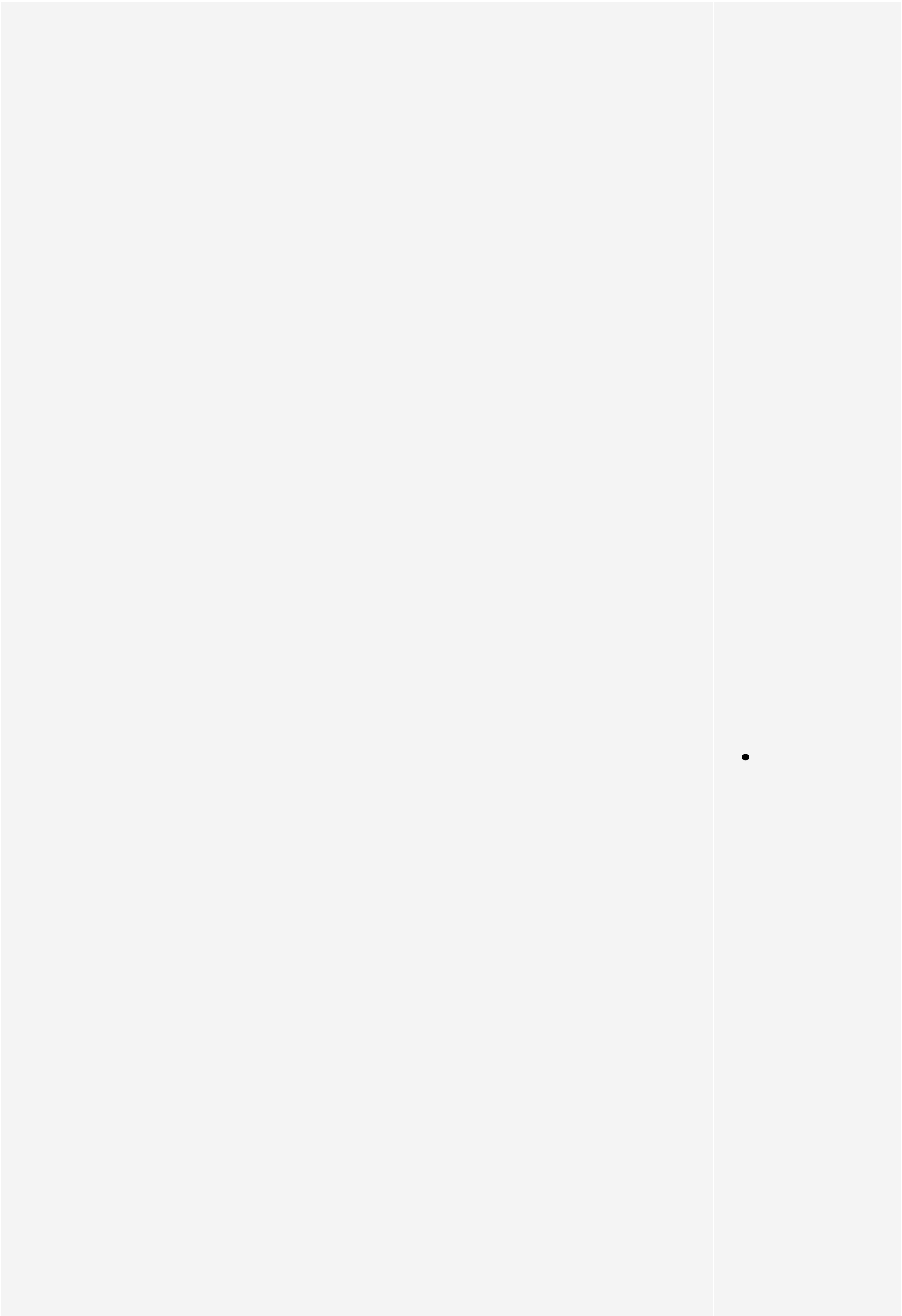
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However, the common law concept of “modified universalism” has been restricted following the 2015 Guernsey case of Re X (a bankrupt)

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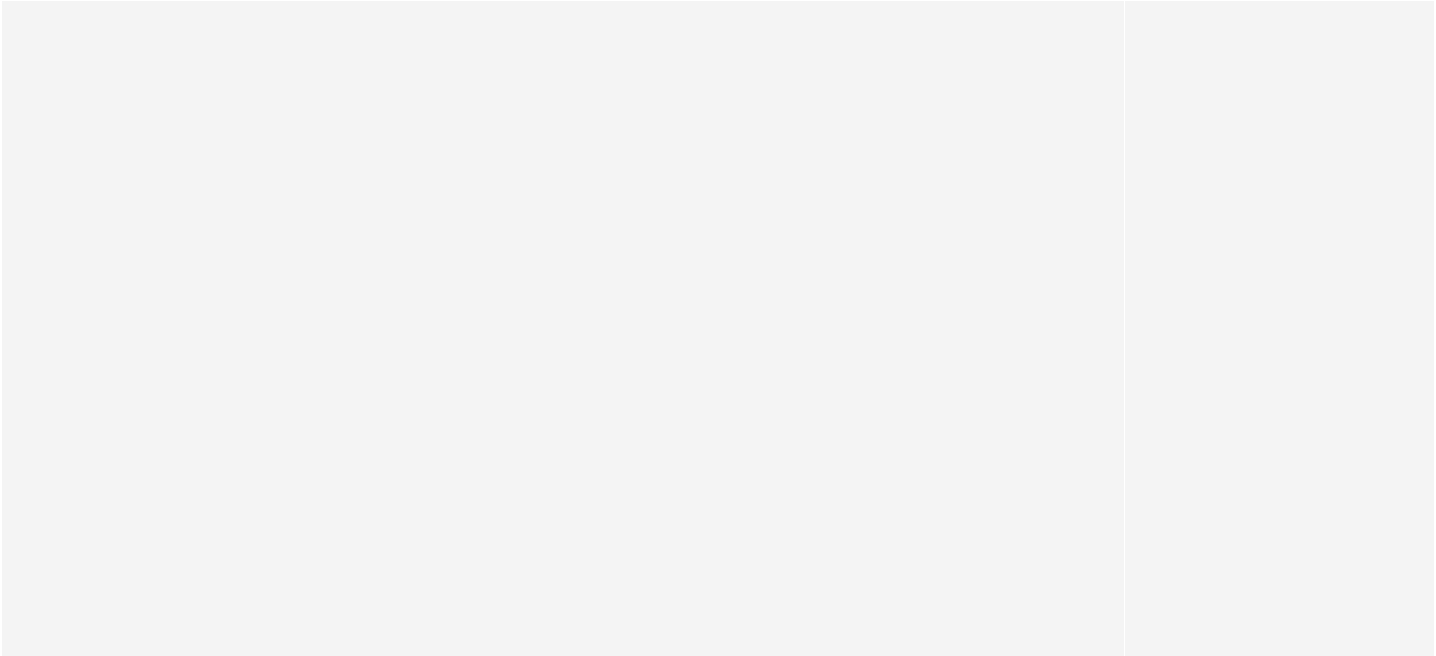


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| Creditors



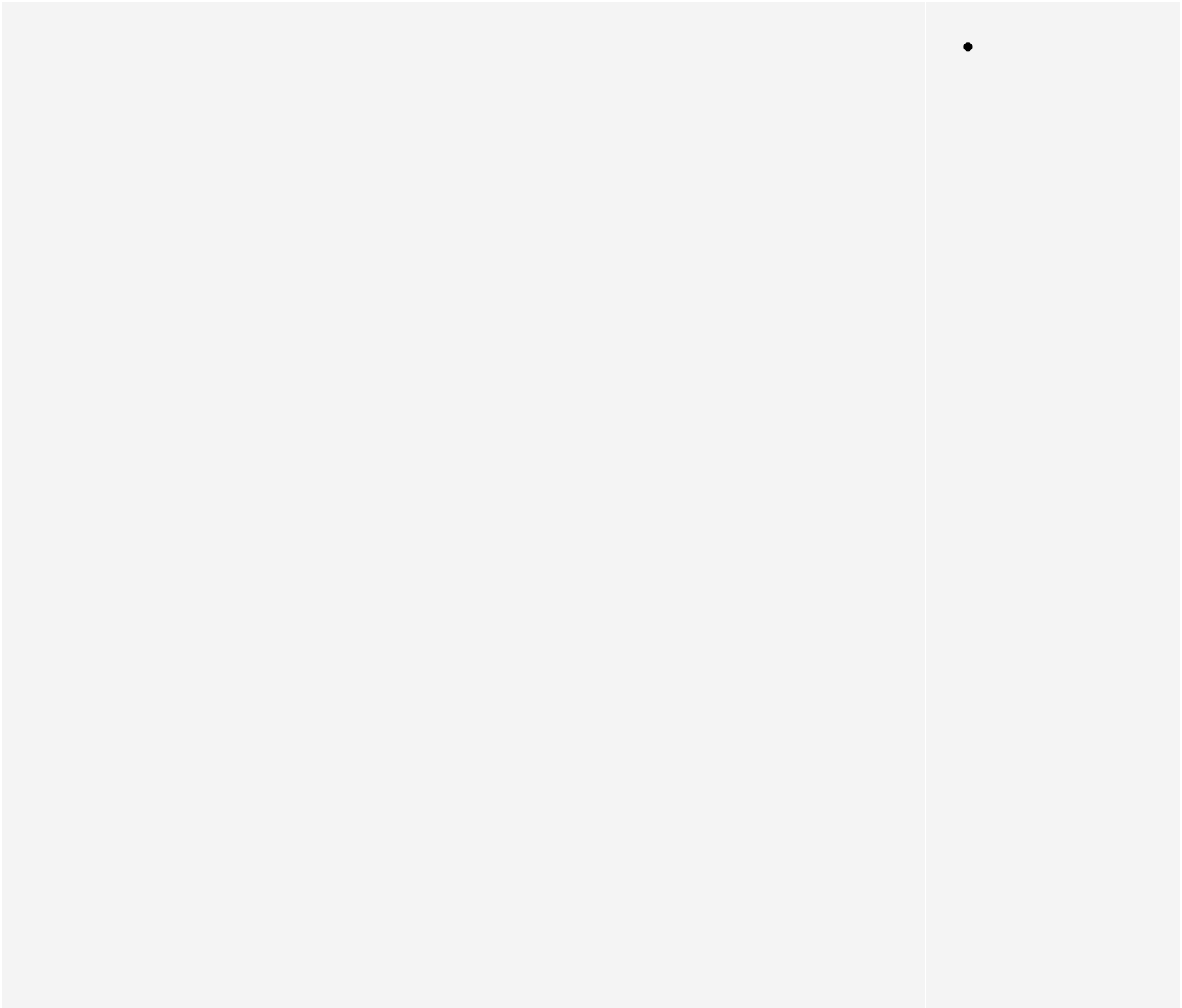
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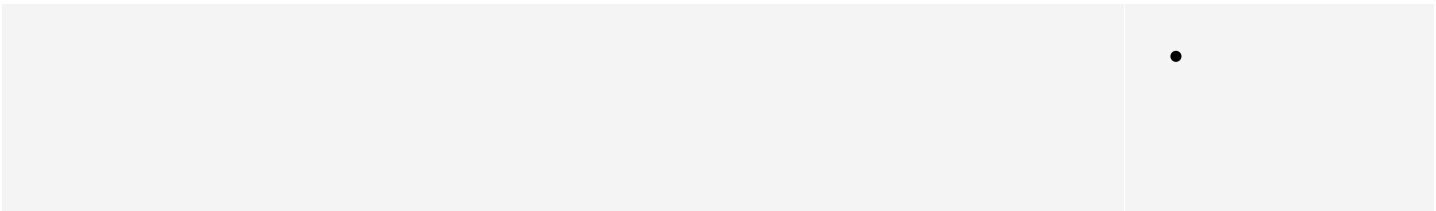
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Avoidance transactions

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Contributions to the liquidation estate and liability of officers

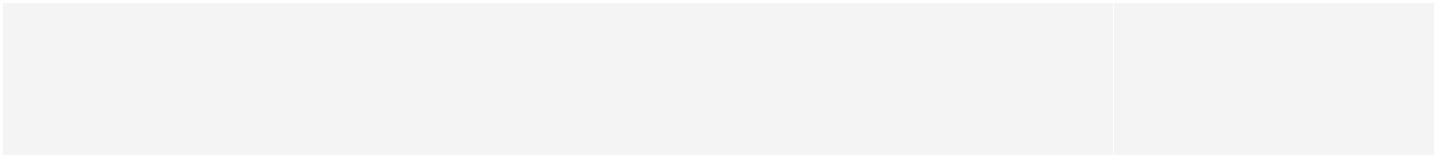
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Can directors or shareholders be required to contribute to the liquidation estate?



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