

Restructuring and Insolvency Jurisdiction Guide: Jersey

Insights - 02/08/2021

Domestic Procedures

What are the principal insolvency procedures for Companies in your jurisdiction?

Désastre; creditors' winding up; just and equitable winding up. A Scheme of Arrangement procedure can also be used for a company to come to an arrangement with creditors.

Are any of the procedures available on a provisional basis?

No.

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

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

Just and equitable winding up

What requirements are to be satisfied for the procedures to be pursued?

- 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 of 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 approved

- Court convenes meeting of creditors
- Support of 75% in value of creditors or class of creditors

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)

What is the procedure and how long typically does it take?

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

Just and equitable winding up

- Application by Representation supported by affidavit
- Interested parties

	<p>can be convened or directed to be given notice</p> <ul style="list-style-type: none"> • Court has discretion whether to order the winding up/appoint a liquidator <p>Creditors' Scheme of Arrangement</p> <ul style="list-style-type: none"> • 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 <p>The time to complete the administration of a winding up or désastre will be fact specific and can be years.</p>
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Can any procedures be pursued without the involvement of the Court?	Yes. Creditors' winding up.
	<p>Désastre</p> <ul style="list-style-type: none"> • All the property and powers of the debtor company, save property held on trust by the debtor for another person,

What is the effect upon control of the company and its assets during those procedures?

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

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

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

	<p>Law will apply</p> <p>Creditors' Scheme of Arrangement</p> <ul style="list-style-type: none"> • Dependent upon the terms of the arrangement
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Is there an automatic moratorium and if so when does it come into effect and what is its effect?

Désastre

- 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

Creditors' winding up

- 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

not affect the rights
of secured creditors

Can companies be forcibly wound up other than when insolvent?	Yes. Just and equitable winding up.
To what extent are the procedures designed to facilitate a rescue of a company's business?	Jersey does not have a prescribed corporate rescue procedure. There has been an increasing use of the just and equitable winding up procedure (eg, pre-pack sale, complete contract, trade stock).
Can the procedures be used to facilitate the sale of all or part of the insolvent company's business?	Yes.

Cross Border

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

To what extent do the Courts in your jurisdiction lend assistance to overseas appointees (through recognition) and in what circumstances?

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.

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.

Are there any limitations typically imposed in respect of the recognition of an overseas appointee?

Under statutory recognition the overseas appointee may have the same powers as granted by the law of the requesting jurisdiction or pursuant to Jersey law. It is a matter for the Court as to which powers might be granted.

What kinds of overseas appointees have been recognised in your jurisdiction?

Foreign liquidators, administrators, trustees in bankruptcy, provisional liquidators and fixed charge receivers have been recognised in Jersey.

Creditors

Immovable property

- Security over freehold property is taken by way

What are the principle forms of security taken in your jurisdiction in respect of movable and immovable property?

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)

**Movable
property**

- 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)

What is the effect on secured creditors of the commencement of an insolvency procedure?

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. Immovable property will vest in the Viscount subject to any hypothec. The hypothec will be extinguished upon sale of the property by the Viscount.

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.

Which creditors are preferred and to what extent?

Employees (6 months' salary and holiday pay and bonus), health insurance, income tax, parochial rates and rent (to the extent permitted under customary law).

What is the position regarding the recoverability and quantum of liquidator's fees and expenses of the insolvency procedure?

- Fees and expenses (including commissions in a désastre 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

committee of
creditors or,
failing
agreement, as
fixed by the
Royal Court
(typically by
reference to
market rates)

Avoidance transactions

**Potentially
“voidable
transactions”
comprise:**

- preferences
- transactions
at an
undervalue
- extortionate
credit
transactions

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

What, if any, categories of transaction can be avoided/set aside?

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.

The relevant period is:

- 12 months prior to the declaration of désastre or passing of the special resolution commencing the creditors' winding up in the case of an unfair preference or
- 5 years in the case of transactions at an undervalue

under value
or
extortionate
credit
transactions

A “connected
person” includes
related
companies, and
directors and
members of the
company and
related
companies.

Who is responsible for seeking orders to set aside such transactions?

The Viscount or
the liquidator.

Contributions to the liquidation estate and liability of officers

Yes, in the case of directors:

- 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

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

Yes, in the case of shareholders:

- 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

**Directors may
attract liability**

What liability can directors or other officers attract in respect of an insolvent company?

attract liability for:

- 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

In what circumstances can directors be disqualified as a consequence of a company being wound up?

Where, upon an application by the Minister for External Relations, or the Attorney General, or the JFSC, the Court is satisfied that the relation to

that the relation to a company makes the person unfit to be concerned in the management of a company.

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