

Guernsey insolvency reforms released

February 2016

Guernsey's Commerce and Employment Department ("the Department") has published its long awaited proposals for reform of Guernsey's insolvency regime. This follows a long period of consultation with industry and other stakeholders.

The proposed reforms of the corporate insolvency process and procedures, if they become law, will address gaps in the current regime for the benefit of creditors, investors and other participants in Guernsey's finance industry while retaining the flexibility that has become a feature of Guernsey's insolvency law. Key proposed reforms are:

1. Enhancing creditors' rights in an insolvent voluntary winding up. A package of measures are proposed to better recognise and safeguard the interests of creditors in an insolvent voluntary winding up. These include a requirement for independent liquidators and reporting to creditors as well as shareholders. These proposals address a concern that, at present, the voluntary winding up process did not sufficiently differentiate between solvent and insolvent situations and the differing interests of shareholders and creditors. The Department however wishes to ensure that the current flexible arrangements for solvent voluntary windings up are not disturbed.
2. Insolvency rules will be introduced that will offer guidance on procedural matters. This long awaited reform will directly benefit insolvency practitioners and those who advise them by providing clarity around routine matters such as calling for and assessing proofs of debt. This should mean faster, cheaper and more efficient liquidations for members and creditors.
3. Express and effective compulsory investigatory powers for office holders. These proposals provide for compulsory liquidators and administrators of Guernsey companies to finally have the sort of investigatory powers that are commonplace across most other comparable jurisdictions. Currently there is a significant question mark over the powers available to compulsory liquidators in particular to obtain the documents and information they require in order to effectively investigate the affairs of a company. This leads to, at the very least, increased costs of administration and no doubt some potential claims for recovery not being identified or pursued due to lack of information.

These reforms should be welcomed. The reforms will allow Guernsey to maintain a flexible insolvency regime whilst giving greater protection to creditors, investors and to the Islands' reputation as a sound place to do business.

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