Collas Crill explains... Compulsory winding-up of an insolvent Guernsey company

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This is part of a series of guides in which we examine areas of Guernsey law that frequently arise in practice. Further guides will be released weekly; click here to subscribe to receive these by email.

This guide looks at the key things you need to know about the winding up of an insolvent **company**.

Who can make an application for compulsory winding-up?

An application to the **Court** for compulsory winding-up may be made by the **company** itself, any of its directors, members or creditors or by any other interested party.

Irrespective of who makes the application, the order made by the **Court** will operate for the benefit of the **company's** creditors in the same way.

Mechanics of an insolvent winding-up

An application may be made by any of the above parties to the **Court**, and in circumstances where the **company** is supervised by the **Commission** or engaged in a financial services business, the application must be served on the **Commission** not less than seven days before the day of the application hearing.

The **Court** may make an order if the **company**:

1. has by special resolution resolved that the **company** be wound up;
2. does not commence business within one year of its incorporation;
3. suspends business for a whole year;
4. has no members (other than the **company** itself holding treasury shares);
5. is unable to pay its debts within the meaning of section 407 of the **Law**;
6. has failed to comply with a direction of the **Registrar** to change its name;
7. has failed to hold a general meeting of its members (unless it is an incorporated cell or has waived the requirement);
8. has failed to send its members a copy of its accounts or reports; or
9. is of the opinion that it is just and equitable that the **company** shall be wound up.

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On hearing the application, the **Court** has powers to grant the application on such terms and conditions as it sees fit, dismiss the application or make any other order as it thinks fit.

Solvency test and 'unable to pay debts'

A **company** shall be deemed to be unable to pay its debts if:

1. it does not pay a sum exceeding £750 for 21 days following the date of service of a written demand by HM Sergeant; or
2. it fails to satisfy the solvency test.

For the purposes of the **Law**, a **company** satisfies the solvency test if:

1. the **company** is able to pay its debts as they become due;
2. the value of the **company's** assets is greater than the value of its liabilities; and
3. in the case of a supervised **company**, the **company** satisfies any solvency requirement imposed by applicable regulation.

Appointing a liquidator

On the making of a compulsory winding-up order, the **Court** will appoint the liquidator nominated by the applicant for the winding-up.

Within seven days of appointment, the liquidator shall send a copy of the compulsory winding-up order to the **Registrar**. The **Registrar** will then publish a notice of the winding-up on its website.

Powers of the liquidator and directors

On appointment, a liquidator has the following express powers:

1. to bring or defend civil actions in the name of and on behalf of the **company**;
2. to carry on the business of the **company**, only to the extent expedient for the beneficial winding-up of the **company**;
3. to make calls of capital;
4. to sign all receipts and other documents in the name of and on behalf of the **company**, and do any other act relating to the winding-up; and
5. to do any act authorised by the **Court**.

Once a liquidator has been appointed, all powers of the directors will cease (unless the **Court** has sanctioned their continuance) and any director who does not comply with this will be guilty of an offence.

The **company** shall also cease to carry on any business, save for anything that may assist with the beneficial winding-up of the **company**.

Next steps

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The commissioner and creditors' meeting

Once the liquidator has realised the **company's** assets, he shall apply to the **Court** for the appointment of a commissioner to examine the accounts and distribute the funds from the **company's** assets.

The commissioner shall arrange a meeting of creditors to examine and verify the financial statements, creditors' claims.

The commissioner must also fix a date for distribution of the **company's** assets and if this is not disputed, the liquidator can distribute the assets as he thinks fit. If a claim is disputed, the commissioner shall refer the dispute to the **Court**.

A notice of the date of the creditors' meeting or distribution must be published in La Gazette Officielle on two occasions in successive weeks. The meeting date cannot be less than 14 days after the publication of the second notice.

Payment waterfall

A liquidator must set out in his accounts if:

1. he believes any officer of the **company** has appropriated or misapplied any **company** assets;
2. it appears any person has become personally liable for the **company's** debts or liabilities;
3. it appears any person is guilty of any misfeasance or breach of fiduciary duty in relation to the **company**;
4. the business appears to have been carried on with the intent to defraud creditors or for any fraudulent purpose; or
5. any instances of wrongful trading appear to have occurred and come to the liquidator's attention.

Liquidation expenses

Any costs properly incurred in connection with the compulsory winding-up of the **company** are payable from the **company's** assets in priority to all other claims. Following this, the assets of the **company** shall be applied in satisfaction of the **company's** debts and liabilities *pari passu.*

Terms used

Commission – the Guernsey Financial Services Commission

Company – a limited liability company limited by shares and incorporated and registered in Guernsey

Court – the Royal Court of Guernsey

Law – the Companies (Guernsey) Law 2008

Registrar – the registrar of the Guernsey Companies Registry

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About this guide

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