INSOLVENCY GUIDANCE NOTE
GUERNSEY INSOLVENCY PRACTICE STATEMENT 4:

SUMMONING AND HOLDING MEETINGS OF CREDITORS IN RESPECT OF INSOLVENT LIQUIDATIONS

INTRODUCTION

1. This Guernsey Insolvency Practice Statement (GIPS) is one of a series of guidance notes issued to 'insolvency practitioners'[1] ("Practitioners"), by the Association of Restructuring and Insolvency Experts (ARIES), the Channel Islands professional body for those practising or interested in restructuring and insolvency. GIPSs are issued to Practitioners with a view to maintaining standards by setting out basic principles and best practice procedures in order to harmonise Practitioners' approach to particular aspects of insolvency.

2. GIPS 4 applies to the following Guernsey insolvency processes:

a) Insolvent voluntary winding up under Part XXII of The Companies (Guernsey) Law, 2008 ("the Law");
b) Insolvent compulsory winding up under part XXIII of the Law; and
c) Insolvent winding up of an incorporated cell company under part XXVIII of the Law.

3. For the purpose of GIPS 4, references to 'company' may also apply to other entities including a cell of a protected cell company, or an incorporated cell company.

4. GIPS 4 is based upon Statement of Insolvency Practice (SIP) 8 'summoning and holding meetings of creditors convened pursuant to section 98 of the Insolvency Act 1986', which applies in England and Wales, effective 1 January 2002 until April 2017.

5. GIPSs should not be relied upon as definitive statements of the Law. No liability attaches to ARIES or to any body or person involved in the preparation or promulgation of GIPSs.

REGULATORY STATUS

6. GIPS are a voluntary industry initiative issued by ARIES and set best practice principles and key compliance standards with which Practitioners are encouraged to comply

[1] Such persons undertaking the appointment of liquidator, administrator or administration manager of an insolvent entity in Guernsey

7. Practitioners should follow the GIPS wherever possible and practical.

8. GIPS set out best practice, but they are not statements of the law. Where a Practitioner is in doubt about any of the requirements contained in the GIPS, they should obtain appropriate guidance from their professional body.

9. No liability attaches to any body or person that prepares, issues or distributes GIPS. The decision whether to comply with GIPS rests solely upon the Practitioner.

CONVENING OF MEETING

10. The liquidator of an insolvent company shall call a meeting of the creditors of the company to be held within 42 days of the date of their appointment. If the liquidator of a solvent company subsequently discovers that the company fails the solvency test as described in Section 527 of the Law, then the liquidator shall call a meeting of the creditors of the company to be held within 42 days of discovering that the company fails the solvency test.

11. A liquidator is not required to call a meeting of creditors if they consider that, having regard to the known assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters, it is not necessary for a meeting to be held.

12. Should the liquidator decide not to call a meeting of the creditors of the company they shall give notice to the creditors stating:

a) that the liquidator does not consider it necessary for a meeting to be held,
b) the reasons for the liquidator's view, and
c) that a meeting will not be called unless 20 per cent in value of the known creditors of the company give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called.

Venue and time of meeting

13. When choosing the venue for the meeting, the liquidator should choose a place which is convenient for creditors to attend. The liquidator is not compelled to hold a meeting outside of the jurisdiction, but where the liquidator has identified that creditors of the company are located outside of the jurisdiction, the liquidator should provide facilities for those creditors to attend the proposed meeting by telephone. The liquidator should also ensure that the accommodation is adequate for the number of persons likely to attend. Subject thereto, there is no objection to a liquidator arranging for the meeting to be held at the liquidator's own offices.

14. The date and time of the meeting must be fixed with the convenience of creditors in mind and having regard to their geographical location. As an example, notices of a meeting should not normally be despatched shortly before the commencement of a known holiday period with the meeting taking place immediately after the holiday.

Notice of the meeting

15. The liquidator shall give at least 14 clear days' notice of the meeting (excluding the date on which the notice is issued and the date of the meeting).

16. The notice convening the meeting shall, where possible, be sent simultaneously to all classes of known creditors (including employees and secured creditors).

17. For the convenience of creditors, the liquidator shall ensure that notices of the meeting are despatched as early as possible having regard to the circumstances of the case.

18. The notice shall be advertised in the La Gazette Officielle and any other publications deemed appropriate as soon as possible and should not be deferred until shortly before the meeting.

19. A copy of the notice of the meeting shall be sent to the Income Tax Office, the Social Security Department, if applicable, and the Guernsey Financial Services Commission (GFSC) if the company is regulated. In addition, notice of the meeting should be sent, where practicable, to Advocates or other known representatives acting for creditors if applicable.

20. When dealing with the issue of notices of the meeting, the liquidator shall ensure that creditors are notified of the possibility that discussions may be held at the meeting to explain the amount of fees payable from the company's assets and, where relevant, provide creditors with explanatory notes setting out the manner in which the remuneration of the liquidator is fixed.

21. Where the name of the company has been changed sufficiently recently for there to be any risk that creditors might not be aware of the new name, it is advisable to include reference to the former name in the notice sent to creditors.

Provision of information prior to the creditors' meeting

22. During the period before the date of the creditors' meeting, the liquidator may, at the request of a creditor, furnish that creditor with:

a) a list of the creditors of the company known to the liquidator; and
b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably and legally able to provide.

ATTENDANCE AT THE CREDITORS' MEETING

23. The liquidator is required to attend and chair the meeting of creditors personally or, if the liquidator is unavailable due to extenuating circumstances, it may be chaired by a suitably experienced colleague.

24. Known creditors and their authorised representatives shall be admitted to attend. In addition, a person who holds themselves out as representing a creditor shall, in the absence

of evidence to the contrary, be allowed admittance to the meeting at the discretion of the liquidator or chair.

25. The liquidator or chair of the meeting, in their sole discretion, shall determine whether to allow any third parties, such as shareholders or other stakeholders of the company to attend, after taking into account the views of the creditors present.

26. The director(s) of the company may be requested to attend the meeting by the liquidator.

INFORMATION TO BE PROVIDED TO THE MEETING

27. The liquidator shall ensure that a summary of the available financial information is provided to all those attending the meeting. This summary will normally be expected to include a list of the names of the known creditors, excluding individual employees, and of the amounts owing to them. Sufficient copies of the full list of known creditors should be available to those attending the meeting.

28. Information to be given to the meeting shall include (where available / practicable):

a) an estimated statement of the company's affairs prepared by the director(s) or the liquidator, comprising a balance sheet identifying estimated realisations and liabilities;
b) details of any prior involvement with the company or its directors by the liquidator and their firm;
c) a report of the proceedings leading to the liquidator's appointment;
d) the details of the costs paid by the company (including the amount and source of payment) or on its behalf in connection with advice to the company or its directors in the period from the time the liquidator was first consulted by or on behalf of the company or its directors. If no payments have been made in respect of these costs prior to the meeting, the estimated amount of the costs should be stated. If any of the costs have been or are proposed to be paid to someone other than the liquidator, the nature of the relationship of the company or its directors to that person (e.g. auditor, legal or financial advisor) should be stated;
e) a report on the company's relevant trading history which may include:
(i) date of incorporation and registered number;
(ii) names of all persons who have acted as directors of the company or as its company secretary at any time during the three years preceding the meeting;
(iii) details of all classes of shares issued;
(iv) nature of the business conducted by the company;
(v) location of the business and the address of the registered office;
(vi) details of parent, subsidiary and associated companies;
(vii) reasons for the failure of the company;
(viii) extracts from any formal or, if none, draft accounts produced for periods covering the previous three years (if available) or for any earlier period which is relevant to the failure of the company. The extracts should include, where relevant, details of turnover, net result, directors' remuneration, shareholders' funds, dividends paid, reserves carried forward at year end and the date of the auditors' report. Creditors should also be advised if the accounts have been qualified by the auditors; and
(ix) such other information as the liquidator considers necessary to give the creditors a proper appreciation of the company's affairs.

29. The advising member shall take all practicable steps to ensure that there are available to hand to those attending the meeting a written summary of the more important financial information which is contained in a report given orally to the meeting.

30. In assisting in the preparation of a report to be presented to the meeting, the liquidator may rely upon information contained in the company's accounts and records and also upon information provided by directors and employees. The liquidator is not expected to conduct an investigation to ensure that the information is accurate, but should provide the creditors with any material conflicting information of which they are aware.

CONDUCT OF THE MEETING

31. The chair is the arbiter on all procedural matters during the meeting.

32. Creditors and their representatives attending the meeting are required to sign an attendance list. This list may be made available for inspection to anyone attending the meeting. In addition, any creditor or creditor's representative wishing to speak, ask questions, or make a nomination, shall be asked to identify themselves and the creditor they represent.

33. Creditors and their representatives shall be given the opportunity to ask questions. Whilst every effort will be made to give a reasonable answer to such questions within the context of the meeting, the liquidator may refuse to answer a question if, for example:

a) the questioner refuses to give the name of the creditor they represent and their own name or that of their firm;
b) the questioner does not claim to be or to represent a creditor;

34. The liquidator may decline to answer it if, for example:

a) the answer could prejudice the successful outcome of the liquidation or creditors' interests;
b) the answer could be construed as slanderous if subsequently proved incorrect.

35. The liquidator should state the grounds on which they refuse to allow a question.

36. It is not appropriate for a detailed investigation of the company's affairs to be undertaken at a meeting of creditors, however creditors should be asked to bring the liquidator's attention to any matter of which they consider they should be aware.

37. The meeting may be canvassed to identify the desire to form an informal creditors' liquidation committee, it being noted that no provision exists under the Law to form such a committee to exercise formal statutory powers under the Law as may be the case in other jurisdictions. Should such a desire exist, the liquidator, in their sole discretion, may decide to form an informal creditors' liquidation committee outside of the statutory scope of the liquidation.

38. A formal record of the meeting shall be prepared and retained by the liquidator.

39. The liquidator and their staff shall conduct themselves in a professional manner at the meeting.

REPORT TO CREDITORS FOLLOWING THE MEETING

40. The liquidator shall send to creditors a report of the proceedings at the meeting. If a list of creditors is not supplied, the liquidator shall undertake to supply or make available a copy to any creditor on request. The report to creditors should include the name and address of the liquidator.

41. It is not necessary to supply a detailed report on all that transpired at the meeting, but matters of particular relevance should be mentioned.

Effective Date: May 3rd 2017