# INSOL International

## Collection of Practical Issues Important to Small Practitioners - Guernsey

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Small Practice Issues Technical Series

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**Acknowledgement**

INSOL International is pleased to present a country study on Guernsey under its Small Practice Technical Papers Series focusing on "A Collection of Practical Issues Important to Small Practitioners". The paper was written by Andrea Harris, Senior Manager of KRyS Global and David Jones, Advocate and Senior Associate of Carey Olsen.

INSOL International sincerely thanks Andrea Harris and David Jones for providing INSOL members with this very informative paper on Guernsey.

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# Collection of Practical Issues Important to Small Practitioners – Guernsey

By Andrea Harris, Senior Manager of KRyS Global and David Jones, Advocate and Senior Associate of Carey Olsen*

## Introduction to Guernsey insolvency law and procedure

### A. Guernsey laws

Parts XXI – XXIV of the Companies (Guernsey) Law, 2008 as amended (the "Law") set out Guernsey's laws relating to corporate insolvency.

The Law includes the concept of the statutory "solvency test" which is key to understanding the insolvency process. Section 527(1) of the Law provides that a company satisfies the solvency test for the purposes of the Law if:

a) It is able to pay its debts "as they become due" (the Cash Flow Test); and

b) The "value of the company's assets is greater than the value of its liabilities" (the Balance Sheet Test).

A company must pass both limbs of the test to be deemed solvent.

In the case of a company supervised by the Guernsey Financial Services Commission, the company must also satisfy any other solvency requirements imposed by or under the provisions of various insurance and banking laws, as well as regulation of fiduciaries, administration businesses and company directors.

The Law is only relevant to corporate insolvency. Guernsey's personal insolvency regime is largely dealt with by way of two customary law procedures despite the existence of a widely unused bankruptcy law.

### B. Types of insolvency proceedings

#### Corporate insolvency

##### (i) *Administration*

Administration proceedings are outlined in sections 374 to 390 of Part XXI of the Law. An administration order can be made by the Royal Court of Guernsey (the "Court") for the purpose of achieving either:

a) The survival of the company and the whole or any part of its undertaking as a going concern: or

b) A more advantageous realisation of the company's assets than would occur in a winding up.

The Court also must be satisfied that the company (or a cell of a protected cell company) does not satisfy, or is likely to become unable to satisfy, the solvency test. An application must be made to the Court, supported by an affidavit, seeking an order that the company be placed into administration and setting out the reasons why. The application can be made by various parties, including the company itself, directors, members, creditors or a liquidator. The Guernsey Financial Services Commission (the "GFSC") can apply in respect of supervised companies engaged in financial services businesses.

* The views expressed in this report are the views of the authors and not of INSOL International, London.

Unless the Court orders otherwise, notice of an application for an administration order should be served on:

a) The company;

b) The GFSC, in the case of supervised companies and companies engaged in financial services businesses;

c) Each incorporated cell, in the case of an incorporated cell company;

d) Any persons as the court may direct, including any creditor; and

e) The Registrar of Companies.

Once an application for an administration order has been presented:

a) No resolution can be passed or order made for the company's winding up; and

b) No proceedings can be commenced or continued against the company except with the Court's leave (or, if an administration order is in force, with the administrator's leave). Rights of set - off and secured interests, including security interests and rights of enforcement, are unaffected.

The above applies for the duration of the administration appointment, or until such time that the application is dismissed.

If appointed, the administrator takes into their custody or control all the property to which the company is or appears to be entitled. The administrator manages the company's affairs, business and property in accordance with any Court directions.

The administrator can do all things necessary or beneficial for the management of the company's affairs, business and property. Schedule 1 to the Law also sets out some powers of an administrator, unless the Court orders otherwise. The administrator can also apply to the Court for directions in relation to the extent or performance of any function in any matter arising in the course of the administration.

In performing its functions, an administrator is deemed to act as the Company’s agent, but shall not incur personal liability except to the extent that he is fraudulent, reckless, grossly negligent or acts in bad faith.

On the making of an administration order, any extant application for the company's winding up is dismissed. It is important to note that the rights of secured creditors are not affected by the administration moratorium in Guernsey.

At any time, the administrator may apply to the Court for the administration order to be discharged or varied, and shall apply to the Court for the administration order to be discharged or varied if it appears that:

a) The purpose(s) specified in the order for appointment has been achieved, or is incapable of achievement; or

b) It would otherwise be desirable or expedient to discharge or vary the order.

**(ii) *Compulsory liquidation***

Sections 406 to 418 of Part XXIII of the Law discuss provision for the Court to order a compulsory liquidation of a company and appoint a liquidator. The liquidator's role is to collect and realise the company's assets and to distribute dividends according to a statutory order of priority.

An application, supported by an affidavit, must be made to the Court seeking an order that the company be wound up and setting out the reasons why. The company, any director, member, creditor, or any other interested party can make the application. In certain limited

circumstances, the GFSC or the States of Guernsey Commerce and Employment Department can make an application.

There are several grounds for which a company can be wound up, including:

a) A company's members have by special resolution resolved that the company be wound up by the Court;

b) A company is unable to pay its debts; or

c) It is just and equitable that the company be wound up.

Any application for an order for the compulsory liquidation of a company supervised by the GFSC will not be heard unless a copy of the application is served on the GFSC at least seven days before the application hearing.

On the making of a compulsory liquidation order the Court will appoint a liquidator nominated by the applicant, or where no person has been nominated the Court will make such appointment as it thinks fit. The liquidator can:

a) Bring or defend civil actions on behalf of the company;

b) Carry on the business of the company to the extent beneficial for winding up the company;

c) Make capital calls (that is, demand money promised by an investor);

d) Sign all receipts and other documents on behalf of the company;

e) Do any other act relating to the winding up; and

f) Do any Court authorised act.

Unlike the administration regime, there is no schedule to the Law in respect to a liquidator's powers. As with administration, a liquidator may seek the Court's directions in relation to any matter arising in the liquidation of the company and upon such an application the Court may make such order as it sees fit.

Upon the appointment of a liquidator in a compulsory liquidation, all powers of the directors cease, except to the extent that the liquidator of the Court sanctions their continuance. Any person who subsequently purports to exercise any powers of a director is guilty of an offence.

When a company has been placed into compulsory liquidation and the liquidator has realised the company's assets, the liquidator must apply for the appointment of a Court Commissioner to examine his accounts and distribute the funds derived from the company's assets to creditors and thereafter, any surplus to members. Following approval of the final accounts and the payment of claims, the liquidator may dissolve the company on application to the Court.

All costs, charges and expenses properly incurred in the compulsory liquidation, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims. The liquidator's fees shall be fixed by the Court.

**(iii)** ***Voluntary liquidation***

Under sections 391 to 405 of Part XXII of the Law the shareholders of a company may decide that it should be wound up and appoint a liquidator. There is no distinction between solvent or insolvent voluntary liquidations. The liquidator's role is to collect and realise the company's assets and to distribute dividends according to a statutory order of priority. Voluntary liquidation is an out - of - court process.

A company can be voluntarily wound up by ordinary resolution if either the period fixed by the memorandum or articles expire, or if an event stipulated in the memorandum or articles occurs. On the other hand, a company can be wound up voluntarily if its members pass a special resolution that it be wound up voluntarily and the winding up commences on the passing of the resolution.

A special resolution is passed when a majority of not less than 75% of voting members (unless the company's articles differ from the requirements of the Law) vote in favour of that special resolution. An ordinary resolution requires a simple majority (that is more than 50%) of voting members.

Once appointed, the liquidator's powers and duties resemble those of a liquidator in a compulsory liquidation. Company assets are initially applied in satisfaction of creditor's claims and any surplus is distributed to members according to their respective entitlements. On the appointment of a liquidator, all powers of the directors cease, except to the extent that the company by ordinary resolution, or the liquidator, approves their continuance. As with a compulsory liquidation, any person who subsequently purports to exercise any powers of a director is guilty of an offence.

As soon as the company's affairs are fully wound up, the liquidator should both:

a) Prepare an account of the liquidation, giving details of the liquidation and the disposal of the company's property, among other things; and

b) Call a general meeting to present and explain the account.

After the meeting, the liquidator must give notice to the Registrar of Companies of the holding of the meeting and its date. The Registrar of Companies publishes the notice along with a statement that the company will be dissolved three months after the notice is delivered.

**Personal insolvency**

There are two distinct procedures under Guernsey law relating to personal insolvency, namely *Saisie* and *Désastre*. *Désastre* is concerned with a debtor's personal property, or moveable goods, rather than the debtor's real estate, which is the subject of a *Saisie*. Both of these processes are involuntary processes.

Before commencing either set of proceedings it is necessary to first obtain judgment from the Court against the debtor in the amount of the debt. After judgment for a debt has been obtained, the arresting creditor must then decide whether or not to proceed via the *Désastre* or *Saisie* route.

The Law Relating to Debtors and Renunciation 1929 contains a form of bankruptcy procedure but has never proved popular.

**(i) *Saisie***

*Saisie* is the "seizure" of a debtor's real property by the creditor. Should a creditor decide to commence or join *Saisie* proceedings, the creditor's right to be paid transfers from the debtor to the realty. Regardless of the extent to which the debt is satisfied, the creditor has no further remedy against the debtor and, in particular, no recourse against the debtor personally.

**(ii) *Désastre***

Where there are insufficient personal assets to satisfy all creditors, the debtor can be declared "*en désastre*" (literally, a state of financial "disaster"). The process allows the Sheriff to arrest assets of a debtor and sell them for distribution to creditors in accordance with the priorities of their respective debts. Normally this means that all creditors share on a pro rata basis. It is a relatively simple, quick and inexpensive procedure.

*Désastre* does not discharge or extinguish the creditor's debts and there are no restrictions on the debtor acquiring property or conducting business after he has been declared en *désastre.*

## 1. How to find information about IPs

### 1.1 Professional associations and resources

#### 1.1.1 Local professional associations and resources

The Association of Restructuring and Insolvency Experts ("ARIES"), which is a member association of INSOL International, is the predominate source of information for members on restructuring and insolvency in Guernsey. To the extent that IPs are also qualified accountants, the Guernsey Society of Chartered and Certified Accountants is a source of information for accountants located in Guernsey.

#### 1.1.2 Foreign professional associations and resources

IPs in Guernsey consist of people who have qualified in both Guernsey and foreign jurisdictions. IPs who have qualified in a foreign jurisdiction will likely maintain membership with foreign associations such as the Insolvency Practitioners Association or Institute of Chartered Accountants.

### 1.2 Sources of information regarding proceedings and IPs

Creditors are entitled to obtain information from IPs regarding the conduct of an appointment and the Court usually imparts an obligation upon IPs to prepare reports and accounts with respect to their conduct during the insolvency proceeding and the state of the company's affairs, which they are required to provide to such parties. However, regular reporting, is not required in Guernsey. Liquidators in a compulsory winding up have no continuing duty to report to members or creditors. However, good practice is often adopted and a sensible approach to reporting followed.

Guernsey IPs can maintain websites as an effective tool for communicating with stakeholders, particularly those domiciled onshore and in other jurisdictions. Information disclosed on websites might include reports, unsealed affidavits filed with the Court and other correspondence.

Creditors and members are entitled to inspect the Court's files in respect of Court appointments and take copies of documents filed. The court will not permit inspection of sealed documents (maintained in the Court's confidential files) and may refuse inspection in certain circumstances.

## 2. Cross - border issues important to small practitioners

### 2.1 Recognition and enforcement of foreign judgments and proceedings

#### 2.1.1 Reciprocal enforcement

The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (the "1957 Law") creates the right to have certain foreign judgments registered in the Court in certain circumstances and the foreign judgment will thereafter have effect as if it had been given by the Court and entered by it on the date of its registration. The Judgments (Reciprocal Enforcement) Rules, 1972 stipulate the procedures surrounding registration.

The Judgments (Reciprocal Enforcement) Ordinance, 1973 specifies the reciprocating countries to which the Law extends. Registration of a foreign judgment is available where:

a) The judgment is of a superior court of a reciprocating country;

b) The judgment is final and conclusive (although a pending appeal does not matter for these purposes);

c) A sum of money is payable under the judgment (other than taxes, fines or other penalty); and

d) The court of the relevant country had jurisdiction to grant judgment.

The process commences with the judgment creditor applying to the Court on an ex parte basis within 6 years of the date of the judgment to be registered, seeking leave for the judgment to be registered in the Court.

If the Court is satisfied that the judgment should be registered, it will grant the application and register the judgment. The order will also state the period within which an application to set aside the registration may be filed by the judgment debtor. Following registration, the judgment can be enforced as if it were one granted by the Court.

Until the English Supreme Court's decision in the case of *Rubin v Eurofinance*, it was commonly accepted that the 1957 Law did not apply to insolvency judgments. However, it was the judgment of the Supreme Court that the English equivalent (in broadly the same terms) of the 1957 Law did apply to insolvency judgments. It may, therefore, be the case that that the 1957 Law can (and should) be utilised when seeking recognition of a judgment in insolvency proceedings.

### 2.1.2 Enforcement at common law

Where the Law does not apply, the common law applies and can permit recognition and enforcement of a foreign judgment. However, certain conditions must be met. The foreign court that granted the judgment must have been of competent jurisdiction. Further, Guernsey courts will apply conflict of law rules in determining whether or not this was so.

Under the common law, a foreign judgment is regarded as a debt; in effect, the liability arising on the implied promise to pay the amount of the foreign judgment. Therefore, a judgment creditor must sue on the debt, and then apply for summary judgment.

If a foreign judgment is sued upon, it is impeachable only on the following limited grounds:

a) The foreign court had no jurisdiction;

b) There was fraud on the part of the party obtaining the judgment;

c) Enforcement of the judgment would be contrary to public policy in Guernsey; or

d) The proceedings in which the judgment was obtained were contrary to natural justice.

If the defendant has essentially submitted to the jurisdiction in question, and the judgment itself cannot be impeached (and the judgment is not one to which the 1957 Law applies) then the defendant has few, if any, defences in Guernsey.

### 2.1.3 Recognition of insolvency appointments

Guernsey is not a signatory to the UNCITRAL model law nor is it a member of the EU and, as such, the EC Regulation on Insolvency Proceedings is not applicable. However, the Royal Court has a long history of providing assistance to overseas insolvency office holders in appropriate circumstances.

Recognition can essentially be divided into two types. Firstly, section 426 of the UK Insolvency Act 1986 has been extended to Guernsey by the Insolvency Act 1986 (Guernsey) Order, 1989. The consequence being that the Royal Court is able to provide judicial assistance to the Courts of England and Wales, Scotland, Northern Ireland, the Isle of Man or Jersey in insolvency matters.

The procedure under section 426 involves the office holder applying to the court in their home jurisdiction for an order that the home court sends a letter of request to the Guernsey Court for assistance. Generally the Guernsey Court must comply with the request unless it offends public policy or the outcome is oppressive. Further, section 426(5) provides the Court with the means

to apply the insolvency law of either Guernsey or the foreign jurisdiction in relation to comparable matters falling within its jurisdiction.

The second type of recognition is under the common law. This is an area that has been subject to substantial development in other jurisdictions in recent decisions, particularly those of the English Supreme Court in *Rubin* and *Eurofinance*. However, the broad position, remains that Guernsey will co - operate in foreign insolvency proceedings especially where there is a sufficient connection between an office holder, appointed in the jurisdiction where the company is incorporated or individual domiciled, and the company or individual has submitted to the jurisdiction of the Court by which the appointment was made.

Although the Royal Court still retains discretion under the common law, where there is a sufficient connection the Court will typically grant the relief sought.

## 3. Marketing of smaller practices

### 3.1 Local marketing

The majority of the work referred to IPs in Guernsey is from local law firms. Therefore, it is important to establish a good working relationship with the major law firms on the island. Smaller practice IPs may also find it beneficial to network with the "Big 4" firms who often find themselves conflicted in relation to taking appointments, and are looking for an independent party to undertake a forensic investigation and / or liquidation. Further, more and more fund administrators are turning to external parties to undertake the liquidation of their entities as it removes the liability of doing the liquidation in house.

Guernsey is one of the world's leading offshore financial services centres with a close link to the United Kingdom which lends itself to regular visits from London based professionals. This relationship provides IPs with an opportunity to access the United Kingdom market. Conferences and seminars held in Guernsey are also attended by international service providers which enables IPs to raise their profile by undertaking speaking engagements and conducting business development.

IPs will also actively participate in the local community to raise awareness of their firm's brand and employ targeted marketing strategies to develop personal relationships with local referrers such as Advocates and service providers.

### 3.2 International marketing

International marketing by smaller practitioners in Guernsey is generally focused in the UK, which has strong historical ties to the island. Generally, UK law firms will have a relationship with local lawyers and referrals usually come via this method. For smaller firms, developing relationships in the UK by identifying key decision makers who might seek an IP's assistance, is a useful means of raising profile and being approached for these opportunities. Once IPs have identified the key decision maker, it is important that they maintain regular communication with the potential referrer to develop the relationship and ensure that their firm's brand is at the forefront.

By developing strategic, informal relationships with other service providers in major financial centres, IPs can achieve a common goal based on a common understanding. This approach enables IPs to source engagements that they may have otherwise missed out on.

## 4. How are IPs compensated for their services?

### 4.1 Consideration of remuneration by creditors / investors, liquidation committee and court

The Law is very brief in terms of setting a formal framework for the conduct of both administrations and liquidations. That brevity extends to the provisions relating to remuneration of office holders.

It is common in both procedures for the applicant of the order to seek to fix the rates payable to office holders in the order for appointment. That is normally done by reference to a schedule of hourly rates appended to the application or the evidence in support of the application.

In administration, remuneration and any costs, charges and expenses properly incurred are payable from the company's assets in priority to all other claims. Those fees are to be fixed by the Court and, as such, some scrutiny is applied on discharge of the order (i.e., when moving to liquidation or exiting administration). However, there is, no statutory provision relating to the formation of a creditors' committee or giving express rights to creditors to examine or approve fees. In practice, a sensible approach is adopted and commercial factors dictate that office holder's fees must be properly considered.

In both compulsory and voluntary liquidation, all costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

Again, there is no statutory provision relating to the formation of a creditors' committee. In a voluntary liquidation, scrutiny may be applied to the fees at the final meeting of shareholders. In a compulsory liquidation, the Commissioner of the Court (see above) will scrutinise the appointee's fees.

### 4.2 Prevailing approaches to compensation of IPs

Generally IPs calculate their fees based on time, with reference to the hourly rates approved either by the Court or members at the commencement of a voluntary liquidation. In a voluntary winding up, the company shall, by ordinary resolution, fix the remuneration of the liquidator, on the appointment of the liquidator.

An alternative in an administration or compulsory liquidation appointment is to calculate fees on a contingency basis, where total fees are based on a percentage of a particular value, such as asset realisations or funds distributed to creditors. Depending on the circumstances and varying nature of tasks an IP is required to address, the IP may adopt a combination of fees being calculated on both time and contingent bases. However, contingency fees are uncommon in Guernsey and the court may be reluctant to sanction such unless circumstances dictated a necessity.

## 5. Litigation and the funding of litigation

Since the global financial crises took hold, Guernsey has seen a marked increase in antecedent transaction / directors' misfeasance litigation. As the number and complexity of insolvencies have increased, so has the volume of litigation.

### 5.1 Funding litigation

#### 5.1.1 Self funding (company assets)

Funding of litigation in Guernsey is generally done by the litigant directly. A successful party can expect to recover about 50 - 60% of their costs from the unsuccessful party.

#### 5.1.2 Creditor and third party litigation funding

In certain circumstances funding for litigation is permissible in Guernsey as long as such funding is not champertous and does not constitute unlawful maintenance. Effectively, a litigant can be funded as long as it retains control of the litigation and gains the benefit of a substantial proportion of any award made.

#### 5.1.3 Contingency and conditional fees

The terms of the Guernsey Bar Code of Conduct do not make it possible for Guernsey advocates to enter into conditional or contingency fee agreements with their clients. However, this does not preclude a compulsory liquidator or administrator appointed by the Court from considering such arrangements.

### 5.2 Practical considerations encountered in funding litigation

As mentioned above, even where a litigant is successful, the successful party is still only likely to recover approximately 50 - 60% of its costs from the unsuccessful party. Further, overseas lawyers' fees are generally not recoverable in the Royal Court save where such fees are necessary to determine an overseas issue in the proceedings.

After - the - event insurance against adverse litigation costs orders is available to litigants. However, any premium paid for after the event insurance cover is not recoverable under a taxation of costs.

Other considerations include:

a) IPs must retain control whereas a funder may seek to control the actions being undertaken; therefore it is necessary to strike a balance between the IP's requirements and the funding party's expectations;

b) It would be prudent for the IP to seek the Court's approval of any funding agreement to confirm its' appropriateness;

c) Dealing with adverse costs orders and setting a reserve;

d) Mechanism for and timing of funding payments;

e) Out of pocket costs; and

f) Application of laws in foreign jurisdictions where litigation might be commenced (*eg* – England and Wales and how such Courts perceive funding alternatives).

### 5.3 Alternatives to litigation

Alternative dispute resolution methods, such as mediation or arbitration, are also growing in popularity in Guernsey with an increasing number of claims going to either mediation or arbitration. Provision is made in the Royal Court Civil Rules, 2007 for the Court to encourage parties to resolve matters through alternative dispute resolution.

## 6 Licensing and regulation of IPs

### 6.1 Statutory and non-statutory organisation of IPs

The legislation implemented in Guernsey and applicable common law prescribes how IPs are to conduct themselves. The Court has an overarching role in monitoring and enforcing compliance with respect to administration and compulsory liquidation appointments. The Court may satisfy itself as to whether the nominated party is qualified to be appointed; however, there is no definition of what "qualified" means.

The Court can impose reporting obligations on IPs and can also, at any stage, require that security be provided by the IP and order the monies received by him be paid into an account specified by the Court.

IPs are deemed to carry on a prescribed business according to The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 ("Criminal Justice Law, 2008") and are therefore required to register with the GFSC. In conducting prescribed business, IPs are required to comply with the laws and regulations set out in the Criminal Justice Law, 2008 and guidelines contained within the Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing.

Firms in which IPs are engaged are responsible for maintaining compliance with the applicable laws and regulations. IPs may also maintain memberships of local and foreign insolvency and accounting professional associations and IPs must be mindful of complying with the guidelines and rules implemented by those associations.

### 6.2 Qualifications and certifications of IPs

There are no formal or minimum education or qualification requirements that are to be satisfied by a person to be appointed as an IP. In practice, in a Court appointment, the Court will lean towards the appointment of qualified accountants. The appointee is not necessarily required to be a Guernsey domiciled accountant, but based on the more recent appointments made by the Court a practice has developed to appoint at least one locally domiciled IP that has suitable accounting, insolvency, restructuring and forensic accounting skills.

Whilst there are no formal or minimum qualification requirements, many IPs and their staff will have specific insolvency qualifications in countries outside of Guernsey, for example a license to practice as an IP in England and Wales.

Insurance and independence requirements are not detailed in the statute, but are necessary in the context that insolvency practitioners are fiduciaries, and in compulsory liquidations are officers of the Court.

There are no regulations around education, qualification or independence requirements for a party to be appointed as a voluntary liquidator.

### 6.3 Selection of IPs

In Court appointments, the appointee is nominated by the party making the application, although the Court has the power to override that request. In a voluntary liquidation, the shareholders choose the liquidator in their resolution to appoint. In the context of a voluntary liquidation, the creditors remain able, if they can show good cause to do so, to apply for the compulsory winding up of the company and thus seek the appointment of an alternative insolvency practitioner by the Court. In respect of a *désastré*, a creditor is appointed by the Court and is supervised by a *Jurat*, sitting as a Commissioner of the Court.

There is capacity for Guernsey domiciled IPs to act jointly in insolvency proceedings with foreign domiciled IPs who have suitable accounting, insolvency, restructuring and forensic accounting skills. In the context of Court supervised appointments, the proposed appointee must attend Court in person to be sworn in before they are formally appointed to act.

## 7 Compliance issues

### 7.1 Reporting obligations to the court and statutory authorities

An administrator or compulsory liquidator is obliged to send a copy of the order appointing them to the Registrar of Companies within seven days of having been appointed. In voluntary liquidations, the company is required to send a copy of the resolution that the company be voluntarily wound up to the Registrar of Companies within 30 days of the resolution. The registrar gives notice of the fact that the company has passed a resolution for the voluntary winding up, or that the company is being compulsorily wound up. In practice, most IPs would also place a notice in *La Gazette Officielle* advising of the liquidation and calling for any claims in the liquidation estate to be lodged with them.

There are no minimum reporting requirements to creditors or members in the Law with respect to administrations or compulsory liquidations, however, the Court can direct an office holder to prepare reports when it makes a winding up or administration order. In a compulsory liquidation, the office holder is required to furnish the Commissioner of the Court with an account of the winding up and outline any director misfeasance, fraudulent trading or wrongful trading.

When the administrator has discharged the purpose of the Administration Order they are required to apply to the Court for the Administration Order to be varied, or discharged and appoint a liquidator. The application will generally involve the administrator providing the Court with an account of the administration and overview that the purpose of the administration order has been met.

IPs are obliged to investigate circumstances when they have reasonable grounds for suspecting money laundering or terrorist financing. An IP also has a positive obligation to file a Suspicious

Activity Report with the Financial Intelligence Unit, a division of the Guernsey Border Agency, if any such activity or transactions are identified.


AlixPartners LLP
Allen & Overy LLP
Alvarez & Marsal
Baker & McKenzie LLP
BDO LLP
BTG Global Network
Cadwalader Wickersham & Taft LLP
Chadbourne & Parke LLP
Clayton Utz
Cleary Gottlieb Steen & Hamilton LLP
Clifford Chance
Davis Polk & Wardwell LLP
De Brauw Blackstone Westbroek
Deloitte
Dentons
DLA Piper
EY
Ferrier Hodgson
Freshfields Bruckhaus Deringer
Goodmans LLP
Grant Thornton
Greenberg Traurig LLP
Hogan Lovells
Huron Consulting Group
Jones Day
Kaye Scholer LLP
King & Wood Mallesons
Kirkland & Ellis LLP
KPMG LLP
Linklaters LLP
Morgan, Lewis & Bokius LLP
Norton Rose Fulbright
Pepper Hamilton LLP
Pinheiro Neto Advogados
PPB Advisory
PwC
Rajah & Tann Asia
RBS
RSM
Shearman & Sterling LLP
Skadden, Arps, Slate, Meagher & Flom LLP
South Square
Weil, Gotshal & Manges LLP
White & Case LLP