

Bankruptcy in Jersey - An Overview

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Both individual and corporate bankruptcies in Jersey are dealt with by the Bankruptcy (Désastre) (Jersey) Law 1990 (“**the Law**”). An application for a declaration en désastre may be made by a creditor with a liquidated claim in excess of £3,000, the debtor, or in certain cases, the Jersey Financial Services Commission.

An application for a *désastre* may be made in respect of the property of the following:

- a person ordinarily resident in Jersey in the 12 months preceding the application
- a person carrying on business in Jersey in the three years preceding the application
- a person who has real property in Jersey capable of realisation
- a company incorporated under the Companies (Jersey) Law 1991, as amended (“**the Companies Law**”)
- a limited liability partnership

The Law further provides that no application may be made in respect of the property of a deceased person. However, in the case of *Re Estate Hickman [2009] JRC040*, the court adopted a procedure very similar to that contained in the Law for

realising the assets in an insolvent estate and for dealing with the claims of competing creditors. An application for a *désastre* is made to the Royal Court and is supported by an affidavit sworn by the applicant. If a *désastre* is granted, then it is administered by the court’s executive officer, known as the Viscount. Notice of the intended application must also be given to him.

DEBTOR’S PROPERTY VESTS IN THE VISCOUNT

When a declaration is made, all the property and powers of the debtor vest immediately in the Viscount, except property held by the debtor on trust for another. Further, a creditor will then have no other remedy against the debtor and may not commence any proceedings to recover the debt. Existing proceedings to recover the debt may only be continued with the consent of the Viscount, or by order of the court. If the debtor is a company, any transfer of shares made without the sanction of the Viscount, or alteration in the status of the company’s members, is void.

The Bankruptcy (Désastre) Rules 2006 require the Viscount to advertise for claims in the *désastre* in

the Jersey Gazette and elsewhere as appropriate. Creditors are required to submit proofs of debt within a specified time failing which they lose the right to claim. The claims submitted are then open to inspection and the debtor, a creditor, or any other interested person may submit a statement to the Viscount setting out his opposition to the admission of a particular claim. The Viscount then decides whether to admit the claims in whole or in part. All interested parties are notified of the decision and of their right to request the Viscount to apply to the court for a review of his decision.

SECURED CREDITORS

Creditors may claim that they are secured, either by way of a judicial or conventional hypothec over land in Jersey, or under the terms of the Security Interest (Jersey) Law 1983. In the case of the former type of secured creditor, their claims crystallise at the time the property, the subject of the hypothecs, is sold by the Viscount. After the payment of the Viscount's fees, those creditors are paid off in the order of the date of creation of their charge. Subject to the foregoing, the debtor's assets realised by the Viscount are applied as follows:

- i. payment of the Viscount's fees and expenses
- ii. payment of arrears of employees' wages for the six months preceding the *désastre*, capped at £3,500 per person, and holiday pay and bonuses capped at £1,000 per person
- iii. payment of sums due to the Health Insurance Fund, the Social Security Fund or the Comptroller of Income Tax under the Income Tax (Jersey) Law 1961
- iv. payment of arrears of rent
- v. parish rates for a period not exceeding two years
- vi. all other debts proved in the *désastre*, which rank equally between themselves (including hypothecary creditors, the proceeds of whose security has been insufficient to satisfy their claims)

If there is a surplus of assets after payment in full of provable debt, then the Viscount is empowered to pay interest on the provable debts.

The Law also has provisions concerning transactions at an undervalue and the giving of preferences as well as wrongful and fraudulent trading. These provisions are in similar terms to those contained in the Companies Law. Where the debtor is a company, the Viscount may refer the matter to the Attorney General if he considers that the company may have committed a criminal offence or if it appears that an order disqualifying a director should be sought.

DISCHARGE

When the debtor is an individual, the Law provides that the Viscount shall apply to the court for a discharge four years after the date of the declaration, although that period may be extended or reduced on the application of the Viscount, a debtor or a creditor.

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