APPLEBY

GUIDE

CORPORATE ADMINISTRATION ORDERS IN GUERNSEY

GUERNSEY

As a British Crown Dependency, Guernsey has a stable and reliable legal system. With a long history of political stability, a highly respected regulatory framework and its accessibility via an established infrastructure make it a desirable international offshore destination for businesses. Guernsey's agile and pro-business government, low tax regime and compliance with international standards of regulation and transparency provide a secure and competitive choice for companies.

INTRODUCTION

The corporate administration regime in Guernsey is contained in Part XXI of the Companies (Guernsey) Law, 2008, as amended (**Companies Law**), together with the Company Insolvency (Guernsey) Rules, 2022.

Administration is a court-supervised insolvency process under which an administrator appointed by the Royal Court manages the affairs, business and property of a company. It can protect the company from most unsecured creditor action while a rescue or restructuring is pursued. It may also be used where administration is likely to produce a more advantageous realisation of assets than a winding up.

The regime applies to Guernsey companies, protected cell companies, incorporated cell companies and their incorporated cells, and cells of protected cell companies. Corresponding provisions apply to limited liability partnerships.

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WHEN MAY AN ADMINISTRATION ORDER BE MADE?

The Royal Court may make an administration order if it is satisfied that the company, or the relevant cell, does not satisfy or is likely to become unable to satisfy the statutory solvency test, and considers that administration may achieve one or both of the statutory purposes.

Those purposes are:

- the survival of the company, or the relevant cell, and the whole or any part of its undertaking as a going concern; or
- a more advantageous realisation of its assets than would be effected on a winding up.

The administration order must specify the purpose for which it is made.

An application may be made by the company, its directors, any member, or any creditor, including a contingent or prospective creditor. The Guernsey Financial Services Commission may apply in relation to a supervised company or a company engaged in financial services business. A liquidator and specified parties within a cellular structure may also apply.

An order may be made notwithstanding that the company is already in compulsory or voluntary winding up. The Court may then discharge or suspend the winding-up order, or provide that the resolution for voluntary winding up ceases to have effect or is suspended, on such terms as it considers appropriate.

THE SOLVENCY TEST

A company satisfies the statutory solvency test only if it is able to pay its debts as they become due and the value of its assets is greater than the value of its liabilities. Contingent and prospective liabilities must be taken into account.

The Court assesses the company’s financial position objectively on the available evidence. Failure to satisfy a statutory demand may provide evidence that the company is unable to pay its debts, but a statutory demand is not a prerequisite to an administration application.

THE APPLICATION

An administration application is made to the Royal Court and must be supported by affidavit evidence. The evidence should address the company’s financial position, the proposed purpose of the administration, the reasons why that purpose may be achieved and the suitability and proposed remuneration of the intended administrator.

Unless the Court orders otherwise, notice must be served on the company and, where applicable, the Guernsey Financial Services Commission and the relevant entities within a cellular structure. The Court may direct notice to other persons, including creditors. Notice must also be delivered to the Registrar of Companies at least two clear days before the application is made, or as soon as reasonably practicable where that is not possible.

The Court may grant or dismiss the application, adjourn it, or make an interim or other order. An interim order may restrict the exercise of functions by the company or its directors pending determination of the application.

THE INTERIM MORATORIUM

A statutory moratorium arises on presentation of the application and continues until the application is determined.

During that period, no resolution may be passed or order made for the company's winding up. Proceedings may not be commenced or continued against the company without the leave of the Court and subject to any terms it imposes. A winding-up application may nevertheless be presented.

Rights of set-off and secured interests, including security interests under the Security Interests (Guernsey) Law, 1993, and the enforcement of those rights, are not affected.

EFFECT OF AN ADMINISTRATION ORDER

On the making of an administration order, any pending winding-up application is dismissed. While the order remains in force, no resolution may be passed or order made for the company's winding up.

Proceedings may not be commenced or continued against the company without the administrator's consent or leave of the Court. Rights of set-off and secured interests and their enforcement remain unaffected.

The administrator's name and a statement that the company's affairs, business and property are being managed by the administrator must appear in its correspondence. The same information must appear prominently on any website maintained by the company.

Any function of the company or its officers which could interfere with the administrator's functions may be exercised only with the administrator's consent.

THE ADMINISTRATOR

The administrator is appointed by, and sworn before, the Royal Court. The Companies Law does not prescribe a formal qualification, but the Court will expect the proposed administrator to be appropriately experienced and suitably qualified.

The Association of Restructuring and Insolvency Experts has issued Guernsey Insolvency Practice Statements (**GIPS**). They set out voluntary best practice principles and are not statements of law, but practitioners are encouraged to follow them wherever possible and practical.

The Court fixes the administrator's fees. The administrator's remuneration and the costs, charges and expenses properly incurred in the administration are payable from the company's assets in priority to other claims.

Joint administrators may be appointed and authorised to act jointly and severally.

POWERS AND DUTIES

The administrator may do anything necessary or expedient for the management of the company's affairs, business and property. Schedule 1 to the Companies Law confers extensive specific powers, including powers relating to the company's business, assets, borrowing, litigation and management.

The administrator must take custody or control of all property to which the company is or appears to be entitled and manage the company in accordance with any directions given by the Court.

The administrator acts as the company's agent and does not incur personal liability unless acting fraudulently, recklessly, with gross negligence or in bad faith. A person dealing with the administrator in good faith is not required to enquire whether the administrator is acting within their powers.

The administrator may remove and appoint directors, call meetings of members or creditors, and apply to the Court for directions on any function or matter arising during the administration.

DISTRIBUTIONS

An administrator may make a distribution to a creditor where that is likely to assist the achievement of a purpose of the administration. A distribution may be made without further permission to a creditor holding a secured interest or a preferred debt. A distribution to any other creditor requires the permission of the Court.

CREDITOR INFORMATION AND MEETINGS

The administrator must notify the company and the Registrar of Companies of the order. Unless the Court orders otherwise, notice must also be sent within 28 days to all known creditors, together with an invitation to an initial creditors' meeting and an explanation of the aims and likely process of the administration.

The initial meeting must ordinarily be held within ten weeks of the order. It may be dispensed with where there are no assets available for distribution and the requirements of the Company Insolvency Rules are met. The Rules govern notice, attendance, quorum, voting, proxies and electronic participation.

The administrator may require specified officers, employees and other persons to submit a verified statement of affairs setting out the company's assets, liabilities, creditors and security interests.

The administrator must report apparent grounds for the disqualification of a past or present officer to the Registrar of Companies and, for a supervised company, to the Guernsey Financial Services Commission.

CREDITORS' AND MEMBERS' RIGHTS

A creditor or member may apply to the Court where the company's affairs are being or have been managed by the administrator in a manner unfairly prejudicial to creditors or members, or where an actual or proposed act or omission would have that effect. The Guernsey Financial Services Commission may also apply in relation to a supervised company or a company engaged in financial services business.

The Court may regulate the future management of the company, require the administrator to do or refrain from doing a specified act, require a meeting of members or discharge the administration order. An administrator may also be subject to the Court's misfeasance jurisdiction in a subsequent winding up and may seek release from liability on ceasing to hold office, subject to the statutory exceptions.

ENDING THE ADMINISTRATION

There is no fixed statutory duration for an administration. The administrator may apply at any time for the order to be discharged or varied and must do so where the specified purpose has been achieved, has become incapable of achievement, or discharge or variation is otherwise desirable or expedient.

The Court may grant or dismiss the application, adjourn it, or make any interim or other order it considers appropriate. Where an administration is discharged and the company has no assets from which a distribution might be made, the Court may order its dissolution on a specified date.

PRE-PACKAGED SALES

The Guernsey regime permits an administration to be used in connection with a pre-arranged sale of a company's business or assets. GIPS5 emphasises transparency, appropriate independent valuation and proportionate marketing. It expects the administrator to keep a detailed record of the reasons for the sale and the alternatives considered, and to provide creditors with a statement explaining and justifying the transaction. That statement should ordinarily be provided as soon as reasonably practicable and within 28 days of appointment. Where practicable, a draft should be placed before the Court on the administration application. Connected-party transactions are likely to require greater detail.

CROSS-BORDER INSOLVENCY

Guernsey has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. The EU insolvency regime does not apply.

The Royal Court may provide assistance to courts in the United Kingdom under section 426 of the Insolvency Act 1986, Guernsey being a designated relevant territory. Office-holders appointed outside the United Kingdom and Crown Dependencies may seek recognition and assistance under Guernsey customary law.

The relief available depends on the circumstances and the limits of the Court's customary-law jurisdiction. Cross-border strategy should therefore be considered at an early stage where assets, creditors or proceedings are located in several jurisdictions.

For more specific advice on corporate administration orders in Guernsey, we invite you to contact one of the following:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found here.

ABOUT APPLEBY

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