Guernsey Restructuring & Insolvency 2026 (Lexology)

Briefing Summary: The aim of this chapter is to provide local insights in Guernsey including a general overview; types of liquidation and reorganisation processes; insolvency tests and filing requirements; directors' and officers' regime; stays of proceedings and moratoria; doing business during reorganisations; asset sales; creditor remedies, involvement and proving claims; security; clawback and related-party transactions; treatment of groups of companies; international cases; and recent trends.

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General

Legislation

What main legislation is applicable to insolvencies and reorganisations?

Parts XXI to XXIV of the Companies (Guernsey) Law 2008, as amended (the Companies Law) contain the main statutory provisions relating to corporate insolvencies and reorganisations of Guernsey companies. These Parts consist of the Companies (Guernsey) Law 2008 (Insolvency) (Amendment) Ordinance 2020 (the Insolvency Amendment Ordinance) as supplemented by the Company Insolvency (Guernsey) Rules 2022 (the Company Insolvency Rules), both of which came into force on 1 January 2023. The Companies Law also contains the procedures applicable to protected and incorporated cell companies.

Excluded entities and excluded assets

What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

While no entities are specifically excluded from the Companies Law regime, separate provisions dealing with the insolvency or winding-up of partnerships, limited partnerships, trusts and foundations are set out in the specific legislation applicable to each.

Public enterprises

What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

There are no specific procedures applicable to government-owned enterprises in Guernsey.

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

No.

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

The Royal Court of Guernsey is the principal court of first instance (equivalent to the High Court in England). It has unlimited civil jurisdiction in Guernsey and is divided into five divisions. For the purposes of insolvency law, the relevant division is known as the Ordinary Division. This is the usual court for all commercial and civil litigation, with exclusive jurisdiction in respect of claims over £10,000.

The Guernsey Court of Appeal hears appeals from the Royal Court. Permission to appeal is required in some circumstances (eg, in interlocutory matters).

Appeals from the Court of Appeal are made to the Judicial Committee of the Privy Council in London. There is, in effect, no appeal as of right to the Privy Council from the Court of Appeal and in nearly all cases leave to appeal from either the Court of Appeal or the Privy Council is required.

There is no requirement to lodge security with the relevant court to proceed with an appeal, however a respondent may in certain circumstances make an application for the appellant to provide security for its costs.

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Types of liquidation and reorganisation processes

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

A company can be voluntarily wound up if either:

- the period (if any) fixed by the memorandum or articles for the duration of the company expires; or
- the event (if any) occurs on which the memorandum or articles provide that the company should be dissolved.

A company can be wound up voluntarily if it passes an ordinary or special resolution that it be wound up voluntarily. The winding-up commences on the passing of the resolution.

Unlike compulsory liquidation, a voluntary liquidation is an out-of-court process that can be used for solvent or insolvent entities.

From the commencement of a voluntary winding-up, the company ceases to carry on business unless beneficial for winding up the company. The company's corporate state and powers continue until dissolution.

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. The liquidator is charged with realising assets and discharging liabilities.

The new Insolvency Amendment Ordinance draws a distinction between solvent and insolvent voluntary liquidations.

In a solvent voluntary liquidation, the directors have the option of making a declaration of solvency, which requires the directors to confirm that the company passes the statutory solvency test. If this declaration is given, then the liquidation can be streamlined and the new provisions of the Companies Law (sections 395(1A) and 398B) will not apply.

If the directors do not give a declaration of solvency, there is now a requirement that an independent liquidator be appointed. The liquidator will be subject to certain additional requirements and will be required to consider and file reports on directors' conduct to the Registrar of Companies and, in the case of regulated companies, to the Guernsey Financial Services Commission (GFSC).

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

Under the Companies (Guernsey) Law 2008, as amended (the Companies Law) a compromise or arrangement can be reached between the insolvent company and its creditors or members. An arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or the division of shares of different classes, or both. The process closely resembles an English law scheme of arrangement.

An application to the court for approval of a compromise or arrangement can be made by:

- the company or any creditor or member of the company;
- the liquidator, if the company is being wound-up; or
- the administrator, if the company is subject to an administration order.

The court can approve the compromise or arrangement if a majority in number representing 75 per cent in value of the members or creditors (or relevant class of members or creditors) voting at the meeting agree.

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

Creditors or members, or both, involved in a proposed scheme will, broadly, be categorised by reference to their respective rights against the company. Classes will generally be confined to those whose rights against the scheme company are 'not so dissimilar as to make it impossible for them to consult together with a view to their common interest'.

The court applies this rule having regard to the specific circumstances of each case.

A court-approved compromise or arrangement is binding on all creditors and members, and the company. If a company is being wound up, the agreement is binding on the liquidator and shareholders. In an administration, the agreement is binding on the administrator and shareholders.

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

Under sections 406 to 418 of Part XXIII of the Companies Law, a company may be wound up by the court and a liquidator appointed. 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 or creditor, or any other interested party, can make the application, including, in certain limited circumstances, the GFSC.

The court can wind up a company on several grounds, including where the company is unable to pay its debts or if the court is of the opinion that it is just and equitable to wind the company up.

On the making of a compulsory winding-up order, the court will appoint a liquidator usually as nominated by the applicant. The company must cease to carry on business except as far as is necessary for the beneficial winding-up of the company; however, its corporate state and powers continue until its dissolution.

There is no statutory moratorium on creditors' claims on the making of a compulsory winding-up order, although a creditor can apply to the court on the making of an application for a compulsory winding-up order (that is, before the winding-up order is made) for an order restraining an action or proceeding pending against the company.

Compulsory liquidation is only available through bringing a court application and is not available via an out-of-court process.

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Administration is the primary form of corporate rescue procedure in Guernsey and is the most utilised process where the intention is to save the company or part of its business as a going concern.

An administration order can be made by the court under sections 374 to 390 of Part XXI of the Companies Law. The court can grant an administration order if it both:

- is satisfied that the company does not satisfy, or is likely to become unable to satisfy, the solvency test; and
- considers that the making of an order may achieve either the survival of the company as a going concern or a more advantageous realisation of the company's assets than would be effected on a winding-up.

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 it should be placed into administration.

The application can be made by several parties, including:

- the company;
- its directors;
- its members;
- any creditor (including any contingent or prospective creditor); or
- the GFSC.

If an administration order is granted and an administrator appointed, the administrator takes control of all the company's assets and manages the company's affairs, business and property in accordance with any court directions.

Once an administration has begun, there is a moratorium on commencement or continuation of any proceedings against the company.

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

A series of Guernsey Insolvency Practice Statements (GIPS) (based closely on the UK Statements of Insolvency Practice (SIP)) were introduced in 2017. While GIPS have no force of law in Guernsey, they provide a framework for good practice in insolvency proceedings in several areas. One of those areas is prepackaged sales of businesses (GIPS 5).

Historically, the Royal Court has only sanctioned one pre-pack in Guernsey in *Esquire Realty Holdings Limited*. In doing so, it made it clear that it had been comforted by the parties' compliance with the UK SIP 16 (as it was then).

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

This is not relevant in Guernsey law.

Corporate procedures

Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

A company may apply to the Guernsey Registrar to be voluntarily struck off. The application must be made by the board of directors and be accompanied by a declaration of compliance confirming that all requirements of Guernsey law have been complied with. That includes confirmation of the company's solvency. The Registrar must give notice stating that on the expiration of two months the company will be struck off the Register of Companies in Guernsey and will be dissolved unless cause is shown to the contrary. At the expiration of the two-month period, the company is struck off (assuming no cause has been shown to the contrary) and is dissolved.

In contrast to the two forms of liquidation, voluntary striking off does not involve the appointment of an office holder to wind down the company's affairs. It is designed to deal with essentially dormant entities where a formal liquation is unnecessary.

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Prior to the enactment of the Insolvency Amendment Ordinance, all administrations in Guernsey had to be concluded by either the survival of the company as a going concern or its being moved into liquidation; administration in Guernsey was not designed to end a company's life. However, pursuant to section 382A of the Companies Law, as inserted by the Insolvency Amendment Ordinance, in simple circumstances where an administration order may have failed, or where distributions have been permitted under the new section 380A of the Companies Law, the company can be dissolved without its entering liquidation first.

Where a company has entered liquidation, the liquidation process can conclude once the liquidator has fully wound up the company's affairs. The company will then be dissolved.

In a compulsory liquidation, the liquidator must apply to the court within 15 days of the day of final distribution of the company's assets (as set at a Commissioner's hearing) for an order declaring that the company is dissolved.

In a voluntary liquidation, as soon as the company's affairs are fully wound up, the liquidator should both:

- prepare an account of the winding-up, giving details of the liquidation and the disposal of the company's property, among other things; and
- 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. The company is dissolved three months after the notice is delivered.

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Insolvency tests and filing requirements

Conditions for insolvency

What is the test to determine if a debtor is insolvent?

Sections 527 and 407 of the Companies (Guernsey) Law 2008, as amended (the Companies Law) provide that a company satisfies the statutory solvency test if:

- the company is able to pay its debts as they become due. A company is deemed unable to pay its debts if either:
    - His Majesty's Sergeant has served on the company a written demand for payment of a due debt of more than £750 and the debt remains outstanding for 21 days after the demand has been made; or
    - the court is satisfied that the company is otherwise unable to pay its debts; or
- the value of its assets is greater than the value of its liabilities. In determining whether this is the case, the directors can rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances, and must have regard to both:
    - the company's most recent accounts; and
    - all other circumstances that the directors know, or ought to know, affect the value of the company's assets and liabilities.

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

There is no statutory provision in the Companies Law that would mandate a company to commence an insolvency procedure. The question as to whether to commence a procedure and which procedure to use falls to the board of a company in the exercise of its duties. Once the directors of a company become aware of the possibility that the company may fail the solvency test, their duties will be to act in the best interests of the company to maximise value in the company for the benefit of creditors as a whole, which includes future, as well as present, creditors. Directors will also be mindful of the risk of personal liability arising in certain circumstances.

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Directors and officers

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

When a company is 'in the zone of insolvency', the actions (or inaction) of directors have the potential to prejudice the position of the company's creditors. In those circumstances, directors still owe their duties to the company but must discharge them predominantly with the interests of creditors in mind.

In certain circumstances, a liquidator may seek orders from the court that an officer must account for (or contribute towards) any losses suffered by the company as a consequence of the director's conduct either before or after the company became insolvent, for instance, by bringing claims for misfeasance or breach of fiduciary duty or wrongful or fraudulent trading, or both. As per the Supreme Court judgment of *Wright & Ors v Chappell & Ors (Re BHS Group Ltd & Ors (in liquidation))* [2024] EWHC 1417 (Ch), directors cannot merely rely on professional advice within the "zone of insolvency", it is a question of individual judgment for the directors of the company.

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

The Companies (Guernsey) Law 2008, as amended (the Companies Law) can in certain circumstances impose personal liability on directors of an insolvent company.

A director of a Guernsey company owes both fiduciary and non-fiduciary duties to the company. The fiduciary duties of a director include:

- acting bona fide in the best interests of the company;
- acting for proper purposes or not to act for improper or collateral purposes;
- exercising independent judgement; and
- avoiding conflicts of interest.

Whether a director has fulfilled their fiduciary duties to the company will be tested (predominantly) subjectively, that is to say, it is contingent upon the director's state of mind.

A director's duty of skill and care, however (which is a non-fiduciary duty), is measured both objectively and subjectively. In determining the scope of the duty, a court will consider:

- the director's actual knowledge, skill and experience (subjective test); and
- the knowledge, skill and experience that may be expected of someone fulfilling that director's role (objective test).

A director's duty of care and skill cannot be diminished on the basis of the director's actual knowledge and experience (as was once the position at common law), but instead the bar can only be raised where a director has such experience and skill that one would have expected the director to have acted differently in the circumstances.

Misfeasance or breach of fiduciary duty

Where in the course of the winding-up of a company it appears that any director has:

- appropriated or otherwise misapplied any of the company's assets;
- has become personally liable for any of the company's debts or liabilities; or
- has otherwise been guilty of any misfeasance or breach of fiduciary duty in relation to the company, the liquidator (or any creditor or member of the company) may apply to the court under section 422 of the Companies Law for an order against the director in their personal capacity. Any claim must be brought within six years of the date of breach.

If a plaintiff is successful in proving misfeasance or a breach of duty, the court may order the delinquent director to:

- repay, restore or account for such money or property;
- contribute sums towards the company's assets; and
- pay interest upon such amount, at such rate and from such date as the court thinks fit in respect of the default.

Wrongful and fraudulent trading

A director can incur personal liability for wrongful trading if they 'knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation' unless the director took every step with a view to minimising the potential loss to a company's creditors.

Furthermore, if in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors, the liquidator may pursue a claim for fraudulent trading and if found liable the director will be personally liable to contribute to the company's assets. The director may also be criminally liable. For a claim to be successful, there must be a finding of actual dishonesty on the part of the director.

Transactions at an undervalue

The Insolvency Amendment Ordinance has introduced the concept of a transaction at an undervalue into Guernsey law. In circumstances where a company has entered into a transaction at an undervalue, the wide scope of possible remedies creates potential personal liability for directors.

Preferences

A liquidator of a company may also apply to the court for an order if, within the six months (or two years in the case of a 'connected party') immediately preceding the application for a compulsory winding-up or a resolution for voluntary winding-up, the company has given a preference to any person.

Disqualification

Finally, the court may make a disqualification order against a director where it considers that, by reason of a person's conduct in relation to a company or otherwise, that person is unfit to be concerned in the management of a company.

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

It will be a defence to a claim for wrongful trading for a director to demonstrate that they took every reasonable step to minimise the loss to creditors, and such action was taken at the appropriate time. In the context of a claim for fraudulent trading, the director must be found to have acted dishonestly.

In relation to transactions at an undervalue, under the new section 426D(7) it will be a defence if the court is satisfied that the transaction was entered into by the company in good faith and for the purpose of carrying on its business; and that at the time the transaction was entered into, there were reasonable grounds for believing that the transaction would be of benefit to the company.

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Once the directors of a company become aware of the possibility that the company may fail the solvency test, their duties will be to act in the best interests of the company to maximise value in the company for the benefit of creditors as a whole, which includes future, as well as present, creditors. Once the directors of the company become aware that it is unlikely to remain solvent, they will, through their fiduciary duty to act in the best interests of the company by maximising its value, need to have regard predominantly to the interests of the company's creditors.

Where a company is bordering on insolvency or insolvency was imminent or probable, the directors should operate on the basis that their decision-making may be scrutinised later if they did not give sufficient regard to how their decision-making would impact creditors.

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Directors are denuded of their powers in formal insolvency procedures or at least the exercise of them without sanction of the office holder.

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Matters arising in a liquidation or reorganisation

Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

There is no statutory moratorium on creditors' claims on the making of a compulsory winding-up order. However, a creditor can apply to court on the making of an application for a compulsory winding-up order (that is, before the winding-up order is made) for an order restraining an action or proceeding pending against the company.

In contrast, once an administration of a company has begun, there is a moratorium on commencement or continuation of any proceedings against the company; however, the rights of secured creditors are unaffected by an administration order.

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Liquidation allows for only a very limited amount of trading. That should, technically, only be necessary for the wider purposes of the winding-up.

Administration is different and affords wide powers to the office holder including the ability to continue trading.

Those providing goods and services after appointment should be entitled to rank as properly incurred fees and expenses of the process giving them priority in the payment waterfall.

Except where an informal creditors' committee has been formed and given powers, there is little creditor involvement in post-appointment trading. The court's involvement is also limited unless the office holder wishes to seek directions in that regard.

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

There are no formal provisions on this point in Guernsey but, practically, there is no impediment to an office holder seeking to obtain loans or credit in pursuit of the statutory purpose.

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

The answer will be fact-specific, but generally the unencumbered assets of a company will be sold 'free and clear'. Secured assets will, effectively, fall outside of the insolvency estate and, if they are dealt with by the office holder, will be dealt with in collaboration with the security holder.

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

There are no formal statutory provisions in relation to either point but, in practice, both can and have been used effectively. Anti-embarrassment provisions in sale contracts are common in a sale by office holders.

The office holder will use their discretion in relation to credit bids having regard to the overriding duty to act in the best interests of creditors as a whole. Directions may be sought from the court where uncertainties arise but there is little precedent on this point.

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

The power to disclaim onerous property was introduced by the Insolvency Amendment Ordinance. Now, under the new section 421A a liquidator may disclaim certain types of onerous property of the company and may do so notwithstanding that they have taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it. The liquidator may only disclaim by giving notice, the format for which is governed by section 421A(3) of the Companies Law and Part 4 of the Company Insolvency Rules. Certain types of property are excluded from this provision, most notably real property situated in the Bailiwick of Guernsey.

A notice of disclaimer must contain a description of the property disclaimed, and be signed and dated by the liquidator and served within seven days on:

- the Registrar;
- His Majesty's Receiver General;
- any person who claims an interest in the disclaimed property;
- any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer; and
- any other person prescribed by the Committee for the purposes of this subjection.

Such a disclaimer operates so as to determine, from the date of the disclaimer, the rights, interests and liabilities of the company in, or in respect of the property disclaimed, but does not affect the rights or liabilities of any other person, except so far as is necessary for the purpose of releasing the company from any liability.

However, a notice of disclaimer should not be given where a person interested in the property has applied in writing to the liquidator requiring the liquidator to decide whether they will disclaim, and the liquidator has not given notice disclaiming the property within 28 days of receipt of the application, or within any other period as may be allowed by the court.

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

A liquidation or reorganisation will not create an automatic right of a licensor or owner of IP to terminate the counterparty's right to use IP assets.

The ability to terminate or continue to use the IP post-appointment will be governed by the terms of the licence.

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

The Data Protection (Bailiwick of Guernsey) Law 2017 (the Guernsey DP Law) is intended to protect personal data in a manner equivalent to and consistent with the Regulation (EU) No. 2016/679 (General Data Protection Regulation) (GDPR).

The Guernsey DP Law effectively mirrors the provisions of the GDPR including:

- the collection and transfer of personal data;
- the review of personal data; and
- the lawful basis for processing special category data.

Consequently, an office holder must be aware of the key principles that data controllers and data processors must comply with when processing personal data.

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

There are few practical examples of arbitration being used within insolvency proceedings in Guernsey, although it is not prohibited.

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Creditor remedies

Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

The answer will be determined by reference to the nature and location of the assets.

For Guernsey situs assets, the court will generally be involved in the enforcement process except in respect of intangible moveable property where security is often taken by way of assignment or possession. Enforcement of a security interest over, for example, securities or shares, is often undertaken without recourse to the court.

Enforcement in respect of security over Guernsey real estate is not discussed in this guide.

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

There are various customary law enforcement remedies in Guernsey, the most relevant of which include:

- the *arret conservatoire*, which applies to the seizure of a tangible asset of personalty (eg, funds in a bank account or where the creditor wishes to arrest a particular tangible thing, for example, a yacht or car). An order will usually be made ex parte where the plaintiff has a cause of action against the defendant who has property in, but is at risk of being removed from, Guernsey; and
- the *arret execution*, which automatically grants the creditor authority to proceed against personalty of debtor. Following judgment, the creditor will deliver a copy of the judgment to HM Sheriff, who will then arrest goods from the debtor to the value ordered under the judgment.

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Creditor involvement and proving claims

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

Prior to the enactment of the Insolvency Amendment Ordinance, Guernsey's statutory insolvency procedures prescribe very light-touch reporting and engagement with creditors, and in general both administration and liquidation had no formal reporting requirements to creditors.

Under the new rules, an administrator is now required to provide an explanatory statement to creditors of the aims and process for the appointment and hold an initial meeting of creditors. This statement must be provided within 28 days and the meeting then held within 10 weeks of the administration order being granted. It is anticipated that these meetings will act as a forum for further explanation of the statement and may also provide an opportunity for creditors to ask questions and consider other steps such as the formation of an informal committee, or ad hoc reporting protocols with the office holders.

In a voluntary liquidation, if a Declaration of Solvency has not been signed, then the liquidator must hold at least one creditor meeting within one month of their appointment. The notice of the meeting must include an explanation of the likely process of the voluntary liquidation.

The requirements for notices of creditor meetings and the meeting itself are set out in the new Company Insolvency Rules. For example, the notice must contain various information including the date, time and location of the meeting, details of the general nature of the business to be dealt with, information in respect of any vote to be taken, and the terms upon which the office holder is being remunerated. As to the meeting itself, it may be held in Guernsey or elsewhere, having regard to the convenience of creditors, and remote attendance is allowed.

In addition, Rule 1.1 of the Company Insolvency Rules affords a discretion to the office holder to dispense with the creditor meeting altogether in circumstances where there are no assets for distribution.

Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Although there are no statutory provisions regarding the formation of creditors' or other committees, informal committees may be formed by office holders, especially in circumstances where a request to do so is made by a body of creditors.

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

While never fully tested before the Royal Court, the prevailing view is that bare causes of action may be assigned by a liquidator for the benefit of the insolvent estate.

A distinction should be drawn between claims belonging to and forming part of the property of the company (eg, for right to recover unlawful dividends) and those arising as a result of the appointment of a liquidator (eg, preference claims). It is expected that assignment of the former should be acceptable whereas the ability to assign the latter is more complicated. The Royal Court would find English precedent on these points persuasive.

However, creditors and members have specific locus to pursue claims under:

- section 422 (misfeasance or misappropriation);
- section 426D (transactions at an undervalue);
- section 433 (fraudulent trading); and
- section 434 (wrongful trading) of the Companies (Guernsey) Law 2008, as amended.

Claims

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

Guernsey currently has no formal rules regarding the proving of debts in insolvencies (albeit changes are proposed).

The Commissioner's hearing process in compulsory liquidation presents an opportunity for creditors to challenge decisions regarding claims. The Commissioner may refer any dispute to the Royal Court for determination.

Set-off and netting

To what extent may creditors exercise rights of set-off or netting in a liquidation or a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

There is no statutory requirement for the set-off of mutual debts on insolvency. The liquidator will take account of any agreement between the company and any creditor as to set-off.

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Guernsey has no statutory provisions on this point and would be expected to uphold any valid security or priority arrangements.

Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Secured assets generally fall outside of the insolvent estate in Guernsey and so no claims will take priority to them. Where an office holder is charged with or allowed to deal with secured assets, the fees and expenses for doing so will likely be taken from the proceeds.

Preferential debts in Guernsey include rent due to:

- landlords (in Guernsey only);
- salaries;
- unpaid income tax; and
- unpaid social security contributions (subject to various statutory limits).

The law was also updated in 2023 to give preferential status to certain insurance related debts in the event of the insolvency of an insurance company.

Rent due to a landlord has priority among preferential debts. Other classes of preferential debt rank equally among themselves, unless the company's assets are insufficient to meet them, in which case they are paid pari passu. A preferential creditor has no priority over a secured creditor.

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Insolvencies of large, trading companies with multiple employees are rare in Guernsey.

Insolvency appointments have no statutory effect on contracts of employment. However, an office holder is likely to terminate employment contracts as part of the process (subject to continued trading in administration) and payments due to employees may attract priority.

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

There are no specific statutory procedures regarding pension claims in Guernsey insolvencies and such claims are not given any priority status.

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Guernsey's insolvency law does not deal with these issues. In practice, the issues would be dealt with on a case-by-case and fact-specific basis. It would be very unlikely that responsibility or liability would be imposed personally on office holders.

Liabilities that survive insolvency or reorganisation proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

Schemes of arrangement will specifically deal with different categories of debt and the compromise thereof. It is quite possible that certain categories of debt will survive the procedure.

Formal insolvency proceedings in Guernsey will either result in the end of the company's life via a liquidation or its survival as a going concern. If an administration does secure survival as a going concern, it is possible that certain debts will also survive the process if they can be shown to not preclude the company's successful continuation.

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

Administration in Guernsey does not provide for distributions to unsecured creditors, albeit distribution to secured creditors may be made. The process rather works to collect assets and claims before liquidation (unless the company survives) during which distributions will be made.

In a voluntary liquidation, there is no formal distribution procedure. The liquidator will distribute as and when they are able to do so and will present a final account to members at the conclusion of the process.

In compulsory liquation, distribution generally happens after the holding of a Commissioner's hearing, at which creditors have an opportunity to raise disputes. It is possible for interim distributions to be made with directions from the court for doing so.

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Security

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

Immovable property is defined as property that cannot be moved from one place to another and that follows or is associated with the land. Parcels of land are by their nature immovable, as are all those things attached to the land such as houses and other buildings as well as trees and shrubs. Personal effects that have become permanently attached to immovable property also form part of that immovable property.

Other than ***rentes foncières*** (perpetual ground rents payable as a fixed annual sum), security over real estate in Guernsey is taken as a ***hypothèque*** (a legal right over the debtor's property in favour of the creditor), by either:

- a ***rente hypothèque***, securing a fixed annual sum; or
- a ***hypothèque***, a ***conventionnel*** (bond).

In practice, the bond has become the dominant form of security over real estate. The bond is a personal obligation to create a charge over the corpus of the debtor's assets (but in practice focused on immovable property) by acknowledging the debt to the creditor and (if appropriate) including a covenant to repay the sum with interest. The bond can be either:

- a general charge, which confers priority to the creditor over all other claimants to the immovable property belonging to the debtor at the time the bond is registered; or
- a specific charge, which confers priority to the creditor only over the immovable property specified in the bond.

Bonds are classified as movable property in Guernsey and do not confer any legal title in the immovable property owned by the debtor at the date the bond is registered. However, any successor in title of that immovable property is, by virtue of the bond's prior registration, on notice of the creditor's claim and becomes guarantor to the creditor of the bond. Therefore, the successor will be made a party to any enforcement proceedings to either make good the value of the claim or surrender the property to the enforcement proceedings. However, any successor in title who was a bona fide purchaser for value at arm's length more than three years before commencement of proceedings can limit their liability to the price paid by them for the property to the defaulting debtor. Also, a successor in title to immovable property acquired by the debtor after the bond's registration date is not held to be on notice and is, therefore, not subject to the rule that would otherwise make them guarantor.

Bonds are subject to a limitation period (known as a prescription period under Guernsey law) of six years from the date on which the claim falls due. For an on-demand bond, the six years runs from the date on which the demand is made. However, for a bond in which periodic payments are payable with effect from the time of the advance, each payment will interrupt the running of the prescription period.

A bond must be in writing and must be consented to by the debtor before the Royal Court of Guernsey sitting as a contract court (Contract Court) before being registered on the public records at the registry of the Royal Court.

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

The most common forms of security over tangible movable property are:

- lien: the right to retain another's property if an obligation is not discharged;
- pledge: a bailment or deposit of personal property with a creditor to secure repayment for a debt or engagement;
- a landlord's right to priority for unpaid rent that is secured by movable property on the demised premises (*tacite hypotheque*);
- reservation of title clause; and
- mortgage (eg, over a ship or aircraft).

The most common form of security over intangible movable property is a security interest under the Security Interests (Guernsey), Law 1993 (the Security Interests Law). This can be created by a security agreement over any intangible movable property (other than a lease). The security interest can be created by the secured party being in possession of, under a security agreement, certificates of title (eg, securities) or policy documents (eg, a life insurance policy).

To be valid, a security agreement must be in writing, dated, signed by the debtor and the secured party, contain provisions regarding the collateral sufficient to enable its precise identification, specify the events that constitute default and contain provisions regarding the obligation, payment or performance to be secured, sufficient to enable it to be identified. Failure to comply with any of these requirements does not necessarily render the security agreement void but takes it outside of the scope of the Security Interests Law.

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Clawback and related-party transactions

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

Preferences

A liquidator may apply to the court for an order to set aside a transaction entered into by a company if:

- it was entered into at a time when the company was insolvent; or
- the company becomes insolvent as a result of the transaction.

Any payment made within six months (or two years in the case of a connected party) immediately preceding the application for a compulsory winding-up (or a resolution for voluntary winding-up) is vulnerable to being set aside.

A company is deemed to have given a preference to a person where:

- 'that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities'; and
- the company 'does anything, or permits anything to be done, which improves that person's position in the company's liquidation'.

It is also important to consider whether the company was (and ultimately the directors as decision-makers were) influenced by the necessary 'desire' to prefer. In practice, establishing a desire to prefer will be a factual exercise to show that the company was influenced by an intention to produce the result of putting one or more creditors in a better position than the general body of creditors.

Any transaction with a connected party during the reference period that would constitute a preference is presumed to be outside of the ordinary course of business and made with the requisite desire to prefer.

If a preference has been given, the court has wide-ranging powers to make any order it thinks fit to restore the position of the company to where it would have been absent the preference. The range of possible orders includes making directors personally liable.

Transactions at an undervalue

Prior to the Insolvency Amendment Ordinance, the Companies Law did not contain any statutory remedies in respect of transactions at an undervalue. There was uncertainty about the existence of a customary law remedy of similar effect and while the availability of a *Pauline* action has been confirmed in Guernsey law, the insertion of the new section 426D into the Companies Law creates certainty.

Under the new section, power is afforded to bring the claims to both liquidators and administrators where the company has entered into a transaction with a person at an undervalue at a relevant time prior to the commencement of the insolvency appointment. The company must have been insolvent at the time of the transaction or become insolvent as a result of it for the remedy to bite. The definition of 'undervalue' extends to gifts, terms that provide for the company to receive no valuable consideration or where the consideration's value in money or money's worth is significantly less than the value provided by the company. This is a major development, as prior to the Insolvency Amendment Ordinance, such a claim was only available to liquidators.

Only transactions undertaken in the six months prior to the relevant date (ie, the commencement of the relevant insolvency process), will be at risk unless the counterparty is a connected person. Where the counterparty is a connected person, transactions undertaken in the two-year period before the relevant date will be scrutinised. A person is said to be so connected with the company at any time if the company knew or ought to have known at that time that:

- that person had any significant direct or indirect proprietary, financial or other interest in or connection with the company (other than as a creditor, surety or guarantor); or
- another person had any such interest in or connection with both that person and the company.

The definition of a connected person is arguably much narrower than it is in England and Wales, however, there is scope for a wide interpretation. There is no specific case law on this point.

The definition of what will constitute a transaction at an undervalue is very similar to that contained in section 238(4) of the Insolvency Act 1986. As such, English authorities on the interpretation and application of this provision will likely be considered persuasive in cases that come before the Guernsey Court.

Where it is found that there has been a transaction at an undervalue, the court may make such order on terms and conditions as it thinks fit for restoring the position to what it would have been if the company had not entered into the transaction. A non-exhaustive list of orders available to the court is set out at section 426D(4), and includes that:

- any property transferred as part of the transaction be vested in the company;
- any security given by the company is released or discharged; and
- any person whose property is vested by the order in the company is to be able to claim in the liquidation for debts or other liabilities which arose from, or were released or discharged by, the transaction.

While the introduction of the prohibition of transactions at an undervalue may make them less relevant, office holders may also consider remedies available under customary law.

One possibility is to claim that the directors committed an equitable wrong, that is, establish that the recipient of the company's assets had knowledge that the directors were acting in breach of their fiduciary duties (by selling company assets at an undervalue) and that the knowledge was such that the recipient's 'conscience' was so affected that it would be impermissible to allow them to retain the misappropriated asset. As such, a claim may be founded by suggesting the recipient was a constructive trustee of the company's assets.

Another possibility may be for a creditor to bring a customary law *Pauline* action. In essence, a *Pauline* action is concerned with setting aside a transaction undertaken to defraud creditors where the debtor was insolvent at the time or as a result of the transaction.

The critical elements to such an action would be that:

- the debtor must have been insolvent on a balance sheet basis at the time of the transaction; and
- the debtor carried out the transaction with the intention of defrauding creditors.

There have been two Guernsey cases decided on principles akin to the *Pauline* action, the remedy for which is restitutionary in nature meaning that, if the action is successfully established, the transfer of assets is set aside such that the assets become available to satisfy the creditor's claim. There is no entitlement to compensation.

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Where sums are owed to such parties as genuine debts of the company, Guernsey has no specific statutory provisions in this regard except where such transaction would otherwise fall foul of a statutory prohibition or remedy (eg, a preference).

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

There are no statutory provisions in Guernsey whereby lenders might be subject to such liability, nor have there been any reported Guernsey cases where lenders have been held liable for the insolvency of a borrower or debtor.

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Groups of companies

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

Absent specific contractual obligations, Guernsey recognises and maintains the limited liability of companies. As such, there is no mechanism by which a parent or affiliate should be liable for an entity's debts except for liability ascribed via litigation in relation to shadow directorships or antecedent transactions and so on.

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

There are no statutory provisions to this effect in Guernsey. The Royal Court has sanctioned the pooling of the affairs of two related companies in insolvency but only where the affairs of each were inextricably linked and doing so was demonstrably to the benefit of creditors of both.

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International cases

Recognition of foreign judgments

Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or the recognition of foreign judgments?

Depending on the jurisdiction in which the judgment has been obtained, a foreign judgment may be recognised through either the statutory or common law route.

Statutory registration of foreign judgments

The Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 (the 1957 Law) creates a right for certain foreign judgments to be registered in the Royal Court in Guernsey. If so registered, judgment will have effect as if it were granted by the Royal Court from the date of registration.

Reciprocating jurisdictions include England and Wales, Scotland, Northern Ireland, Isle of Man, Jersey, Israel, Italy and the Netherlands; however, it does not include the United States. If an applicant wants to register a judgment from a reciprocating country, then they must use the 1957 Law.

To be eligible for registration under the Reciprocal Enforcement Law the Judgment must, among other things, have been obtained in a reciprocating country (of which England is one), be final and conclusive and be for a sum of money payable, and not relating to taxes or other similar charges or fines.

In certain circumstances, a registered judgment can be set aside, including if the courts of the originating country did not have jurisdiction.

Common law recognition of foreign judgments

Where the 1957 Law does not apply (eg, the judgment is not from a reciprocating country, for example, the United States), then common law will apply subject to conditions. The foreign court granting judgment must be of competent jurisdiction, and the Royal Court will apply conflict of laws rules to assess whether or not this is the case.

Under common law, a foreign judgment is regarded as a debt, meaning that the creditor must sue on the debt and subsequently apply for summary judgment. A foreign judgment may be impeachable if the foreign court had no jurisdiction (eg, a default judgment).

UNCITRAL Model Laws

Have any of the UNCITRAL Model Laws in relation to insolvency been adopted or is adoption under consideration in your country?

No; however, the Royal Court often provides assistance to overseas office holders in appropriate circumstances.

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

Foreign creditors are dealt with in the same way as domestic creditors in insolvency proceedings.

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

There is no statutory provision enabling this in Guernsey but, in appropriate circumstances, this may be allowed pursuant to a direction from the court.

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

The concept of centre of main interests is not known to Guernsey law. Under section 418B (introduced by the Insolvency Amendment Ordinance), the Royal Court of Guernsey is now able to wind up a non-Guernsey company, subject to certain circumstances being satisfied.

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

The Royal Court has a long history of providing assistance to overseas insolvency office holders in appropriate circumstances. Recognition of a case can essentially be divided into two types – the UK Insolvency Act 1986 and common law.

First, section 426 of the UK Insolvency Act 1986 has been extended to Guernsey by the Insolvency Act 1986 (Guernsey) Order 1989 meaning that the Royal Court can provide judicial assistance to the courts of England and Wales, Scotland, Northern Ireland, the Isle of Man or Jersey in insolvency matters. Equally, Guernsey office holders are entitled to seek assistance in those jurisdictions that have chosen to elect Guernsey as the specified country for incoming requests.

A letter of request issued under these provisions is authority for the English court to apply either its own insolvency law (or the insolvency law of Guernsey) and, in the event, its own jurisdiction and powers.

Section 426(5) states that the receiving court 'shall assist' the requesting court and the UK courts have granted assistance in a wide variety of circumstances. However, the obligation to assist is not mandatory and the receiving court must consider whether the assistance may properly be granted.

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 that of the Privy Council in ***Singularis***. The broad position is that Guernsey will cooperate in foreign insolvency proceedings, particularly 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 where 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.

Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

There has been little practical experience of this in Guernsey but the Royal Court has a proven track record of showing flexibility and practicality in insolvency cases. There is no reason to assume that it would not be amenable to adopting such protocols or arrangements in appropriate circumstances.

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

Prior to the introduction of the Insolvency Amendment Ordinance, the Royal Court did not have the ability to wind up an entity registered outside of Guernsey. The Royal Court now has a discretionary power to wind up a non-Guernsey company under section 418B, which provides that a non-Guernsey company may be wound up by the Royal Court if:

- the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
- the company is unable to pay its debts; or
- the court is of the opinion that it is just and equitable that the company should be wound up.

It is believed that guidance on the application of this section will be drawn from England and Wales with the likely result that the 'sufficient connection' test will be adopted in Guernsey.

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Update and trends

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

The changes resulting from the enactment of the Companies (Guernsey) Law 2008 (Insolvency) (Amendment) Ordinance 2020 and the Company Insolvency (Guernsey) Rules 2022, which came into effect in January 2023, represent the most significant updates to Guernsey's regime since 2008. They are having a positive impact on the restructuring and insolvency landscape and may lead to an increase in the number of appointments and subsequent litigation against former officers and other wrongdoers. Further changes are expected to expand out the current proof of debt regime and to improve other areas where clarification will improve the regime.

There are discussions around the potential introduction of a register of insolvency practitioners but these are still at a relatively early stage.

Law stated date

Correct on: 19 September 2025

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Quick reference

Summary of law and procedure

Applicable insolvency law, reorganisations and liquidations	The Companies (Guernsey) Law 2008 as amended.
Customary kinds of security devices on immovables	*Hypothèque,a conventionnelle (bond).*
Customary kinds of security devices on movables	Security interest taken pursuant to the Security Interests (Guernsey) Law 1993.
Stays of proceedings in reorganisations/liquidations	Limited moratorium in administration proceedings.
Duties of the insolvency administrator	Not prescribed but generally to fulfil statutory purpose in best interests of insolvent estate.
Set-off and post-filing credit	Set-off agreements recognised and permissible. Post-filing credit equally possible within parameters of statutory procedures.

Creditor claims and appeals	Law on proving debts not prescriptive. Creditor appeals dealt with through Commissioner's hearing process at conclusion of liquidation or by the Royal Court, or both.
Priority claims	Preferred debts consisting of: • rent due to local landlords; • certain insurance debts; • salaries; and • unpaid income tax and unpaid social security contributions. Subject to various statutory limits.
Major kinds of voidable transactions	Preferences, transactions at an undervalue, transactions defrauding creditors (common law ***Pauline*** action).
Operating and financing during reorganisations	Court-appointed administrator has ability to continue trading to further the purpose of the administration.
International cooperation and communication	Formal recognition pursuant to section 426 of the Insolvency Act 1986 as extended to Guernsey or pursuant to common law. Royal Court historically willing to adopt pragmatic approach.
Liabilities of directors and officers	Directors and officers may be found personally liable for misfeasance or breach of fiduciary duty, wrongful or fraudulent trading, and directors may also be subject to disqualification order.
Pending legislation	Further insolvency rules may be introduced to provide practical clarity from time to time.

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