



INSOL Channel Islands Conference 2021 – Round-up of key points

Service area / [Restructuring and Insolvency](#)

Legal jurisdictions / [Guernsey, Jersey](#)

Date / [September 2021](#)

Carey Olsen is proud to have sponsored the 7th annual INSOL International Channel Islands Seminar which took place in Jersey on 14 September 2021.

The seminar, which provided a welcome opportunity for insolvency practitioners and advisers to reconnect in person, showed why Jersey and Guernsey remain leading locations for structuring complex financial transactions and for the secured lending market.

The following key points were amongst or relate to those discussed at the seminar.

No pandemic-driven barriers to enforcement

Many jurisdictions have enacted restrictions on enforcement to protect businesses affected by measures to control the pandemic. Those restrictions on enforcement have, however, led to frustration for creditors seeking to deal with delinquent debtors who may have wrongly taken advantage of such measures to avoid payment. None of our jurisdictions (Bermuda, BVI, Cayman, Guernsey and Jersey) has imposed such restrictions on enforcement and, though the courts in those jurisdictions may exercise forbearance in genuine cases, we are increasingly assisting lenders with enforcement in our jurisdictions whilst such enforcement restrictions remain onshore.

Enforcement of share security affords significant optionality over LPA receivership

Panellists rightly discussed the attractiveness and efficiency of enforcing fixed charge security over English real estate by the appointment of LPA receivers to the property. But the

optionality and ease of enforcing security over shares or units in an offshore holding structure was also highlighted. Potential options that may benefit creditors enforcing such security include:

- Speed/ease of process in taking possession of shares.
- Ability to take control of an entire entity to obtain information.
- Ability to control/replace boards.
- Ability in Guernsey to appoint voluntary liquidators ‘up chain’.
- Ability to sell an entire structure to preserve tax advantages.
- Ability to place shares in bespoke revised structures designed to implement restructuring.

Additional certainty and protection for security trustees enforcing Jersey security

In 2019, the Jersey Royal Court, using its jurisdiction under the Trusts (Jersey) Law 1984, approved the enforcement by a security trustee of its Jersey security at the price and on the terms set out in a proposed share purchase agreement.

Significantly, supporting its decision to bless the enforcement, the Court found that the security trustee would comply with each limb of its duty under the Security Interests (Jersey) Law 2012 (the “**2012 Law**”) in completing the sale as proposed. Such a judgment can therefore provide a security trustee with additional certainty that it has discharged its statutory duties and protection against a disgruntled grantor of security.

The Royal Court’s jurisdiction in this case was founded on the security trustee’s trust assets having Jersey situs, and it is notable that both the security trustee and the proper law of

OFFSHORE LAW SPECIALISTS

the trust were foreign. Our briefing note on this decision is available here: [Carey Olsen advises on ground-breaking Jersey security enforcement](#).

Given the similarities in the security enforcement regimes in the Channel Islands, the case also provides helpful commentary from a Guernsey perspective.

[Moratoria in Jersey – confirmation for secured creditors](#)

In 2021, the Jersey Royal Court, showing its continued willingness to provide assistance to facilitate cross-border insolvency proceedings, granted a moratorium in relation to certain English group companies under the Bankruptcy (Désastre) (Jersey) Law 1990.

Importantly, the Royal Court confirmed that such moratorium would not restrain secured creditors from exercising certain rights under the 2012 Law.

Our briefing note on this decision is available here: [Jersey court facilitates cross-border insolvency proceedings in judgment](#).

[Administration in Guernsey – a useable and credible option](#)

Guernsey's light touch administration regime continues to offer a familiar, creditor-driven insolvency process in enforcement scenarios. This is a flexible regime that, coupled with the Guernsey Royal Court's willingness to look to case law from England and elsewhere to produce practical outcomes in restructurings, affords creditors and debtors an attractive option whilst also preserving the rights of secured creditors.

Read our briefing note on [Administration in Guernsey](#).

[Clarification of wrongful trading provisions in Jersey in the wake of the pandemic](#)

The Law Society of Jersey issued a practice statement in May 2020 which provides reassurance to directors of Jersey companies about their personal liability for wrongful trading.

This pragmatic statement reminds directors that: (a) a wrongful trading claim can only be made against a director if the relevant company becomes subject to formal insolvency proceedings; and (b) it is a defence to a claim of wrongful trading for a director to show that the director took reasonable steps to minimise losses to creditors from the point at which the director knew there was no prospect that (or was reckless as to whether) the company would avoid insolvency proceedings.

The statement also contains helpful guidance for directors on what may constitute "reasonable steps" and makes it clear that, provided a director acts responsibly and reasonably, they should not attract personal liability.

Our briefing note on this practice statement is available here: [Coronavirus \(COVID-19\): Reassurance for directors of Jersey companies](#). And please also see our related briefing note

[Jersey directors' duties in light of the coronavirus \(COVID-19\)](#).

[Law reform is anticipated to further improve Guernsey and Jersey's statutory insolvency regimes](#)

The Jersey government has recently consulted on proposed changes to the statutory insolvency regimes available in Jersey.

Importantly, those changes include the introduction of a creditors' winding up which would permit, for the first time under Jersey law, a creditor with a debt of over £3,000 to apply to the Court (following the issuance of a statutory demand) for an insolvent company to be placed into a winding up and for a liquidator to be appointed.

It is expected that the changes will be brought into effect within 6 months. Carey Olsen welcomes the proposed reforms which will offer greater certainty to creditors and borrowers alike.

The Guernsey government has also approved a raft of improvements to Guernsey's statutory insolvency regime. Amongst the key changes are:

- The introduction of the ability for administrators to make distributions to unsecured creditors out of administration without the need for a subsequent liquidation.
- An increase in office holder reporting requirements and protection for creditors in all processes.
- The introduction of a procedure whereby liquidators may disclaim onerous assets.
- The creation of a wider body of insolvency rules, together with a committee for their review, to govern procedural matters in insolvency and to keep up to date with developments.
- A mandatory requirement for office holders to report delinquent conduct by officers and former officers.
- The creation of a statutory offence in relation to transactions at an undervalue undertaken by a company in the run up to insolvency.

Our briefing note on the changes can be found here: [Reforms to Guernsey's Insolvency laws to be introduced](#).

Continued



FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

E guernsey@careyolsen.com

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900

E jerseyco@careyolsen.com



FOLLOW US

Visit our restructuring and
insolvency team at [careyolsen.com](https://www.careyolsen.com)



PLEASE NOTE

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2021.