



## Key developments in Jersey's corporate insolvency regime

Service area / [Dispute Resolution and Litigation, Restructuring and Insolvency](#)

Legal jurisdictions / [Jersey](#)

Date / [February 2022](#)

This Spring will see the introduction of a number of landmark developments in Jersey's statutory insolvency regimes, which will further solidify Jersey's reputation as a leading offshore location for businesses.

Following a consultation process by government, the Jersey legislature has now approved a number of important changes to the corporate insolvency regimes under the Companies (Jersey) Law 1991 (the "CJL").

Key among those changes is the creation of a new insolvent company winding-up regime, referred to as a "court ordered creditors' winding-up", which will, for the first time in Jersey, enable creditors to commence a winding-up of an insolvent company under the CJL. This new regime will sit alongside the existing winding-up regimes under the CJL and the *désastre* regime under the Bankruptcy (Désastre) (Jersey) Law 1990, and will therefore introduce a further layer of protection and flexibility to creditors and companies seeking to commence an insolvency process in Jersey.

This regime is estimated to come into force on 1 March 2022.

### The position pre-March 2022

Whilst the introduction of the new "creditors' winding-up" regime is undoubtedly significant, Jersey law has long enabled creditors to commence an insolvency process in respect of a debtor company by way of the *désastre* regime under the Bankruptcy (Désastre) (Jersey) Law 1990 (the "Désastre Law").

The *désastre* regime enables a creditor, with an outstanding debt in excess of £3,000, to make an application to the Jersey court for a declaration of *désastre*. In order to make that application, the creditor must file evidence with the Court demonstrating that the debtor is insolvent. The effect of that declaration (if made) is that all of the assets of the debtor company will be vested in the Viscount of Jersey (the Royal Court's executive officer with a responsibility for insolvency and other matters) for the purpose of being ascertained and liquidated for the benefit of creditors.

Prior to March 2022, the *désastre* regime represented the only Jersey insolvency procedure, which could be commenced by a creditor. Whilst a "creditors' winding-up" regime was provided for under the CJL, despite its name, this process could only be commenced by a company voluntarily by way of a special resolution of its shareholders.

### Summary of the new regime

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.

Under the new regime, a creditor with a debt of over £3,000 may apply to the Royal Court for an order to commence a creditors' winding up of a Jersey company. Such application can only be made where:

- the company is unable to pay its debts;
- the creditor has evidence of the company's insolvency; or

### OFFSHORE LAW SPECIALISTS

- the creditor has the consent of the company.

The company is deemed to be unable to pay its debts for these purposes if:

- the creditor has served on the company a statutory demand (in the prescribed form) requiring it to pay the sum so due; and
- the company has for 21 days after service of that demand failed to pay the sum or dispute the debt due to the reasonable satisfaction of the creditor.

Where the Court makes an order to commence a winding up, it will also appoint a liquidator (or more than one liquidator), in each case being a person who is either:

- nominated by the applicant creditor; or
- a person selected by the Court.

The new regime also enables the Court to appoint a provisional liquidator.

Additionally, the upcoming changes to the CJL will amend the conditions of eligibility and the required qualifications of liquidators of public companies and liquidators appointed in respect of a creditors' winding up (both the existing and new regimes). A liquidator will be regarded as eligible only if he/she is registered as an "approved liquidator" and entered on a new, public "Register of Approved Liquidators", which will be administered by the Viscount. A liquidator must meet certain criteria in order to be approved and entered onto that register. Those criteria include a requirement that the liquidator is Jersey resident and has substantial bonds in place. However, it is possible for a non-Jersey resident (who otherwise meets the eligibility and qualification requirements) to be appointed as a liquidator in Jersey under the new regime provided that he/she is appointed jointly with a liquidator who is Jersey resident and registered as an "approved liquidator".

## Conclusion

Carey Olsen welcomes these reforms, which bring Jersey into step with other major jurisdictions. The new regime offers obvious benefits to creditors who now have an additional mechanism available when considering debt recovery options in Jersey – and one that offers greater comfort, control and flexibility.



---

## FIND US

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

T +44 (0)1534 888900

E [jerseyco@careyolsen.com](mailto:jerseyco@careyolsen.com)



---

## FOLLOW US

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



---

## PLEASE NOTE

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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 Jersey LLP 2022.