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COUNTRY COMPARATIVE GUIDES 2019

The Legal 500 Restructuring & Insolvency country comparative guide – Q&A

Jersey

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Contents

Security and enforcement

What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Intangible movable property

Financing international investment structures continues to be one of Jersey's principal business activities and Jersey remains a popular choice for both issuers or investment holding vehicles. For that reason Jersey has a well-developed legal framework designed to assist the UK and international secured lending industry.

The focus for the finance industry is lending to Jersey special purpose vehicles, with wide ranging security interests being granted over shares in borrower vehicles, securities' accounts, contact rights and/or local bank accounts. A security interest may be created over all present and after-acquired intangible movable property or may be limited to specific items and accounts.

Although not common, some pre-2014 security interest agreements are still in force. These are governed by the Security Interests (Jersey) Law 1983. Further advice should be taken in respect of these agreements.

Post-12 January 2014 a security interest can only be created in Jersey situs property (commonly termed collateral) pursuant to the Security Interests (Jersey) Law 2012 (the "SIL"). A valid security interest must attach to the collateral and in order to be protected from third party interests on insolvency, must also be perfected.

A security interest attaches when:

- value has been given in respect of the security agreement;
- the grantor has rights in the collateral or has the power to grant such rights to the secured party; and
- either;
  a. the secured party has possession or control of the collateral; and/or
  b. the security agreement is in writing, signed by the grantor and contains an adequate description of the collateral. (SIL Part 3)
  c. A security interest which has attached can be perfected by possession, control or by registration (SIL Part 3)

A security interest perfected by registration requires a financing certificate to be lodged in the on-line and searchable Jersey security interest registry.

A possessory security interest only operates to perfect a security interest in a documentary intangible movable.

A security interest in securities perfected by control requires that the secured party becomes the registered holder of the securities (subject to an equity of redemption) or takes possession of the certificate issued in respect of the security.

A security interest in a bank account perfected by control will typically require:

- the account to be transferred into the name of the secured party with the written agreement of the grantor;
- the parties and the bank to agree that the bank will act on instructions from the secured party;
- for the account to be assigned by way of a security with notice of the assignment having been given to the bank; or
- the secured party is the bank which holds the account.

A security interest in a securities' account perfected by control will typically require:

- the securities' account to be transferred into the name of the secured party with the written agreement of the parties and the custodian of the securities' account;
- the parties and the custodian agree in writing that the custodian will act on instructions from the secured party; or
- the secured party is the custodian.

Ships and aircraft

The Jersey aircraft registry allows for the registration of private and corporate aircraft, aircraft engines and aircraft mortgages, and permits registration of aircraft engine mortgages. The register does not cater for commercial air transport aircraft. There is a separate regime for mortgages of ships. The mechanisms for creation and enforcement of ship and aircraft mortgages are not addressed herein.

Other tangible movable property

A Jersey law security interest can only be granted in respect of tangible movable property by way of pledge, which requires actual rather than deemed delivery. This maintains the customary law position of preserving the doctrine of apparent wealth, such that movables subject to existing security interests should not remain in the possession of the debtor as to do otherwise would give a misleading impression of a debtor's credit-worthiness and apparent availability of the assets for further security.

Failure to comply with formalities of creation of security interests

In respect of intangible movables, a failure to comply with the formalities for attachment renders the security interest void. Failure to comply with the formalities for perfection means that the security interest is only effective between the grantor and the secured party, and not as against third parties including but not limited to insolvency appointees.

In respect of tangible movables, failure to comply with the formalities for creation of an interest by way of pledge renders the security interest void.

Immovable property

Security can be taken over Jersey situs real estate interests by way of a hypothec. A hypothec is a registered interest in freehold property, leases of more than 9 years known as a contract lease, or an undivided share in a freehold property or a contract lease owned in common as opposed to jointly.

The two principle forms of the hypothec are:

A hypotheque judiciaire (an "HJ")

This is created by registering an obligation with the Jersey Public Registry typically in the form of a:

- promissory note;
- bond; or
- judgment debt, usually a consensual judgment debt.

A hypotheque conventionnelle simple (an "HCS")

The creation of an HCS typically occurs in the following limited circumstances:

- when a property is sold and part of the purchase price is not paid to the seller but the HCS arises as an encumbrance representing the debt owed to the seller by the purchaser; or
- when the terms of borrowing in a real property transaction, with provision for security are sworn to before the Court. That the terms of the borrowing are before the Court makes them liable to be registered in the Public Register so that the HCS is unattractive for commercial or complex lending.

It is notable that the HCS is itself immovable property, but an HJ is not.

The Jersey Public Registry is a register of various interests including almost all immovable property transactions in Jersey created since it was established by Act of the States of Jersey (the Jersey Parliament) in 1602. The Public Registry is available for public inspection.

Creation of any hypothec is approved by the Royal Court such that a failure in process is unlikely to occur. To the extent that there are any failures the Court retains a discretion to amend its own process.

What practical issues do secured creditors face in enforcing their security (e.g. timing issues, requirement for court involvement)?

Tangible movables

Enforcement of rights in tangible movables over which a security interest is created by pledge will be enforced under the terms of the pledge agreement and are not subject to statutory governance.

Intangible movables

The SIL provides for enforcement against collateral over which security has been given by way of:

- appropriation (literally taking the collateral);
- sale to the secured party or a third party;
- taking ancillary actions such as:
  a. taking control or possession of the collateral;
  b. exercising rights arising from or in connection with the collateral; or
  c. instructing any person who has an obligation in respect of the collateral to carry out that obligation; or
- taking any other step provided for in the security agreement which is not in conflict with the law. (SIL Art.43)

Although there is no authority on the point, it is expected that the ancillary actions identified above must be exercised in good faith for the purpose of effecting the appropriation or sale of the collateral.

The powers of enforcement can only be exercised once a notice of an event of default has been served in respect of an act or omission identified in the security interest agreement as an event of default.

The SIL provides that save where the security interest agreement provides otherwise, the power of enforcement should only be exercised pursuant to an order of the Court. It is industry standard practice to exclude any obligation to seek an order of the Court in all security interest agreements.

It follows that once a notice of an event of default has been delivered, the secured party can enforce against the collateral without any further reference to the grantor. An exception to this rule is that where a third party has created a new security interest by registration in the 21 days prior to enforcement, 14 days' notice must be given to that new secured party of the intention to enforce. (SIL Art.44)

Post-enforcement the secured party is obliged to serve an account within 14 days after appropriation or sale of the collateral on the grantor and any inferior secured interest holders setting out:

- the gross value of the value realized by appropriation or sale;
- the secured party's costs in respect of the appropriation or sale;
- the secured party's costs of enforcement' the net value of the collateral or the collateral; and
- the surplus or deficit arising. (SIL Art.48)

The secured party is obliged to distribute any surplus to those holding inferior security interests and then to the grantor. (SIL Art.49)

The Royal Court has a jurisdiction to make orders in support of or to assist an enforcing secured party. The Royal Court has also found that it can assist security trustees by making orders blessing transactions in advance to avoid security trustees, who have limited economic interest in the secured lending transaction, being vulnerable to actions by grantors post enforcement.

On sale or appropriation the secured party owes a duty to the grantor to:

- take all reasonable commercial steps to achieve fair value;
- act in a reasonable commercial manner; and
- in the case of a sale, contract on reasonably commercial terms. (SIL Art.46)

There is no authority on the application of these duties but at the time of writing judgment is awaited on the first enforcement to be considered by the Royal Court.

Enforcement of immovable property interests

The enforcement of a secured party's rights in respect of obligations secured against immovable property is by way of a dégrèvement process.

The process commences by a secured party obtaining judgment against the grantor, usually by way of a simple summons, although more complex pleadings may be ordered when the claim predicating enforcement is contested on substantial grounds.

If the judgment is not satisfied within 1 month the secured party issues an application for a final demand to be issued by the Royal Court. This demand is known as the Acte Viscomte chargé d'écrire.

If the final demand is not satisfied the matter will be listed before the Royal Court who will in the absence of any procedural irregularity, adjudge the grantors' property to be renounced and appoint to attournés to conduct the dégrèvement process, and to draw up lists of creditors and other parties interested in the secured property.

The process at the dégrèvement hearing is as follows:

- Unsecured creditors as a single body are called first and asked if they want to take the immovable property. If they do take the property they do so subject to having to pay off in full all senior creditors;
- If the unsecured creditors do not take, then each secured creditors is called in reverse chronological order according to the date of creation of their hypothec from the most recent through to the creditor with first-ranking security;
- Each creditor, when called, can either elect to "take" the grantor's immovable property subject to paying off all prior (i.e. earlier in time) obligations and the attournés fees or to renounce their claim and decline to "take" the immovable property;
- On "taking" the immovable property the creditor who takes, then goes back to court to be confirmed as the new owner of the immovable property by the court, at which point it will be free of all encumbrances and that creditor can keep it or sell it; and
- The creditor who takes the immovable property has no obligation to account to the grantor for any value in the property over and above what that creditor is owed or has paid to other creditors: they keep all equity.

There has not been a challenge to the dégrèvement process on human rights' grounds in respect of the right of the creditor who takes the property to keep any surplus.

A parallel process known as a realisation can be commenced at the same time as the adjudication of renunciation to collect in and sell all movable property of the grantor with any recovery being applied to increase the pot available to the creditor who takes the property.

Local insolvency proceedings

What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

The test for insolvency in Jersey law is the cash-flow test although a declaration of a désastre, (as to which see below) may be set aside if a debtor is balance sheet solvent and can liquidate assets within an acceptable period of time. While there is no direct authority on the point it is likely that the Jersey Court would evaluate insolvency by reference to the analysis of the English Supreme Court in BNY Corporate Trustee Services Limited v Eurosail-UK 2007-3BL PLC [2013] UKSC 28.

Although there are no express obligations on directors or officers to commence insolvency proceedings, where the directors of a Jersey company continue to trade when they reasonably know that the company cannot avoid an insolvency process or are reckless as to whether an insolvency process can be avoided, they may be liable for debts incurred when they did or should have formed that view unless they acted so as to minimise the potential loss to creditors.

Further, when a company is in the zone of insolvency the directors general obligations to the company and its shareholders are displaced by duties to creditors, albeit that any breach of those duties to creditors can only be enforced by the company, and if appropriate any liquidator or insolvency appointee.

What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

Jersey has two principle mechanisms for confirming the bankruptcy of natural and juristic persons, and in the case of companies for winding up their affairs before dissolution.

Désastre

The Jersey process of obtaining a declaration of a désastre (literally a disaster) pursuant to the Bankruptcy (Désastre) (Jersey) Law 1990 (the "Désastre Law) allows a debtor or creditor to apply to the Court for an order that the debtor's assets be vested in the Viscount of Jersey, the Court's executive officer with responsibility for insolvency matters, for the purpose of being ascertained and liquidated for the benefit of creditors.

An application can be made in respect of an individual, a company, a limited liability partnership or an incorporated limited partnership. The process is largely statutory and is broadly similar to compulsory Court appointed individual bankruptcies in the UK under the Insolvency Act 1986 and the US Chapter 7.

A creditor's application is made ex parte to the Royal Court, and save in urgent situations, on 48 hours' notice to the Viscount. The Viscount does not have a veto on the application but will review the papers for technical defects and may express concerns as to the process in advance of the hearing.

To bring an application a creditor must have an ascertained debt in excess of £3,000 and must be able to swear an affidavit asserting that the debtor is insolvent. The insolvency issue is often addressed by an informal demand process which if left unsatisfied is treated as evidence of the debtor's insolvency.

The application is typically made ex parte but the Court can direct the application to be served on the debtor, often where the debt is questionably uncertain. Once the declaration is made and served, the debtor can apply to set aside the declaration on the grounds that they are balance sheet solvent albeit cash flow insolvent, and they can look to take advantage of a protective remedy such as a remise des biens. The creditor would expect to take an active part in opposing the process.

The Viscount will tend to ask for an indemnity from the applicant creditor (typically c. £5 – 10,000) to be called on if the debtor's assets are not sufficient to pay her costs.

On administration of the estate the Viscount is entitled to claim costs capped at 10% of the value of assets collected in plus 2.5% of assets paid out. In practice the Viscount tends to charge sub-commercial lawyers rates on a time charge basis and is at pains to point out that the costs incurred are reasonable when compared to commercial insolvency processes.

On making the order the assets of the company vest in the Viscount and the directors and shareholders lose control of the company and its assets.

The secured creditors are entitled to be paid in full less the costs of sale.

The Viscount will call for claims to be filed within a period of not less than 40 and not more than 60 days, subject to a discretion to allow late claims. No assets other than perishable assets can be sold by the Viscount until the period for filing claims has expired. The Viscount may make interim distributions at their discretion, having due regard to the number of creditors, the value of their claims and the debtor's assets.

The Viscount is able to assign causes of action vested in a debtor, say claims for breach of duty or recovery of unlawful dividends in the case of a corporate debtor. The Viscount cannot assign causes of action which are vested in the office of Viscount by statute such as claims for wrongful trading.

A debtor who is a natural person is entitled to be discharged after 4 years although the Viscount will typically apply for a discharge at the earliest opportunity when a point is reached when the process can achieve nothing further.

Upon completion of the désastre process in respect of a company or other juristic person, the Viscount will apply to eh Court for an order that debtor be dissolved.

The time taken for completion of the process is fact specific and there is no statutory limit to the time the process may take. Typically we do not expect a désastre process to take more than two years.

Creditor's Winding Up

The principle mechanism for winding up insolvent Jersey companies is the creditors' winding up process as per Chapter 21 of the Companies (Jersey) Law 1991 (the "Companies Law"), whereby the shareholders of a company resolve to wind up a company and appoint a liquidator to wind up its affairs.

The process is as follows:

- more than 14 days before the schedule meeting of members, a notice to creditors is sent by post advising that the Company's members will be convening a meeting to consider a Special Resolution to undertake a creditors' winding up and that there will be a creditors' meeting immediately thereafter;
- more than 10 days before the meeting and an advertisement is placed in the Jersey Gazette giving notice of the creditors' meeting;
- on the day of the meetings:
    a. the Directors prepare a Statement of Affairs (usually approved at a meeting of directors);
    b. one of the Directors swears an affidavit proving the Statement of Affairs;
    c. a meeting of members is convened, chaired by a Director and the Statement of Affairs is presented to the meeting;
    d. a special resolution of Members for winding up is approved (which requires a 2/3 majority or higher if so provided for in the articles of association) and a decision is made as to the identity of the proposed liquidator; and
    e. a meeting of creditors is convened chaired by a Director, at which the Statement of Affairs is presented and the identity of the liquidator is determined
- in the event the Members and Creditors cannot agree the identity of the liquidator, the Creditors' choice prevails subject to the Company's right to apply to the Court
- no later than 14 days after the meetings;
    a. an advertisement must be placed in the Jersey Gazette of the Special Resolution; and
    b. the Liquidator must file a certified copy of the Special Resolution with the Jersey Financial Services Commission.

The directors and shareholders lose their powers upon the resolution being passed, but all assets remain vested in the company.

When the Company's affairs have been wound up the Liquidator must convene a final meeting of the Company and Creditors on 21 days' notice, to present the final account. The Liquidator must file a final return with the Registrar within 7 days of the final meeting and the Company is then dissolved.

How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?

Secured creditors are paid in full including interest to the date of payment, less the costs of and associated with the sale of the collateral. (Désastre Law Art.32 and Companies Law Art.166)

Priority creditors are limited to the following in this priority:

- payment of the Viscount or liquidator's fees properly incurred, including the costs of the application process where the Court so orders;
- payment of up to 6 months of arrears of salary of any employees and any outstanding holiday pay and bonuses;
- payment of local employee related taxes;
- up to two months arrears of rent; and
- payment of local rates for a period not exceeding 2 years.

Where non-priority creditors cannot be paid in full, the available assets are distributed pari passu.

There is no difference in treatment of local and foreign creditors.

Jersey does not recognise equitable subordination. Contractual netting and set off provisions are given effect in Jersey law.

Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Post-declaration the Viscount and post-appointment a liquidator, both have a wide range of powers to obtain the books and records of a company. There are also powers to examine directors and officers, investigate unlawful trading and unwind unlawful transactions.

The principle grounds for challenging pre-insolvency transactions are in respect of:

Preferences

- Where by any transaction, an existing creditor is put in a position which is more favourable than that which it would have been in had the transaction not occurred, and that transaction occurred when the debtor was insolvent or became insolvent by reason of that that transaction, that transaction may be set aside. (Désastre Law 17A and Companies Law Art.176A)
- A preferential transaction undertaken up to 12 months prior to the declaration or winding up may be set aside.
- A transaction will not be set aside where:
  a. it prejudices an interest in property which was acquired from someone other than the debtors and was acquired for value or in good faith; or
  b. it requires a person who is not a creditor, who received a benefit in good faith and for value to make a payment to the debtor's estate.

Transactions at an undervalue

- Where a debtor enters into a transaction whereby a benefit is conferred for no value or a value which is significantly less than the value of the benefit conferred, or by way of a gift or marriage settlement, at a time when the debtor is insolvent or by that transaction became insolvent, the transaction may be set aside as a transaction at an undervalue. (Désastre Law 17 and Companies Law Art.176)
- A transaction which occurred no more than 5 years prior to the declaration or winding up may be set aside as a transaction at an undervalue.
- A order setting aside the transaction may not be made where:
  a. it would prejudice an interest in property acquired from a person other than the debtor in good faith and for value; or
  b. it would require a person who received benefit for value and in good faith to make a payment to the debtor's estate.

Other impugnable transactions

- Other transactions which may be impugned on the application of the Viscount or a liquidator include where a debtor has entered into extortionate credit bargains or an individual has made excessive pension contributions.

What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Commencement of a désastre or creditors' winding up process gives rise to a moratorium on claims against the debtor. The moratorium is not expressly stated to be extra-territorial although it is likely that the Royal Court will consider applications for letters of request seeking the assistance of foreign Courts by way of the recognition of Jersey insolvency appointees in those other jurisdictions to enforce the moratorium . (Désastre Law 10 and Companies Law Art.159)

Creditors may apply for the moratorium on claims to be lifted in facts specific circumstances and the Court has a general discretion to allow claims to be commenced or pursued.

Local restructuring proceedings

What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

There is no codified statutory or customary corporate rescue process in common use in Jersey. It has been possible to use the just and equitable winding up jurisdiction under the Companies Law in certain limited circumstances but this is a continually evolving area of law without consistent jurisdiction. There is also an older process under the Loi (1839) Sur Les Remises des Biens and named remise de biens that may be afforded by the Court to temporarily embarrassed debtors with Jersey situs immovable property.

Part 18A of the Companies Law provides for a company to compromise with creditors and members by way of a scheme of arrangement.

- A scheme of arrangement can be made between a Jersey company and its creditors or any class of them, or its shareholders or any class of them. A scheme of arrangement can be implemented subject to obtaining the required level of votes at a meeting of the relevant creditors or shareholders to support a plan which is then sanctioned by the Royal Court.

- The provisions of the Companies Law relating to schemes of arrangement are based on the UK Companies Act 1985 and it is expected that the guidance of the English courts in respect of the UK statutory provisions will be followed in Jersey.
- The company's management is unaffected during the process.

Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

There are no restrictions on companies in liquidation obtaining credit.

Individuals are prevented from obtaining credit in excess of £250 during the course of their désastre without disclosing the order to the proposed creditor. (Désastre Law Art.25)

Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

There is no formal mechanism for such releases although they may be approved in the course of a scheme of arrangement.

The Viscount has the power to compromise all claims in a désastre (Désastre Law Art.26)

In the course of winding up processes or a liquidator have powers to release claims with the consent of a creditors' committee if convened, the body of creditors or the Royal Court. (Companies Law Art.170)

Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities to they have? Are they permitted to retain advisers and, if so, how are they funded?

No.

Existing contracts and assets / business sales

How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

The existence of insolvency proceedings does not have any effect on any contracts by operation of law outside the moratorium. The Viscount or a liquidator have a power to disclaim any onerous contracts subject to a right of any person adversely effected by disclaimer being entitled to claim in the bankruptcy or winding up for any loss or damage suffered thereby. . (Désastre Law 15 and Companies Law Art.171)

What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

The Viscount or a liquidator is able to pass unconditional title to assets free and clear of claims and liabilities.

The SIL provides that the operation of any security interest agreement is unaffected by a désastre or winding up process, although that may be waived by secured creditors who may wish to prove in the winding up or désastre.

Although possible, the Royal Court has not considered whether a security can be released without the consent of the secured party.

Credit bidding is not generally recognised as part of Jersey law but there is no reason why it would not be permitted.

Although Administration is not known to Jersey law the just and equitable jurisdiction has been employed to effect a pre-pack sale of a business as a going concern.

Liabilities of directors and others

What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?

Directors of Jersey companies owe general duties to:

- act honestly and in good faith with a view to the best interests of the company; and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. (Companies Law Art.74)

These duties continue into insolvency. These duties are owed to the company but the duties to take account of the interests of creditors arise as the company enters the zone of insolvency. The duties are owed to the creditors but can only be enforced by the company, whether by itself of by an insolvency appointee.

A director owes a duty to the company to ensure that all the company's creditors are treated equally and fairly. It follows that where a director allows preferential treatment of some creditors or allows a transaction at an undervalue, to the extent that recovery from the preferred creditor or transacting party is not possible, the director may be liable to make up that difference.

Further, directors should be aware of the obligations to avoid wrongful trading, that is trading while insolvent, which might result in a personal liability for debts incurred after the director ought to have commenced an insolvent winding up process. (Companies Law Art.177)

And further, directors should be aware of the obligation to avoid fraudulent trading, that is engaging in transactions which are intended to defraud creditors, which may result in the directors being personally liable to contribute to the company's assets to the extent the Royal Court might think fit. (Companies Law Art.178)

Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

No

Foreign debtors and recognition issues

Will a local court recognise concurrent foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

The Royal Court of Jersey will typically provide assistance to foreign insolvency appointees by operation of Art.49 of the Désastre Law or its inherent jurisdiction.

Applications for recognition of foreign appointees are predicated on the issuance of a letter of request or letters rogatory from a Court in the appointing jurisdiction. Advance notice of any recognition application should be given to the Viscount save in the most urgent cases, but the Viscount and the Royal Court are typically willing to assist foreign appointees.

Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction?

The Royal Court has jurisdiction to make a declaration that a person or entity's estate is en désastre and should vest in the Viscount regardless of where they reside or are incorporated if they have:

- carried on business in Jersey in the three years preceding the application; or
- if they own immovable property situate in Jersey. (Desastre Law Art.3)

Otherwise only Jersey residents or entities incorporated or constituted under Jersey statutes can be subject to Jersey insolvency processes.

A creditors' winding up is only available to Jersey registered companies.

Corporate groups

How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders?

There are no specific provisions in Jersey law for the restructuring or insolvency of companies within groups or groups of more than one company. Particular arrangement may be available on a case by case basis.

Opinion

Is it a debtor or creditor friendly jurisdiction?

Jersey is generally and properly recognized as being a creditor friendly jurisdiction with particular favour for secured creditors.

Do socio-political factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?

There are no relevant socio-political factors which are relevant to restructuring or insolvency in Jersey.

No state support is available for distressed businesses. Save where there is a public interest in a company being wound up, a Jersey company can be too poor to be wound up

What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Jersey does not have a creditor instigated winding up process whereby a creditor can apply to any local Court for orders to appoint a private liquidator for the purpose of the winding up of a Jersey company on the grounds it is insolvent or it is otherwise just and equitable that a company should be wound up.

The Jersey legislature is currently considering an amendment to the existing statutory regime which would allow a creditor to apply to the Royal Court of Jersey for a Creditors' Winding Up process to be commenced. There is no clear timetable as to when this legislation might come into force.

Jersey does not have any statutory rescue remedy similar to administration under the English Insolvency Act 1986 or Chapter 11 of the US Bankruptcy Code. There are presently no plans to introduce such a regime.

About Carey Olsen

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Our lawyers have been involved in a very significant number of the major formal insolvency proceedings in recent years in the jurisdictions in which we practice, and have played a key role in the development of the law in many key areas. They have a practical and deep technical understanding of the issues that can arise in restructuring situations, whether around merger, acquisition, reorganisation, workout or recapitalisation activities. They focus their advice on furthering our clients' commercial aims; typically preserving the assets of a business or the value of an investment, and building a viable restructuring transaction, exit strategy or litigation plan.

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The Legal 500 & The In-House Lawyer

Comparative Legal Guide Jersey: Restructuring & Insolvency (3rd edition)

This country-specific Q&A provides an overview to restructuring and insolvency laws and regulations that may occur in Jersey.

This Q&A is part of the global guide to Restructuring & Insolvency (3rd edition).

PLEASE NOTE

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