

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE COMPANIES (GUERNSEY) LAW, 2008 (INSOLVENCY) (AMENDMENT)**  
**ORDINANCE, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Companies (Guernsey) Law, 2018 ("the Law") to make further provision relating to the insolvency of companies.

Sections 2 and 3 insert provisions into the Law exempting a company in liquidation from the requirement under section 255 of the Law to have its accounts audited.

Section 6 inserts a provision into the Law that an administrator may make distributions to creditors in specified circumstances.

Section 7 inserts a provision into the Law permitting the dissolution of a company, following the discharge of an administration order, where it appears to the Court that a company has no assets that might permit a distribution to creditors. Sections 4 and 5 insert consequential provisions.

Section 8 inserts a provision into the Law requiring administrators to call an initial meeting of creditors, and to send an explanation to creditors of the aims, and likely process of, the administration. Section 8 also inserts into the Law a power for the Committee for Economic Development to make regulations in respect of the initial meeting and for the calling and otherwise in respect of any further meetings of creditors.

Sections 9 and 20 insert new sections into the Law enhancing the powers of administrators and liquidators of companies to obtain information and documents from officers, employees and those involved in the formation of companies.

Sections 10 and 21 insert provisions into the Law requiring administrators and liquidators, respectively, to report delinquent officers of insolvent companies to the Registrar of Companies or, in the case of supervised companies, to the Guernsey Financial Services Commission.

Sections 11 to 15 insert provisions into the Law regarding the appointment, and conduct, of liquidators of insolvent companies which are being voluntarily wound up, to enhance creditor protection.

Sections 16 and 17 insert provisions into the Law relating to circumstances where a final meeting prior to the dissolution of a company is called but no quorum was present.

Section 19 inserts a new Part XXIIIA into the Law providing for the compulsory winding up, by the Court, of non-Guernsey companies in specified circumstances.

Section 21 inserts provisions into the Law giving liquidators a power to disclaim onerous property and making consequential provision.

Section 22 inserts a new Part XXIVA into the Law which contains miscellaneous provisions relating to the winding up and administration of companies including:

- Powers for the Committee for Economic Development to appoint an Insolvency Rules Committee and to make rules for the purpose or carrying into effect Parts XXI to XXIV of the Law and more generally relating to dissolution, winding up, liquidation or administration.
- A power for a liquidator or administrator to apply to the Court for an order setting aside transactions at an undervalue and extortionate credit transactions in specified circumstances.
- A power for the Committee for Economic Development to make regulations about the supply of specified services to companies in administration or liquidation, with the aim of enabling such supplies to continue.

Other sections of the Ordinance make miscellaneous minor, or consequential, amendments to the Law.

The Ordinance shall come into force on the day appointed by regulations made by the States Committee for Economic Development, and different days may be appointed for different provisions and different purposes.

# **The Companies (Guernsey) Law, 2008**

## **(Insolvency) (Amendment) Ordinance, 2020**

**THE STATES**, in pursuance of their Resolution of the 31<sup>st</sup> March, 2017<sup>a</sup>, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008, as amended<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Law.**

1. The Companies (Guernsey) Law, 2008 is further amended as follows.
2. In section 255 after "section 256" add "or section 256A".
3. After section 256 add the following section -

### **"Company in winding up exempt from audit.**

**256A.** (1) Upon the appointment of a liquidator a company is exempt from the requirement under section 255 to have its accounts for a financial year audited.

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<sup>a</sup> Article XIV of Billet d'État No. VII of 2017.

<sup>b</sup> Order in Council No. VIII of 2008; No. XIII of 2010; No. I of 2013; No. VI of 2014; No. VI of 2017; Ordinance No. XXV of 2008; No. LIV of 2008; No. VII of 2009; No. XIV of 2009; No. XI of 2010; No. XXXI of 2012; No. XXXI of 2013; No. IV of 2015; No. XII of 2015; No. XXVI of 2015; No. IX of 2016; No. XXIX of 2017; No. XXVII of 2018; G.S.I. No. 34 of 2009; G.S.I. No. 37 of 2013; G.S.I. No. 84 of 2014; G.S.I. No. 29 of 2016; G.S.I. No. 35 of 2016; G.S.I. No. 38 of 2016; G.S.I. No. 35 of 2017; G.S.I. No. 103 of 2017; G.S.I. No. 90 of 2018.

(2) An exemption under subsection (1) will apply to each financial year of the winding up, including -

(a) the financial year in which the liquidator is appointed, and

(b) the company's final financial year,

but, for the avoidance of doubt, will not apply to any financial year prior to the one in which the liquidator was appointed (provided always that there is no obligation upon the liquidator to conduct an audit of the company's accounts for any such prior financial year in respect of which the company was in contravention of section 255).

(3) An exemption under subsection (1) only has effect in relation to obligations under this Law and does not prejudice any other obligation of a company to have its accounts audited."

4. In sections 369 and 370(1)(a)(ii) after "section 111(2)(d)" insert "or 382A".

5. In section 371(3)(b) after subparagraph (ii) insert the following subparagraph -

"or (iii) dissolved under section 382A and removed from the Register of Companies, whether any person who was an administrator prior to the company's dissolution consents to be an administrator if the company is restored,"

6. After section 380, add the following section -

**"Distributions to creditors.**

380A. (1) The administrator may make a distribution to a creditor of the company if he thinks it likely to assist the achievement of any purpose for which the administration order was made.

(2) The administrator may not make a distribution to a creditor who is not -

(a) a creditor with a secured interest, including a security interest (within the meaning of the Security Interests (Guernsey) Law, 1993), or

(b) a creditor with a preferred debt within the meaning of the Preferred Debts (Guernsey) Law, 1983,

unless the Court gives permission.

(3) For the avoidance of doubt, a distribution under this section to a creditor is not a distribution within the meaning of section 301 or for the purposes of section 303."

7. After section 382, add the following section -

**"Dissolution following discharge of administration order.**

382A. (1) If an administration order is discharged under section

382, and it appears to the Court that the company has no assets which might permit a distribution to its creditors, the Court may, on such terms and conditions as it thinks fit, order that the company be dissolved on a specified date.

(2) Where an order is made under this section the administrator shall -

- (a) within 7 days after the day of the order, send a copy of the order that the company be dissolved to the Registrar, and
- (b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct."

8. After section 386, add the following section -

**"Requirement for initial meeting of creditors.**

**386A.** (1) Each notice sent to creditors under section 386(1)(d)(i) shall be accompanied by -

- (a) an invitation to an initial meeting of creditors, and
  - (b) an explanation of the aims of and the likely process of the administration.
- (2) If the Court orders otherwise than for notices to be sent

to all creditors of the company under section 386(1)(d), the Court may at the same time order that the administrator must -

- (a) call an initial meeting of all such creditors by notice sent to them, and
- (b) send the explanation of the aims and process of the administration to all such creditors as set out in subsection (1)(b),

in each case so far as he is aware of their addresses.

(3) The date set for an initial meeting of creditors must be within a period of 10 weeks from the date of the administration order, or such other period as the Court may direct.

(4) The Committee may make regulations in respect of the initial meeting and for the calling and otherwise in respect of any further meetings of creditors which -

- (a) shall be by way of company insolvency rules under section 426B, and
- (b) may, without limitation, provide that -
  - (i) the initial meeting may be dispensed with where, in the opinion of the administrator, having regard to the provisions of section 419, there are no

assets available for distribution to the creditors, and

- (ii) this section and the regulations shall have effect in respect of the initial meeting and any further meeting of creditors subject to such exceptions, adaptations and modifications as may be specified in the regulations."

9. In section 387 -

- (a) after subsection (3)(d) add the following paragraph -

"(e) with the leave of the Court, any other person.",

- (b) after subsection (7) add the following subsection -

"(7A) If a person fails to comply with any obligation imposed under this section the administrator may (without prejudice to any other remedy or sanction in respect of the failure to comply) apply to the Court, and upon such an application the Court may make such order on such terms and conditions and subject to such penalty as it thinks fit, including without limitation an order that the person in respect of whom the application is made must –

- (a) make out and submit a statement of affairs in accordance with the



provisions of this section, and

- (b) comply with any other obligation imposed under this section."

10. After section 387, add the following section -

**"Duty to report delinquent officers of company."**

387A. (1) If it appears to the administrator at any time when an administration order is in force that there are grounds for the Court to make a disqualification order under Part XXV in respect of any past or present officer of the company, he shall, before, or within a period of 6 months from, the day on which he vacates office report the matter to the Registrar of Companies and, in the case of a supervised company, to both the Registrar of Companies and the Commission.

(2) Following a report under subsection (1), the administrator shall provide to the Registrar of Companies or (as the case may be) the Commission such additional information or documents in the possession of or under the control of the administrator and relating to the matter in question as the Registrar or (as the case may be) the Commission requires.

(3) The provisions of this section are in addition to and not in derogation from the provisions of section 422."

11. After section 391 add the following section -

**"Declaration of solvency.**

391A. (1) Where it is proposed to wind up a company voluntarily, the board of directors may make a declaration of solvency, which is a declaration signed by a director stating that, in the opinion of the board, the company satisfies the solvency test.

(2) To be effective, the declaration must be made within the period of 5 weeks immediately preceding the date of the resolution for winding up, or on the same date.

(3) If a declaration of solvency is not made in accordance with this section, sections 395(1A) and 398B apply to the winding up, and for the avoidance of doubt, those sections do not apply to a winding up in respect of which a declaration of solvency has been made in accordance with this section.

(4) A copy of a declaration of solvency made under this section shall be delivered by the company to the Registrar within a period of 30 days after the day of it being made.

(5) A company which fails to comply with subsection (4) -

(a) is guilty of an offence, and

(b) is liable to a civil penalty."

12. After section 395(1), add the following subsection -

"(1A) If a declaration of solvency has not been made in

accordance with section 391A, the company may not appoint a liquidator under subsection (1) who is -

- (a) a director, former director, shadow director, employee, manager, secretary or member of –
  - (i) the company, or
  - (ii) any associated company,
- (b) a director, former director, shadow director, employee, manager, secretary or member of -
  - (i) any other company (company X) which is or has been a director, former director, shadow director, employee, manager, secretary or member of the company intended to be placed into voluntary liquidation, or
  - (ii) any associated company of company X, or
- (c) the parent, spouse, former spouse, child or step-child of any of the persons referred to in paragraph (a) or (b)."

13. In section 396(1)(b), after "made with its creditors," add "and subject also to the provisions of section 395(1A),".

14. In section 398, number the existing text as subsection "(1)" and add the following subsection -

"(2) For the avoidance of doubt, the Court may appoint a liquidator under this section who is a person referred to in section 395(1A)(a) or (b), whether or not a declaration of solvency has been made in accordance with section 391A."

15. After section 398, add the following sections -

**"Liquidator to resign in certain circumstances."**

398A. (1) If a liquidator ("A") is a person referred to in section 395(1A)(a) or (b), and it becomes apparent to him during the winding up that, notwithstanding the declaration of solvency made under section 391A, the company does not satisfy the solvency test, A shall -

(a) convene a meeting of all creditors of the company (so far as he is aware of their addresses) to which either or both of the following propositions shall be submitted -

(i) that A's appointment as liquidator be sanctioned,

(ii) that an alternative liquidator, who has expressed his willingness to act, be appointed on the same terms and conditions as A, or on such other terms

and conditions as may be set out in the proposition, and that A shall immediately resign, or

- (b) make an application to the Court on notice to all creditors of the company (so far as he is aware of their addresses) for an order that A's appointment as liquidator be sanctioned,

and, where the appointment of a liquidator has been sanctioned by a meeting of creditors or by an order of the Court pursuant to paragraph (a)(i) or (b) or an alternative liquidator has been appointed pursuant to paragraph (a)(ii), section 398B applies to the winding up.

(2) For the purposes of subsection (1) -

- (a) a proposition mentioned in subsection (1)(a)(i) or (ii) must be passed by a simple majority in value of the creditors present and voting,
- (b) if only one of the propositions mentioned in subsection (1)(a) is submitted to the meeting, and that proposition is not passed, A shall immediately resign and deliver notice of resignation to the Registrar within a period of 30 days immediately following the day of the meeting,
- (c) if both propositions mentioned in subsection

(1)(a) are submitted to the meeting –

- (i) the proposition mentioned in subsection (1)(a)(i) shall be voted on first,
  - (ii) if that proposition is passed, then no vote shall be taken on the proposition mentioned in subsection (1)(a)(ii), and
  - (iii) if neither of the propositions mentioned in subsection (1)(a) is passed, a vote having been taken on each, A shall immediately resign and deliver notice of resignation to the Registrar within a period of 30 days immediately following the day of the meeting,
- (d) if only the proposition mentioned in subsection (1)(a)(ii) is passed -
- (i) A shall immediately resign and deliver notice of resignation to the Registrar within a period of 30 days immediately following the day of the meeting, and
  - (ii) notice of the appointment of the alternative liquidator shall be delivered to the Registrar within a period of 30 days immediately following the day of

the meeting (and the provisions of section 395(1) shall be deemed to have been complied with), and

(e) notwithstanding the foregoing provisions of this section, if in any case -

(i) no creditor is present at the meeting mentioned in subsection (1)(a), or

(ii) no creditor votes at that meeting,

the proposition mentioned in subsection (1)(a)(i) shall be deemed to have been passed,

and a proposition passed or deemed to have been passed under this subsection shall have effect for the purposes of this Law and shall be complied with and acted upon accordingly.

(3) On hearing an application under subsection (1)(b), the Court may, if satisfied it would be just to so order, sanction the liquidator's appointment (on such terms and conditions as the Court may direct), or make such other order as the Court considers just.

**Additional requirements on liquidator.**

398B. (1) If -

(a) a declaration of solvency has not been made in accordance with section 391A,

- (b) the appointment of a liquidator has been sanctioned -
  - (i) by a meeting of creditors pursuant to section 398A(1)(a)(i), or
  - (ii) by an order of the Court pursuant to section 398A(1)(b), or
- (c) an alternative liquidator has been appointed pursuant to section 398A(1)(a)(ii),

the liquidator shall, unless in the opinion of the liquidator, having regard to the provisions of section 419, there are no assets available for distribution to the creditors, call at least one meeting of the company's creditors which meeting shall take place within one month of his appointment or (as the case may be) the sanctioning of his appointment.

(2) Notice of the meeting shall be sent to all the company's creditors at least 7 days before the day on which the meeting is to be held, and shall contain -

- (a) notice of the liquidator's appointment or (as the case may be) the sanctioning of his appointment, and
- (b) an explanation of the likely process of the voluntary winding up."



16. After section 400(2) add the following subsection -

"(2A) However, if a quorum is not present at such a meeting, the liquidator shall give notice to the Registrar that the meeting was duly called, specify the date on which it was due to take place and state that no quorum was present."

17. In section 400(3) after the words "publish the fact of this final meeting" insert ", or the fact that it was duly called and no quorum was present,".

18. In section 407, for the expression "section 406(e)" substitute "sections 406(e) and 418B(2)(b)".

19. After section 418 insert the following Part -

#### "PART XXIIIA

#### WINDING UP OF NON-GUERNSEY COMPANIES

##### Meaning of "non-Guernsey company".

**418A.** In this Part of this Law "**non-Guernsey company**" means -

- (a) any overseas company,
- (b) any person or body prescribed by the Committee for the purposes of this section or of a class or description so prescribed,

and, for the avoidance of doubt, does not include a company registered in the

Register of Companies.

**Winding up of non-Guernsey companies.**

**418B.** (1) Subject to the provisions of this Part, any non-Guernsey company may be compulsorily wound up by the Court under this Law, and Parts XXIII and XXIV, other than section 420, apply (with the modification set out in subsection (2) and all other necessary modifications) to a non-Guernsey company as they apply in relation to a company registered in the Register of Companies, and the court or liquidator may exercise any powers or do any act in the case of a non-Guernsey company which might be exercised or done by it or him in winding up a company registered in the Register of Companies.

(2) Section 409(1) applies with the modification that in the case of a non-Guernsey company which is -

- (a) a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002, or
- (b) a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

the Court may not direct that the period specified in that section be reduced to a period of less than 7 days.

(3) The circumstances in which a non-Guernsey company may be wound up by the Court are as follows -

- (a) 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,

- (b) if the company is unable to pay its debts within the meaning given in section 407, or
- (c) if the Court is of the opinion that it is just and equitable that the company should be wound up."

20. After section 419, insert the following sections -

**"Statement of affairs to be submitted to liquidator.**

**419A.** (1) Subject to this section, section 387 applies (with necessary modifications) to a winding up and a liquidator as it applies to an administration and an administrator, and accordingly a liquidator may (without prejudice to any other requirements imposed by or under that section) require all or any of the persons mentioned in section 387(3) to make out and submit to him a statement (a "**statement of affairs**") in such form as he may require as to the affairs of the company.

(2) For the purposes of the application of section 387 to a statement of affairs to be submitted to the liquidator, "the preceding year" in section 387(3)(b) means the period of one year before the date of -

- (a) the making of the application for the compulsory winding up of the company under section 408,
- (b) the passing by the company of any resolution

mentioned in section 391(1) for the voluntary winding up of the company, or

- (c) the making of an administration order in respect of the company,

as the case may be.

(3) For the avoidance of doubt, a liquidator may require a statement of affairs from a person notwithstanding that that person has submitted a statement in respect of the company in a previous administration or voluntary winding up of the company.

(4) The powers conferred on a liquidator by this section may be exercised only to the extent reasonably required by the liquidator for the purposes of the performance of his functions in respect of the winding up of the company.

**Production of documents and information.**

**419B.** (1) The liquidator may at any time before the dissolution of the company apply to the Court for an order requiring all or any of the persons mentioned in subsection (3) to produce documents and information relating to the company.

(2) The Court may, on such terms and conditions and subject to such penalties as it thinks fit, order a person who is the subject of an application under subsection (1) -

- (a) to produce, in the form and manner specified in

the order, any documents that are specified or described in the order, and

- (b) to provide, in the form and manner specified in the order, such information as may be specified or described in the order.

(3) The persons referred to in subsection (1) are -

- (a) those who are or have been officers of the company,
- (b) those who have taken part in the company's formation at any time within the preceding year within the meaning of section 419A(2),
- (c) those who are in the company's employment or have been in its employment within the preceding year, and are in the liquidator's opinion capable of giving the information required,
- (d) those who are or have within the preceding year been officers of or in the employment of a company which is, or within the preceding year was, an officer of the company,
- (e) with the leave of the court, any other person.

(4) In subsection (3) -

(a) "**employment**" includes employment under a contract for services, and

(b) in the case of a cell of a protected cell company, references to company include references to the protected cell company.

(5) This section only applies to documents and information reasonably required by the liquidator for the purposes of the performance of his functions in respect of the winding up of the company.

(6) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an advocate or other legal adviser may be required to give the name and address of any client.

(7) An order of the Court under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.

(8) A person who without reasonable excuse fails to comply with any obligation imposed by or under this section is (without prejudice to any other remedy or sanction in respect of the failure to comply) guilty of an offence.

**Examination of officers.**

**419C.** (1) The liquidator may in the course of the winding up apply to the Court for the appointment of an Inspector of the Court to conduct an examination of any person who is or has been an officer of the company.

(2) The liquidator -

- (a) unless the Court on the application of the liquidator directs otherwise, shall make an application under subsection (1) as soon as reasonably practicable if requested to do so by one half in value of the company's creditors, and
- (b) may make such an application of his own motion at any time.

(3) On an application under subsection (1), the Court shall if it thinks fit appoint an Inspector on such terms and conditions (including terms and conditions as to remuneration, costs and expenses and the recovery thereof) as the Court thinks fit and direct that an examination of the person to whom the application relates shall be held on a day to be appointed by the Inspector, and that person shall -

- (a) attend on that day in the same way as if summonsed before the Court in civil proceedings, and
- (b) be examined as to -

- (i) the formation, management or promotion of the company,
- (ii) the conduct of its business and affairs, or
- (iii) his conduct or dealings in relation to the company.

(4) A person examined under subsection (3) has the same rights, powers and privileges, and is subject to the same duties, obligations, sanctions, penalties and proceedings, as a witness summonsed before the Court in civil proceedings (including, without limitation, duties to take the oath or affirmation, which shall be administered by the Inspector, to produce any document in his possession, custody or power, and to answer any question put to him).

(5) An examination before an Inspector under this section shall be conducted in private.

(6) A statement made by a person in the course of an examination before an Inspector under this section -

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except -



(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) any offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(B) perjury, or

(C) perverting the course of justice.

(7) The Committee may make such rules of procedure in respect of examinations under this section and the conduct thereof as it thinks fit and in respect of the qualifications, appointment, functions, privileges and immunities of an Inspector.”.

21. After section 421, insert the following sections -

**“Power to disclaim onerous property.**

**421A.** (1) The liquidator may by giving notice under this section disclaim any onerous property of the company, and may do so

notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) For the purpose of this section, “**onerous property**” means -

- (a) any unprofitable contract,
- (b) any other personal property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and
- (c) any real property if it is situated outside the Bailiwick of Guernsey.

(3) A notice of disclaimer under subsection (1) must -

- (a) contain a description of the property disclaimed which enables it to be easily identified,
- (b) be signed and dated by the liquidator and served within 7 days of signing on -
  - (i) the Registrar,
  - (ii) Her Majesty's Receiver General,
  - (iii) any person who claims an interest in the

disclaimed property,

(iv) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer,

(v) any other person prescribed by the Committee for the purposes of this subsection.

(4) A disclaimer under this section -

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed, but

(b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(5) A notice of disclaimer shall not be given under this section in respect of any property if -

(a) a person interested in the property has applied in writing to the liquidator requiring the liquidator to decide whether he will disclaim or

not, and

- (b) the liquidator has not, within a period of 28 days after receipt of the application or such further period as may be allowed by the Court, given notice disclaiming the property.

(6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

(7) Notwithstanding any other provision of this section, a notice of disclaimer of onerous property of a company under this section is not effective against any person not served with notice of the disclaimer.

(8) Where the effect of a disclaimer of onerous property under this section is that the property would become bona vacantia, Her Majesty's Receiver-General may direct that the property is not bona vacantia and accordingly does not belong to the Crown.

**Disclaimer of leaseholds.**

**421B.** (1) The disclaimer under section 421A of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either -

- (a) no application under section 421C is made in respect of that property before the end of the

period of 14 days beginning with the day on which the last notice served under this subsection was served, or

- (b) where such an application has been made, the Court directs that the disclaimer shall take effect.

(2) Where the Court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 421C, make such orders in respect of fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

- (3) For the purposes of this section -

**"mortgagee"** means a person holding any, or any interest in any, security on assets of the company or any cell thereof,

**"property of a leasehold nature"** means -

- (a) any interest in or in respect of real property which confers or vests rights of possession, occupation or enjoyment and which is treated by law as or deemed to be personal property, or
- (b) any real property subject to such an interest,

**Powers of court in respect of disclaimed property - general.**

**421C.** (1) This section and section 421D apply where the liquidator has issued a notice disclaiming any property under section 421A.

(2) An application may be made to the Court by -

- (a) any person who claims an interest in the disclaimed property,
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer,
- (c) Her Majesty's Receiver General,
- (d) with leave of the Court, any other person.

(3) Subject to subsection (4) the Court may, on an application under this section, make an order on such terms and conditions as it thinks fit, including without limitation one for the vesting of the disclaimed property in, or for its delivery to -

- (a) a person entitled to it or a trustee for such a person, or
- (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.

(4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the

disclaimer.

(5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 421A(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

**Powers of court in respect of leaseholds.**

**421D.** (1) The Court shall not make an order under section 421C vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person -

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under section 421C relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

(3) Where subsection (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under section 421C on the terms required under subsection (1), the Court may, by order under section 421C, vest the company's estate and interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

The Court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(4) Where subsection (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under section 421C, that person is excluded from all interest in the property.

**Duty to report delinquent officers of company.**

**421E.** (1) If it appears to the liquidator in the course of the winding up of a company that there are grounds for the Court to make a disqualification order under Part XXV in respect of any past or present officer of the company, he shall before, or within a period of 6 months from, the day on which the company is dissolved report the matter to the Registrar of Companies, and in the case of a supervised company, to both the Registrar of Companies and the Commission.

(2) Following a report under subsection (1), the liquidator shall provide to the Registrar of Companies or (as the case may be) the Commission such additional information or documents in the possession of or under the control of the liquidator and relating to the matter in question as the



Registrar or (as the case may be) the Commission requires.

(3) The provisions of this section are in addition to and not in derogation from the provisions of section 422."

22. After section 426A insert the following Part -

"PART XXIVA  
MISCELLANEOUS PROVISIONS APPLYING TO WINDING UP  
AND ADMINISTRATION

**Company insolvency rules.**

**426B.** (1) The Committee may by regulation make rules ("**company insolvency rules**") for the purpose of carrying into effect Parts XXI to XXIV of this Law and any other provision of this Law relating to dissolution, winding up, liquidation or administration, including (without limitation) rules prescribing or otherwise in respect of -

- (a) matters of practice and procedure to be followed in or in connection with those Parts and provisions,
- (b) the administration of those Parts and provisions, including by the Committee and the Registrar,
- (c) the means by which particular facts may be proved, and the way in which representations may be made or given,

- (d) ancillary, incidental, supplementary and related matters.

(2) Company insolvency rules under subsection (1) may, without limitation -

- (a) prescribe the circumstances where a creditor wishing to recover a debt from a company which is being wound up must submit a proof of that debt to the liquidator, and provide for a procedure for proving the debt,
- (b) provide that the liquidator may accept or reject a proof (in whole or in part),
- (c) provide that, if a creditor is dissatisfied with a liquidator's decision to reject a proof, the creditor may apply to court for the decision to be reversed or varied,
- (d) prescribe the form and content of the notice by which a liquidator may disclaim onerous property of the company under section 421A.

(3) Company insolvency rules may, without limitation, make provision corresponding to that made in England and Wales by the Insolvency (England and Wales) Rules 2016 as from time to time amended or

re-enacted (with or without modification).<sup>c</sup>

**Company Insolvency Rules Committee.**

**426C.** (1) The Committee may from time to time establish an Insolvency Rules Committee for the purpose of being consulted by the Committee under subsection (3).

(2) The Committee may appoint as members of the Insolvency Rules Committee any persons appearing to it to have qualifications or experience that would be of value to the Committee in considering any matter about company insolvency rules.

(3) If an Insolvency Rules Committee has been established under subsection (1), the Committee must consult that Committee before making any company insolvency rules under section 426B.

**Transactions at an undervalue.**

**426D.** (1) A liquidator or an administrator (as the case may be) of a company may apply to the Court for an order under this section if -

- (a) the company has entered into a transaction with a person at an undervalue at any time after the commencement of a period of 6 months immediately preceding the relevant date, and
- (b) the company -

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<sup>c</sup> United Kingdom S.I. 2016/1024.

- (i) was unable to satisfy the solvency test when it entered into the transaction, or
  - (ii) became unable to satisfy the solvency test as a result of entering into the transaction.
- (2) For the purposes of this section -
  - (a) a company enters into a transaction with a person at an undervalue if the company -
    - (i) makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no valuable consideration, or
    - (ii) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company,
  - (b) the “**relevant date**” is the earlier of -
    - (i) the date of the making of any application for the compulsory winding up of the company under section 408,

(ii) the date of the passing by the company of any resolution mentioned in section 391(1) for the voluntary winding up of the company,

(iii) the date of the making of any application for an administration order under section 375.

(3) Subject to subsection (7), on an application by a liquidator or an administrator under subsection (1) the Court may make such order on such terms and conditions and subject to such penalty as it thinks fit for restoring the position to what it would have been if the company had not entered into the transaction.

(4) Without prejudice to the generality of subsection (3) but subject to subsection (5), an order under this section may -

(a) require any property transferred as part of the transaction to be vested in the company,

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,

(c) release or discharge (in whole or in part) any security given by the company,

- (d) require any person to pay, in respect of benefits received by him from the company or benefits received by him from the person who entered into the transaction with the company, such sums to the liquidator or administrator as the court may direct,
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the Court thinks fit,
- (f) provide for -
  - (i) security to be provided for the discharge of any obligation imposed by or arising under the order,
  - (ii) such an obligation to be secured or charged on any property, and
  - (iii) such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction,
- (g) provide for the extent to which any person

whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to claim in the liquidation for debts or other liabilities which arose from, or were released or discharged (in whole or in part) by, the transaction.

(5) An order under this section may affect the property of or impose obligations on any person, whether or not he is the person with whom the company entered into the transaction, but shall not -

- (a) prejudice any interest in property acquired from a person other than the company in good faith, for value and without notice of the existence of circumstances by virtue of which an order under this section may be made,
- (b) prejudice an interest deriving from such interest, or
- (c) require a person who received a benefit from the transaction in good faith, for value and without notice of the existence of circumstances by virtue of which an order under this section may be made to pay any sum unless he was a party to the transaction.

(6) In the application of this section to any case where the person who entered into the transaction with the company is connected with

the company, the reference in subsection (1) to 6 months is to be read as a reference to 2 years.

(7) The Court shall not make an order under this section if it is satisfied -

- (a) that the transaction at an undervalue was entered into by the company in good faith and for the purpose of carrying on its business, and
- (b) 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.

(8) In considering for the purposes of this section whether a person has acted in good faith, the court may, without limitation, take into consideration -

- (a) whether the person was aware -
  - (i) that the company had entered into a transaction at an undervalue, and
  - (ii) that the company -
    - (A) was unable to satisfy the solvency test when it entered into the transaction, or



(B) would as a likely result of entering into the transaction became unable to satisfy the solvency test, and

(b) whether the person was an associated company of or was connected with either the company or the person with whom the company entered into the transaction.

(9) In this section "**connected**" has the same meaning as in section 424(7).

(10) This section is without prejudice to any other remedy.

**Extortionate credit transactions.**

**426E.** (1) A liquidator or an administrator of a company may apply to the Court for an order under this section if -

(a) the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company,

(b) the transaction is or was extortionate, and

(c) the transaction was entered into during the period of 3 years immediately preceding the relevant date.

(2) For the purposes of this section -

(a) a transaction is extortionate if, having regard to the risk accepted by the person providing the credit -

(i) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(ii) it otherwise grossly contravened ordinary principles of fair dealing,

(b) "**relevant date**" has the same meaning as in section 426D(2)(b).

(3) Unless the contrary is proved, it shall be presumed that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section shall be made on such terms and conditions and subject to such penalties as the Court thinks fit, and may -

(a) set aside the whole or part of any obligation created by the transaction,

- (b) vary the terms of the transaction or vary the terms on which any security for the purposes of the transaction is held,
- (c) require any person who is or was a party to the transaction to pay to the liquidator or administrator (as the case may be) any sums paid to that person, by virtue of the transaction, by the company,
- (d) require any person to surrender to the liquidator or administrator (as the case may be) any property held by that person as security for the transaction,
- (e) make any other order with regard to the transaction as the Court thinks fit, (including, without limitation, one directing accounts to be taken between any persons).

(5) This section is without prejudice to the provisions of the Ordonnance donnant pouvoir à la Cour de réduire les intérêts excessifs, 1930.

**Supplies of gas, water, electricity, etc.**

**426F.** (1) The Committee may make regulations about the supply of -

- (a) gas, water and electricity,

- (b) communications services, and
- (c) goods or services mentioned in subparagraphs (i) to (v), where the supply is for the purpose of enabling or facilitating anything to be done by electronic means -
  - (i) point of sale terminals,
  - (ii) computer hardware and software,
  - (iii) information, advice and technical assistance in connection with the use of information technology,
  - (iv) data storage and processing, and
  - (v) website hosting,

by a person who carries on a business which includes giving such a supply to a company in administration or liquidation with the aim of enabling that supply to continue.

(2) Without prejudice to the generality of subsection (1), regulations may provide that if a liquidator or administrator of a company (as the case may be) makes a request to a person who carries on a business which includes giving such a supply as is mentioned in subsection (1) in Guernsey for a supply to the company in liquidation or administration, the supplier -

- (a) may make it a condition of the supply that the liquidator or administrator (as the case may be) personally guarantees the payment of any charges in respect of the supply, but
- (b) may not make it a condition of the supply, or do anything which has the effect of making it a condition of the supply, that any outstanding charges in respect of a supply given to the company before the company entered liquidation or administration are paid."

23. In section 513(1)(b), after "391(4)," insert "391A(5)," and after "414(6)," insert "419B(8),".

24. In section 533 -

- (a) in subsection (4)(b), repeal the word "and",
- (b) in subsection (4)(c), for "enactment." substitute "enactment, and",
- (c) add the following paragraph after subsection (4)(c) -
  - "(d) may empower the Committee or the Registrar, in specified circumstances, to make regulations."

**Citation.**

25. This Ordinance may be cited as the Companies (Guernsey) Law, 2008

(Insolvency) (Amendment) Ordinance, 2020.

**Commencement.**

26. This Ordinance shall come into force on the day appointed by regulations made by the States Committee for Economic Development, and different days may be appointed for different provisions and different purposes.