

Administration Orders – a new opportunity for creditors of Guernsey companies

With the coming into effect of The Companies (Guernsey) (Amendment) Law, 2005, (the “Amendment Law”) a new concept has been introduced into the general law affecting Guernsey registered companies. Although dated 2005 the Amendment Law came into effect on 13th November 2006.

Those familiar with protected cell companies (“PCCs”) will already be aware of administration orders. The Amendment Law does not relate to PCCs. PCCs and administration orders relating to them continue to be governed by the Protected Cell Companies Ordinance, 1997.

Previously, a Guernsey company was either a going concern or else it was in liquidation (voluntary or compulsory). The new legislation has introduced a 'half way house' in that a company in difficulties may now be placed into administration rather than into liquidation. Administration is an alternative to winding up and is intended to be used where a company is in difficulties but where something may be saved. For this reason it may be of particular interest to creditors who are owed money by the struggling debtor company and where in liquidation proceedings such creditors may not obtain the full amount they are owed.

In order to obtain an administration order the applicant must show to the Court that the company is, or is likely to become, unable to pay its debts and that the making of the order will either assist with the survival of the company as a going concern or allow a more advantageous realisation of the company's assets than would be achieved by liquidation.

When an administration order is made, the Court will appoint an administrator. The administrator may do anything that is necessary or expedient for the management of the affairs and business of the company.

An administration order will specify one or more purposes for which it is made. These will be either (a) the survival of the company, and the whole or any part of its undertaking, as a going concern or (b) a more advantageous realisation of the company's assets than would be effected on a winding up. The administrator must then conduct the administration in accordance with such purpose(s).

The making of an administration order by the Royal Court has an immediate and profound effect on the company. From the application for the administration order and during the period for which an administration order is in effect a 'moratorium' is imposed on the company's debts and there is a stay on any winding up. This means that no resolution may be passed or order made for the company's winding up and any application for the company's winding up must be dismissed. Of particular interest to the officers, members and creditors of the struggling company is that no proceedings may be commenced or continued against the company except with the leave of the Court. However rights of set-off and secured interests, and rights to enforce them, are unaffected by administration.

Once a company is subject to an administration order every document which is issued by it or on its behalf must refer to the administrator, so that anyone dealing with the company is aware of its status. As in the case of a liquidation, notice of the administration order must be published in La Gazette Officielle and the administrator will inform all the creditors of the company and (if the company is a supervised company) the Guernsey Financial Services Commission in writing that the administration order has been made. A copy of the administration order is also placed on the company's public record at the Greffe allowing all who may potentially deal with the company to know of its precarious situation.

The interests of creditors and members of the company are further protected during the period of an administration order. Whilst an order is in force a creditor or member of the company may apply to the court if he believes that the administrator is handling the company's affairs in a manner prejudicial to all or some of its creditors or members.

An administration order comes to an end when the administrator applies to the court for the order to be discharged. He will make such application when it appears to him that the purpose of the administration order has been achieved or is incapable of being achieved.

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