



Jersey

COMPANIES (AMENDMENT No. 8) (JERSEY) REGULATIONS 202-

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Made *[date to be inserted]*

Coming into force *[date to be inserted]*

THE STATES make these Regulations under Article 194A of the Companies (Jersey) Law 1991 –

1 Companies (Jersey) Law 1991 amended

These Regulations amend Part 21 of the Companies (Jersey) Law 1991.

2 Article 157 (procedure) substituted

For Article 157 there is substituted –

“157 Procedure

A company, not being one in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up under this Chapter if –

- (a) the company so resolves by special resolution; or
- (b) the court makes an order for winding up under Article 157C.”.

3 Article 157A, 157B, 157C and Article 157D inserted

After Article 157 there is inserted –

“157A Application for creditors’ winding up by creditor

- (1) Subject to paragraphs (2), (3) and (4), an application for an order commencing a creditors’ winding up may be made to the court by a creditor of a company with a claim against the company of not less than the prescribed minimum liquidated sum.
- (2) Except in the case of clear evidence of the company’s insolvency or consent, prior to making an application under paragraph (1), a creditor must, by way of personal service, serve a demand in the prescribed form on the company.

- (3) A creditor must not make an application under paragraph (1) unless –
 - (a) the company fails to pay the debt due or does not otherwise dispute the debt due and owing within 21 days after the service of the demand, if any, under paragraph (2); and
 - (b) except in exceptional circumstances, the creditor gives the company at least 48 hours' notice of the application that is being made.
- (4) A creditor must not make an application under paragraph (1) –
 - (a) to the extent that the creditor has agreed not to make an application; or
 - (b) whose only claim is for repossession of goods.
- (5) An application must be made in the form approved by the court and must be accompanied by an affidavit verifying the content of the form.

157B Appointment of provisional liquidator

- (1) Subject to the provisions of this Article, the court may, at any time after an application for a creditors' winding up is made under Article 157A, appoint a liquidator provisionally.
- (2) The liquidator appointed provisionally under this Article must carry out such functions that the court may confer on the liquidator.
- (3) The powers of a liquidator appointed provisionally under this Article may be limited by the order appointing the liquidator.
- (4) After the appointment of a provisional liquidator no action must be taken or proceeded with against the company except by leave of the court and subject to such terms as the court may impose.

157C Order of court commencing creditors' winding up

- (1) The court, after considering an application made, and the affidavit required, under Article 157A, may –
 - (a) make an order that a creditors' winding up must commence in respect of the company from the date the application is made and appoint a person nominated by the applicant or selected by the court as the liquidator; or
 - (b) dismiss the application and make such order as it thinks fit.
- (2) The court may at any time adjourn the hearing of an application made under Article 157A for such time as the court thinks fit and may require the applicant to furnish such further information as the court requires.
- (3) A liquidator appointed under paragraph (1)(a) must, within 14 days after the liquidator's appointment, in writing signed by the liquidator, give notice of the appointment to the registrar, the Viscount and the directors and creditors of the company (to the extent known to the liquidator).

- (4) A liquidator who fails to comply with paragraph (3) commits an offence.
- (5) Article 83 applies to a liquidator appointed under paragraph (1)(a) as it applies to a director.
- (6) If, as a result of an application made by a creditor, an order for a creditors' winding up is made and the company was not insolvent at the date that the application was made, the company has the right of action against the applicant to recover damages for or in respect of any loss sustained by the company as a consequence of the order, unless the applicant, in making the application, acted reasonably and in good faith.
- (7) Any action brought under paragraph (6) must be commenced within 12 months from the date of the application.

157D Debtor's application to terminate creditors' winding up

- (1) A company may, at any time during the course of the creditors' winding up which has been ordered by the court under Article 157C, apply to the court for an order terminating the creditors' winding up.
- (2) The court must refuse an application made under paragraph (1) if the court is not satisfied that the property of the company is at the time of the application sufficient to pay in full claims filed with the liquidator or claims which the liquidator has been advised will be filed within the prescribed time.
- (3) In considering an application under paragraph (1), the court must have regard to the interests of –
 - (a) creditors who have filed a proof of debt;
 - (b) creditors whose claims the liquidator has been advised will be filed within the prescribed time; and
 - (c) the company.
- (4) If the court makes an order under this Article, the court may make such order as it thinks fit.
- (5) If the court makes an order under this Article, the creditors' winding up terminates from the date of the order unless the court orders otherwise.
- (6) An order made under this Article does not prejudice the validity of any act of the liquidator relating to the company between the date the application for a creditors' winding up is made under Article 157C(1)(a) and the date of the termination of the creditors' winding up under paragraph (5)."

4 Article 158 (notice of winding up) amended

In Article 158 after paragraph (2) there is inserted –

- “(3) If the court orders a creditors' winding up, the liquidator must within 14 days of the date of the order give notice of that fact in the Jersey Gazette.

- (4) If a liquidator fails to comply with paragraph (3), the liquidator commits an offence.”.

5 Article 159 (commencement and effects of creditors’ winding up) amended

In Article 159(1) after sub-paragraph (b) there is inserted –

- “(c) if the court orders the creditors’ winding up under Article 157C(1)(a), at the time the application is made under Article 157A(1),”.

6 Article 160A (meeting of creditors following court ordered creditors’ winding up) inserted

After Article 160 there is inserted –

“160A Meeting of creditors following court ordered creditors’ winding up

- (1) If the court orders a creditors’ winding up in respect of a company under Article 157C(1)(a) or appoints a provisional liquidator under Article 157B, the liquidator or provisional liquidator must –
 - (a) within 7 days after the date of appointment of the liquidator or provisional liquidator, give to the creditors of the company known to the liquidator or provisional liquidator notice in writing calling a meeting of creditors to be held in Jersey on the day falling 21 days after the date of the court order, or if that day is not a working day, the next working day after that day;
 - (b) give notice in the Jersey Gazette of the creditors’ meeting not less than 10 days before the day for which the meeting has been called; and
 - (c) during the period before the creditors’ meeting, furnish creditors free of charge with such information concerning the company’s affairs as they may reasonably require and which is in the possession of the liquidator or provisional liquidator.
- (2) The directors of a company in respect of which a creditors’ winding up has been ordered under Article 157C(1)(a) must –
 - (a) make out a statement as to the affairs of the company, verified by affidavit by some or all of the company’s directors; and
 - (b) lay the statement before the creditors’ meeting.
- (3) The liquidator or provisional liquidator appointed by the court must preside over the creditors’ meeting called under this Article.
- (4) If –
 - (a) the liquidator or provisional liquidator appointed by the court without reasonable excuse fails to comply with paragraph (1); or

- (b) the directors of the company in respect of which a creditors' winding up is ordered without reasonable excuse fail to comply with paragraph (2),

the liquidator, provisional liquidator or the directors, as the case may be, commit or commits an offence.

- (5) For the purposes of paragraph (1) "working day" means a weekday (within the meaning of Part 1 of the Schedule to the Public Holidays and Bank Holidays (Jersey) Act 2010) other than –

- (a) a day specified in that Schedule as a day which is to be observed as a public holiday; or
- (b) a day noted in that Schedule as a day which is by custom observed as a general holiday.”.

7 Article 161 (appointment of liquidator) amended

In Article 161 after paragraph (4) there is inserted –

“(4A) Where a liquidator has been appointed by the court, a creditor of the company in respect of which the creditors' winding up has been ordered under Article 157C(1)(a) may, within 7 days of the creditors' meeting referred to in Article 160A, apply to the court for an order appointing some other person to be the liquidator instead of the person appointed by the court under Article 157C(1)(a).”.

8 Article 163 (remuneration of liquidator, cesser of directors' powers, and vacancy in office of liquidator) amended

In Article 163 –

- (a) in paragraph (1) after “creditors' winding up” there is inserted “(other than a liquidator appointed by the court)”;

- (b) after paragraph (1) there is inserted –

“(1A) A liquidator appointed by a court in a creditors' winding up ordered by the court is entitled to receive such remuneration as is fixed by the court.”;

- (c) for paragraph (2) there is substituted –

“(2) In a creditors' winding up –

- (a) on the appointment of a liquidator, in the case of a creditors' winding up that is not ordered by the court under Article 157C(1)(a); or

- (b) on the date that the application is made to the court under Article 157A(1), in the case of a creditors' winding up that is ordered by the court under Article 157C(1)(a),

all the powers of the directors cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.”;

- (d) for paragraph (3) there is substituted –

“(3) The creditors, in the case of a creditors’ winding up that is not ordered by the court under Article 157C(1)(a) or the court, in the case of a creditors’ winding up ordered by the court under Article 157C(1)(a), may at any time remove a liquidator.”.

9 Article 170 (powers and duties of liquidator) amended

In Article 170 –

(a) in paragraph (5) after “The appointment” there is inserted “(other than pursuant to a court order)”; and

(b) after paragraph (5) there is inserted –

“(6) A court order appointing more than one person as a liquidator may provide whether any act to be done is to be done by all or any one or more of them and in the absence of any such provision, any such act may be done by 2 or more of them.”.

10 Article 186A (references to the court) amended

In Article 186A(1) before sub-paragraph (a) there is inserted –

“(aa) the Viscount;”.

11 Article 190 (notification by liquidator of resignation, etc.) amended

For Article 190(1) there is substituted –

“(1) A liquidator who resigns, is removed or for any other reason vacates office must within 14 days after the resignation, removal or vacation of office give notice thereof, signed by the liquidator, to the registrar and –

(a) in the case of a creditors’ winding up (except where the removal is under Article 163(3)), to the creditors;

(b) in the case of a creditors’ winding up ordered by the court, to the court and the Viscount.”.

12 Citation and commencement

These Regulations may be cited as the Companies (Amendment No. 8) (Jersey) Regulations 202- and comes into force on a day to be specified by Act.