

WINDING UP SOLVENT JERSEY COMPANIES

Introduction This briefing note is intended to provide an overview of the Summary Winding Up process of a Jersey company. More detailed guidance or advice on the specific legislation is available on request.

What is a summary winding up?

This is a process in the Companies (Jersey) Law 1991 (the **Law**) permitting solvent companies to be dissolved.

What is the effect of commencing a summary winding up?

A summary winding up only commences once the shareholders pass a special resolution authorising its commencement (the **Winding Up Resolution**). Once the Winding Up Resolution is passed and the process commences:

- The capacity of the company continues until it is dissolved;
- The powers of the company may only be exercised to realise and or distribute assets and or discharging liabilities; and
- All company correspondence, invoice and orders for goods or services must contain a statement that the company is in liquidation.

Does a liquidator need to be appointed?

The Law does not require a liquidator to be appointed. Notwithstanding this the members (shareholders) may on or after the commencement of the winding up, pass a further special resolution to appoint one (the **Liquidation Resolution**). This should only really be necessary where the affairs of the company are not straightforward.

What steps must be undertaken?

Firstly, a solvency statement must be signed by every director (the **Solvency Statement**) stating that, after having made a full enquiry into the affairs of the company they are satisfied that the company either:

- has no assets and no liabilities; or
- has assets and no liabilities; or
- will be able to discharge its liabilities in full within 6 months; or
- has liabilities that will fall due more than 6 months after commencement of the winding up but will be able to discharge them in full as they fall due.

Secondly, the Winding Up Resolution must be passed. The Winding Up Resolution, and, if necessary, the Liquidation Resolution, along with the Solvency Statement must be delivered to the Jersey Financial Services Commission within 21 days of the passing of the Winding Up Resolution to formally record the commencement of the process.

If the directors state in the Solvency Statement that the company has no assets and liabilities, the company will be dissolved upon the registration of the Solvency Statement.

If the directors stated in the Solvency Statement that the

company has assets and liabilities the company will not be wound up until:

- the directors (or a liquidator, if appointed) have discharged the company's liabilities in full and distributed the company's assets to its members; and
- each director (or a liquidator, if appointed) has signed a further solvency statement (the **Additional Solvency Statement**) confirming that, after having made full enquiry into the company's affairs, they are satisfied that the company has no assets and no liabilities.

Once the Additional Solvency Statement is delivered and registered by the Jersey Financial Services Commission the company will be formally dissolved.

What happens if the company becomes insolvent during this process?

If after beginning this process, the directors (or liquidator, if appointed) forms an opinion that the company has liabilities that it cannot be discharged within 6 months of the commencement of the winding up, or if after that date, as they fall due, the directors (or liquidator) must call a meeting of the company's creditors to be held in Jersey. From the date of that meeting, the winding up of the company becomes an insolvent winding up.

Are there any offences I need to be aware of?

The Law makes it an offence for a director (and liquidator, if appointed) to sign and deliver the Solvency Statement and Additional Solvency Statement (if applicable) without having reasonable grounds for the statements made therein. If found guilty that person could be imprisoned for up to two years or be imposed with a fine or both.

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below.

Wendy Lambert, Partner
+44 (0) 1534 760 882
wendy.lambert@bcrlawjersey.com

Chris Hendry, Scottish Solicitor
+44 (0) 1534 760 886
chris.hendry@bcrlawjersey.com

Ashley Quenault, English Solicitor
+44 (0) 1534 760 856
ashley.quenault@bcrlawjersey.com