



Jersey

## COMPANIES (AMENDMENT No. 8) (JERSEY) REGULATIONS 2022

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## COMPANIES (AMENDMENT No. 8) (JERSEY) REGULATIONS 2022

*Made**8th February 2022**Coming into force**1st March 2022*

**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) A creditor may make an application to the court for an order to commence a creditors’ winding up if the creditor has a claim against the company for not less than the prescribed minimum liquidated sum and –
  - (a) the company is unable to pay its debts;
  - (b) the creditor has evidence of the company’s insolvency; or
  - (c) the creditor has the consent of the company.

- (2) A company is deemed to be unable to pay its debts for the purposes of paragraph (1)(a), if –
  - (a) the creditor to whom the company is indebted in a sum exceeding the prescribed minimum liquidated sum then due has served on the company, by way of personal service, a statutory demand in the prescribed form on the company requiring the company to pay the sum so due; and
  - (b) the company has for 21 days after service of the statutory demand failed to pay the sum or otherwise dispute the debt due to the reasonable satisfaction of the creditor.
- (3) Except in exceptional circumstances, a creditor who makes an application under paragraph (1) must give 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 under paragraph (1) 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 liquidator provisionally under this Article 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.
- (5) A liquidator appointed provisionally under this Article must as soon as is reasonably practicable after the appointment –
  - (a) 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); and
  - (b) send a copy of the relevant act of court to the registrar.

#### **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

- or such other date as the court deems fit 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 –
- (a) at any time adjourn the hearing of an application made under Article 157A for such time as the court thinks fit;
- (b) require the applicant to furnish such further information as the court requires; and
- (c) order other parties to be convened to the application.
- (3) A liquidator appointed under paragraph (1)(a) must, within 14 days after the liquidator's appointment –
- (a) 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); and
- (b) send a copy of the relevant act of court to the registrar.
- (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 Company'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(1)(a), 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 further 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 the 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), unless the court orders otherwise,".

#### **6 Article 160 (meeting of creditors in creditors' winding up) amended**

In Article 160 –

- (a) in the Article heading after "creditors' winding up" there is inserted "other than a court ordered creditors' winding up";
- (b) before paragraph (1), there is inserted –

"(1A) This Article applies in the case of a creditors' winding up that is not ordered by the court."

#### **7 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 liquidator provisionally under Article 157B, the liquidator must –

- (a) within 7 days after the date of appointment of the liquidator, give to the creditors of the company known to the 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.
- (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 appointed by the court must preside over the creditors' meeting called under this Article.
- (4) If –
- (a) the liquidator appointed by the court without reasonable excuse fails to comply with paragraph (1), the liquidator commits an offence; 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 directors commit 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."

## 8 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)."

## **9 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, on the appointment of a liquidator all the powers of the directors cease except –
  - (a) in the case of a creditors’ winding up that is not ordered by the court, so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance; or
  - (b) in the case of a creditors’ winding up that is ordered by the court under Article 157C(1)(a), so far as the court or liquidator 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.”.

## **10 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)”;
- (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.”.

## **11 Article 175 (appointment or removal of liquidator by the court) amended**

In Article 175 after paragraph (2) there is inserted –

- (3) The appointment or removal of a liquidator under this Article may be made on request by the company, a director of the company, a creditor, the Viscount, the Commission, the Minister or any other person.”.



**12 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.”.

**13 Article 193 (bar against other proceedings in bankruptcy) amended**

In Article 193 after “Désastre Law” there is inserted “where the winding up is not one ordered by the court under Article 157C(1)(a)”.

**14 Schedule 1 (punishment of offences) amended**

In the table in Schedule 1 –

- (a) after the entry relating to Article 155(6) there is inserted –

“157C(4)	Failure of a liquidator to comply with Article 157C(3) (order of court commencing creditors’ winding up)	Level 3”;	
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- (b) after the entry relating to Article 158(2) there is inserted –

“158(4)	Failure of a liquidator to comply with Article 158(3) (notice of winding up)	Level 3”;	
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- (c) after the entry relating to 160(3) there is inserted –

“160A(4)(a)	Failure of the liquidator appointed by the court without reasonable excuse to comply with Article 160A(1) (meeting of creditors following court ordered creditors’ winding up)	Level 3	
160A(4)(b)	Failure of the directors of the company in respect of which a creditors’ winding up is ordered without reasonable excuse to comply with Article 160A(2) (meeting of creditors following court ordered creditors’ winding up)	Level 3”.	

**15 Citation and commencement**

These Regulations may be cited as the Companies (Amendment No. 8) (Jersey) Regulations 2022 and come into force 21 days after they are made.