

GUERNSEY STATUTORY INSTRUMENT

2022 No. 90

**The Companies (Guernsey)  
(Insolvency Rules) Regulations, 2022**

<i>Made</i>	<i>8<sup>th</sup> December, 2022</i>
<i>Coming into operation</i>	<i>1<sup>st</sup> January, 2023</i>
<i>Laid before the States</i>	<i>, 2023</i>

**THE COMMITTEE FOR ECONOMIC DEVELOPMENT**, in exercise of the powers conferred on it by sections 386A(4) and 426B of the Companies (Guernsey) Law, 2008<sup>a</sup> (the "**Companies Law**"), and all other powers enabling it in that behalf, and after consultation with the Insolvency Rules Committee established pursuant to section 426C of the Companies Law, hereby makes the following regulations:-

**Insolvency Rules.**

1. For the purposes of section 426B of the Companies Law the Committee for Economic Development, after consultation with the Insolvency Rules Committee established pursuant to section 426C of that Law, hereby makes the rules set out in the Schedule to these Regulations (the "**Company Insolvency Rules**").

**Application.**

2. The Company Insolvency Rules shall not apply to any appointment of an administrator or liquidator made pursuant to: -

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<sup>a</sup> Order in Council No. VIII of 2008; this enactment has been amended.

- (a) section 374(2) or 384(2) of the Companies Law in respect of an administration,
- (b) section 395(1)(a), 396(1), 398 or 401(1)(a) of the Companies Law in respect of a voluntary winding up, and
- (c) section 411(b), 413(1) or 416(b) in respect of a compulsory winding up,

before these Regulations come into force, and the provisions of the Companies Law as it had effect immediately prior to the date of the commencement of these Regulations shall continue to have effect in respect of -

- (i) any such appointment, and
- (ii) the conduct of any administration or liquidation being carried out pursuant to any such appointment, whether or not a new administrator or liquidator is appointed to replace the administrator or liquidator originally so appointed.

**Citation.**

3. These Regulations may be cited as the Companies (Guernsey) (Insolvency Rules) Regulations, 2022.

**Commencement of Regulations.**

4. These Regulations shall come into force on the 1<sup>st</sup> day of January, 2023.

Dated this 8th day of December, 2022



Deputy N. Inder

President of the States Committee for Economic Development

For and on behalf of the Committee

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#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, made by the Committee for Economic Development under sections 386A(4) and 426B of the Companies (Guernsey) Law, 2008 after consultation with the Insolvency Rules Committee established pursuant to section 426C of that Law, set out certain technical and procedural rules for the purposes of insolvency proceedings under that Law. The matters covered include the holding of creditors meetings, the format of reports of delinquent company officers and declarations of solvency, and the disclaimer by liquidators of onerous property.

These Regulations further provide that the Company Insolvency Rules made hereunder shall not apply to relevant appointments made prior to the date these Regulations come into force.

These Regulations come into force on the 1<sup>st</sup> January 2023.

## Schedule

# **The Company Insolvency (Guernsey) Rules, 2022**

### ARRANGEMENT OF RULES

#### PART 1 MEETINGS

- 1.1 Dispensing with the requirement for an initial meeting of creditors pursuant to section 386A.
- 1.2 Convening a creditor meeting for the purposes of section 398A.
- 1.3 Convening a general meeting for the purposes of section 399.
- 1.4 Notice of creditor meetings.
- 1.5 Content of notice of creditor meetings.
- 1.6 Location of a creditor meeting.
- 1.7 Quorum at a creditor meeting.
- 1.8 Chair of creditor meetings.
- 1.9 Voting at creditor meetings.
- 1.10 Suspension and adjournment of creditor meetings.
- 1.11 Proxies.
- 1.12 Minutes.
- 1.13 Electronic communication regarding creditor meetings.

#### PART 2 REPORTING DELINQUENT OFFICERS

- 2.1 Format of reports.

#### PART 3 DECLARATION OF SOLVENCY

- 3.1 Format of declaration of solvency.

#### PART 4 DISCLAIMING ONEROUS PROPERTY

- 4.1 Application of this Part.
- 4.2 Notice of disclaimer.
- 4.3 Non-effective notice of disclaimer to interested persons for information.
- 4.4 Disclaimer presumed valid and effective.
- 4.5 Rights unaffected by disclaimer

PART 5  
INTERPRETATION

5.1 Interpretation of Rules.

- ANNEX 1: Proxy form
- ANNEX 2: Reporting Delinquent Officers of a Company
- ANNEX 3: Voluntary winding up Declaration of Solvency

# The Company Insolvency (Guernsey) Rules, 2022

## PART 1 MEETINGS

### **Dispensing with the requirement for an initial meeting of creditors pursuant to section 386A.**

1.1. An administrator may dispense with the requirement to call an initial meeting of creditors pursuant to section 386A where -

- (a) 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
- (b) the administrator has given notice to the creditors, so far as the administrator is aware of their addresses, within 28 days immediately following the day of the administrator's appointment, stating that the administrator has the opinion set out in Rule 1.1(a).

### **Convening a creditor meeting for the purposes of section 398A.**

1.2. A meeting pursuant to section 398A(1)(a) must be convened within 28 days immediately following the date on which it first became apparent to the liquidator that the company does not satisfy the solvency test.

**Convening a general meeting for the purposes of section 399.**

1.3. A general meeting of the company pursuant to section 399 shall be convened within three months immediately following the expiration of the relevant year.

**Notice of creditor meetings.**

1.4. (1) Where no period of notice for a creditor meeting is specified in the Law, the office holder shall give notice of the meeting to all creditors of the company, so far as the office holder is aware of their addresses, at least 14 days before the date of the meeting.

(2) Where a period of notice for a creditor meeting is specified in the Law, and that period is less than 14 days, an office holder should nonetheless endeavour, where reasonably practicable, to give notice of the meeting to all creditors of the company, so far as the office holder is aware of their addresses, at least 14 days before the date of the meeting.

(3) No proceedings, or decisions taken, at a creditor meeting are invalid by reason only that one or more creditors have not received notice of the meeting, provided that the office holder has complied with the requirements of the Law and these Rules regarding the giving of notice.

**Content of notice of creditor meetings.**

1.5. (1) Notice of a creditor meeting shall state -

(a) the time and date of the meeting,

- (b) the place of the meeting or, where the meeting is to be held entirely electronically or via telephone, the means and manner by which persons may attend,
- (c) information in respect of any vote to be taken at the meeting including the basis on which a person will be admitted to vote at the meeting,
- (d) the general nature of the business to be dealt with at the meeting,
- (e) details of the terms upon which the office holder is being remunerated, and
- (f) any further information required to be contained in the notice by any provision of the Law.

(2) Notice of a creditor meeting must include a proxy form which complies with Rule 1.11.

**Location of a creditor meeting.**

1.6. (1) A creditor meeting may be held in Guernsey or elsewhere.

(2) In fixing the venue for a creditor meeting, an office holder should, as their primary consideration, have regard to the convenience of the creditors entitled to attend the meeting and, for the avoidance of doubt, may provide facilities for creditors to attend the meeting by telephone, video conference, or other electronic

medium.

**Quorum at a creditor meeting.**

1.7. (1) Unless otherwise specified in the Law, one creditor present at a meeting (in person or by proxy) is a quorum.

(2) If a quorum is not present at a creditor meeting, the office holder shall note in the minutes that the meeting was duly called, specify the date on which it was due to take place and state that no quorum was present.

**Chair of creditor meetings.**

1.8. The chair of a creditor meeting shall, unless otherwise specified in the Law, be the officer holder or, if the office holder is unavailable, a suitably experienced person nominated by the office holder.

**Voting at creditor meetings.**

1.9. (1) Any matter requiring a decision of creditors shall, unless otherwise specified in the Law, be determined by a simple majority in value of the creditors present, in person or by proxy, and voting.

(2) A creditor is only entitled to vote at a creditor meeting if, no later than 12.00 noon on the business day before the day fixed for the meeting, the creditor has -

(a) given written notice of the creditor's claim to the office holder, and

(b) lodged any proxy intended to be used on the creditor's behalf with the office holder.

(3) The office holder must accept a proxy form which complies with Rule 1.11 as having been lodged for the purposes of Rule 1.9(2)(b) whether lodged in hard copy or by electronic means.

(4) The chair of a creditor meeting shall determine the entitlement of persons to vote and shall admit or reject their claims in whole or in part for voting purposes accordingly.

(5) The chair of a creditor meeting may require a creditor to produce any document or other evidence where the chair considers it necessary for the purpose of substantiating the creditor's right to vote or the whole or part of the creditor's claim.

(6) The chair of a creditor meeting may allow a creditor to vote, notwithstanding that they have failed to comply with this Rule, if the chair is satisfied that the failure was due to circumstances beyond the creditor's control.

(7) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except where the chair agrees to an estimated minimum value of the claim for the purpose of entitlement to vote and admits the claim for that purpose alone.

(8) At a creditor meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of the debt after deducting the value of the security interest as estimated by them.

(9) A decision taken at an adjourned creditor meeting is treated for all purposes as having been passed on the date of the taking of the decision and not

as having been passed on an earlier date.

**Suspension and adjournment of creditor meetings.**

1.10. (1) The chair of a creditor meeting may, without an adjournment, declare the meeting suspended until a later time on the same day for one or more periods not exceeding one hour in total (or, in exceptional circumstances, any longer total period during the same day at the chair's discretion).

(2) If within 30 minutes immediately following the time fixed for the commencement of a creditor meeting there is no person present to act as chair of the meeting, the meeting is adjourned to the same time and place the following week or, if that is not a business day, to the business day immediately following.

(3) If within 30 minutes immediately following the time fixed for the commencement of a creditor meeting after a second adjournment under Rule 1.10(2) there is no person present to act as chair of the meeting, the meeting comes to an end.

(4) The chair may adjourn a creditor meeting from time to time.

**Proxies.**

1.11. (1) A creditor is entitled to appoint another person as a proxy to exercise all or any of the creditor's rights to attend and to speak and to vote at any creditor meeting.

(2) Proxy forms shall be in substantially the same format as, and must contain as a minimum the information set out in, the proxy form attached to these Rules as Annex 1.

**Minutes.**

1.12. (1) The chair of a creditor meeting shall ensure that minutes of its proceedings are kept, signed by the chair, and retained as a record of the proceedings.

(2) Minutes shall include a list of the creditors who attended the creditor meeting, whether in person or by proxy, and the decisions taken at the creditor meeting.

(3) Creditors must be provided with a copy of the minutes upon request to the office holder.

(4) The minutes of proceedings of a creditor meeting, if purporting to be signed by the chair of the meeting, are evidence of the proceedings at the meeting.

(5) Where minutes have been made in accordance with this Rule of the proceedings of a creditor meeting, then, unless the contrary is proved -

- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and
- (c) all appointments and decisions at the meeting are deemed valid.

**Electronic communication regarding creditor meetings.**

1.13. For the avoidance of doubt (and without prejudice to the provisions of the Electronic Transactions (Guernsey) Law, 2000<sup>b</sup>) an office holder may communicate with creditors in electronic form and by electronic means unless the creditor expressly declines to receive communications in this manner.

PART 2

REPORTING DELINQUENT OFFICERS

**Format of reports.**

2.1. Where a duty arises under section 387A(1) or 421E(1), a report to the Registrar of Companies or the Guernsey Financial Services Commission shall be in substantially the same format as, and must contain as a minimum the information set out in, the form for "Reporting Delinquent Officers of a Company" attached to these Rules as Annex 2.

PART 3

DECLARATION OF SOLVENCY

**Format of declaration of solvency.**

3.1. A declaration of solvency under section 391A(1) shall be in substantially the same format as, and must contain as a minimum the information set out in, the "Declaration of Solvency" form attached to these Rules as Annex 3.

PART 4

DISCLAIMING ONEROUS PROPERTY

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<sup>b</sup> Order in Council No. VIII of 2000; this enactment has been amended.

**Application of this Part.**

4.1. This Part applies to disclaimers made under section 421A.

**Notice of disclaimer.**

4.2. A notice of disclaimer given under section 421A shall -

- (a) state that the notice is made under section 421A,
- (b) identify the company whose property is being disclaimed,
- (c) identify and provide contact details for the liquidator,
- (d) include any information required to be contained in the notice by section 421A, and
- (e) state that the requirements of section 421A have been complied with.

**Non-effective notice of disclaimer to interested persons for information.**

4.3. (1) If a liquidator discovers, after disclaiming onerous property, that a person exists who claims an interest in the disclaimed property (which would have entitled that person to be served with a notice of disclaimer under section 421A(3)(b)(iii) had the liquidator been aware of that person's claim at the time the property was disclaimed) then, without prejudice to section 421A(7), the liquidator must deliver a copy of the notice of disclaimer to that person as soon as reasonably practicable after the discovery.

(2) A liquidator who has issued a notice of disclaimer under section 421A may at any time provide a copy of that notice to any other person whom the liquidator thinks ought, in the public interest or otherwise, to be informed of the disclaimer.

(3) This Rule is without prejudice to the provisions of section 421A.

**Disclaimer presumed valid and effective.**

4.4. A disclaimer of onerous property by a liquidator is presumed to be valid and effective unless it is proved that the liquidator was in breach of the requirements of section 421A or that for any other reason the disclaimer was invalid and ineffective.

**Rights unaffected by disclaimer**

4.5. For the avoidance of doubt and without limitation, (a) any rights relating to netting, set-off, or *compensation* and (b) rights of enforcement thereof are unaffected by the provisions of section 421A and this Part of these Rules.

PART 5  
INTERPRETATION

**Interpretation of Rules.**

5.1. (1) In these Rules, unless the contrary intention appears -

"**creditor meeting**" means any meeting of creditors held under Part XXI (Administration), Part XXII (Voluntary Winding Up) or Part XXIII (Compulsory Winding Up) save for a meeting before a Commissioner held pursuant to section 417,

"**the Law**" means the Companies (Guernsey) Law, 2008,

"**office holder**" means a liquidator or administrator of a company.

(2) A reference in these Rules to a numbered section without mention of another enactment is a reference to that section of the Law.

ANNEX 1

Proxy form

[COMPANY NAME] ("the Company")

Form of proxy for use at the meeting convened under Section [INSERT SECTION]  
of the Companies (Guernsey) Law, 2008, to be held on [INSERT DATE]

I/We (BLOCK CAPITALS)

.....

of

.....

.....

being (a) creditor(s) of [COMPANY]

hereby appoint the Chair of the meeting\*

.....

as my/our proxy to vote for me/us and on my/our behalf at the meeting of the  
Company to be held at [INSERT ADDRESS] on [INSERT DATE] at [INSERT TIME],  
and at any adjournment of that meeting. I/We direct my/our proxy to vote as

follows:

	Proposition	For	Against
1			
2			
3			

Dated: .....

Signed: .....

Notes:

- 1.\* If you wish to appoint another person as your proxy, delete the words "the Chair of the meeting" and insert the other person's name in the space provided.
2. Please indicate how you wish your proxy to vote on the propositions by inserting a tick in the appropriate boxes. If no indication is given, your proxy will vote as they think fit or may abstain from voting.
3. In the case of a company, the proxy should be executed under its common seal (if any) or the hand of its duly authorised officer or attorney. In the case of an individual, the proxy must be signed by the appointer or the appointer's guardian or attorney, duly authorised in writing.
4. In the case of joint holders, the signature of any one holder will be sufficient but the names of all joint holders should be stated and the vote of the senior who tenders a vote will be accepted to the exclusion of other joint holders, seniority being determined by the order in which the names of the holders stand in the register of members.
5. To be valid, this form of proxy, duly completed and signed (together with any power of attorney or other authority under which it is signed or a notarised copy of it), must be deposited at the offices of [INSERT ADDRESS] marked for the attention of [INSERT NAME], not later than 12 noon on the business day before the meeting.

ANNEX 2

**Reporting Delinquent Officers of a Company**

**Sections 387A and 421E of the Companies (Guernsey) Law, 2008**

**(the "Companies Law")**

**NAME OF  
COMPANY**

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**SECTION 1: OFFICE-HOLDER**

1. NAME OF OFFICE-HOLDER(S)
  
2. NAME OF THE FIRM (where applicable) AND ADDRESS OF THE OFFICE-HOLDER(S)
  
3. ARE YOU REPORTING AS:  
  
LIQUIDATOR IN A VOLUNTARY LIQUIDATION 


  
LIQUIDATOR IN A COMPULSORY LIQUIDATION  
LIQUIDATOR OF AN INCORPORATED CELL COMPANY  
ADMINISTRATOR
  
4. DATE OF APPOINTMENT
  
5. NAME AND CONTACT DETAILS OF THE MEMBER OF YOUR STAFF WITH DAY TO DAY RESPONSIBILITY FOR THE CASE:

**SECTION 2: COMPANY**

1. NAME OF THE COMPANY: (Please include details of all registered names and trading styles of the company used in the last two years)
2. COMPANY REGISTERED NUMBER:
3. GUERNSEY FINANCIAL SERVICES COMMISSION REFERENCE NUMBER (IF REGULATED):
4. CURRENT REGISTERED OFFICE ADDRESS:
5. ANY OTHER REGISTERED OFFICE IN THE SIX MONTHS PRIOR TO YOUR APPOINTMENT:
6. PRINCIPAL TRADING ADDRESS(ES):
7. NATURE OF THE COMPANY'S BUSINESS:
8. WHEN DID THE COMPANY COMMENCE TRADING?
9. DETAILS OF ANY OTHER INSOLVENCY PROCESS IN RELATION TO THE COMPANY:  
(Stating type, name of office-holder(s) and date of appointment (if appropriate))

**SECTION 3: COMPANY OFFICERS**

PLEASE COMPLETE BELOW, IN RESPECT OF ANY PAST OR PRESENT OFFICER OF THE COMPANY, REGARDING WHOM IT APPEARS TO YOU THAT THERE ARE GROUNDS FOR THE COURT TO MAKE A DISQUALIFICATION ORDER UNDER PART XXV OF THE COMPANIES LAW:

Details of the matters leading you to this view should be set out in section 5.

**ADDITIONAL COPIES OF SECTIONS 3-5 SHOULD BE USED AS APPROPRIATE.**

1.	FULL NAME: (including other known names)
2.	CURRENT OR LAST KNOWN ADDRESS:
3.	DATE OF BIRTH:
4.	OCCUPATION, TRADE OR PROFESSION:
5.	BRIEFLY, WHAT WERE THE OFFICER'S DUTIES IN THE COMPANY?
6.	PERIOD AS OFFICER:

**SECTION 4: CONNECTED COMPANIES**

PLEASE GIVE DETAILS OF ANY OTHER COMPANIES THAT YOU ARE AWARE OF WITH WHICH THE OFFICER, IN RESPECT OF WHOM YOU HAVE PROVIDED DETAILS

AT SECTION 3, MAY HAVE HAD AN INVOLVEMENT WHICH YOU CONSIDER MAY BE RELEVANT TO THE CONSIDERATION OF THEIR CONDUCT:

COMPANY NAME	COMPANY REGISTERED NUMBER	INFORMATION WHICH MAY BE RELEVANT

**SECTION 5: CONDUCT**

PLEASE GIVE DETAILS (ATTACHING ADDITIONAL PAGES IF NECESSARY) OF THE OFFICER'S CONDUCT WHICH APPEARS TO YOU TO PROVIDE GROUNDS FOR THE COURT TO MAKE A DISQUALIFICATION ORDER UNDER PART XXV OF THE COMPANIES LAW. IF YOU HAVE ALREADY PREPARED A REPORT WHICH DETAILS THIS, ATTACH A COPY AND SUMMARISE YOUR FINDINGS BELOW.

DETAILS OF CONDUCT	NATURE OF SUPPORTING EVIDENCE

b. ARE THERE ANY OTHER RELEVANT MATTERS?

If yes, give brief details

**SECTION 6: STATEMENT OF AFFAIRS, ACCOUNTS AND REPORT TO CREDITORS**

**STATEMENT OF AFFAIRS**

PLEASE ATTACH A COPY OF ANY STATEMENT OF AFFAIRS TO THIS FORM.

If a copy is not attached, please state why not and attach details of the known assets and liabilities of the company.

IF THERE IS A MATERIAL DIFFERENCE BETWEEN THE STATEMENT OF AFFAIRS AND THE EXPECTED FINAL POSITION, PLEASE PROVIDE DETAILS OF THE AMOUNT AND THE REASON FOR ANY DISCREPANCY:

**ACCOUNTS**

PLEASE ATTACH TO THIS FORM A COPY OF THE LAST TWO SETS OF THE AUDITED/ UNAUDITED ACCOUNTS OF THE COMPANY AND ANY DRAFT OR MANAGEMENT ACCOUNTS PREPARED THEREAFTER.

If none are attached, please state why not: (e.g. none prepared, none in your possession, etc.)

**REPORT TO CREDITORS**

PLEASE ATTACH A COPY OF ANY REPORTS TO CREDITORS TO THIS FORM.

If you are not able to provide a copy of the report to creditors, please attach a report detailing the company's history.

**SECTION 7: DECLARATION**

THE DETAILS GIVEN IN THIS FORM ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

PLEASE SIGN THE FORM:

\_\_\_\_\_

DATE:

\_\_\_\_\_

**PLEASE ENSURE THAT COPIES OF THE FOLLOWING ARE ATTACHED:**

**(a) Statement of Affairs (if available, or if not, details of assets and liabilities);**

- (b) Last two sets of audited/unaudited accounts and draft or management accounts subsequently prepared, if any;**
- (c) Report(s) to creditors issued by Liquidator(s) / Administrator(s); and**
- (d) Questionnaire(s), if any, completed by officer(s).**

**PLEASE SEND THE COMPLETED FORM, TOGETHER WITH ENCLOSURES TO:**

**(For all companies)**

The Registrar of Companies  
Market Building  
PO Box 451  
Fountain Street  
St Peter Port  
Guernsey  
GY1 3GX

**(For Guernsey Financial Services Commission supervised companies only)**

Guernsey Financial Services Commission  
PO Box 128  
Glategny Court

Glategny Esplanade

St Peter Port

Guernsey

GY1 3HQ

