



ADVISORY
Industry Information

Legal Guide to Pre-Enforcement Steps under Jersey and Guernsey Law

September 2020

Although there have already been some very high profile high street casualties – Debenhams, DW Sport, Monsoon, Laura Ashley, Virgin Media – there is an increasing expectation that this is just the tip of the iceberg with further defaults and insolvencies likely to follow in a number of sectors of the UK economy.

During the Covid-19 pandemic, creditors have to date acted in a supportive manner with forbearance being a common theme. Creditor support in the UK has been driven to some extent by political pressure from the UK government and also by the fact that business valuation is difficult in the current economic climate.

The temporary Covid-19 protections offered by the UK government to businesses to prevent them from being subject to winding up petitions or wrongful trading actions are currently due to expire at the end of September (although an extension is very possible).

At some point, those protections will lapse and creditor sentiment could quickly turn from forbearance to enforcement. There may well be situations where secured creditors take the view that rather than continuing to support the current equity holders, a “loan to own” strategy or a clean enforcement is the preferred exit route.

Given the popularity of Jersey and Guernsey holding structures for investment into the UK, secured creditors with exposure to such structures will need legal advice in those jurisdictions where enforcement strategies are being considered. Enforcement of share security over Jersey or Guernsey companies in those structures will generally be one of the enforcement options.

With that in mind, it is a good time for secured creditors with Jersey and/or Guernsey share security to consider steps that they can take now to make a future enforcement of that security as efficient as possible. Such steps include:

- ensuring that fully executed copies of the security documents are available;
- ensuring that those security documents have been reviewed by Jersey/Guernsey counsel (as applicable) and any issues that may impact on enforcement have been addressed;
- ensuring that the security interests remain attached and perfected;
- locating the original share certificates and security stock transfer forms that will be required should the secured shares be transferred (whether as a further perfection step outside of a formal enforcement or as a means of enforcement);
- arranging for full CDD/KYC information to be collated for (i) any potential transferees of the secured shares and (ii) new directors of the target company that the secured creditor may wish to appoint using the voting rights on the secured shares should this be permitted by the underlying security documents;
- engaging with valuation experts and developing a plan for the valuation and marketing of the secured assets;
- ensuring that there are no regulatory or other consents required in connection with the proposed enforcement steps; and
- ensuring that where the security has been given in support of a foreign law loan obligation, the enforcement is consistent with the terms of the foreign law loan documentation and the enforcement process is coordinated amongst both Jersey/Guernsey and foreign law counsel.



Enforcement steps in relation to Jersey and Guernsey share security must be taken in accordance with the underlying security documents and the relevant legislation in each jurisdiction (being the Security Interests (Jersey) Law 2012 in Jersey and the Security Interests (Guernsey) Law 1993 in Guernsey). Legal advice is therefore key.

You can read our full notes on the enforcement of Jersey and Guernsey share security here:

- [Enforcement of Jersey Security](#)
- [Enforcement of Guernsey Security](#)

The Walkers Restructuring and Insolvency team has been consistently ranked as the offshore market leaders, with teams in the Asian, Caribbean and European timezones advising on Bermudan, BVI, Cayman, Guernsey, Irish and Jersey law. The Jersey team has acted on one of the very few known enforcements of share security under the Security Interests (Jersey) Law 2012 and so have valuable practical experience on enforcement under what is a relatively new piece of legislation.

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