Royal Court of Jersey
Viscount's Department
Jersey Court Service

GUIDE FOR UNSECURED ORDINARY CREDITORS

Ordinary creditors share “pro-rata” any funds remaining after creditors with priority claims have been paid in full.

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Whose property can be declared "en désastre" (bankrupt)

The property of individuals, companies, cell companies and partnerships are all capable for being declared "en désastre".

How is a désastre application made and who can present a désastre application to the Court?

The debtor (or a director of a debtor company) or any creditor with a claim greater than £3,000 can apply to the Royal Court for the debtor's property to be declared "en désastre". The property of a deceased person cannot be declared "en désastre". The person making the application to the Court has to give 48 hours' advance notice of the application to the Viscount. The applicant has to complete a specified form giving some information about the debtor's assets and liabilities, and has to swear an affidavit that the debtor is insolvent but has realisable assets.

The Royal Court hears the application, usually at "ex parte" time on Friday afternoons. Unless the debtor has made the application, the Court only hears the creditor's side of the case. Because of this, if the debtor can show within twelve months of the désastre being declared that the debtor was in fact solvent a creditor may have to pay damages to the debtor, unless the creditor can prove that the creditor was acting reasonably and in good faith.

Who is appointed to deal with the property of the debtor?

As soon as a désastre has been declared, all the property of the debtor is vested in the Viscount. Basically, the Viscount becomes legal owner of the debtor's property world-wide. Mortgages and security interests remain valid against the property they were secured upon. Property owned jointly by the debtor and one or more others is treated as though it is split into proportionate shares, and the debtor's share is vested in the Viscount.

After the désastre has been declared, creditors entitled to claim in the désastre cannot sue the debtor - their only remedy is to make a claim in the désastre.

What is the effect of the désastre proceedings on the debtor?

The debtor - or a director, secretary, manager or other officer of an en désastre company - is obliged to assist the Viscount to the utmost of the debtor's power. The debtor has to provide information about assets and liabilities, hand over any property still under the debtor's control - and any property acquired during the course of the désastre - and attend before the Viscount whenever called upon. A personal debtor – or a director or former director of an "en désastre" company must notify the Viscount immediately in writing of any change of address or employment. If the debtor fails to do this, the debtor commits an offence.

A personal debtor can carry on in business but with the following restrictions:

- The debtor must not obtain credit of more than £250 from anyone without telling that person that he/she is an undischarged bankrupt.

- The debtor must not carry on business under a name different to that under which he/she was declared "en désastre" without disclosing the fact that he/she is an undischarged bankrupt.

The Viscount may require the debtor to pay over part of future income, if there is more income than is required to meet reasonable domestic needs.

The Viscount may also claim any property acquired by the debtor after the date of the désastre, such as assets left in a will.

During the course of the désastre, a personal debtor cannot be a company director or sit on a jury, and suffers various other legal "disabilities".

What are the powers of the Viscount?

The Viscount's powers are wide and include powers to sell the debtor's assets, sometimes to carry on the debtor's business, to bring and defend legal proceedings, and to pay dividends to the debtor's creditors. The Viscount also has wide investigatory powers. Some of the Viscount's powers will only be exercised with the endorsement of the Royal Court.

Does the Viscount pay unsecured creditors the money they are owed?

Secured and priority creditors' debts are paid before ordinary creditors. Secured creditors are those who have some form of security over a debtor's property (for instance a bank where a debtor has a mortgage). Secured creditors are entitled to be repaid their debts out of the proceeds of sale of secured assets, before other creditors.

Certain types of creditors are categorised as priority creditors. Their claims are generally discharged after any secured creditors have had their claims settled as above.

Debts given a priority are:-

- Prior priority (immediately following payment of the Viscount's fees, emoluments, costs charges and expenses) in respect of monies paid by the Jersey Bank Depositors Compensation Board where it gives compensation to a depositor in return for taking over the depositor's rights against a bank, in the context of failure of a financial institution registered under the Banking Business (Jersey) Law 1991.

- Arrears of wages or salary owing to an employee for up to six months before the désastre was declared, to a maximum of £6,300, plus holiday pay and bonuses due to that date, to a maximum of £1,800. If the amount due is greater; the employee will receive any ordinary dividend on the balance.

- The full amount due to the Social Security Department.

- Income Tax (or in the case of an employer, both the employer's income tax and ITIS payments on behalf of employees) due for the year in which the désastre was declared, and for the preceding year.

- GST due for the year in which the désastre was declared, and for the preceding year.

- Arrears of rental with reference to common law rules.

- Parish rates for up to two years.

If there are insufficient funds to pay out all priority creditors, the available funds are shared "pro rata" between creditors with such claims. Ordinary creditors share "pro-rata" any funds remaining after creditors with priority claims have been paid in full.

When all claims have been adjudicated or provided for, the Viscount will declare a dividend. The Viscount may declare a number of interim dividends before declaring a final dividend.

How do I make a claim in a désastre?

The Viscount advertises in the Jersey Gazette (www.gov.je/gazette) for creditors to file their claims with her by a set date. That date is usually forty days from the date of the désastre declaration. If any creditor fails to file a claim with the Viscount within the specified time-period the creditor effectively loses the right to claim and gets nothing.

Creditors are required to write to the Viscount with full details of their claims, together with copies of supporting documentation. Any creditor who claims that any amount due ranks for payment in priority to other debts must say so in the statement of claim.

Any creditor who has a claim for the repossession of goods must say so in the statement of claim and provide copies of all relevant documentation ('reservation of title questionnaires' are also available at the Viscount's Department in order to assist with this process).

After the expiration of the time fixed for the filing of claims the Viscount will fix a time and place for the inspection of the claims filed. Notice of the time and place of inspection will be published in the Jersey (www.gov.je/gazette).

If a debtor, creditor or other interested person wishes to oppose the admission of any claim in a désastre (including a claim that any amount should rank for payment in priority to any other) that person must within one month of the inspection lodge with the Viscount a statement of opposition setting out the grounds on which that person opposes such a claim.

How will the Viscount adjudicate my claim?

The Viscount examines every proof of claim lodged and rejects or admits it in whole or in part. If the Viscount rejects the proof in whole or in part she must serve reasoned notice of the rejection upon the claimant. The Viscount must similarly give notice to a party whose statement of opposition to a claim has, upon adjudication, been rejected.

What can I do if I believe the Viscount has unfairly rejected my claim?

Where any person is dissatisfied with the Viscount's decision that person can, within 21 days, notify the Viscount that that person wishes application to be made to the Royal Court to review the Viscount's decision.

Does the Viscount have to fulfil contracts entered into by the debtor prior to the désastre?

The Viscount has a general duty to maximise the level of dividend to creditors. The Viscount will usually not be in a position to fulfil a contract. If the Viscount does not fulfil a contract, the other party will usually have an unsecured claim in the bankruptcy for losses arising.

Is the Viscount liable for sums due under contracts entered into by the debtor after the date of the désastre?

No. The personal debtor can even continue to trade in a new capacity after the date of the désastre (subject to the conditions noted above). Any new debts created cannot be claimed in the bankruptcy.

As an unsecured creditor, what information am I entitled to?

When the Viscount has completed the case, she supplies all creditors with a report and account relating to the désastre. At the same time, she pays any dividend that may be available.

If you would like information on progress at any time you should contact the Officer dealing with the relevant case.

How can I help the Viscount to achieve the best possible outcome for creditors?

You should tell the Viscount if you believe the debtor has assets, income or business interests not disclosed, or if you think you have any information that might be useful to the Viscount.

How is the Viscount's fee determined?

The Viscount's fee is generally 10% of the value of assets realised, plus 2½% of the funds distributed to creditors. In the case of a creditor declaring a désastre, if insufficient assets are realised to pay the Viscount's expenses (such as adverts and bought-in legal and accountancy services), the declaring creditor may have to reimburse the shortfall. The Viscount's fees and expenses are paid prior to any distribution to creditors.

When will a personal bankrupt be discharged from désastre?

Four years after an individual has been declared "en désastre", the Viscount brings an application to the Royal Court for an order discharging the debtor. Subject to certain exceptions specified in the Bankruptcy Law, the discharge means that the debtor is no longer liable to pay the debts dealt with in the désastre, and the various legal disabilities to which the debtor was subject cease to apply. The Viscount, the debtor or a creditor can ask the Court to reduce or extend the usual four year period.

When does the Viscount cease to act?

In the case of an individual, the Viscount may continue to act after the debtor has been discharged if, for example, there are assets still to be realised or creditors' claims remain to be agreed.

What should I do if I am dissatisfied with the Viscount's handling of a case in which I have an interest?

You should first contact the Viscount to try to resolve the problem. If you are still not satisfied, you may be able to make an application to the Court seeking (e.g.) the variation of a decision of the Viscount.

What if I am an employee of an insolvent company?

As set out above, an employee has a priority claim for a capped amount of arrears of wages and holiday pay, however this is a limited benefit and is unlikely to be paid until the désastre procedure is at an advanced stage, or possibly completed.

However, when an employer becomes insolvent their employees may be able to claim 'Insolvency Benefit' from the Social Security Department. This benefit was introduced to provide prompt financial assistance to employees whose employment ends because their employer becomes insolvent. An employer who has ceased trading is not necessarily insolvent, and in order to claim the benefit the employer must have entered into a formal insolvency procedure such as being declared bankrupt or entering into administration, receivership or liquidation.

In order for an employee to claim Insolvency Benefit they must meet the following conditions:

1. Employer is undergoing a formal process of insolvency and this is the main reason they are no longer employed.

2. Were an employee.

3. Were employed mainly in Jersey.

4. The employer was liable to pay Class 1 contributions on the employees behalf in one or more of the three months before becoming insolvent.

5. The employer owes the employee pay in respect of one of the four components of benefit

The maximum amount of Insolvency Benefit a person can be paid is £10,000, plus the employers liability for Social Security and Income Tax payments on any payment. The Insolvency Benefit is calculated based on the pay owed to an employee by their former employee in respect of four components:

1. Unpaid wages relating to the 12 months prior to employment ending.

2. Holiday pay relating to the 12 months prior to employment ending.

3. Statutory redundancy pay (one week pay for each year of service, subject to a minimum of two years' service).

4. Pay in lieu of notice of termination of employment (up to 12 weeks' pay).

An employee who has any claims against an employer which fall outside of these categories, for example claims for unpaid bonuses, or for unfair dismissal, must file a claim in the désastre, together with supporting documentation. If the claim is accepted they will receive a dividend along with any other unsecured creditors.

For more information please contact the Insolvency Team of the Viscount's Department:

Morier House
Halkett Place
St Helier
Jersey
JE1 1DD

Telephone: 01534 - 441410
E-mail: viscount@courts.je
Website: www.gov.je/viscount