

Guernsey

1. Neither will be formally recognised other than by court application to the Guernsey Royal Court.
2. None required.
3. A liquidator or an administrator of a Guernsey company can be appointed by application to the Royal Court. The Court will usually be willing to appoint multiple liquidators or administrators (generally so long as one is resident in Guernsey). Accordingly, a UK practitioner could be jointly appointed by the Guernsey Court alongside a Guernsey practitioner.
4. Challenge any application for recognition, oppose any application to put the company into liquidation/administration, oppose the nominated liquidator/administrator or challenge the jurisdiction of the foreign court.
5. No but as creditors it might be possible to appoint a liquidator/administrator.
6. A power of sale must arise in accordance with the security interest agreement and is exercisable once the secured lender has served notice on the chargor specifying the default. Sale must be at the best price reasonably obtainable if there is no open market value at the time of sale. Prior to sale the security interest agreement will usually give the secured lender power to direct the voting of the shares.
7. The secured creditor has priority after deduction of the costs and expenses of the sale.
8. No.
9. No.

Jersey

1. Neither will be formally recognised other than by court application as referred to in 8.
2. None required, discretionary filing with the Registrar of Companies is sometimes possible.
3. The only options are winding up or declaring the debtor's property en désastre unless one appoints under Jersey security documents.
4. Apply for a declaration of en désastre in relation to the debtor's property (although in practice this will not have extra territorial effect unless the creditor wishes to prove for any unsecured balance in the désastre).
5. No.
6. A power of sale must arise in accordance with the security interest agreement (which should exclude the statutory requirement for a court order prior to sale) and may be exercised following 14 days' notice specifying the default. Sale must be within a reasonable time and for open market value at the time of sale. No concept of receiver under Jersey law.
7. The secured creditor has priority unless not registered holder where if the security provider is declared en désastre, costs and expenses of the Viscount realising the security will have priority.
8. No although assistance to certain foreign courts (including the UK) is available at the discretion of the Jersey court.
9. No although an initial draft proposal for changes to the laws relating to security interests has been produced.

Isle of Man

1. Both will be recognised. For a receiver, notice is sufficient, for an administrator, practice is to apply for court recognition.
2. Notice of appointment must given to the Financial Supervision Commission within 7 days of the appointment.
3. None unless assets within the jurisdiction. No office of 'insolvency practitioner' – generally a chartered accountant appointed as receiver under Manx law security documents or to apply to the court to wind up the company.
4. Challenge to the effectiveness of the security itself – ultra vires, lack of authority/commercial benefit, preference etc.
5. No.
6. In accordance with the share security (usually giving the creditor the right to sell/transfer into a nominee/appoint a receiver similar to English share security).
7. A fixed charge has priority but a floating charge is subject to the rights of preferential creditors (employees, tax, national insurance, etc) although some can be avoided by prompt crystallisation (unlike under English law this is still an option to avoid the rights of preferential creditors).
8. No.
9. No.

British Virgin Islands

1. No statutory method of recognition of a foreign appointment.
2. None specifically required for foreign appointments but a receiver must file notice of appointment upon appointment with the company and within 7 days with Registry of Corporate Affairs (and the BVI Financial Services Commission if company is or was regulated). An administrative receiver must also advertise appointment within 5 days and notify all creditors within 28 days.
3. Although untested creditor could probably make a joint appointment of a BVI and a foreign receiver under BVI law, under a debenture governed by English law; or put the company into liquidation with the local and foreign practitioner jointly appointed as liquidators.
4. Challenge the appointment/application or apply to put the company into liquidation. Outside liquidation or administrative receivership, access to the corporate books and records could be difficult.
5. This is untested but considered possible. As seen in the case of Cukurova v Alfa Telecom, foreign security can effectively charge BVI shares.
6. Upon an event of default continuing for 30 days and not rectified within 14 days' notice (such periods usually considerably reduced in the mortgage) appoint a receiver under the terms of the security document who could sell either by public auction or private sale. Registered agent may however refuse to register changes without the consent of his client of record. As seen in Cukorova, security over shares in BVI companies can be governed by a foreign law so could be charged by an English law debenture so that English remedies including appropriation possible.
7. Fixed charges have priority, floating charges are subject to liquidator expenses, tax, certain amounts due to employees.
8. Relevant part of Act implementing the Model Law not in force and not known when it will be.
9. No.

FAQs in relation to each jurisdiction

1. What (if any) recognition would a local court give to an English administrator/receiver?
2. If an administrator/receiver is appointed under English law in England, what procedural steps (including timescales) would be required/recommended (e.g. registration, advertisement etc)?
3. Would there be any benefit in the secured creditor appointing a local insolvency practitioner? If so, what would they be and how would one do it?
4. If the directors or creditors of the provider of English law security wanted to be difficult, is there anything they could do in the relevant jurisdiction?
5. If, for whatever reason, we cannot make an appointment under our security under English law, can we use any of the English security to make any appointment in the relevant jurisdiction?
6. What steps would need to be taken to enforce local share/unit security in the relevant jurisdiction?
7. What is the priority of claims in relation to the proceeds of enforcement of such share/unit security?
8. Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted?
9. Are there any proposals for reform to insolvency law?

Cayman Islands

1. No formal recognition although an administrator could apply for discretionary ancillary relief (e.g. information, turnover of assets, recognition, stays of enforcement or proceedings against the debtor).
2. Notice of appointment should given to the Registrar of Companies although no prescribed form.
3. Unlikely. An English administrator/receiver could petition to wind up the company in the Cayman Islands and seek a joint appointment with the Cayman liquidator but will be taken to have elected to abandon its security.
4. As applications for relief are discretionary, they could oppose them.
5. Unlikely.
6. Take possession by issuing notice to the company or require the company to register a transfer to a third party with recourse to the courts if the company fails to comply. If the security provides for it, a receiver can be appointed to do these.
7. The holder of a fixed charge has priority. The holder of a floating charge can, subject to the terms of the charge, unlike under English law, crystallise the charge in order to rank ahead of other creditors.
8. No although Model law remedies available at the discretion of the court.
9. No.

Mauritius

1. None until the new Insolvency Act provisions are enacted (no date for this is currently proposed) and then only an administrator and not a receiver. However, might be possible to use the mechanics of application to enforce a judgment by a foreign court.
2. None specifically required although a receiver is required to give public notice of his appointment, copied to the Registrar of Companies within seven days of appointment, which arguably could include a foreign receiver.
3. The creditor could appoint either a liquidator following presentation of a winding up petition or a court appointed receiver. It is untested whether a receiver could be appointed under an English law document.
4. Challenge the appointment/application or apply to put the company into liquidation.
5. This is untested but might be possible.
6. Following an event of default a receiver may be appointed under the terms of the security document who could sell either by public auction or private sale. One could also apply for a court appointed receiver (unusual).
7. If the company is in liquidation, liquidator expenses, tax and certain amounts due to employees will rank ahead.
8. The relevant law implementing the Model Law is not in force and not known when it will be.
9. No.

Gibraltar

1. Neither will be formally recognised.
2. None specifically required for foreign appointments but a receiver must file notice of appointment within 7 days with the Registrar of Companies with an ongoing duty to file details of receipts and payments every 6 months during the appointment.
3. Apply to the court to appoint a liquidator if local knowledge of law and other professionals was considered desirable.
4. Apply to wind up the company since any transfer of shares after a winding up is void without the consent of the court.
5. No.
6. Generally the secured creditor will appoint a receiver to sell the shares once the security has become enforceable in accordance with the terms of the charge. Most share charges will give the secured creditor power to control the voting of the shares once an event of default has occurred. In addition the EC directive on financial collateral arrangements has been adopted so that if the rules apply and the share security includes the relevant provision, the secured lender may be able to appropriate the shares without recourse to the court.
7. The secured creditor with fixed security has priority. To the extent that there are insufficient unsecured assets to meet them, the rights of a floating chargeholder will be subject to the claims of preferential creditors (rates, tax, certain amounts due to employees etc). A floating chargeholder's claim may also be subject to the liquidator's expenses.
8. No but the EU Insolvency Regulation (EC1346/2000) applies with Gibraltar being part of the UK for this purpose
9. There is talk of a possible review of insolvency law but nothing has yet been produced.

Luxembourg

1. Under the EU Insolvency Regulation (EC1346/2000), if a Luxembourg company's COMI is in another EU country, a liquidator/administrator appointed in that jurisdiction will be recognised as part of main proceedings. If a Luxembourg company has a COMI in Luxembourg and an establishment in another state, any secondary proceedings opened will be recognised, subject to the right to commence main proceedings in Luxembourg. Non-EU foreign insolvency decisions in relation to foreign companies are generally recognised if a judgment was given by a competent court, has extra territorial scope and does not contravene public policy. The appointment of a receiver (who is not court appointed) would not be recognised.
2. Not mandatory for either main or territorial insolvency but in practice they are often registered at the Trade and Companies register. No notification for a receiver.
3. Yes if the Company's COMI was in Luxembourg or was domiciled in another EU state and had an establishment in Luxembourg. The options are liquidation, 'controlled management' and composition proceedings. The last two are rescue remedies and only available as main and not secondary proceedings.
4. Challenge any application for COMI/try to commence main proceedings in Luxembourg.
5. No.
6. Either by way of public auction organised by the Luxembourg stock exchange or appropriation by the pledgee having obtained a court order. If the Law of Financial Collateral applies appropriation and private sale are also possible.
7. The costs of any court appointed liquidator, employee claims and unpaid tax and social security contributions will always have priority unless the Law on Financial Collateral applies.
8. No but as a member of the EU, the EU Insolvency Regulation (EC1346/2000) applies
9. No.

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