

Audit Exemption Waiver Resolutions Companies in liquidation

Requirement for audit

Part XVI Section 255 of the Companies (Guernsey) Law, 2008 requires that a company's accounts for a financial year must be audited in accordance with the provisions of Part XVI unless a company is exempt from audit under the provisions of Section 256.

Section 256—Exemptions from audit:

The members of certain companies may pass a waiver resolution exempting the company from the requirement to have its accounts audited for the financial year.

A resolution must be passed in the financial year before the year to which it relates or, in the case of a newly incorporated company, in the first financial year.

The resolution can waive the requirement for audit for one year, multiple years, or indefinitely.

But what if the company is in liquidation ?

Even if a company has been put into liquidation, it is still obliged to comply with Part XVI of the Law and, therefore, the default position is that the companies' accounts must be audited in each financial year.

Members should ask themselves the following questions when considering the requirement for audit:

1. Has an audit waiver resolution been passed in the preceding year (Section 256) or,
2. Have the directors reasonably resolved otherwise on the grounds that audited accounts are unlikely to be required (see Section 257 (1)(b) - this is a matter for the directors to consider—taking into account the circumstances of the particular company.

Don't directors powers cease upon the appointment of a liquidator ?

It is true that directors powers do cease upon the appointment of a liquidator in a winding up. However, under both a voluntary and a compulsory winding up, the liquidator can sanction the continuance of the directors' powers.

The liquidator can, therefore, sanction the continuance of the directors' powers under section 257(1)(b) to resolve that audited accounts are not reasonably required.

Why can't a blanket audit waiver be applied to all companies in liquidation ?

A blanket waiver for all companies in liquidation is not desirable. There will be cases of companies in liquidation where audited accounts are likely to be required.

The purpose of this guidance note is to provide a prompt for directors on certain issues that should be considered with regard to audit waiver resolutions for companies in liquidation.

It is not intended to be definitive legal advice and should not be relied upon as such.

The interpretation of the Companies (Guernsey) Law, 2008 is a matter on which the Guernsey Registry cannot advise and companies need to form their own view on compliance with the legislation.

Independent legal advice is advised where there is any uncertainty.