

STATES OF JERSEY



STATES OF JERSEY LAW 2005: PROPOSAL TO AMEND BANKRUPTCY PROVISIONS

Lodged au Greffe on 24th May 2016
by Deputy M.R. Higgins of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that Article 8 of the States of Jersey Law 2005 should be amended in order to bring the Law into line with the provisions of Article 40 of the Bankruptcy (Désastre) (Jersey) Law 1990;
- (b) to agree that Article 4A of the States of Jersey Law 2005 ‘Disqualification for election as Connétable’ should be repealed and replaced with the same provisions contained in Article 8 of the said Law relating to Senators and Deputies, so that the requirements relating to disqualification for election of all members of the States Assembly are the same; and
- (c) to request the Privileges and Procedures Committee to bring forward for approval the necessary amendments to the States of Jersey Law 2005 to give effect to the proposals.

DEPUTY M.R. HIGGINS OF ST. HELIER

REPORT

- (a) The purpose of this proposition is to bring the bankruptcy provisions contained in the States of Jersey Law 2005 into line with the provisions of the Bankruptcy (Désastre) (Jersey) Law 1990.

At present, Article 8(1)(f) of the States of Jersey Law 2005 states –

“8 Disqualification for office as Senator or Deputy

- (1) A person shall be disqualified for election as or for being a Senator or Deputy if that person –

...

- (f) subject to paragraphs (3) and (4), has become bankrupt or made a composition or arrangement with his or her creditors;

...”.

Article 8(3) states –

- “(3) The disqualification attaching to a person by reason of his or her having become bankrupt shall cease –

- (a) if the person pays his or her debts in full on or before the conclusion of the bankruptcy proceedings, on the day the proceedings are concluded;
- (b) in any other case, on the expiry of 5 years from the day the proceedings are concluded.”.

Article 8(4) states –

- “(4) The disqualification attaching to a person by reason of his or her having made a composition or arrangement with his or her creditors shall cease –

- (a) if the person pays his or her debts in full, on the day on which the payment is completed;
- (b) in any other case, on the expiry of 5 years from the day on which the terms of the composition or arrangement are fulfilled.”.

The Bankruptcy (Désastre) (Jersey) Law 1990 deals with the disqualification period of bankrupts at PART 9 (“DISCHARGE WHERE DEBTOR IS AN INDIVIDUAL”).

Article 39 states –

“39 Application of Part 9

This Part applies to debtors who are individuals.”.

Article 40(1) states –

“40 Application by Viscount for order of discharge

- (1) Subject to paragraph (2), at the expiration of 4 years from the date of the declaration the Viscount shall apply to the court for an order discharging the debtor.”.

Article 40(2) states –

- “(2) The Viscount, the debtor or a creditor of the debtor may apply to the court for an order that the period referred to in paragraph (1) be reduced or extended.”.

It is argued that there should be consistency in law, and that the States of Jersey Law 2005 would unfairly prevent discharged bankrupts standing for election in the States.

- (b) It is inequitable for the different Members of the States of Jersey to have different legal provisions regarding disqualification for election to the States of Jersey.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this proposition.