

English Insolvency Courts open for international business

The Court of Appeal has unanimously decided that it may appoint English administrators to a Jersey company, upon the request of the Jersey Court. This overturns a controversial decision from just last month, where a formal request from the Jersey Court for assistance was not considered sufficient for the English Courts to oblige. In that case, the English Court held that there had to be local insolvency proceedings afoot or at least in mind, before it could lend assistance. The Court of Appeal's decision reversed that approach and confirmed that no local insolvency proceedings were in fact necessary. Today's decision is significant in promoting cross border co-operation in insolvency cases. It reinforces the English Court's long held tradition to provide assistance and cooperation to insolvency courts beyond its own shores.

No formal insolvency proceedings, no assistance: the first instance decision

This case concerned an entity incorporated in Jersey, Tambrook Jersey Ltd (Tambrook) but which had all its assets and business interests in England. Local insolvency proceedings in Jersey were not considered appropriate because they would terminate key contracts and not provide the benefit of a moratorium. An English administration by direct appointment under the English insolvency legislation was not available on the basis that Tambrook did not have its centre of main interests in England. An indirect appointment was therefore sought via a letter of request from the Jersey Court to the English Court.

English insolvency legislation provides that "*the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.*" For these purposes, a relevant country or territory includes any of the Channel Islands, in this case Jersey, but also extends the English Court's assistance to other countries. These other countries largely comprise former Commonwealth countries including (amongst others) the BVI, the Cayman Islands, Hong Kong and the Republic of Ireland. So, whilst the decision had implications for this particular case and other cases involving Jersey companies, it is also of wider interest bearing in mind the fact that many of the "*relevant countries*" are tax efficient

Key issues

- English Court of Appeal confirms administrators may be appointed over Jersey company at the request of the Jersey Court
- Letter of request from Jersey Court sufficient, no local insolvency proceedings required

jurisdictions often favoured as places of incorporation when structuring complex and high value deals. At first instance, the judge held that, in the absence of local proceedings in Jersey, the English Court could not assist by making an administration order. Whilst this may have been a good result for stakeholders in the context of a structured finance

arrangement, which have been deliberately structured to avoid the effects of English insolvency proceedings, in the present case it served to frustrate the secured creditor's most efficient way of enforcing its security.

No proceedings, no problem: the Court of Appeal overturns

The Court of Appeal overturned the first instance decision. It was held that to be able to provide assistance, the court seeking that assistance need not be 'exercising' its jurisdiction. The English Court should simply consider whether that court would, or might, 'have' insolvency jurisdiction. In this case, the Jersey court had insolvency jurisdiction, sufficient to enable a request to be made and for the

English court to grant assistance. In making the order, the Court of Appeal recognised that it would be in the interests of Tambrook and its creditors, as well as facilitating the most effective collection and administration of Tambrook's assets. Put simply, there was no good reason to deny assistance or refuse to acknowledge an insolvency jurisdiction on the basis that formal proceedings had not been commenced.

Generally speaking, the decision should provide comfort to stakeholders who, when faced with distressed debtors based in any of the relevant countries or territories, should be confident that the assistance of the English court ought to be forthcoming where required.

This should avoid additional time and costs that may otherwise be involved in seeking multiple proceedings in different jurisdictions. For those operating in the structured finance markets the decision could simply be perceived as restoring order. This is because in that context, assistance from the English Court and risks of English insolvency proceedings have long been contemplated and anticipated in the transaction analysis.

More broadly, the decision reiterates the importance of the English Court and its role in the promotion of cooperation in cross border insolvency cases.

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