

# Putting Jersey Companies into English Administration

A Jersey company or one of its creditors may wish the company to be placed into administration in England under Schedule B1 of the UK's Insolvency Act 1986 (the "Act").

The ability to continue the business of an insolvent company as a going concern may be in the best interests of the creditors of the company, particularly where the assets of the company comprise commercial property in England. In both structured finance and bank financed transactions where UK real estate is being held through offshore borrower vehicles for tax and other reasons, there may be solid income streams even if loan to value ratios have declined below the level permitted in the transaction documents. Creditors may not wish for the property to be the subject of a forced sale into a depressed market and the structure liquidated. While in Jersey both a *désastre* and a just and equitable winding up may permit the business of the company to be continued for a time, there is no equivalent to an English administration order whereby an insolvency practitioner is appointed with the objective of (for example) rescuing a company and the whole or any part of its undertaking as a going concern, or achieving a more advantageous realisation for creditors than would be effected on a winding up.

There are two circumstances in which the High Court of England and Wales ("English Court") will have jurisdiction to make an administration order in respect of a Jersey company:

- **COMI:** A company incorporated in Jersey but with its centre of main interests (or "COMI") in a member state of the European Community other than Denmark will be a "company" for the purposes of Schedule B1. So if, for example, a Jersey incorporated company has its COMI in England, the English Court will have jurisdiction to place it into administration under the Act.
- **Letter of request:** On the face of the Act, the English Court has no power to make an administration order against a Jersey company which has its COMI in Jersey. However, the Royal Court of Jersey ("Jersey Court") can, by way of letter of request, endow the English Court with jurisdiction over a Jersey company to make such an order if appropriate as a matter of English law. The letter of request will be received by the English Court under section 426 of the Act.

The first case where the Jersey Court issued such a letter of request was OT Computers Limited 2002 JLR N10. Bedell Cristin acted for the applicant in this ground-breaking case. A number of subsequent applications have been made, and it is now a well-trodden path which can be pursued by the Jersey company or one of its creditors. For example, Bedell Cristin acts for the Special Servicer of a £1.45 billion commercial real estate loan made to the Protractor Group, which is a complex structure of offshore companies, limited partnerships and unit trusts, the senior tranche of which loan was subsequently securitised in the White Tower 2006-3 CMBS transaction. As part of a strategy to manage and realise the assets of the Group, on 8 October 2009 we successfully obtained letters of request from the Jersey Court asking the English Court to make UK administration orders in relation to seven Jersey companies in the Group. Administration orders were subsequently granted by the English Court.

The letter of request procedure may be preferable to an application direct to the English Court on the basis of the Jersey company's COMI for several reasons:

- If the Jersey company's COMI is not in England, or the location of its COMI is in doubt, obtaining a letter of request ensures that the English Court has jurisdiction to make an administration order.

- Property holding vehicles are commonly tax resident in Jersey and have their COMI here. The Jersey company or its directors may not want to assert that the COMI is in England for tax or other reasons.
- If the application for an administration order is being pursued by a creditor, it may be unable to demonstrate that the Jersey company's COMI is in England.

The overriding principle is one of assisting the creditors to achieve maximum value. Insolvency practitioners and advisers should therefore be aware of this procedure.

Bedell Cristin is a leading Channel Islands law firm headquartered in Jersey and operating from offices in Jersey, Guernsey, London and Geneva.

Bedell Cristin has a dedicated insolvency practice which deals with every aspect of contentious and non-contentious insolvency and restructuring. Senior Partner Anthony Dessain, who is widely regarded as Jersey's leading insolvency expert - and was ranked as Jersey's top insolvency lawyer by Legal 500 - heads the team. He is the co-author of "Jersey Insolvency and Asset Tracking" (now in its third addition) with Michael Wilkins, the Viscount of the Royal Court of Jersey.

The team has particular expertise in cross-border insolvencies and has been at the cutting edge for many years of developing Jersey law on assisting foreign officeholders and seeking assistance from the courts of other jurisdictions.

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