

Recognition of UK insolvency practitioners in Jersey

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Introduction

In the current COVID-19 environment it is likely that there will be more businesses becoming insolvent. Some of those businesses will have an interest in Jersey property. For example as owners of Jersey property or holders of a lease of retail premises situated in the Island. The business may also have locally employed employees to consider.

Insolvency practitioners appointed outside Jersey in respect of an overseas person or company (or of a Jersey company subject to English insolvency proceedings) need to be recognised in Jersey before they can deal with certain forms of Jersey property. This is because Jersey immovable property can only be transacted by passing a contract before the Royal Court.

Immoveable Property

Immoveable property includes land and buildings (including flying freeholds) and leases for nine years or more (a contract lease). The assignment of a contract lease needs to be passed by the Royal Court and, therefore, an insolvency practitioner wishing to assign the benefit of a contract lease will require Jersey recognition.

Applications for Recognition

Applications for recognition from practitioners appointed in the UK, Guernsey, Isle of Man, Australia and Finland can apply under Article 49 of the Bankruptcy (Désastre) Jersey Law 1990. This provision allows the Jersey court to assist the courts of a foreign jurisdiction in insolvency matters on the basis of a Letter of Request.

Practitioners from other jurisdictions will need to apply under customary law as a matter of

comity.

In practice there is little difference in the approach of the Jersey court to applications under Article 49 and applications under customary law and the following procedure is followed in both cases.

Consultation with the Viscount

Stage one is to consult with the Viscount's Department. The Viscount is the executive officer of the Court and has responsibility for bankruptcy matters. The Department produces a useful guide on recognition applications that can be accessed on the Jersey government website.

The Viscount will want to know what action the practitioner intends to take within the jurisdiction of Jersey and the impact of the insolvency on any locally employed staff. There is no equivalent of TUPE in Jersey although mechanisms have grown up to transfer staff to alternative employers, where this is a viable alternative. There is also law in Jersey relating to unfair and wrongful dismissal and on redundancy, including collective consultation obligations. The Viscount will also be interested in the payment of priority debts, which in Jersey include arrears of wages, holiday pay and bonuses, income tax, goods and services tax, social security payments, rent owed to landlords and parochial rates. The Viscount will also want to know how any Jersey unsecured creditors will be dealt with.

Having taken initial guidance from the Viscount's department the next stage is to present the Viscount with a draft application. This will include a draft Representation setting out the relief sought, a draft affidavit in support and a draft Letter of Request. The Viscount will provide feedback on the documents and indicate any concerns he has with the application.

Letter of Request

Stage three is to obtain a Letter of Request from the Insolvency Practitioner's home court. Once the Letter of Request has been issued the finalised Jersey application is sent to the Viscount for formal approval. Assuming the Viscount has no further comments he will write to the court indicating that his advice has been sought and he is content for the application to proceed. Alternatively, if the Viscount has concerns these will be indicated to the court and the Viscount may wish to attend the recognition hearing.

Issuing the Representation

The Representation is issued by lodging it with the court no later than Thursday lunchtime for a hearing on the Friday afternoon. If the application is straightforward it will be dealt with that Friday afternoon and the hearing can be done in conjunction with the sale of property or the

assignment of a lease. If the hearing is not straightforward (eg the Viscount has objections to the orders sought) the matter will be adjourned to a later date when all interested parties are able to attend.

Alternative Orders

Other reasons why an insolvency practitioner may seek recognition in Jersey are disclosure of assets and/or documents, examination of witnesses and freezing orders. In addition, some financial institutions will only release assets or funds where the practitioner has been recognised in Jersey.

Timescale

The timescale for recognition largely depends on how long it takes for the practitioner to obtain a Letter of Request from the home court.

If the matter is urgent the Viscount's Department will typically respond to enquiries within a few days and, therefore, the Jersey part of the process can be done in three to four weeks or less assuming there are no complications.

Conclusion

An understanding of the recognition procedure is important when insolvency practitioners are dealing with Jersey property.

At Ogier the Local Legal Services and Restructuring and Corporate Recovery teams work together in any recognition application involving immoveable property and in dealing with any employment issues. Our joint expertise means that we can progress the application quickly and cost effectively. We can also advise the practitioner on the terms of any lease assignment or property sale and on all related employment matters.

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