Jersey Restructuring and Insolvency – letters of request

Insights - 31/03/2020

As a jurisdiction, Jersey is at the heart of cross-border restructuring and insolvency. Inevitably, situations arise where insolvent companies' assets or possibly important evidence are located overseas or an overseas liquidation regime would be best for creditors. Conversely there will be situations where a foreign insolvency process will require steps to be taken in Jersey.

The Bankruptcy (Désastre) (Jersey) Law 1990 (the **Law**) contains an assistance provision which gives the Jersey court discretion to provide assistance to the courts of prescribed jurisdictions (currently Guernsey, the United Kingdom, Republic of Ireland, the Isle of Man, Australia and Finland). Also, as a matter of comity the Jersey Court has consistently shown itself to be willing where appropriate to assist overseas liquidators or other appointed officers by recognising those office holders in Jersey. Examples of recognised office holders have included liquidators, administrators and receivers from a variety of jurisdictions.

Applications have also successfully been made to the Jersey Court for the grant of letters of request to the English Court to place a Jersey company in administration where creditors' interests would be best served thereby "passporting" the insolvency of the Jersey company to England. Last year, for the first time in nearly 40 years Jersey's Viscount successfully obtained two letters of request to be issued to the English Court to seek her recognition in England to administer a major cross-border insolvency case:

Representation of the Viscount [2017] JRC 025

The high profile insolvency of Jersey company Orb a.r.l (Orb) and its sole shareholder Dr Gail Cochrane (Dr Cochrane), a local GP, has firmly placed Jersey's insolvency regime in the spotlight. The matter commenced in late 2016 and has continued to build throughout the course of 2017 and 2018, with related proceedings in the BVI and before the High Court in England and interested parties ranging from the Serious Fraud Office to law firms.

By way of brief background, the proceedings relate to the theft of around £35 million from a

company called Izodia by Dr Cochrane's former husband Dr Gerald Smith in late 2002 – most of the proceeds of the theft were misapplied to the benefit of Orb. Once the theft had been discovered, Orb sold a substantial proportion of its assets to a third party, who transferred them into a complex structure – it is asserted that there was an oral agreement between Orb and the third party, not reflected in the sale agreement, that Orb would continue to benefit from the assets that it had sold and the proceeds of their development.

Following an investigation by the Serious Fraud Office in the UK, Dr Smith pleaded guilty to a number of charges and was sentenced to an eight year prison term, and was the subject of a £41 million confiscation order.

The proceedings before the Royal Court of Jersey arise from litigation funder Harbour's efforts to recover money and assets from Dr Cochrane and Orb.

The matter has gone before the Jersey Court three times and the court's judgments have shown a clear desire to promote the capability of Jersey's insolvency regime and its ability to deal with complex cross border matters. The judgments issued in this saga have been as follows:

(i) In the Representation of Harbour Fund II LP [2016] JRC 171, the Royal Court declined an application by Orb's litigation funder, Harbour Fund (Harbour), to place Orb into English law administration. On examination of the facts it did not consider there was any advantage of using English administration in favour of Désastre (i.e bankruptcy in Jersey), particularly in circumstances where there was no expressed desire to maintain Orb as a going concern (the **First Proceedings**).

(ii) In Harbour Fund II LP v Orb a.r.l and others [2017] JRC 007, Harbour duly returned to the Royal Court to seek declarations en désastre of Orb and Dr Cochrane. Notwithstanding the potential scope and complexity of the two bankruptcies and the burden that would be imposed upon the Viscount and her department in respect of dealing with assets and actions around the world, the Royal Court declared both Orb and Dr Cochrane en désastre. The Court stated it was important that Jersey, as a well-respected financial centre, discharged its responsibility for dealing with the affairs of a Jersey company and its own resident (the **Second Proceedings**). The combined creditor claims filed to date equate to in excess of £1.2 billion.

(iii) In the Representation of the Viscount [2017] JRC 025, the Viscount sought and was granted two Letters of Request to be issued by the Royal Court to the High Court of England and Wales requesting the assistance of the High Court in accordance with Section 426 of the Insolvency Act 1986 in respect of each of the désastres of Orb and Dr Cochrane. The Letters of Request broadly sought the recognition of the Viscount in England with authority to exercise various powers to ascertain information about the assets of Orb and Dr Cochrane and to gather in relevant documents and to exercise various powers of investigation (the **Third Proceedings**). The letters of requested were issued and the

Viscount is now exercising various powers in relation to her function within England.

In the First Proceedings, the Royal Court found that there was no advantage to using English administration in favour of désastre and did not accept that Orb had substantial connections with England. The court considered that the majority of assets, listed by an accountant, were situated outside England and Wales. Accordingly, the Royal Court held that initiating the English administration process over a Jersey company that had no substantial connection to England was unjustified.

The Second Proceedings were concerned with a claim that was filed in the English courts by Dr Cochrane and Orb against Harbour for a sum of £73 million. Dr Cochrane and Orb instructed Jersey Advocates to assist with resisting Harbour's application for a declaration en désastre, on the basis that they had a significant claims against the creditor in the England. The Royal Court refused to allow Dr Cochrane and Orb to frustrate the Jersey désastre process by engaging in English proceedings that it considered to be a 'last gasp' attempt to avoid bankruptcy.

In the Third Proceedings, the Royal Court granted an application by the Viscount (the official Insolvency officeholder of Jersey) for the issue by the Royal Court of letters of request, pursuant to which the Viscount sought recognition in England to administer the désastres of Dr Cochrane and Orb. The court was prepared to make a wide request for assistance including asking the English court to authorise the Viscount to exercise such of her powers and functions as may be necessary, (including the power to intervene in and prosecute or defend or apply for a stay in various sets of proceedings currently before the English courts and to ascertain information and gather in relevant documents relating to assets of Dr Cochrane and/or Orb).

The saga is ongoing and there will undoubtedly be further judgments and authority arising from this interesting and complex insolvency. What is certainly clear from the tenor of the judgments issued to date, is that the Royal Court of Jersey will not lightly permit Jersey's insolvency regime to be circumvented in favour of other jurisdictions. It is a clear indication to the international insolvency community that Jersey is confident in its ability to have conduct of complex cross border insolvency matters of this nature.

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