

Guernsey Royal Court issues Letter of Request to the High Court

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Advocate Mathew Newman acted for the Joint Administrators of a Guernsey company (Company), which was a party to ongoing court proceedings in England.

The Joint Administrators applied to the Royal Court of Guernsey seeking an order that it issue a Letter of Request to the High Court of Justice of England and Wales, requesting the High Court to act in aid of and auxiliary to the Royal Court pursuant to section 426 of the Insolvency Act 1986 (1986 Act) in recognising the appointment of the Joint Administrators as administrators of the Company.

Whilst the Royal Court has dealt with incoming letters of requests, in making the Application counsel was not aware of any reported (or indeed unreported) case where the Royal Court's jurisdiction to issue a Letter of Request had been considered previously.

Order for Letter of Request

Looking at section 426(4) of the 1986 Act, it states: "The Courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in ... any relevant country or territory". Whilst, again, counsel was not aware of any case where the English courts had assisted the Royal Court of Guernsey, there have been a number of occasions where it has done so in respect of Jersey companies (considered below).

The Insolvency Act 1986 (Guernsey) Order 1989 (1989 Order), which practitioners will be familiar with, somewhat surprisingly (perhaps) is not directly relevant to the question of whether the Royal Court of Guernsey might issue a letter of request, but in fact solely deals with the receipt by the Royal Court of such a letter from another British court. However, the Joint Administrators submitted that the very existence of the 1989 Order is reflective of the principles of comity and assistance between the courts of England and Guernsey.

Indeed, the Royal Court of Jersey's jurisdiction to issue a Letter of Request as a matter of authority and principle is well-established, and has been applied on a number of previous occasions and the Joint Administrators submitted that the approach by the Jersey Court is the correct approach to take and is persuasive authority in Guernsey.

In the matter of the Representation of the Viscount and in the matter of the desastres of Cochrane and Orb A.R.L[1], the Royal Court of Jersey issued a letter of request to the High Court seeking recognition of the Viscount in that case (paragraph 17):

"In those circumstances, the Court is in no doubt that it should issue a letter of request to the High Court seeking the assistance of that Court in accordance with Section 426 of the Insolvency Act 1986 in respect of each désastre. The Court approved the draft letter of request... That letter of request essentially seeks recognition of the Viscount in England with authority for her to exercise her powers and functions as administrator of the two désastres... The letter of request also seeks permission for the Viscount to bring, institute, defend or intervene in any legal proceedings in England and Wales relating to Orb or Dr Cochrane together with various other ancillary orders."

In addition to this more recent authority, which sought (amongst other things) recognition of the Viscount in England, there are also a number of previous Jersey cases where letters of request have been issued seeking the administration of a Jersey company in England.

The judgment in one of these such cases, REO (Powerstation) Limited,[2] refers to the long-standing reciprocity existing between Jersey and the United Kingdom in cross-border insolvency matters. The learned Deputy Bailiff (as he then was) concludes at paragraph 7 of his judgment in that matter:

"[I]t appears to us to be an assumption, in the interests of comity, that if the Royal Court would give assistance to the courts of [the United Kingdom], we would anticipate, absent good reason to the contrary, that the courts of those countries or territories would give assistance to our court".

Further, English authority dealing with a specific request from Jersey is referred to and quoted by the Deputy Bailiff in his judgment, which authority concludes: "I think this [English] court is bound to give all the assistance it can". This has been confirmed more recently by the English Court of Appeal in *In re Tambrook Jersey Limited*[3].

REO (Powerstation) Limited also notes (at paragraph 10) that although there is no statutory jurisdiction to issue a Letter of Request, the Royal Court of Jersey has an inherent jurisdiction to do so. In this regard, it cross-refers to the earlier decision *In the Matter of OT Computers*[4] when this point was first decided (paragraph 4). The Joint Administrators submitted that the same principles apply in the Royal Court.

Discretion

Whilst the Court does retain a discretion to issue a letter of request, the Joint Administrators submitted that, in the circumstances of the present case, the Court should readily exercise its discretion to do so where the Letter of Request simply seeks recognition of the administration order and the appointment of the Joint Administrators in the High Court, which, it is submitted, is a straightforward request (rather than, say, an application that seeks more detailed assistance of the High Court, such as using the powers under the UK Insolvency Act to clawback transactions or interrogate directors or third parties).

The primary reason for the Joint Administrators' Application was to seek recognition of the Guernsey statutory moratorium in England & Wales for the purposes of the proceedings there. The point was made that it would, of course, be a matter for the English court as to whether to grant the request, and on what terms, but the Joint Administrators submitted that in circumstances where the English moratorium is potentially much wider than the Guernsey moratorium (see paragraph 43 of schedule B1 to the 1986 Act), the Royal Court should not be reticent in requesting the assistance of the English court to recognise both the administration and the effect of section 377 of the Companies Law in England & Wales. It was further submitted that there were no matters pertaining which might weigh in favour of the Court exercising its discretion to refuse the Application for the Letter of Request.

Conclusion

In the circumstances, the Royal Court was satisfied that it had the jurisdiction to order the issuance of such a letter of request (and in fact did so), noting the following:

- Section 426 of the 1986 Act caters for the receipt of such letters of request;
- Guernsey itself would give similar assistance to the English courts in accordance with the terms of the 1989 Order;
- The Royal Court of Jersey has issued similar letters of requests in insolvency matters (including as regards recognition), which it is submitted is persuasive authority in Guernsey.

The matter was heard in camera, but it is expected that the Royal Court will issue an anonymised written judgment in due course, noting the lack of authority on the point in Guernsey.

[1] [2017] JRC025

[2] [2011] JRC 232A

[3] [2013] EWCA Civ 576

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