Jersey court once again shows willingness to facilitate cross-border insolvency proceedings in new judgment relating to the Arcadia administration

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In the Representation of Matthew David Smith and Ors. [2021] JRC 047 the Royal Court of Jersey has handed down an important decision, exercising its discretion to grant a moratorium in substantially the same terms as provided under the UK Insolvency Act 1986.

The case concerned an application by the joint administrators of Arcadia Group Limited and certain other Arcadia group companies seeking (a) recognition of their appointment (including the power to continue to trade the relevant stores in Jersey) by means of a letter of request from the High Court of England and Wales, and (b) the grant of a moratorium preventing any claims or enforcement against the group companies in Jersey.

In recognising the administrators' appointment, the Royal Court applied its power to assist a foreign court in insolvency matters under the Bankruptcy Désastre (Jersey) Law 1990 (Bankruptcy Law). In common with other similar cases, as conditions to the recognition of their appointment the administrators agreed that they would be responsible for meeting Jersey employee wages, social security and taxes while the Jersey businesses traded under their control, and that they would return to Court for directions before exercising their powers for any purpose other than to operate and trade the stores in Jersey.

The Royal Court held that the power to grant a moratorium was available under the Bankruptcy Law and under the Court's inherent jurisdiction. The Court would not grant a moratorium simply because there was a moratorium in the equivalent process in the UK, but in doing so in this case it had regard in particular to the small number of Jersey creditors (and the proportionately small amounts due to them), the risk that any enforcement action by such creditors could be disproportionately disruptive (in that it could prevent the stores from continuing to trade and thereby undermine the purpose of the administration), the fact that equivalent moratoria would be in place not only in the UK but also in the Isle of Man and Guernsey, the limited duration of the requested moratorium, and the fact that any creditor aggrieved could apply to Court for leave to issue proceedings.

The decision shows the Royal Court's continued willingness to provide assistance to facilitate cross-border insolvency proceedings, including by providing for remedies (such as a moratorium in substantially the terms of the UK Insolvency Act 1986) that would not otherwise be available in Jersey, and recognising and empowering foreign insolvency officials such as administrators (in this example) and fixed charge receivers (as seen in the case of In re Estates & General Developments Limited [2013]).

The use of the letter of request procedure in this matter, although not strictly necessary in every case, follows a well-trodden path which we have seen in a number of similar applications, particularly in the retail sector, in recent years (for example in the case of In re Monsoon Accessorise Limited [2020]).

The Royal Court also has inherent jurisdiction to issue a similar letter of request to a foreign court, requesting that a Jersey company be placed into a foreign law administration or other insolvency procedure, as seen in the case of Intu Merry Hill Limited [2020]. The Royal Court will issue such a letter if satisfied (amongst other things) that the foreign court would accept jurisdiction in the insolvency (on grounds of COMI or for some other reason) and it is in the interests of the creditors, in the interests of the debtor, or in the public interest to do so.

Carey Olsen's restructuring and insolvency team have extensive experience of acting in respect of these and similar matters and would be pleased to discuss recognition and other restructuring related matters with you.

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