

International Corporate Rescue



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Guernsey Letter of Request: Guidance from the Royal Court

Mathew Newman, Partner, and Sam Dingle, Managing Associate, Ogier, Guernsey, Channel Islands

Synopsis

The Royal Court of Guernsey has clarified its approach to the issuance of a letter of request to the High Court, seeking that it act in aid of and auxiliary to the Royal Court pursuant to section 426 of the Insolvency Act 1986, in recognising the appointment of Joint Administrators of a Guernsey-registered company. The removal of any residual doubt as to how the Royal Court of Guernsey might deal with such an application is a helpful development in the island, to be welcomed by practitioners, office-holders and creditors alike.

Royal Court issues letter of request to the High Court

Whilst it may have been that most practitioners in the island never considered the point might be controversial, the Royal Court of Guernsey has recently confirmed that it does indeed have the jurisdiction to order the issuance of a letter of request to the High Court in England.

Advocates Mathew Newman and Sam Dingle take a look at a recent case, which put the point beyond doubt.

Joint Administrators' application

In the case at hand, Joint Administrators were sworn into office by the Royal Court of Guernsey in respect of a Guernsey-registered company (Company), which was a party to ongoing court proceedings in England.

The Joint Administrators then subsequently applied to the Royal Court 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 numerous incoming letters of requests, somewhat surprisingly counsel for the Joint Administrators were not aware of any reported (or indeed unreported) case where the

Royal Court's jurisdiction to issue a letter of request had been considered.

The Application, which ultimately was granted by the Royal Court, was heard *in camera*, but the broad principles can nevertheless be usefully discussed without reference to the facts of the case.

Section 426

By way of recollection, section 426(4) of the 1986 Act 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'.

Of course, Guernsey is not a part of the United Kingdom, but is a self-governing British Crown Dependency and so falls outside of the jurisdiction of the English courts. Equally, the 1986 Act does not apply in Guernsey, but rather the definition of 'relevant country or territory' in the 1986 Act is stated as including 'any of the Channel Islands'. So there can be little doubt that upon receipt of a letter of request issued by the Guernsey court, the High Court would be likely to assist as necessary.

Whilst the 1986 Act does not extend to Guernsey, contemporaneous (and eponymous) insolvency legislation was passed in the island, namely The Insolvency Act 1986 (Guernsey) Order 1989 (1989 Order), which practitioners in the island will be well familiar with.

Somewhat surprisingly, again, the 1989 Order is not directly relevant to the question of whether the Royal Court of Guernsey itself 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. Nevertheless, 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 O T Computers*⁴ when this point was first decided

(paragraph 4). The Joint Administrators submitted that the same principles apply in the Royal Court of Guernsey.

Discretion

Whilst the Royal Court does retain a discretion to issue a letter of request, the Joint Administrators submitted that, in the circumstances of the case at hand, 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, counsel 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 1986 Act to claw back 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 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 (Guernsey) Law, 2008, in England and 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:

- (a) Section 426 of the 1986 Act caters for the receipt of such letters of request;
- (b) Guernsey itself would give similar assistance to the English courts in accordance with the terms of the 1989 Order;

Notes

¹ [2017] JRC025.

² [2011] JRC 232A.

³ [2013] EWCA Civ 576.

⁴ JRC 2002/29.

- (c) 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.

As already stated, 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.

The removal of any residual doubt as to how the Royal Court might deal with any application for the issuance of such a letter of request is a welcome development in Guernsey and (it is hoped) shall provide a further addition to the island's developing body of case law on insolvency-related matters.

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