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VISA DENIED: AN END TO THE JERSEY PRACTICE OF INSOLVENCY "PASSPORTING"?

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This article analyses recent jurisprudence in respect of external requests by Jersey court to their counterparts in the United Kingdom for assistance in insolvency matters.

Introduction

1 Section 426 of the Insolvency Act 1986 (United Kingdom) ("s 426") is an insolvency co-operation provision and counterpart to Jersey's own art 49 of the Bankruptcy (*Désastre*) (Jersey) Law 1990. The common ancestry of both provisions can be traced back to 19th century enactments providing for the enforcement of orders given by courts within the various constituent parts of the United Kingdom as well as imposing a requirement of assistance to and by other British courts, a definition which encompassed many of the courts in the then British Empire (later Commonwealth).[1] In 1986, the United Kingdom's newly enacted insolvency text extended the scope of the provision to cover both corporate and personal insolvencies. Under s 426, 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 other part of the United Kingdom or any relevant country or territory.[2] Assistance under any request is deemed authority for the court to which the request is made to apply the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction, subject to any considerations of private international law that might arise.[3] The

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[1] Bankruptcy Act 1849, s 220; Bankruptcy Act 1869, ss 73–74; Bankruptcy Act 1883, ss 117–118; Bankruptcy Act 1914, s 122. Note that the Jersey Royal Court was deemed to be a British court for the purpose of the last of the above-mentioned provisions in *Re A Debtor (ex p Viscount of the Royal Court of Jersey)* [1980] 3 All ER 665.

[2] Insolvency Act 1986, s 426(4) which applies to England and Wales and Scotland. It was also extended to Northern Ireland under s 441(1)(a).

[3] *Ibid*, s 426(5).

number of countries to which the rules on assistance apply is limited, the section itself specifying automatic assistance internally between courts in different parts of the United Kingdom and also Jersey, Guernsey and the Isle of Man.[4] Subsequent statutory instruments extend co-operation to other countries and territories, which, although not limited in coverage by the text itself, in practice means a category constituted predominantly of Commonwealth countries and some former members, such as Hong Kong and Ireland.[5]

2 Section 426 has been used in a number of ways to effect cooperation between courts, including to recognise foreign insolvency orders and the appointments of office-holders, to permit the bringing of vulnerable transaction actions under domestic law,[6] to allow for proceedings against directors to recover a deficiency in the insolvent debtor's assets,[7] to bind creditors to a foreign composition,[8] to recognise and give effect to a stay authorised by the application of a foreign rule in relation to set off,[9] to permit the public examination of persons connected to an insolvency,[10] as well as to endorse the remittance of funds to an overseas proceeding despite the very different priority rules that would apply.[11] Only where the giving of assistance would be contrary to the conduct of proceedings already on foot within the jurisdiction would that assistance not be forthcoming.[12] Otherwise, s 426 would be interpreted widely: unless good grounds existed for not making an order, then the domestic courts should accede to the request emanating from the foreign court and the

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[4] *Ibid*, s 426(11)(a), which deems the phrase "relevant country or territory" to include the Channel Islands and the Isle of Man.

[5] Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986 (SI 1986/2123), Co-operation of Insolvency Courts (Designation of Relevant Countries) Order 1996 (SI 1996/253), and Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998 (SI 1998/2766) collectively apply s 426 to Anguilla, Australia, The Bahamas, Bermuda, Botswana, British Virgin Islands, Brunei, Canada, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Hong Kong, Ireland, Isle of Man, Jersey, Malaysia, Montserrat, New Zealand, St. Helena, South Africa, Turks & Caicos Islands as well as Tuvalu.

[6] Re BCCI International (Overseas) Ltd [1988] 1 WLR 708.

[7] *Re BCCI* [1993] BCC 787.

[8] *Re Business City Express* [1997] BCC 826; [1997] 2 BCLC 510.

[9] *Re Bell Lines Ltd* 6 February 1997, unreported.

[10] *England v Smith* [2000] 2 BCLC 21.

[11] Re HIH Casualty & General Insurance Ltd [2008] UKHL 21.

[12] Re Focus Insurance Co Ltd [1997] 1 BCLC 219.

definition of insolvency contained in s 426 should be given as wide an interpretation as possible so as not to fetter the exercise of the court's equitable discretion.[13]

3 One of the most innovative ways, though, in which s 426 has been employed is to open domestic rescue proceedings in respect of foreign debtors. Statutory provisions have long existed for extending what is termed ancillary liquidation to a foreign company carrying on business within the jurisdiction, even where that company may have been dissolved according to the laws of its state of incorporation.[14] However, prior to a 1992 case, it was doubted whether the rescue provisions could be extended to a foreign debtor unless that debtor met the jurisdictional criteria for the opening of such proceedings.[15] In *Re Dallhold*,[16] the company, which was in liquidation in Australia, had applied for an order for the winding up of its wholly-owned subsidiary. Subsequently, with the support of the Australian provisional liquidator of the subsidiary, it also sought the issue of a Letter of Request addressed to the High Court in London seeking its assistance to make an administration order in respect of the subsidiary.[17] In the Australian proceedings, the court accepted the submission by the parent company, incidentally also the subsidiary's principal creditor, that an administration offered the possibility that the value of an agricultural lease owned by the subsidiary might be preserved for the benefit of the creditors as a whole. This would not occur in a liquidation, whether in Australia or in England. Agreeing with this proposition, the Australian court also accepted advice given by English solicitors that there were significant doubts as to whether an administration order could be made because of the jurisdictional problem, except at the request of the court under the co-operation measures.

4 In the United Kingdom, the court held that the effect of s 426 was to confer on the United Kingdom courts a jurisdiction to apply any

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[13] Hughes v Hannover Ruckversicherungs-AG [1997] 1 BCLC 497.

[14] Insolvency Act 1986, s 221 and s 225 (United Kingdom).

[15] In both cases, to be a company incorporated under the Companies Act 1985 (United Kingdom), since replaced by the Companies Act 2006 (United Kingdom).

[16] Re Dallhold Investments Pty Ltd & Re Dallhold Estates (UK) Pty Ltd (1991) 6 ACSR 378, (1991) 10 ACLC 1374 (Australia); Re Dallhold Estates (UK) Pty Ltd [1992] BCC 394 (United Kingdom).

[17] One of the reasons for seeking an administration in the United Kingdom was the fact that, at the time, a rescue provision did not exist in Australian law, as the voluntary administration procedure was only introduced in 1993 (now Corporations Act 2001, Part 5.3A, (Cth) (Australia)).

domestic remedy. The judge held that the purpose of the provision was to give to the requested court a jurisdiction that it might not otherwise have in order that it could give assistance to the requesting court. As such, the court would approach the case by first identifying the matters specified in the request. It would then ask itself what would be the relevant insolvency law it would apply to comparable matters falling within its jurisdiction. Finally, it should then apply that insolvency law to the matters specified in the request.[18] Once a request for assistance was granted, it naturally followed that a court could apply all of the rules of insolvency law that would apply to a domestic insolvency, including, where appropriate, the rescue regime of administration. This would, of course, be subject to any exercise of discretion in the application of these rules that would feature in a domestic case. A little later, in 2002, the ambit of assistance under s 426 was held to also include the ordering of corporate voluntary arrangements, an alternative form of rescue, in the case of a foreign company.[19]

5 The precedent set by the Australian case must have been viewed with some interest in Jersey, as the practice of "passporting" insolvent debtors, by the making of a Letter of Request by the Jersey courts to their counterparts in the United Kingdom, is of some vintage. It was first initiated in 2002 in *Re OT Computers*,[20] and has been seen subsequently in a number of cases, including *Re First Orion*,[21] *Re St John Street Ltd*,[22] *Re REO*[23] and *Re Control Centre*.[24] As in the Australian case, its use is probably directly driven by the absence of a local rescue procedure.[25] This lack has also led to the development of

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[18] Re Dallhold Estates (UK) Pty Ltd [1992] BCC 394, at 398–399.
[19] Re Television Trade Rentals Ltd [2002] EWHC 211.
[20] In re OT Computers Ltd 2002 JLR N [10].
[21] Re First Orion Amber Ltd (or Representation of Governor & Company of the Bank of Ireland) [2009]JRC126.
[22] Re St John Street Ltd (or Representation of Anglo Irish Asset Finance) [2010]JRC087.
[23] *Re REO (Powerstation) Ltd* [2011] JRC 232A. This case was noted, by this author, in "Finding Rescue: Creative Alternatives to the Classic Insolvency Procedures in Jersey" (2012) 16 JGLR 248.
[24] Re Control Centre General Partner Ltd (or Representation of RBS plc) [2012]JRC080.
[25] For an outline of Jersey insolvency law, see, by this author, *Law Relating to Security on Movable Property and Bankruptcy Study Guide* (2012, Institute of Law Jersey, St Helier), Chapters 8–15; Dessain & Wilkins, *Jersey Insolvency Law and Asset-Tracking* (4th ed) (2012, Key Haven Publications, Oxford), Chapter 5.

other "quasi-insolvency" procedures, including reliance on schemes of arrangements,[26] which are potentially applicable to those companies that are very close to the threshold of insolvency (even possibly technically insolvent).[27] Changes to the merger framework in Jersey in 2011, which have introduced the possibility of mergers on a cross-border basis as well as with non-corporate bodies, also permit insolvent companies to merge subject to court permission being obtained, although no cases have yet been seen invoking this procedure.[28] There are also interesting developments in the jurisprudence in relation to the just and equitable winding up procedure[29] taking into account creditors' interests,[30] permitting "trading-out" type processes for companies carrying out regulated business[31] as well as, in a recent case, sanctioning a procedure akin to the pre-pack sale often seen in the context of United Kingdom administration proceedings.[32]

6 In the "passporting" cases mentioned above, resolving the lack of a local procedure has involved the issue of a Letter of Request to a United Kingdom court, usually where the corporate debtors involved had a close connexion with that jurisdiction anyway, through the conduct of business, the location of assets or the law applicable to contractual obligations, albeit not a sufficient connexion to enable jurisdiction on the basis of a finding that the debtor's centre of main interests ("COMI") was in the United Kingdom.[33] The Jersey court has readily assented to this step, based on an appreciation of its own inherent jurisdiction as well as the facility provided under s 426, particularly since Jersey is one of a limited number of jurisdictions the United Kingdom courts are bound to assist. The deficiencies of locally available procedures have been increasingly the subject of explicit note in the Jersey reports in these cases, while the comparative merits of the administration process, comforted by counsels' opinions, have been remarked upon, especially by reference to the benefit for

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[26] Companies (Jersey) Law 1991, arts 125–127.

[27] *Re Drax Holdings Ltd; Re Inpower Ltd* [2004] 1 BCLC 10. This was also in part a Jersey case.

[28] Companies (Jersey) Law 1991, art 127 *et seq*.

[29] *Ibid*, art 155.

[30] Re Poundworld (Jersey) Ltd 2009 JLR N [12].

[31] Re Centurion Management Services [2009]JRC227.

[32] *Re Clews* (Case 2013/044) (unreported).

[33] Except perhaps in the *Re OT Computers* case, above note 20, where the court noted that the facts peculiar to the debtor could perhaps have underpinned such a finding. The COMI test is an innovation introduced by the European Insolvency Regulation 2000.

creditors. Inevitably, there have been calls for Jersey to adopt its own rescue laws, including by this author, although action on this point is possibly some way off.[34] In most of these cases, there are no local proceedings in Jersey, nor is there any intention to open one. The debtor companies are simply "passported" via the Letter of Request route into the jurisdiction of the courts in the United Kingdom.

7 In this light, a 2013 case, *Re Tambrook*,[35] treads a familiar path in making an approach to the Jersey court for the issue of a Letter of Request addressed to the United Kingdom courts, whose subject is the making of an administration order in relation to the company. The surprise comes in the fact that, in proceedings before the High Court in London,[36] the English court appears to have called a halt to the practice of automatically "passporting" debtors by imposing a pre-requisite to the effect that there must be insolvency proceedings afoot in Jersey for the purposes of providing cooperation under the provision.

The facts of the case

8 The company in question borrowed a sum of money, over £6m, from HSBC Bank, which it used to purchase properties in Margate, Kent, with view to their redevelopment.[37] The bank had debenture-based security as well as fixed charges over the properties concerned. The company's business in the United Kingdom was admittedly not very successful and it eventually ran into financial difficulties. Its eventual debt to the bank was over £9.65m, which the bank naturally sought to recover.[38] The company was clearly insolvent on both the cash-flow and balance sheet tests. However, as the company did not have its COMI in the United Kingdom, there was no direct jurisdiction to apply for the opening of administration proceedings.[39] The bank sought, via a representation to the Jersey court, to have the court issue

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[34] Of note here might be the fact that Guernsey has introduced United Kingdom-style administration in the Companies (Guernsey) Law 2008.
[35] Re Tambrook Jersey Ltd (or Representation of HSBC Bank plc) [2013]JRC046 (28 February 2013) ("Jersey Judgment").
[36] *HSBC Bank v Tambrook Jersey Ltd* [2013] EWHC 866 (Ch) (12 April 2013) ("UK Judgment").
[37] The GSE Group's Newsletter No 17, available via the group's website at: www.gse-group.com, refers to a Letter of Intent received from Tambrook Jersey Ltd in December 2010 for a £4.5m contract for the completion of two five-storey apartment blocks in Margate.
[38] Jersey Judgment, at para 1.
[39] *Ibid*, at para 2.

a Letter of Request to its counterpart in London so as to enable the opening of administration proceedings via this route.[40] The application was of some urgency given the fact that the properties were deteriorating, while a sale was envisaged on a pre-pack basis so as to raise a sum of money that would go towards reducing the company's indebtedness.[41] The application was accompanied by counsel's opinion which asserted that s 426 would enable the Jersey court to make the request sought and that the grounds for making an administration order as well as the purposes of administration would be satisfied in the instant application.[42]

The Jersey Judgment

9 The court's judgment was remarkably succinct, consisting of only 10 paragraphs. The court was clearly satisfied that it had the jurisdiction to be able to issue the Letter of Request sought on the basis of the precedent in *Re REO*,[43] where the court recognised the lack of adequate provision in Jersey law for a procedure offering the flexibility of the administration process as militating in favour of the making of a Letter of Request. Factually, the instant case resembled the situation in *Re Control Centre*,[44] in that all of the company's assets were in England and Wales with all bar one of the creditors located in the same jurisdiction. Although the bank facility was governed by Jersey law, the security documentation, under which the bank was the sole secured creditor, was governed by English law.[45]

10 Canvassing the local insolvency procedures available as alternatives, the court noted certain features of the *désastre* procedure that made it unattractive, notably that the Viscount, who administered the process, would need to seek recognition in the United Kingdom to

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[40] *Ibid*, at para 1.
[41] On the basis of the valuation revealed in the United Kingdom proceedings, the amount was not thought to be very great, some £150,000 or so.
[42] Jersey Judgment, at paras 3–4. Insolvency Act 1986, Rule 3, Schedule B1 (United Kingdom) sets out the purposes as: (a) the rescue of the company as a going concern; (b) achieving a better result for the creditors than would be the case in liquidation; and (c) the making of a distribution to one or more preferential or secured creditors. Rule 11 would only authorise the making of an order if the company was or was likely to become insolvent and that it was reasonably likely that one of the above purposes would be achieved.
[43] Above, note 23.
[44] Above, note 24.
[45] Jersey Judgment, at para 2.

be able to deal with the assets that vested in him under the procedure.[46] There would also be a need to appoint local agents to deal with the property, thus adding to the costs of the process, while the initiation of the *désastre* process itself could lead to the inadvertent termination of contracts that might otherwise be assigned or novated as part of the disposal of the property.[47] Furthermore, while the *remise de biens* procedure had some features akin to an administration, notably the suspensory effect of the moratorium, it could not be initiated by a creditor and required, moreover, the holding of Jersey immoveable property as a pre-requisite for the debtor qualifying.[48] In the United Kingdom, other options could exist, including that of winding up the company as a foreign company,[49] although the appointment of the official receiver would lead to some delay. Receivership, as the security documents would additionally permit, would only allow the secured creditor's appointed receiver to deal with the secured assets and would leave behind the corporate shell together with any unresolved creditor claims outstanding.[50]

11 The court accepted the arguments made by the bank's advocate, who submitted that the administration process would be the most appropriate and would allow the proposed administrators to maximise the value of the assets for the benefit of the creditors as a whole. The administrators would have wide powers to do so and would be under a duty, as officers of the court, to take account of all the creditors. The process itself would enable a moratorium on creditor action and investigation by the administrators of any antecedent transactions, while, at the end of the process, the company could be simply dissolved by application of the administrators.[51] In determining that the administration would be appropriate and advantageous, the court also accepted, on the basis of the evidence, the benefits of the proposed pre-pack and the application of SIP 16.[52] Should the pre-pack for any reason fall through, the court also accepted the proposed administrators' evidence that another of the statutory purposes of administration could be achieved.[53] As the known creditors had been

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[46] Bankruptcy (*Désastre*) (Jersey) Law 1990, arts 8 and 9, vests the debtor's pre-procedure and after-acquired property, respectively, in the Viscount.
[47] Jersey Judgment, at para 5.
[48] *Ibid*, at para 6.
[49] Under Insolvency Act 1986, s 221 (United Kingdom).
[50] Jersey Judgment, at para 7.
[51] *Ibid*, at para 8.
[52] Statement of Insolvency Practice No. 16 deals with the conduct of pre-packaged sales in administration.
[53] Jersey Judgment, at para 9.

convened, albeit with no objections to the relief sought, while the Viscount, similarly consulted for his opinion, had no observations to make, the court granted the application for the Letter of Request to issue.[54]

The English Judgment

12 When the matter reached the High Court in London, the judge acknowledged the urgency of the case, given the intention to effect a forthcoming sale.[55] After a brief recitation of the facts,[56] the judge also acknowledged the deficiencies in the Jersey processes adverted to and the overall desirability of an administration.[57] Noting also the absence of a COMI in England and Wales and thus the unavailability of a direct application by the conventional route, the court pointed to the Letter of Request that had been received and its terms, particularly its recitation of the justice and convenience of the order to be made, which would be in the interests of creditors. It also noted the authority of s 426, under which the English court was called upon to act in aid of and be auxiliary to the Jersey court.[58] Although the court accepted the desirability of the order and that it would be appropriate to make the order to enable the proposed administrators to carry out the pre-pack sale,[59] agreement to the request hinged on whether the court actually had jurisdiction under the statute in the particular circumstances of the case and whether the word "assist" in the provision could cover the situation envisaged by the Jersey court.[60]

13 For the court, assistance under s 426, which is set out,[61] requires three elements: (i) a United Kingdom court exercising jurisdiction; (ii) a foreign court exercising a similar jurisdiction; and (iii) a request received by the former from the latter. If a request were made, in most circumstances the court receiving the request would assist in whatever appropriate way it could.[62] The problem for the court was how the Jersey court would be "assisted" for the purposes of the provision. The court's view was that it was not empowered to act simply because it was asked to assist. The foreign court was required to be an insolvency

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[54] *Ibid*, at para 10.
[55] UK Judgment, at para 1.
[56] *Ibid*, at para 2.
[57] *Ibid*, at para 3.
[58] *Ibid*, at paras 4–5.
[59] *Ibid*, at para 6.
[60] *Ibid*, at para 7.
[61] *Ibid*, at para 8.
[62] *Ibid*, at para 9.

court, which the Jersey court was seen to be, but must also be assisted in its functions as an insolvency court. This presupposed that the foreign court was exercising some jurisdiction or proposing to exercise that jurisdiction and, in doing so, invited the English court to assist.[63] This appeared to the judge to be consonant with the principles of "modified universalism", referring to two statements,[64] the first being that by Lord Hoffmann in *Re HIH*,[65] where he stated that the "golden principle" required courts to cooperate with the courts of the country of the principal liquidation.[66] The second was the statement made by Lord Collins in *Rubin*,[67] where, referring to s 426, the judge stated that the provision was there to assist corporate as well as personal insolvency proceedings in those countries contemplated by s 426.[68]

14 As such, the judge was of the view that the context of the provision, its "natural habitat", was where there was some form of insolvency procedure taking place before the requesting court. The cases cited in commentaries on the statute and in the textbooks all appeared to the judge to involve the existence of some procedure. This made sense because the foreign court was doing something within its insolvency jurisdiction and was asking the English court for help in doing so.[69] In the instant case, the judge noted the absence of any Jersey proceedings and/or intention to commence any. The Letter of Request was expressed in general terms, not in aid of any proceedings, whether existing or contemplated, and in fact was "premised on the undesirable nature" of any such proceedings. For the court, the terms of the request sought, not assistance in respect of any "endeavour" of the Jersey court, but the provision of insolvency proceedings in "substitut[ion]" of domestic ones.[70] The court took the view, therefore, that the type of assistance sought in the Letter of Request was not the type of help the court was empowered to give under the statute, because the provision contemplated assistance in the context of proceedings and not otherwise.[71]

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[63] *Ibid*, at para 10.
[64] *Ibid*, at para 11.
[65] Above, note 11.
[66] *Ibid*, at para 30.
[67] Conjoined Appeals (1) Rubin v Eurofinance SA & (2) New Cap Reinsurance Corp Ltd v Grant [2012] UKSC 46.
[68] *Ibid*, at para 25.
[69] UK Judgment, at para 12.
[70] *Ibid*, at para 13.
[71] *Ibid*, at para 14.

15 In seeking to determine whether any authority existed on the point, the judge was referred to a number of cases, which had been the subject of similar Letters of Request and in which administration orders had been made, despite the absence of any proceedings in Jersey and/or intention to begin them.[72] For the judge, the cases demonstrated that the Jersey court had given "anxious consideration" to its ability to make a request and jurisdiction to do so. The cases also demonstrated a "heavy emphasis" on the interests of creditors and how they would benefit by the opening of an administration. Apart from the merits of an administration, usually comforted by counsel's opinion, there appeared to be no articulation of whether local proceedings were contemplated or any disadvantages in undertaking such a step, nor is there any indication of the absence of any intention to do so. The English decisions were usually made without reasons being recorded. For the judge, the fact that orders had previously been made was of no help in determining the jurisdictional issue.[73]

16 Although due weight and respect had to be given to the Jersey court's request and to the fact that a number of English judges had made such orders, the reports of those cases, such as they were, did not clearly state the absence of any intention to have local proceedings. As such, the English judges may not have known this was the case, assuming perhaps that the administration was in order to assist "primary" proceedings on the Island. Where the jurisdiction question is raised, as in the instant proceedings, the judge was of the view that assistance could not be engineered to cover a situation where there were no proceedings that could be assisted, whether such proceedings were afoot or intended to be commenced at some point. For the court, the jurisdictional threshold set by the statute had not been crossed. The intention behind the statute was not to be there to "fill in gaps in another jurisdiction's insolvency processes", even if creditors and the foreign commercial community would be much assisted by the court doing so. In the last analysis, cooperation could only be between "actual processes".[74] Therefore, the application was refused.[75]

Summary

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[72] *Ibid*, at para 15. Paragraph 16 then refers to a piece by this author, titled "Section 426 of the Insolvency Act 1986: Extending Rescue to Foreign Debtors on a 'Passporting' Basis", available on the International Insolvency Institute website at www.iiiglobal.org.
[73] *Ibid*, at para 17.
[74] *Ibid*, at para 18.
[75] *Ibid*, at para 19.

17 What impact will there be, as a result of the English decision, on the practice of "passporting"? At first sight, it might appear to pose some considerable difficulty because it is hard to imagine what procedure the Jersey court might open that the English court could then assist. The disadvantages of *désastre* have already been the subject of some remark, while *remise de biens* would only be available if the debtor had Jersey immoveable property. The other bankruptcy procedure, *cession de biens*, does not work well with corporate debtors, not surprisingly so, given that all of the bankruptcy procedures evolved at a time before corporate entities were widely available and/or commonly used in the course of business. Of the company law winding up procedures, available mostly only for debtors to initiate, only the just and equitable winding up procedure could conceivably offer the same flexibility that recent changes in its use have indicated. There are some doubts, however, that the English decision is correct insofar as it predicates assistance on the existence, actual or contemplated, of proceedings. For some, the examination by the Jersey court in the relevant cases of the needs of the debtor and the desirability of making a Letter of Request was evidence that the court was dealing with insolvency matters, as contemplated by the statute, and applying the law developed through the precedent offered by previous cases in exercise of its insolvency jurisdiction.[76] In that context, that there were no actual or likely proceedings did not matter, as the court was using its insolvency jurisdiction to determine the appropriate methodology to deal with the distressed corporate debtors concerned.

18 As the decision is being appealed, we will discover in short order whether the High Court was right to hold as it did, limiting assistance to procedures and processes. Also awaiting discovery will be whether the practice, as creative and convenient as it seems to be, might not now have to come to an end in its current form, triggering perhaps the exploration of the merits of any change to Jersey law, with a view perhaps to introducing a form of rescue procedure apt for Jersey debtors. In light of the decision in *Rubin*,[77] which many have criticised for its restrictive approach to cross-border assistance,[78] the instant case appears to some to also be proof that the courts in the United Kingdom are adopting a narrower view than hitherto in respect of what cross-

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[76] See Lincoln & Swart, "Letters of Request—Insolvent Jersey Companies and UK Administration" (Mourant Ozannes Briefing, April 2013).

[77] Above, note 67.

[78] Including this author in an article titled: "The Limits of Co-Operation at Common Law: *Rubin v Eurofinance* in the Supreme Court" (2013) 10 ICR 106.

border assistance they can legitimately give.[79] Set against the background of the trend internationally for more expansive forms of assistance, as first explored in *Cambridge Gas*,[80] a view lately accepted across the world as being in furtherance of the principles of "modified universalism",[81] including in Jersey,[82] the instant case might seem an anachronism. Nonetheless, it does raise the interesting question about whether the nature of assistance itself is contingent on the existence of procedures or whether, in a wider and similarly expansive way, assistance can simply be between courts engaged in the administration of insolvency. Either way, the results of the appeal will be eagerly awaited.[83]

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[79] See Windsor & Sidle, "High Court calls into question the availability of administration for Jersey and other offshore companies" (Linklaters Briefing, April 2013).

[80] Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] UKPC 26.

[81] The case has been used as precedent in Bank of Western Australia v Henderson (No 3) [2011] FMCA 840 (obiter) (Australia); Re Founding Partners Global Fund Ltd (No 2) [2011] SC (Bda) 19 Com; Re Saad Invs Co Ltd (In Official Liquidation) and Re Singularis Holdings Ltd (In Official Liquidation) (unreported) (15 April 2013) (Bermuda); Picard v Primeo Fund (In Official Liquidation) (unreported) (14 January 2013) (Cayman Islands); Williams v Simpson Civ 2010-419-1174 (12 October 2010) (New Zealand).

[82] Re Montrow International Ltd 2007 JLR N [40].

[83] As this issue went to print, the English Court of Appeal delivered judgment on 1 May 2013, overturning the decision of the High Court, and holding that the Jersey court's consideration of the request by HSBC Bank and its decision as to whether or not to request assistance were in fact an exercise of insolvency jurisdiction by that court and therefore within the statute. Reasons are expected in due course.