

## BOOK REVIEW

A Dessain and M Wilkins, *Jersey Insolvency and Asset Tracking*, Key Haven Publications, 5th ed, 2016, cviii and 583 pages, ISBN 978-1-901614-67-1, £125

1 The law on insolvency in the Channel Islands has roots in the customary law of Normandy and has also been influenced by developments in neighbouring France both before and since the great codifications of the 19th century and refection of the civil law. More lately, however, corporate law procedures have been imported from comparable rules in the United Kingdom, leading to the landscape of insolvency law being a rich and sometimes confusing one. As a “mixed jurisdiction”, the law in Jersey provides a fascinating insight into the juxtaposition of rules from different legal families. Providing an understanding of these areas of law is the function of this work, first published in 1999, co-authored by Anthony Dessain, senior partner in Bedells and a prominent Jersey advocate, and Michael Wilkins, for many years the Viscount of the Royal Court in Jersey and with the assistance of a formidably qualified team of specialists. The work has seen four editions over the years, the last (fourth) edition appearing as recently as 2012. The four years that have elapsed since that edition have seen the issue of a supplement (after only two years) to reflect the considerable number of changes in the law in Jersey and now, another two years on, the publication of a fifth edition to incorporate the further changes that have occurred in areas as diverse as bankruptcy procedures and trusts, as well as recognition and disclosure orders, not to mention over a hundred discrete changes in a range of technical matters including employment law, cross border co-operation, human rights, foreign taxation, tracing, schemes of arrangement and the introduction of a new aircraft registry. Added to the regular updating of the statutory framework and the regular production of case law, this has necessitated considerable amendment of the text as well as the inclusion of further commentary on key issues (now numbering 11 all told) further developing themes raised within the book and forming veritable “mini guides” to the subjects they cover.

2 The work continues to be a *tour de force*, covering almost 700 pages. It first covers a brief introduction to the Jersey legal system and court structure, accompanied by some useful illustrations and pictures. This section also provides a glimpse into the sources of Jersey law and issues of validity and capacity. This is followed by a very detailed chapter on asset recovery and claimants’ rights around insolvency,

including litigation and enforcement issues. This section incidentally reveals the very different concepts of property in the Island, largely drawing from the civil law concepts of property and co-ownership rights, with the differences being pointed out as and where they arise. Asset security is also dealt with in this section, illustrating the civil law antecedents of real property security, the mixed heritage of the law relating to tangible movable security as well as the Island's own legislation covering intangible movable security with mention both of the autochthonous development of the Law of 1983 (a brief text indeed) and its more recent replacement of 2012 building on the work across the Commonwealth of personal property security legislation. The interaction between foreign and domestic security over property, especially property located in a jurisdiction other than where it was created, is also outlined. Collateral issues are also canvassed, including enforcement, and covering such topics as torts, fraud, constructive trusts, restitution as well as other causes of action. This section ends by enumerating the remedies and orders available as well as issues around the specific enforcement of domestic and foreign judgments and arbitral awards. The text then moves on to directors' duties and liabilities under corporate, insolvency and other legislation, as well as with issues of creditor and shareholder protection, before dealing, in a separate chapter, with the specific issue of piercing the veil in the context of the use of corporate bodies, particularly important given the prevalence in Jersey of financial investments structured using bodies established under corporate and trust laws, in the context of which piercing the veil issues have also been raised.

3 Chapter 5 is by far the lengthiest part of the work encompassing all that might be termed "bankruptcy", from winding up procedures under company law to the classic (*cessions de biens* and its dependent enforcement procedures as well as *remise de biens*) and more modern (*désastre*) procedures in the law of insolvency. There is a tremendous amount of detail in this chapter detailing the functioning of the procedures, relevant provisions underpinning the articulation of the procedures, the case-law illustrating the court's role in interpreting the law governing these procedures, many of which have only been partially codified in statute and that at an early date, for example the Laws of 1832 (*cession de biens*) and 1839 (*remise de biens*). Of note too is the continuing evolution of this jurisprudence, seen in the number of the cases that proliferate into very recent times, which incidentally also illustrate the continuing utility of some of the "older" procedures. Reference is also made to commentary and further information and guidance on these procedures where available. The insolvency dimension in this tome is then rounded off with two chapters on cross-border insolvency, including how Jersey courts have dealt with issues of co-operation and comity, and also human rights,

dealing also with the potential impact of the UNCITRAL Model Law. A final chapter covers the issue of proper scrutiny of Jersey's position as a financial centre, of some concern in recent years with adverse attention by some international institutions.

4 In summary, the main text, the further commentary and appendices containing the relevant laws, offer a highly weighty and considered exposition of everything to do with asset tracking, security and insolvency in Jersey. It is well written, lucid and articulate, dealing with matters clearly and with a level of technical detail that is unsurpassed. It forms a handy compendium to the subjects it covers and has the advantage of being written by a team with considerable expertise. For these reasons and many more, the whole work should readily find a place on the shelves of anyone who has dealings in Jersey and, more widely, for comparative lawyers interested in the evolution and development of insolvency and asset-security in a legally fascinating jurisdiction.

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