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REVIEW

Court confirms that a Manx company may be subject to Administration in the UK

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The recent judgment of the High Court in the Isle of Man in *Capita v Gulldale* (2014) appears to confirm that a company incorporated in the Isle of Man is capable of being placed into Administration under the laws of England and Wales. The case is of particular interest as the English law concept of administration has no direct statutory equivalent under Isle of Man law. In the Isle of Man the appointment of a liquidator or a receiver are possible alternatives when faced with a company which is insolvent. The statutory procedures relating to the winding up of insolvent companies and the appointment of a liquidator are similar to the equivalent statutory procedures under English law. However English insolvency laws have developed alternatives to the appointment of a liquidator including the possibility of placing a company into Administration under the provisions of the Insolvency Act 1986 (schedule B1). Administration involves the appointment of an administrator in circumstances where there are considered to be prospects for a better outcome than might otherwise be the case were a liquidator to be appointed. The procedure is designed to enable a rescue, restructure or sale to take place, whilst creditors rights are subject to a moratorium. During the Administration the company's affairs, business and property are managed by an administrator.

In the *Capita* case the Court initially had concerns in respect of its jurisdiction and as to whether the English High Court would act favourably upon a Manx Court's request to apply English Administration to the Isle of Man company. This is not surprising given that under general principles of private international law the laws which govern all matters concerning the constitution of a corporate entity will generally be the laws of the company's place of incorporation. Uncertainties can arise where, for example, an Isle of Man company which holds property or assets in England enters into English law governed loan security documentation which on its terms will commonly make reference to the company being placed into Administration as an event of default. Can such provisions have any meaningful effect in relation to an Isle of Man company given that it is not possible to place a Manx company into administration under the domestic laws of the Isle of Man?

Any uncertainty as to whether a Manx company may be subjected to the domestic insolvency laws of England and Wales relating to Administration appears now to have been clarified by the Manx Court's decision in the Capita case. In reaching its decision the Court relied upon the provisions of section 426 of the English Insolvency Act 1986 which makes provision for cooperation between Courts exercising jurisdiction in relation to insolvency. In particular sub-sections 4 and 5 provide:-

"(4) The Courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the Courts having

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the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

(5) For the purposes of sub-section (4) a request made to a Court in any part of the United Kingdom by a Court in any other part of the United Kingdom or in a relevant country or territory is authority for the Court to which the request is made to apply, in relation to any matter specified in the request, the insolvency law which is applicable by either Court in relation to comparable matters falling within its jurisdiction. In exercising its discretion under this sub-section a Court shall have regard in particular to the rules of private international law".

Sub-section (10) defines *"insolvency laws"* for these purposes and includes within such definition:-

"In relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions failing within any of the foregoing paragraphs".

Sub-section (11) further confirms that *"relevant country or territory"* includes the Isle of Man.

In light of these statutory provisions the Manx Court concluded that it had discretion to issue a letter of request for assistance to the English Court, requesting *inter alia* that the English Court hear and determine an application for an Administration Order in relation to the Manx company pursuant to schedule B1 of the Insolvency Act 1986, effectively therefore asking the English Court to place the Manx company into Administration in England and to apply the relevant English law and procedure to it and its UK property. In exercising its discretion the Court stated that it had considered all the circumstances of the case including the interests of the claimant, the defendant, the creditors and the public interest. It also appears to have been a material factor that the Manx company had significant connections with England, which presumably was in reference to the company's ownership of property located in England.

An interesting point for debate is that section 426 requires that there be corresponding jurisdiction in both England and the relevant territory. Also the request which is made by one Court to the other is to apply the insolvency law which is applicable by either Court in relation to comparable matters falling within each jurisdiction. It could perhaps be argued that the absence of a procedure for Administration under Isle of Man law creates a difficulty because it cannot be said that there is exactly corresponding jurisdiction in both England and the Isle of Man. The Manx Court has no power to place a Manx company into Administration since no statutory provision is made for this in the Isle of Man.

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Sub-section (10) in defining *"insolvency laws"* refers to the law of the country or territory as corresponds to provisions falling within any of the foregoing paragraphs (i.e. those of sub-section (10)) and in the *Capita* case that could only mean the laws of the Isle of Man as correspond to provisions falling within the English Insolvency Act. Does this therefore create a jurisdictional issue by reason that the provisions relating to Administration in the English Insolvency Act have no direct equivalent in the Isle of Man?

The Court it would appear has taken the approach that all that is required is that there be corresponding jurisdiction in relation to insolvency laws generally and that since the request from one Court to the other can request the Court to apply its own insolvency law in relation to *'comparable matters'* the lack of specifically equivalent statutory provisions does not present any bar to such assistance.

In conclusion therefore the question as to whether it is possible to place a Manx company into English insolvency law Administration appears to have been answered in the affirmative.

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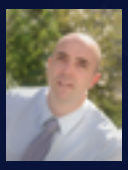

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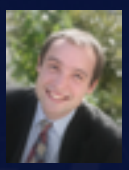

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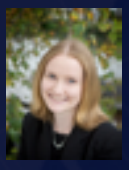

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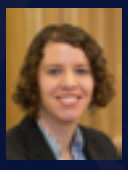

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