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UK Cross-Border Assistance in Insolvency: An Update

Paul J. Omar, Barrister, Gray's Inn, London, UK

Introduction

In 1986, the United Kingdom acquired a provision to deal with cross-border assistance in insolvency matters involving both individuals and corporate entities in section 426 of the Insolvency Act 1986 ('section 426'). The text that is section 426 can be traced back to 19th century provisions on enforcement of orders given by courts within the United Kingdom and a requirement of assistance to and by other British courts.¹ Prior to 1986, the last enactment of the co-operation measure of these provisions occurred as part of the Bankruptcy Act 1914, but which applied uniquely to the insolvency of individuals and partnerships.² The provisions were designed to co-ordinate proceedings and enabled the courts within the British Empire (later Commonwealth) to request other courts to assist in the management of bankruptcy proceedings within their own jurisdiction, the making of an order being deemed sufficient authority to enable the other court to exercise the jurisdiction it would if the matter were before it for consideration. The general remit and purpose of the section were considered in *Re A Debtor*,³ in which it was held that the definition of 'bankruptcy' referred to the judicial process dealing with insolvent persons and was to be construed in a wide sense as the section was designed to produce co-operation between courts acting under different systems of law. Once an English court was satisfied the request for aid fell within the ambit of the provision, there was no

general duty to scrutinise anterior proceedings unless it could be shown that they were defective under the proper law of the court or that they offended against public policy.

Since the repeal of section 122 of the Bankruptcy Act 1914 and the introduction of section 426, a number of cases have fleshed out how assistance under section 426 is to be offered. The latest of these decisions, given by the Court of Appeal, occurred on 9 August 2011.⁴ The case has reinforced the utility of the co-operation provision by providing that a foreign practitioner seeking the assistance of the English courts may do so under section 426 even though another parallel framework may exist for the recognition and enforcement of judgments. The intention in this article is to outline the case and comment on its impact on the workings of section 426.

How section 426 works

Under section 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.⁵ 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. The number of

Notes

- 1 Section 220, Bankruptcy Act 1849; sections 73-74, Bankruptcy Act 1869; sections 117-118, Bankruptcy Act 1883.
- 2 Section 122, Bankruptcy Act 1914.
- 3 *Re A Debtor (ex parte the Viscount of the Royal Court of Jersey)* [1980] 3 All ER 665.
- 4 *New Cap Reinsurance Corp Ltd v Grant and others* [2011] EWCA Civ 971 (9 August 2011), copy available via the BAILII website at: <www.bailii.org/ew/cases/EWCA/Civ/2011/971.html>. This was an appeal from the High Court (coram Lewison J), whose judgment is available at: <www.bailii.org/ew/cases/EWHC/Ch/2011/677.html> (both cases last viewed 15 September 2011).
- 5 Section 426 applies to England and Wales and Scotland. It was also extended to Northern Ireland by virtue of section 441(1)(a), Insolvency Act 1986. The relevant parts of section 426 read as follows:
 - '(4) 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.
 - (5) For the purposes of subsection (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 matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.
 - (11) In this section "relevant country or territory" means –
 - (a) any of the Channel Islands or the Isle of Man, or
 - (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.'

countries to which the rules on assistance apply at present is limited, the section itself specifying automatic assistance internally between courts in different parts of the British Isles and also for Jersey, Guernsey and the Isle of Man. Subsequent statutory instruments extend co-operation to other countries and territories, which, although not limited in scope by the text itself, in practice means a category constituted predominantly of Commonwealth countries and some former members, such as Hong Kong and Ireland.⁶

It should first be noted that the position under section 426 is different to that under Article 3 of the European Insolvency Regulation,⁷ as the latter permits insolvency proceedings to be opened in respect of a company whose 'centre of main interests' ('COMI') is to be found within the jurisdiction, irrespective of where it is in fact incorporated, while section 426 has no such requirement for the finding of a COMI and the connection to the jurisdiction may be more tenuous, such as the presence of assets, the conduct of some business or the finding of some benefit to the creditors were proceedings to take place. The leading early case in English law with respect to the section 426 co-operation measure and how it was intended to work is *Re Dallhold*.⁸ *Dallhold Investments*, itself in liquidation in Australia, had applied for an order for the winding up of its wholly-owned subsidiary *Dallhold Estates*. The parent company, with the support of the Australian provisional liquidator of the subsidiary, also sought the issue of a Letter of Request addressed to the High Court of Justice in London seeking assistance by the making of an administration order in respect of the latter.⁹ Other creditors opposed that course and sought to be substituted as applicants in lieu of the parent company and for a winding up order pursuant to the original application to be made in respect of the subsidiary.¹⁰

The Australian court first hearing the matter noted the effect of the provision was to permit the court to request a foreign court to act in aid of the Australian court in an 'external administration matter', a phrase defined to include matters relating to the winding up of the parent company. The court accepted the submission by the parent company, also the principal creditor of its

subsidiary, 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 through administration proceedings. This would not be achieved by the making of a winding up order either in Australia or in England. The court also accepted advice given by English solicitors that there were significant doubts as to whether an administration order may be made except at the request of this Court under the co-operation measures and concluded that was desirable that the best possible realisation of the assets of the subsidiary be achieved for the benefit of all its creditors. The court made a declaration that it is desirable to request the assistance of the English Courts and ordered the issue of a Letter of Request.

When the case was brought to London, it was held that the effect of section 426 was to confer on the English courts a jurisdiction to apply any domestic remedy. As the pre-conditions for the granting of an administration order were satisfied, the court was able to grant the remedy sought. The discretion in sub-section (5) extended solely to the granting of the request and not the application of the rules of insolvency law to a request that, once granted, was mandatory. The trial judge, Mr. Justice Chadwick, held that the purpose of the section was to give the 'requested court a jurisdiction that it might not otherwise have in order that it can give the assistance to the requesting court'. The judge stated that the section required first the identification of the matters specified in the request, then the interrogation by the domestic court of itself as to what would be the relevant insolvency law that it would apply to comparable matters falling within its jurisdiction. Finally, it should then apply the insolvency law determined to the matters specified in the request. This was held to extend to include the powers to open an administration under section 8 of the Insolvency Act 1986.¹¹

Following this case, it was reasonably clear that once a request for assistance was granted, it naturally followed that a court would apply all of the rules of insolvency law that would apply to a domestic insolvency subject to any exercise of discretion in the application of these rules that would feature in a domestic case.¹²

Notes

- 6 The Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986 (SI 1986/2123), The Co-operation of Insolvency Courts (Designation of Relevant Countries) Order 1996 (SI 1996/253) and The Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998 (SI 1998/2766). Thus section 426 applies 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.
- 7 Council Regulation (EC) No. 1346/2000 of 29 May 2000 ('European Insolvency Regulation').
- 8 *Re Dallhold Investments Pty Ltd and 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).
- 9 It ought to be noted that at the time a rescue provision did not exist in Australian law, as the voluntary administration procedure was only introduced in 1993.
- 10 Under the ancillary assistance framework in what are now sections 221 and 225, Insolvency Act 1986.
- 11 *Re Dallhold Estates (UK) Pty Ltd* [1992] BCC 394, at 398-399.
- 12 See *Re BCCI International (Overseas) Ltd* [1988] 1 WLR 708 (application made by liquidator of a bank in Cayman Islands claiming relief under sections 212-4 and 238, Insolvency Act 1986).

This wide definition of domestic rules as interpreted by the judge allowed the extension of administration, not hitherto considered as available in the case of foreign companies subject to proceedings in England and Wales. This was favourably commented on as being an innovative order that allowed for the flexible treatment of foreign companies using all the means available under domestic legislation.¹³ The case is also notable for expressing the nature of the assistance given under provisions as being mandatory, leading to the assumption that, as in *Re A Debtor*,¹⁴ courts were not bound to examine too closely the proceedings leading up to the request unless they would be manifestly contrary to public policy, because of the imperative terms in which the section is drafted. Later cases have, however, raised serious questions about whether mandatory means mandatory in all situations.

Consideration of whether courts had a particular choice as to what rules to apply came in *Re BCCI*,¹⁵ where the liquidators in England and the Cayman Islands sought to commence proceedings against a former director of the bank and associated companies to recover the deficiency in the assets. The judge noted that the court had the discretion whether to apply English insolvency law (including both 'procedural' and 'substantive' elements of that law) or the law of the requesting court.¹⁶ In this case, it was clear that once a request for assistance was granted, it naturally followed that a court, where it chooses to apply domestic law, will apply all of the rules of insolvency law that would apply to a domestic insolvency subject to any exercise of discretion in the application of these rules that would feature in a domestic case. The question remained, however, as to what foreign law rules the domestic court might choose to apply or disapply.¹⁷ In *Re Focus*,¹⁸ it was held that assistance would not be forthcoming where this would be contrary to the conduct of proceedings already on foot within the jurisdiction. The courts took the view that England and Wales was the proper forum for disclosure of the subject of the request relating to

assets held outside Bermuda. A possible alternative formulation for the views of the courts may be seen in *Re Business City Express*,¹⁹ where it was authoritatively stated that, unless good grounds existed for not making an order, that the domestic courts should accede to the request emanating from the foreign court, in this case the Irish High Court seeking to bind creditors in England through a scheme of composition.

It has also been held that the definition of insolvency contained in section 426 should be given as wide an interpretation as possible so as not to fetter the exercise of the court's equitable discretion.²⁰ The limits of the assistance possible have been canvassed in two cases where orders were sought by a foreign court for the public examination of persons in connection with insolvency. The first instance courts refused the orders, drawing the analogy between the likelihood of refusal in the context of an exclusively domestic case.²¹ In any event, the Court of Appeal qualified the question of whether oppression was a valid ground for refusal of the request by looking to the overall policy of the co-operation section. This was held to include the acceptance and, where appropriate, application of the foreign law, even where the results might have a different effect than the corresponding domestic provisions.²² In the later case of *Re HIH*,²³ in proceedings involving an Australian insurance company whose business within the jurisdiction was being wound up in England and Wales, Mr Justice Richards held that, in his view, the co-operation mechanism cannot be used to oblige a liquidator carrying out proceedings in the United Kingdom to transfer funds to Australia where the priority rules on distribution would be so different as to trigger a possible offence to a court's view of the *pari passu* principle.²⁴ This was not a view with which the House of Lords agreed, which held that the co-operation implicit in the section 426 framework required in some instances co-operation even though the foreign law was very different to the equivalent domestic provisions.²⁵ As a final point, although the issue of the extension of the

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- 13 See J. Bannister, *The Co-Operative Court – The Decision of Chadwick J in Re: Dallhold Estates (UK) Pty Ltd (1992) 8 IL&P 31 (Casenote)*; M. Stallworthy, *The Application of the Administration Provisions of the Insolvency Act to Overseas Companies* [1992] 9 ICCLR 319.
- 14 *Re A Debtor (ex parte the Viscount of the Royal Court of Jersey)* [1980] 3 All ER 665.
- 15 *Re BCCI* [1993] BCC 787.
- 16 *Ibid.*, at 801-802 (per Rattee J).
- 17 *Re Bell Lines Ltd* (unreported) 6 February 1997, cited in D. Turing, *Set-Off and Netting: Developments in 1996 affecting Banks* (1997) 4 JIBFL 155, at 158 (stay on set-off effective in Ireland given effect in England).
- 18 *Re Focus Insurance Co Ltd* [1997] 1 BCLC 219.
- 19 *Re Business City Express* [1997] BCC 826; [1997] 2 BCLC 510.
- 20 *Hughes & others v Hannover Ruckversicherungs-AG* [1997] 1 BCLC 497. See K. Dawson, *The Extent of the Jurisdiction under Section 426 Re: Emlico* (1998) 22 Ins Law 14; P. Smart, *English Courts and International Insolvency* (1998) 114 LQR 46.
- 21 *Re JN Taylor Finance Pty Ltd* [1999] 2 BCLC 256; *Re Southern Equities Corporation Ltd* [2000] 2 BCLC 21. See R. Nolan, *International Insolvency Assistance* (1999) 20 Co Law 336.
- 22 *England v Smith* [2000] 2 BCLC 21. See J. Scott, *Public Policy and International Co-Operation between Courts exercising Insolvency Jurisdiction: Section 426 Insolvency Act 1986 (2000)* 1 RALQ 1.
- 23 *Re HIH Casualty and General Insurance Limited and Others* [2005] EWHC 2125.
- 24 This was endorsed by the Court of Appeal: [2006] EWCA Civ 732.
- 25 [2008] UKHL 21.

co-operation element was decided early on as far as administration was concerned, it was not until 2002 that the ambit of assistance under section 426 was held to include ordering corporate voluntary arrangements in the case of a foreign company.²⁶

The facts of the case

The facts arise from insolvency proceedings involving the New Cap Reinsurance Corporation Limited, which was in liquidation in New South Wales, Australia. The liquidator sued members of a Lloyd's syndicate, who had placed reinsurance with New Cap and who had obtained payment in respect of liabilities in two successive years of account (1997 and 1998), on the basis that those payments amounted to a preference under the law, the contention being that New Cap was insolvent at the time the payments were made. The court in Australia accepted the liquidator's argument on the basis of evidence presented to it and issued judgments against the syndicate members following proceedings in which the syndicate members did not participate, but about which they had been informed by means of substituted service under the relevant rules of court. The syndicate members had argued that proceedings in Australia would have involved increased costs and inconvenience for them compared to proceedings in England and Wales, hence their declining to take part. The Australian court made an order on 11 September 2009 providing for the payment by syndicate members of the sums due under the judgment, attached interest as well as costs.²⁷

The Australian court also made an order requiring a Letter of Request to be sent to the English courts, which was duly performed sometime after 20 October 2009, stated as the date of issue.²⁸ The Letter of Request was issued on the basis of section 426, which extends co-operation in cross-border insolvency matters to Australia.²⁹ The Letter of Request recorded that the Australian court had been shown and accepted that the duty placed on the liquidator under Australian law, in particular to recover assets for the benefit of the creditors, required the issue of the Letter of Request

and that it was just and convenient for the court to do so. The Letter of Request couched the terms of the assistance requested as being primarily that the English courts should enforce the order of the Australian court in relation to payment due from the syndicate members under the terms of the judgment itself. Alternatively, it requested the English courts to sanction the bringing of proceedings in England and Wales by the liquidator against the syndicate members on the same basis as in Australia, i.e. that the payments were in the nature of preferences.³⁰

The judgement below

At the hearing before Mr Justice Lewison in the High Court on the Letter of Request, Counsel for the liquidator put his case in two ways. He first relied on the powers available to the court under section 426; alternatively, he argued that the court was able at common law to provide assistance under the rule in *Cambridge Gas*.³¹ In response, Counsel for the syndicate members argued that enforcement via these avenues was unlawful, given that the only method for enforcement of the Australian court's judgment was via the Foreign Judgments (Reciprocal Enforcement) Act 1933 ('1933 Act'),³² which had been extended to Australia,³³ section 6 of which precluded the use of other methods to effect enforcement, which Counsel said included both the powers at common law as well as those under section 426.³⁴ If section 426 did apply, however, the argument was that the court's discretion should not be exercised in the liquidator's favour.³⁵ Interestingly, the Australian court had also decided that its judgment was one that could not fall within the ambit of the 1933 Act, as a result of which it had issued the Letter of Request on the basis of section 426.³⁶ In response, Counsel for the liquidator argued that the 1933 Act could not apply to the judgements in question, given that they were orders made in the context of insolvency proceedings, which he argued was excluded from the scope of the 1933 Act, given that orders in bankruptcy and analogous proceedings were deemed not to be judgments given on the basis of an action *in personam* included within the

Notes

26 *Re Television Trade Rentals Ltd* [2002] EWHC 211.

27 Court of Appeal Judgement, at paragraph 2.

28 *Ibid.*, at paragraph 3.

29 Australia is a 'relevant country or territory' under the terms of the Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order (SI 1986/2123).

30 Court of Appeal Judgement, at paragraph 4.

31 High Court Judgement, at paragraph 10, citing *Cambridge Gas Transportation Corp v. Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26.

32 *Ibid.*, at paragraph 10.

33 By virtue of the Reciprocal Enforcement of Foreign Judgments (Australia) Order 1994 (SI 1994/1901) ('1994 Order').

34 Court of Appeal Judgement, at paragraph 59.

35 High Court Judgement, at paragraph 10.

36 *Ibid.*, at paragraph 7.

category of judgments that could be registered using that legislation.³⁷

In giving judgment, Mr Justice Lewison held that the 1933 Act could not apply, as it had not been the intention of the Committee appointed to consider the legislation that it should, especially given their observation that in formulating the legislation they need not consider the effect of foreign judgments in bankruptcy.³⁸ In determining whether assistance could be forthcoming under section 426, the trial judge held that it could and that, despite the section being framed as including discretion for the court, in practice the court ought not to refuse assistance except on very cogent grounds, for example that it would be improper to extend assistance.³⁹ On arguments advanced by Counsel for the syndicate members, the judge saw no merits in the contention that the case would have been better heard in England and Wales, stating that the seat of the insolvency had been in Australia and that the syndicate members would not have been hampered in exercising their rights to defend the claim there. Similarly, the argument that the claim was stale was dismissed as a factor of no weight.⁴⁰ In respect of the position at common law, the judge also held that assistance could have been forthcoming had section 426 not been of application.⁴¹ In sum, the order the judge made was for payment by the syndicate members under the terms of the Australian judgment, which the judge was prepared to enforce under section 426.⁴²

The judgment on appeal

It is against this judgment that both parties appealed. For the syndicate members, Counsel again advanced the arguments that the 1933 Act did apply and that assistance could not be forthcoming under other avenues that were implicitly or explicitly excluded. Were the 1933 Act to apply, then the syndicate members had an arguable claim that the judgement could be set aside. Were section 426 to apply, however, Counsel iterated the position of the syndicate members that they did not consider themselves immune from proceedings, but that it was more apt for these to take place in England

and Wales, albeit that the law applicable to the substance of the proceedings could be Australian law.⁴³ In response, Counsel for the liquidator contended that the trial judge's findings were correct, but that, even if the 1933 Act did apply to insolvency proceedings, the judgement that could be registered could not be set aside and that the court should make a determination on this matter in the appeal proceedings.⁴⁴

The judgement of the court was given by Lord Justice Lloyd, Lords Justice McFarlane and Mummery concurring. On the matter of the 1933 Act, the court was of the view that the legislation did apply to insolvency proceedings. The Report, on whose terms the trial judge had based his findings, was 'at worst equivocal and unclear'.⁴⁵ The reasoning of the court was that section 1(2) of the 1933 Act, in defining judgments (that would be registrable) as including 'judgments for a sum of money' (subject to exceptions in the case of taxes, fines or penalties), clearly included judgments given or made by a court in any civil proceedings, which to the court encompassed the proceedings before the Australian court and the order for the payment of a sum of money it had made.⁴⁶ The court held here that the terms 'civil', used in the 1933 Act, and 'civil and commercial', used in the 1994 Order, also included insolvency matters. The fact that the Brussels Convention 1968, from which the latter phrasing was borrowed, excluded insolvency judgments from its remit did not mean, to the court, that the term itself excluded insolvency matters.⁴⁷

In the event that registration of that judgement took place, section 4(1) of the 1933 Act delimited the circumstances in which the registration could be set aside, paragraph (a)(ii) of which (the only paragraph the court said could apply) provided that set aside was to occur where the original court hearing the matter had no jurisdiction in the circumstances of the case.⁴⁸ In determining whether jurisdiction existed, section 4(2)(c) (again the only provision the court said could apply), the original court hearing the matter had this jurisdiction if the court where enforcement was to take place recognised that jurisdiction.⁴⁹ The court was satisfied that registration could not, under the provisions applicable, be set aside and went as far as to state this

Notes

37 *Ibid.*, at paragraph 23.

38 Report of the Foreign Judgments (Reciprocal Enforcement) Committee (Cmnd 4213) (1932), at paragraph 4.

39 High Court Judgment, at paragraph 32.

40 *Ibid.*, at paragraphs 34-36.

41 *Ibid.*, at paragraph 28.

42 *Ibid.*, at paragraph 39.

43 Court of Appeal Judgment, at paragraphs 11-12.

44 *Ibid.*, at paragraph 13.

45 *Ibid.*, at paragraph 34.

46 *Ibid.*, at paragraph 16.

47 *Ibid.*, at paragraphs 17 and 47.

48 *Ibid.*, at paragraph 19.

49 *Ibid.*, at paragraph 22.

in its overall conclusion.⁵⁰ As far as the exclusions under section 6 were concerned, the court held those to refer to the common law methods for recognition and enforcement of judgments which had been intended to be superseded by the 1933 Act.⁵¹

In turning to the applicability of section 426, the court was of the view that both section 426 and 1933 Act regimes could operate side by side.⁵² The scope of application for both regimes was not identical, given that different countries were designated under the two texts.⁵³ However, even where they did overlap, they could operate in parallel, although the courts would be free to determine which avenue was the more appropriate for the office-holder to use and, it being the case, that the use or non-use of the 1933 Act was relevant to the exercise of discretion under section 426. The court gave the example of a judgement sought to be enforced under section 426 where the time-limits under the 1933 Act had passed, which it says could preclude the exercise of discretion in the office-holder's favour.⁵⁴ Where section 426 did apply, the court stated that there was no reason why assistance could not include enforcement of a judgment, given that the provision had been invoked during the currency of its application in a wide manner to allow, for example, for injunctive anti-suit relief, to permit examinations of material witnesses and to remit funds to a main liquidation.⁵⁵ On whether discretion should be exercised against an order under section 426, the court found that the trial judge's reasoning was sound and upheld it on that basis, although the court did not find it necessary to determine whether the common law power to provide assistance was available where section 426 was not of application.⁵⁶ However, the fact the court was of the view that the 1933 Act also applied was material insofar as it could not countenance the use of section 426 to avoid anything mandated by the 1933 Act.⁵⁷

Summary: analysis and impact

This is a very interesting judgement by the Court of Appeal which, although complex in its reasoning, contains two very important elements. It first states that recognition and enforcement powers under statute, such as the 1933 Act, can apply to judgements in insolvency matters that have the status of civil (or commercial) judgements, opening up an avenue for enforcement that some (including the Australian court and trial judge below) thought excluded from the scope of such legislation. The second is that, notwithstanding the availability of enforcement under the 1933 Act, section 426 can be used as an avenue of enforcement, a factor which extends considerably the range of remedies available in an application based on section 426. This adds considerably to the canon and range of assistance that has been developed by the courts incrementally over the years since section 426 came into force. Furthermore, although the court does state that the 1933 Act closes off the possibility of enforcement of such judgments at common law, it does leave open the possibility of the common law continuing to be of use, as the trial judge has indicated, in situations as illustrated by the case of *Cambridge Gas*, where section 426 does not apply, to other forms of assistance. The result is to increase the strategic possibilities open to office-holders considering how best to pursue the aim of recovery and concomitant benefit for creditors. The only caveat is that office-holders must consider, where more than one avenue is available, which to pursue and to note that their choice may well affect the availability of the other remedy.

Notes

50 *Ibid.*, at paragraph 84, referring to the case of *Rubin v Eurofinance SA* [2010] EWCA Civ 895, which it says is authority for the proposition that insolvency judgements do not fall under the provisions preventing enforcement based on non-submission. NB. This case is being appealed on this and other points.

51 *Ibid.*, at paragraphs 63 and 76.

52 *Ibid.*, at paragraph 76.

53 *Ibid.*, at paragraph 59.

54 *Ibid.*, at paragraph 61.

55 *Ibid.*, at paragraph 56.

56 *Ibid.*, at paragraph 83.

57 *Ibid.*, at paragraph 81.

International Corporate Rescue

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