New Guidelines for Communication and Co-operation between Courts in Cross-Border Insolvency Matters

The High Court has formally adopted new guidelines approved by the fledgling Judicial Insolvency Network (**"JIN"**) designed to encourage and enhance communication between courts where parallel insolvency proceedings have been commenced in different jurisdictions (the "Guidelines").

The JIN was established in October 2016 by a group of judges from England and Wales, Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Singapore and the USA and the Guidelines were incorporated into law in England and Wales on 5 May 2017 through an amendment to the Chancery Guide.

The key aim of the Guidelines is to encourage communication and co-operation between courts overseeing parallel insolvency proceedings with a view to improving efficiency and reducing cost for all proceedings concerned.

We have seen a number of examples in recent times where closer cooperation between courts could have resulted in a simpler and less costly result for all estates involved. The courts in many jurisdictions including England and Wales have been willing to do all they can to assist insolvency proceedings in other jurisdictions, but the necessarily adversarial nature of the litigation required and the risks faced by insolvency practitioners of inadvertently submitting to a foreign jurisdiction have meant that the process has often not been efficient and has always resulted in considerable cost to each estate.

The Guidelines are intended to address this by establishing key areas where courts may seek to co-operate in parallel proceedings and to ensure that all stakeholders' interests are respected. Those key areas are as follows.

1. The courts in each of the parallel proceedings may correspond with each other to share orders, judgments, reasons or other documents relating to the proceedings.
2. A court can direct that notice of proceedings in its jurisdiction be given to parties in proceedings in other jurisdictions and that court may permit a person resident in another jurisdiction to appear in front of it or be heard by it without that person submitting to the court's jurisdiction.
3. A court can recognise orders, laws or regulations of the courts in other jurisdictions without further proof (except where there is a proper objection on valid grounds).
4. The courts in parallel proceedings may hold joint hearings where appropriate.

The driver, therefore, is close co-operation and collaboration, recognising that the only persons who lose out when there is a conflict between parallel proceedings are the creditors, and it is hoped that the Guidelines will streamline the process where such cross-border cooperation in insolvency processes is required.

Insolvency Practitioners here are likely to feel the impact most in two ways. First, where the court requests that a Guidelines protocol is used in insolvency proceedings, the Insolvency Practitioner will need to work with the court to develop workable and efficient ways to design and implement that protocol. This may result in additional costs up front though the intention would be that, once established, the protocol would result in reduced costs for the insolvent estate in the long term. Secondly, the use of the Guidelines may remove many of the risks of the Insolvency Practitioner inadvertently submitting to a foreign jurisdiction in respect of parallel proceedings thus helping the Insolvency Practitioner retain control and open up ways in which the Insolvency Practitioner can participate in and potentially influence foreign parallel proceedings.

It will be interesting to see how the courts approach the implementation of the Guidelines in practice and what protocols are put in place but there can be little doubt that closer co-operation between courts in parallel proceedings can only benefit creditors. And that has to be a good result for everyone.

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