

Recognition of Foreign Trustees in Bankruptcy in the Isle of Man

The Isle of Man Court has on numerous occasions confirmed that they have wide discretionary powers to recognise foreign insolvency officers including trustees in bankruptcy.

The default position of the Court is a desire to assist foreign courts in respect of foreign insolvency proceedings unless there are strong and compelling reasons justifying a refusal.

The Court's Jurisdiction

The relevant statutory framework for international cooperation in bankruptcy proceedings is found in the Bankruptcy Act 1988 ("the Act").

Section 1(1) of the Act provides that: "*The High Court shall assist the courts having bankruptcy jurisdiction in any relevant country or territory*" which includes the United Kingdom amongst others. Where assistance is sought by a country that is not designated as a "relevant country or territory", the Isle of Man Court has confirmed that it has jurisdiction to assist at common law or under the Court's inherent jurisdiction.

What assistance will the Court provide?

As noted above, the Isle of Man Court has wide powers to assist, dependent on all the circumstances of the case. Orders may include:

- Recognising the appointment of the foreign insolvency officer in the Isle of Man;
- Vesting any moveable assets of the insolvent in the Isle of Man in the foreign insolvency officer.
- Permitting the foreign insolvency officer to take whatever action they see fit to investigate, secure and collect in the moveable assets of the insolvent estate in the Isle of Man.

The Court may also, in some circumstances, require third parties in the Isle of Man holding information and/or documents about the assets of the insolvent to disclose such information and/or documents to the insolvency officer.

Ultimately, the foreign insolvency officer will be empowered to act in respect of the bankrupt's estate as if they were assets located in the foreign jurisdiction (subject to the terms specifically ordered by the Isle of Man Court).

What factors will the Court consider?

As noted above, the Isle of Man Court favours co-operating with and providing assistance to other courts in relation to insolvency matters. However, the Court will carefully consider its jurisdiction and deal with each application on its merits taking into consideration all of the relevant factors.

In particular, the Court will balance the need of the foreign insolvency holder on the one hand and any issues of confidentiality and the private affairs of others on the other hand. In particular, the Isle of Man Court has said that issues of confidentiality and privacy will frequently take second place to the

public interest in insolvency officers getting a full picture of an insolvent's affairs in order that wrongdoers are brought to justice.

Furthermore, the Isle of Man Court has provided the below list of matters that it may consider on any application:

- The source of the Court's jurisdiction;
- Whether all proper parties are before the Court and have had the opportunity to be heard;
- The likely practical effect of assistance including proportionality, unfairness and oppression;
- Any undue prejudice to local creditors or entities and if so, are there advantages sufficient to counteract any prejudice;
- The local law and procedure from the jurisdiction the request originates;
- The differences in the substantive and procedural law in the respective jurisdictions and the potential impact of these;
- The existence of any parallel, conflicting or competing insolvency proceedings;
- Any applicable rules of private international law;
- The modern global community approach in favour of assistance;
- Principles of reciprocal judicial comity;
- The fact of the request for assistance (this is considered a weighty factor);
- Material developments from the date of request;
- The overall justice of the case; and
- Whether it would be contrary to Manx public policy or the foreign proceedings constitute a fraud, breach of natural justice or breach of human rights.

Our litigation team has significant experience in the recognition of foreign insolvency office holders. If you would like further information or assistance, please contact [Robert Colquitt](#), [Tara Cubbon-Wood](#) or any member of our team.

Cains Advocates Limited is incorporated in the Isle of Man and licensed by the Isle of Man Financial Services Authority. Registered office: Fort Anne, Douglas, Isle of Man, IM1 5PD. Registered company number 009770V.

A list of all the directors' names is open to inspection at our registered office. This document is provided for information purposes only and does not constitute legal, tax, investment, regulatory, accounting or other professional advice.