

UPDATE

# Huelin-Renouf - a case study in what can be achieved in trying circumstances when Jersey and Guernsey work together

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In a great show of cooperation between the courts of Jersey and Guernsey earlier this year, the Jersey Royal Court made the novel decision to pool the assets of a Jersey company being wound up pursuant to Article 155 of the Companies (Jersey) Law 1991 and a Guernsey company leading to the best possible outcome for all creditors concerned.

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## Introduction

The respective courts of Guernsey and Jersey made orders for the winding up of Huelin-Renouf Shipping Limited (in liquidation) (**HR Jersey**) and Huelin-Renouf Shipping (Guernsey) Limited (in compulsory liquidation) (**HR Guernsey**) within one day of one another in August 2013.

HR Jersey was wound up on just and equitable grounds pursuant to Article 155 of the Companies (Jersey) Law 1991 (**Companies Law**). Alan James Roberts, James Robert Toynton and Benjamin Alexander Rhodes (all directors of Grant Thornton Limited) act as joint liquidators for both companies (the **Joint Liquidators**).

This update considers, in particular, the application to the Jersey Royal Court by the Joint Liquidators of HR Jersey earlier this year (the **JSY Pooling Representation**) in relation to the following.

- Whether the Jersey Royal Court had the power to order a pooling of the assets and liabilities of HR Jersey and HR Guernsey, as two legally distinct yet inextricably linked companies and, if so;
- whether the Jersey Royal Court was satisfied, given the facts in this case, that it was in the best interests of the creditors of both the companies to do so.

The JSY Pooling Representation had been preceded by a similar application made by the same Joint Liquidators, in their capacities as liquidators of HR Guernsey to the Guernsey Royal Court (the **GSY Pooling Application**).

## The power to order and the legal test for the pooling of assets

The concept of pooling assets in the course of the winding up of Jersey companies is not of itself novel. The Jersey Royal Court has held before that it has authority to authorise the pooling of assets in the context of a *désastre* (a compulsory liquidation process akin to liquidation or bankruptcy) or a creditors' winding up.

In *Re Royco Investment Company Limited* [1994 JLR 236], the Jersey Royal Court permitted the assets of the Jersey company placed en *désastre* to form part of the assets of a group (including English companies) and to be transferred (via the Viscount, being the official responsible for insolvencies in Jersey and the effective office holder in a *désastre*) to an English liquidator. The pooled assets were then distributed amongst all of the creditors (including the Jersey creditors) pursuant to a compromise approved by the English High Court. In that case, Deputy Bailiff Bailhache (as he then was) stated:

'In any *désastre*, it is the interest of the creditors which must be borne primarily in mind. There is no sense in employing funds which would otherwise be paid to the creditors in pursuing lines of enquiry with only a remote prospect of recovering further assets. That is particularly important, in our

judgment, where the affairs of the debtor company are inextricably intermingled with other entities, the affairs of which are being administered in another jurisdiction.'

Pooling was also applied, this time in a creditors' winding up, in *Re Corebits Services Ltd and Zoombits Ltd* [2011] JRC 166. In this case the Jersey Royal Court considered an application by liquidators of two Jersey companies, both in creditors' winding up, to pool their assets and liabilities so as to treat them as a single entity. This was on the basis that the way the companies were traded would have made it disproportionate to work out the assets and liabilities of each company individually.

As noted in *Jersey Insolvency and Asset Tracking* by Dessain and Wilkins (4th Edition):

'... where it is impossible, impracticable and disproportionately expensive to identify individual rights the pooling of assets and/ or liabilities represents a practical solution warranted on just and equitable grounds.'

### **Orders made by the Jersey Royal Court**

The JSY Pooling Representation was novel because:

- it was the first time that a pooling order had been made in respect of a Jersey company being wound up pursuant to Article 155 of the Companies Law (ie on just and equitable grounds); and
- it involved the pooling of assets between two Channel Island companies (ie a Jersey company and a Guernsey company).

The JSY Pooling Representation was first presented to the Jersey Royal Court on 22 July 2015. At that time the Jersey Royal Court ordered that no other party needed to be convened to the hearing of the JSY Pooling Representation, that the Joint Liquidators should consider the result of the GSY Pooling Application to be made on 24 August 2015 and then notify the creditors of HR Jersey in writing whether they intended to pursue their application for the requested orders (set out below).

The Joint Liquidators notified the creditors that they did intend to proceed and, subsequently, the JSY Pooling Representation was returned to court on 8 September 2015. At that hearing, the Jersey Royal Court made the following orders (with reasons following in a written judgment handed down on 7 October 2015).

- The assets and liabilities of the HR Jersey and HR Guernsey should be consolidated.
- Such consolidation should be effected by way of a transfer of the assets and liabilities of HR Guernsey to HR Jersey.
- The Joint Liquidators' costs that were incidental to the Jersey Pooling Representation would rank as a cost of the liquidation of HR Jersey.

### **Reasons for orders being granted**

#### **Judgment of the Guernsey Royal Court**

It appears clear from the judgment of the Jersey Deputy Bailiff Le Cocq that the comprehensive judgment of the Guernsey Royal Court in the GSY Pooling Application, handed down by Deputy Bailiff McMahon on 4 September 2015, heavily influenced and assisted the Jersey Court. The GSY Pooling Application judgment not only ordered a pooling of assets by way of a transfer of those assets of HR Guernsey to HR Jersey, but also confirmed that it would be in the interests of the HR Guernsey creditors for a pooling of assets to take place.

#### **Jersey Royal Court's power to pool**

In confirming that it had the power to order the pooling of assets in this matter, the Jersey Royal Court relied on the decisions in *Royco* and *Corebits*, noting that the powers available to it were very wide-ranging. The Court further noted that there was nothing in the wording of the Companies Law which would prevent it from making the orders sought.

## Best interest of creditors

The Jersey Royal Court found that a pooling of assets was in the best interest of creditors on the basis of the affidavit evidence placed before it by the Joint Liquidators. That evidence, it said, made the following abundantly clear:

- The affairs of HR Guernsey and HR Jersey were 'inextricably intertwined even though separate books of account were maintained for each company'. While the judgment of 7 October 2015 did not expand on the Jersey Royal Court's reasons for determining that the companies' affairs were inextricably linked, when coming to its conclusions it is likely that it placed significant weight on the fact that the companies operated, in many ways, together (as noted in paragraph 16 of the judgment in *Re Huelin-Renouf Shipping Limited* [2013 JRC 164] where the just and equitable winding up of HR Jersey was ordered). Further, the pan-island nature of the services provided and undertaken by both companies is likely to also have lent itself to treating them as a single entity.
- It was far more cost-effective for a pooling of assets to take place. In this regard, the Joint Liquidators produced an analysis comparing the potential liquidation costs in scenarios where a pooling of assets did and did not take place. The results of this analysis showed that, if pooling did not take place, a significant amount of additional work would need to be undertaken by the Joint Liquidators to unravel the affairs of the two companies. This would have led to increased costs in both liquidations, to the detriment of the Jersey creditors.
- A pooling of assets was not only in the best interests of the creditors of HR Jersey, but also HR Guernsey, and therefore the body of creditors of both companies as a whole. When taken as a stand-alone company, the finances of HR Guernsey were such that its unsecured creditors stood to receive nothing by way of a dividend if a pooling did not take place. The Joint Liquidators successfully argued that, effectively, the Royal Courts of Jersey and Guernsey had available to them a means of preserving the assets of both companies (and particularly those of HR Jersey, which were far greater in value) to ensure as fair and equitable treatment as possible of the collective body of creditors across both jurisdictions.
- HR Jersey creditors would be treated fairly and in accordance with local laws. As was the case in the GSY Pooling Application in relation to HR Guernsey's creditors, the Joint Liquidators gave an undertaking before the Jersey Royal Court that they would deal with and treat the creditors of HR Jersey pursuant to and in accordance with the laws of Jersey.

## Conclusion

This latest decision relating to the liquidation of HR Jersey, following on from a similar decision made by the Guernsey Royal Court in relation to HR Guernsey, provides a good example of the pragmatic approach that both courts will take in appropriate circumstances in order to protect the interests of creditors. It also illustrates the ability and willingness of the Jersey and Guernsey Courts to cooperate with one another closely.

## Contacts

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