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## Notable Appleby Guernsey Corporate Insolvency Matters

**Appleby's insolvency and restructuring team in Guernsey have been involved in a number of high value corporate insolvency matters in 2014. Advocate Anthony Williams discusses notable cases involving a complex cross border restructuring, the discharge of a company administration order by the Royal Court returning the company to its owners and a novel application to wind up a group of online gaming companies in Alderney as a result of a massive fraud perpetrated in the United States.**

### Administration order

In a highly complex and sensitive commercial matter, Appleby successfully sought administration orders in respect of a number of Guernsey investment companies, forming part of a wider UK property holding structure. The primary purpose of the administration order was to implement a plan of restructuring to rescue the group as a going concern. The reorganisation involved the proposed restructuring of a secured loan facility in excess of £700m, and the managed disposal of an extensive portfolio of UK commercial real estate assets.

The administration application was unusual insofar as it involved the appointment of administrators to the Guernsey investment holding company level, rather than to the direct property holding companies. The reason for this approach was to avoid sending unnecessary distress signals to the wider market thereby resulting in a rapid devaluation of the underlying property assets, which could have eventuated if insolvency processes were undertaken at the real estate holding level. The Guernsey investment holding companies did not have any substantial assets of their own other than the shares in the underlying property holding subsidiaries. The purpose of the Guernsey investment holding companies was to facilitate the efficient disposal of tranches of the portfolio or the entire portfolio itself.

The Royal Court was satisfied that the purpose of administration would be achieved and that the value of debt under the secured loan facility was so far in excess of the group's assets that no creditors other than the secured lender could have an economic interest in the administration application. Appleby worked closely with the companies' directors, the group's property advisers, the proposed administrators and the legal advisers representing the secured lender in order to achieve the best possible outcome in difficult economic circumstances.

### Administration discharge order

Appleby recently advised the major shareholder of a company in administration in relation to the discharge of an administration order.

The company, Mitco Retail Six Limited (**MR6**), which formed part of a wider German property holding structure owing its creditors in excess of €50m, was placed into administration in the summer of 2014 by its secured creditor. MR6, together with the other entities forming part of the structure, opposed the administration application on the basis that it would be in a position to refinance the loan facility and an administration order would not achieve the purpose of administration. Following a contested hearing, in a 2:1 decision of the Jurats of the Royal Court, MR6 (and the other entities forming part of the structure) were placed into administration. The judgment is notable as it held that, following English common law, under Guernsey law even if an administration order is granted or the court is minded to accede to the application, the effective date of the order may be delayed to allow the company to take certain steps to avoid the order taking effect.

Subsequently the major shareholder offered to refinance the secured debt and other debts of MR6 in order to ensure the survival of MR6 as a going concern. Appleby, on behalf of the major shareholder, worked closely with the joint administrators and their advisors to structure the refinancing package. The proposed refinancing

was complex and involved cross-border commercial issues, including the renegotiation of existing unsecured lending to MR6 and the release of both Guernsey and German law security. The Royal Court was satisfied that the purpose of administration had been achieved and ordered that the joint administrators be discharged and control and management of MR6 be returned to the current director in order that it could continue to trade. The transaction serves to validate the rescue culture embodied in the Guernsey corporate administration process.

### **Just and equitable compulsory winding up**

In an eAlert published by Appleby in October 2013, it was noted that in an unusual claim under Alderney law, Appleby successfully sought an order that a group of Alderney companies previously carrying on the business of the online poker site Full Tilt Poker (the **Full Tilt Alderney Companies**), be wound up on a just and equitable basis on the grounds that they had lost their substratum and it was in the public interest of the Bailiwick of Guernsey that they be wound up. The application came about as a result of a massive fraudulent scheme involving the Full Tilt Alderney Companies in the United States. Alan Roberts and James Toynton of Grant Thornton were appointed as the joint liquidators by the Alderney Court.

The judgment was and continues to be of significant interest as the Alderney Court was called upon for the first time to consider the standing of applicants (other than by the company, member or creditor thereof) for a compulsory liquidation order on the basis that they have "a legitimate and substantial interest in making the application" pursuant to section 127(1) of the Companies (Alderney) Law, 1994. The Alderney Court considered that for a "legitimate and substantial interest" to arise, a significant connection or association with the company in question will need to be demonstrated such as to equate to "exceptional circumstances".

The joint liquidators, working closely with interested parties and creditors, have successfully realised the company's assets and are now in the process of dissolving the companies. The process highlights the adaptability of the Alderney Companies Law and the ability of the Alderney Court to efficiently supervise and administer corporate insolvency processes.

Commenting on the work, Advocate Williams said, "The results achieved over the past year are tribute to the hard work, experience and skill of the Insolvency and Restructuring Team. It has been a pleasure to work with our clients and we are very proud to have been involved in these matters. Our experience also demonstrates that the Guernsey corporate insolvency regime continues to adapt and evolve in light of changing circumstances, which is facilitated by the flexibility that the law provides".

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