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Re Esken Ltd [2026]: A quiet shift in cross-border insolvency strategy

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Cross-border insolvency doesn't often announce itself with fireworks. Instead, it tends to evolve through careful judicial nudges that, taken together, reshape how practitioners think about jurisdiction, strategy, and risk. *Re Esken Ltd [2026] EWHC 495 (Ch)* (***Esken***) is one such decision confirming this.

At first glance, the decision appears technical: a question of statutory interpretation concerning whether a Guernsey-incorporated company could validly move from administration into a creditors' voluntary liquidation (**CVL**) under the English Insolvency Act, 1986. But beneath that surface lies something more significant. The case offers succinct and valuable insight into the process concerning how the English court approaches overseas companies whose centre of main interests (**COMI**) sits firmly in England.

For restructuring and insolvency professionals operating across jurisdictions, the message is both reassuring and quietly powerful.

The facts

Esken was incorporated in Guernsey but had its COMI in England. It entered administration in England and upon realisation of its assets thereafter, the administrators sought to transition the company to a CVL by filing a notice with the Registrar pursuant to Rule 21.4 of the Insolvency (England and Wales) Rules 2016 seeking the court's confirmation of the creditors' voluntary winding up of Esken.

The issue for determination by the court was whether Esken could move from administration to CVL in circumstances where it was incorporated outside of the United Kingdom. The court had to consider whether Esken was considered an unregistered company as its registered office was outside of the United Kingdom, and if so whether section 221(4) of the Act applied. Section 221(4) provides that *'No unregistered company shall be wound up under this Act voluntarily, except in accordance with the European Union Regulation.'*

The question was therefore deceptively simple: did that provision prevent Esken, as a non-UK incorporated entity, from entering a CVL via the Schedule B1 route?

The court's answer: Clean separation

The High Court held that it did not.

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Judge Burton concluded that Part V of the Insolvency Act (dealing with unregistered companies) does not overlap with, duplicate, or restrict the operation of Schedule B1. In other words, the statutory regimes operate in parallel rather than in conflict.

This meant that Esken could validly enter CVL when the administrators filed the requisite notice and it was registered.

The reasoning is notable for its clarity. Rather than attempting to reconcile competing provisions through strained interpretation, the court drew a firm line: Part V simply does not apply to the administration-to-CVL transition under Schedule B1 in this context.

The Court in making its determination relied on the definition of a company under paragraph 111(1a) (c) (a company not incorporated in an EEA State but having its centre of main interests in a member state other than Denmark) or in the United Kingdom.), to establish that Esken was permitted to enter CVL.

Why this matters: COMI still reigns

The decision reinforces a central organising principle of cross-border insolvency: COMI continues to anchor jurisdictional legitimacy.

Even post-Brexit, and despite the waning direct influence of EU insolvency frameworks, the English court remains comfortable exercising jurisdiction over overseas companies once their economic reality is centred in England.

Esken demonstrates that this jurisdiction is not merely theoretical or limited to rescue procedures. It extends seamlessly into liquidation pathways also.

For practitioners, this reduces friction. Once an overseas company is properly within the English insolvency regime through administration, the route to CVL is not obstructed by technical arguments about its status as an 'unregistered company' under section 221(4).

A practical win for administrators and creditors

From a commercial perspective, the decision avoids an outcome that would have been deeply impractical.

Had the court found that section 221(4) blocked the transition, administrators of overseas companies would have been forced to consider alternative and potentially less efficient routes, such as compulsory winding up proceedings or parallel processes in the jurisdiction of incorporation.

That would have introduced delay, cost, and uncertainty, precisely what the insolvency law seeks to minimise.

Instead, the court has endorsed a streamlined approach:

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- Administration in England (based on COMI)
- Followed by CVL under Schedule B1
- Without needing to navigate conflicting statutory regimes

For creditors, this translates into quicker realisations and fewer procedural hurdles. For officeholders, it provides confidence that the standard English toolkit remains available even in cross-border scenarios.

The EU regulation question: A fading shadow?

One of the more intriguing aspects of the case is the reference to the 'European Union Regulation' within section 221(4).

In a post-Brexit landscape, the continued presence of EU-derived language in domestic legislation arguably creates interpretative tension. *Esken* sidesteps this tension by concluding that the provision is simply inapplicable once COMI in the UK is established.

It is evident that English courts are not grappling with how EU concepts should impact domestic decisions but rather have adopted an increasingly focused and practical approach for determining commercial outcomes rather than being constrained by legacy statutory language whose original context has shifted.

A subtle but important jurisdictional signal

There is also a wider, strategic implication.

It reinforces England’s position as a flexible and pragmatic forum for cross-border restructurings and insolvencies, by confirming that overseas companies with an English COMI can move through the full lifecycle of insolvency procedures within the English system. This bolsters reliability and strengthens certainty which is currency in the restructuring world.

For lenders and investors, the ability to rely on a single, coherent process, rather than fragmented multi-jurisdictional proceedings is a significant advantage. It informs structuring decisions long before any distress arises.

Guernsey, Jersey and the offshore perspective.

For offshore financial centres, the case is significant.

It highlights the reality that companies incorporated offshore but operationally centred in England may find themselves fully subject to English insolvency processes. This is not new, but *Esken* sharpens the point by confirming that even the transition into liquidation can occur without recourse to local winding-up procedures.

That raises important considerations for:

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- corporate structuring;
- day-to-day corporate decision making; and
- choice of governing law.

It also underscores the importance of early advice. Understanding where a company's COMI truly lies is no longer just an academic exercise; it is determinative of how and where insolvency processes will unfold.

Conclusion

Esken may not be a headline-grabbing decision, but it is an influential one.

It confirms that:

- the English insolvency framework remains accessible to overseas companies with an English COMI;
- the transition from administration to CVL is not automatically obstructed by Part V of the Insolvency Act, if the company is incorporated outside of the United Kingdom; and
- the courts will prioritise coherent, commercially sensible outcomes over technical barriers.

For practitioners, the takeaway is straightforward. The English regime continues to offer a flexible and reliable avenue for cross-border insolvencies, even where the corporate shell sits elsewhere. In a world where structures are increasingly international but financial distress demands decisive local action, that clarity is invaluable.

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COLLAS CRILL

For more information please contact:



Jaavonne Taylor

Senior Associate | BVI

t: +1 284 852 6337 | **e:** jaavonne.taylor@collascrill.com

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