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Assistance in international insolvency: Jersey's decision for Topshop, Burton and Dorothy Perkins closures

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Jersey does not have a statutory rescue or reconstruction regime like UK administration or Chapter 11 proceedings under the US Bankruptcy Code which allow a company to be restructured and trade out of financial difficulty.

However, the Royal Court has recently affirmed its willingness to recognise and assist English administrators in order to preserve and protect assets in Jersey where they would otherwise lack the authority to do so.

- Islanders will be aware of the closure of well-known retailers Topshop, Burton and Dorothy Perkins during the December lockdown. The brands are held by a group of English companies (the **Group**) that were placed into administration by the English Court at the beginning of December 2020. This followed several attempts to revive the Group's financial position amidst severe lockdown restrictions during 2020.
- One of the Group companies owns properties in St Helier, Jersey, from which Topshop and Burton respectively traded.
- On 2 December 2020, the Royal Court, exercising its discretion under article 49 of the Bankruptcy (*Désastre*) (Jersey) Law 1990 (the **BDJL**), recognised the administrators (the **Joint Administrators**) of the Group pursuant to a letter of request issued by the English Court. This is one of two ways for a foreign officeholder to be recognised in Jersey, the other being recognition under the Royal Court's inherent jurisdiction.
- Unless and until recognised, a foreign officeholder has no standing or power under Jersey law to carry out their duties in Jersey. The purpose of the application to the Royal Court was to ensure that the Joint Administrators would be able to continue to operate and trade in the Jersey stores during the Christmas period and hopefully bring about the sale of the businesses in due course. The effect of the order was that at least 32 employees would be able to retain their jobs over the festive season.
- The Royal Court granted the Joint Administrators such powers as were necessary to operate and trade in the Jersey retail stores with the Joint Administrators having the ability to make a further application to the Royal Court should they wish to exercise their powers for another purpose.
- The Royal Court was also asked to grant a moratorium (a prohibition on claims) in the same or substantially the same terms as the moratorium under the UK Insolvency Act. The Joint Administrators considered that there was a real risk that creditors may seek to repossess assets, enforce security, cancel leases and/or take other steps that could undermine the objective of the administration. The Royal Court granted the

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moratorium, noting that it was satisfied that it had the power to do so under the BDJL both by applying English law (as it has done previously) and under its inherent jurisdiction. The Royal Court noted that moratoriums were a feature of Jersey insolvency processes and that the Joint Administrators would be assisted by consistency in the various jurisdiction (moratoriums were or would be in place in the UK, the Isle of Man and Guernsey in relation to connected companies).

- Jersey is one of the world's leading offshore international finance centres. It has ties to many other jurisdictions. Accordingly, the Royal Court routinely exercises its discretion in terms of Article 49 of the BDJL or under its inherent jurisdiction to recognise and assist foreign insolvency practitioners in order to achieve the best outcome for stakeholders.
- Additionally, it is worth bearing in mind that the Royal Court is also willing to issue a letter of request to a foreign court for a Jersey company to be placed into an insolvency process in that jurisdiction (on the basis that it is advantageous for the Jersey company's stakeholders).

For further information, please see our practical guides:

- Getting a foreign insolvency officeholder recognised in Jersey
- Placing a Jersey company into UK administration

If you would like to discuss anything covered in this article, please get in touch with Simon Hurry or Caitlin Bruce or speak to your usual Collas Crill contact.

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