COLLAS CRILL

BVI Court confirms it has power to order block transfer of an insolvency practitioner's appointments

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Collas Crill was successful in obtaining what is believed to be the first published judgment permitting the block transfer of insolvency and receivership appointments in the BVI.

The case, outlined below, provides a useful precedent for insolvency practitioners and firms in the jurisdiction seeking to transfer multiple appointments in a cost-effective and efficient way.

In what is the first known published judgment on the point, the BVI Commercial Court recently held that it has the power to order the block transfer of an insolvency practitioner's appointments.

A block transfer refers to the transfer of the appointments of an insolvency practitioner over a number of companies, in one single application. This is in contrast to the creditors of each separate company in liquidation having to approve the change to the insolvency practitioner's appointment, or the need for a separate Court application approving the change of the appointment for each company.

In ***In the Matter of the Application of Wesley Arthur Edwards, a Licensed Insolvency Practitioner***[1] **David Harby and Nia Statham of Collas Crill L.P**. acted for the Applicant, who sought a block transfer in respect of a large number of companies of which he had been the liquidator or Court-appointed receiver. The Applicant had left his employment at Begbies Traynor (BVI) Ltd. (**"Begbies"**) and was seeking those appointments to be transferred to another insolvency practitioner at Begbies.

The case raised two issues. The first was whether the Court had the power to approve a block transfer. The second was whether a licence was required from the Governor of the BVI in order to permit the transfer of receiverships over assets that were frozen under the Russian sanctions regime.

On the first issue, the BVI Court noted that the BVI Insolvency Act, 2003 contains no express power for it to make a block transfer order, which is unlike the current position in England.

However, the BVI Court considered an English Court of Appeal decision[2] which predated the legislative change in England that allowed block transfers to be made. In that decision, the English Court of Appeal looked at previous cases which suggested that bankruptcy was a court-controlled process, in relation to which the Court had wide powers that were not limited to those expressly conferred by the relevant legislation.

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The English Court of Appeal also suggested that similar considerations applied to company liquidations and other forms of insolvency proceedings. That Court also thought that the alternative of holding a succession of creditors' meetings to appoint a new liquidator was expensive and unnecessary.

In the BVI Court's judgment, similar considerations apply to the BVI and as such, the BVI Court also has the power to make a block transfer order.

In our view, this is an extremely useful, efficient and cost-effective tool available to an insolvency practitioner who may be in the course of changing their employment, or may soon cease to hold a licence to act as an insolvency practitioner, and needs to arrange for their appointments to be transferred to a new office-holder.

In relation to the second issue, the Applicant had been appointed as the receiver of shares in six companies. His appointments were in support of the execution of judgment debts that were obtained by designated persons (i.e. sanctioned entities or individuals).

The Judge considered whether the appointment of the new receiver was a "dealing" with funds or economic resources, in breach of The Russia (Sanctions) (Overseas Territories) Order 2020 (the **"Sanctions Regulations"**).

In interpreting the terms of the Sanctions Regulations, the Judge held that there was no commercial dealing where one receiver was merely replaced by another and as such, there was no need for the Applicant to obtain a licence from the Governor in order to facilitate the change to his appointment.

Please do not hesitate to contact a member of our Dispute Resolution team if you have any questions or require any assistance.

[1] Claim No. BVIHC (COM) 2022/0122 delivered on 7 July 2022.

[2] *Donaldson v O'Sullivan* [2008] EWCA Civ 879, [2009] 1 WLR 924.

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COLLAS CRILL

For more information please contact:



Ellie Crespi

BVI Managing Partner | BVI

t: +1 284 852 6335 | **e:** ellie.crespi@collascrill.com

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