

## Royal Court recognises appointment of English fixed charge receivers

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Ogier has successfully applied for the recognition by the Royal Court of Jersey of English fixed charge receivers. The decision of the Court in *Re Estates and General Developments Limited*<sup>1</sup> is the first time that such an appointment has been recognised in Jersey.

The Royal Court reached its decision on the specific facts of the case and the circumstances of the companies involved and the insolvency proceedings to which they are subject, the security under which the appointment was made and the nature of the secured property. Therefore, whilst the decision represents an important development in terms of Jersey law on recognition of overseas appointees, it will be interesting to see whether or not other receivers appointed under security documents rather than by a foreign Court will similarly be able to meet the criteria in future cases.

### Facts

The facts of the case were as follows. Estates and General Developments Limited (EGDL) is an English company which is a subsidiary of an English parent company (E&G). E&G and its subsidiaries carried on property development business. EGDL owns property in Jersey (the Property). Pursuant to a trust deed, E&G issued mortgage debenture stock, of which Capita IRG Trustees Limited (Capita) was trustee. The stock was secured against property held within the E&G group, including the Property over which a first ranking judicial hypothec (a form of Jersey charge) was registered. As a result of financial difficulties within the E&G group, E&G and EGDL were placed into voluntary liquidation in 2011. In addition, pursuant to powers in the trust deed, Capita appointed members of Deloitte as both administrative receivers of EGDL and as joint fixed charge receivers of the Property. It was in the latter capacity that the application for recognition was made.

### Legal basis

Although a fixed charge receivership is not a form of insolvency proceeding (being an appointment pursuant to contract), the Royal Court considered that the wider insolvency of E&G and EGDL was sufficient to bring the application within Article 49 of the Bankruptcy (*Désastre*) (Jersey) Law 1990, which provides for the grant of assistance by the Royal Court to foreign courts in "*all matters relating to the insolvency of a person*". The fixed charge receivers had also successfully applied to the High Court in England for the issue of a letter of request to the Royal Court, which therefore amounted to sufficient authority for the Royal Court to grant assistance under Article 49.

Although the letter of request in the context of the insolvency of EGDL had been issued, the Royal Court still had a discretion as to whether to give assistance or not. In deciding to exercise its discretion in favour of the fixed charge receivers, the Royal Court took account of conflicts of law principles concerning circumstances where English receivers seek to act overseas. The Court noted that the security charge under which the appointment had been made included a registered Jersey judicial hypothec and therefore was not repugnant to Jersey law. The Court also noted that there would be no prejudice to local creditors, given that the Property was secured and that, in any event, the fixed charge receivers had undertaken to advertise for any local creditors who might have a claim arising out of the Property.

The Court was, however, mindful of the fact that the concept of the appointment of receivers pursuant to security documentation is not part of Jersey law, which contains other procedures by which a charge holder could seek to enforce its security. The Court considered that those procedures (being *désastre* (liquidation) or *dégèvement*), or alternatively the application for recognition by the liquidators of EGDL would provide no advantage to any concerned party, as the Property was secured and there was no prospect of any unsecured creditor benefitting from its realisation. Furthermore, the alternatives would likely involve additional cost and delay, which should be avoided in an insolvency situation.

In granting the application, the Court noted that the fixed charge receivers would, as a matter of English law (being the law of their appointment) not act as agents of EGDL given the appointment of the liquidators. However, as a matter of Jersey law, it was EGDL that owned the Property and only EGDL could manage and ultimately realise it. Accordingly, the Court's order reflected that the fixed charge receivers would be acting in Jersey on behalf of EGDL in relation to the Property.

## Conclusion

It is apparent that the application was successful because of the facts of the case and based upon certain key features: the insolvency of the Property owner, the letter of request from the English Court, the Jersey law charge over the Property and the fact that the Property was in Jersey. The decision does not provide a wide ranging basis under which foreign law receivers appointed under security documents can automatically look for recognition in Jersey although there is now a basis for recognition if the circumstances are right. It does, however, demonstrate the pragmatic approach of the Royal Court in looking for an outcome that is in the best interests of the

stakeholders, even where established alternative Jersey law routes would have been available. When considered in the light of the Royal Court's recognition in its decision in *Representation of Standish & Others*<sup>2</sup> of an English Court appointed receiver in respect of a freezing injunction, it confirms the willingness of the Royal Court to develop the areas in which, as a matter of Jersey law, assistance will be afforded to overseas Courts.

**1 4 February 2013**  
**2 [2011] JRC239A**

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## Meet the Author



[Edward Mackereth](#)

Global Managing Partner

[Jersey](#)

E: [edward.mackereth@ogier.com](mailto:edward.mackereth@ogier.com)

T: [+44 1534 514320](tel:+441534514320)

## Key Contacts



Nick Williams

Partner

Jersey

E: [nick.williams@ogier.com](mailto:nick.williams@ogier.com)

T: [+44 1534 514318](tel:+441534514318)



Oliver Passmore

Partner

Jersey

E: [oliver.passmore@ogier.com](mailto:oliver.passmore@ogier.com)

T: [+44 1534 514247](tel:+441534514247)

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