



COMPANY LAW REVIEW GROUP

REPORT ON THE TERMS AND SCOPE OF SECTION 1417 OF THE COMPANIES ACT 2014 PERTAINING TO THE RECOGNITION OF WINDING UP ORDERS MADE IN THE U.K.

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Chairperson's Letter to the Minister for Enterprise, Tourism and Employment

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1 April 2026

Dear Ministers,

I am pleased to deliver to you the Company Law Review Group's report on the terms and scope of section 1417 of the Companies Act 2014 pertaining to the recognition of winding up orders made in the U.K.

The Review Group's work Programme for 2024-2026 mandated it to examine this issue and the Review Group therefore requested its Corporate Insolvency Committee to conduct a detailed review. Following that review and consideration of the Committee's draft Report, the Review Group adopted that Report which is now presented to you.

The Review Group recommends:

- Section 1417 should be amended to more explicitly give the Minister the power to make an order thereunder.
- The wording of Section 1417 should be retained as it refers to orders "made for, or in the course of, winding up a company".
- Section 1417 should clarify that the Court has discretion and may attach terms and conditions to its order as it sees fit.
- The issue of COMI (Centre of Main Interest) or non-COMI cases should be treated in accordance with Article 16 of the UNCITRAL Model Law.

I extend my sincere thanks to the members of the CLRG's Corporate Insolvency Committee and in particular Committee Chairperson Professor Irene Lynch Fannon for their extensive and rigorous engagement and input in examining these issues. I also thank the Department of Enterprise, Tourism and Employment for its support, in particular, the Secretariat to the Review Group, Paul Thompson and Dan O'Neill.

Yours sincerely,

Paul Egan

Paul Egan SC
Chairperson
Company Law Review Group

1. The Company Law Review Group

The Company Law Review Group (**CLRG**) is an expert advisory body charged with advising the Minister for Enterprise, Tourism and Employment (**the Minister**) on the review and development of company law in Ireland. It was accorded statutory advisory status by the Company Law Enforcement Act 2001, which was continued under Section 958 of the Companies Act 2014 (**the 2014 Act**). The CLRG operates on a two-year work programme which is determined by the Minister in consultation with the CLRG.

The CLRG consists of members who have expertise and an interest in the development of company law, including practitioners (the legal profession and accountants), users (business and trade unions), regulators (implementation and enforcement bodies) and representatives from Government Departments and Agencies including the Department of Enterprise, Tourism and Employment, the Courts Service, the Office of the Attorney General, and the Corporate Enforcement Authority. The Secretariat to the CLRG is provided by the Company Law Review Unit of the Department. Full lists of members of the Company Law Review Group and of the Corporate Insolvency Committee are set out in Section 2.

1.1. The Role of the CLRG

The CLRG is established to monitor, review, and advise the Minister on matters pertaining to company law. In so doing, it is required to “seek to promote enterprise, facilitate commerce, simplify the operation of the Act, enhance corporate governance and encourage commercial probity” as per section 959(2) of the 2014 Act.

1.2. Policy Development

The CLRG submits its recommendations on matters in its work programme to the Minister. The Minister, in turn, reviews the recommendations and determines the policy direction to be adopted.

1.3. Contact information

The CLRG maintains a website at www.clrg.org. In line with the requirements of the Regulation on Lobbying Act and accompanying Transparency Code, all CLRG reports and the minutes of its meetings are routinely published on the website. It also lists the members and the current work programme.

The CLRG’s Secretariat receives queries relating to the work of the CLRG and is happy to assist members of the public. Contact may be made either through the website or directly to:

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2. Introduction and Background

As part of the 2024-2026 Work Programme the CLRG has been asked to -

“Examine the terms and scope of section 1417 of the 2014 Act pertaining to the recognition of winding up orders made in the U.K.”

2.1. Corporate Insolvency Committee

This matter was referred by the CLRG to the Corporate Insolvency Committee (**the Committee**), which considered a number of issues described below. The Committee includes the following membership:

Prof. Irene Lynch Fannon	Company Law Review Group Member and Chairperson of the Committee
Paul Egan SC	Chair, Company Law Review Group & Committee Member
Anne Fitzpatrick	Office of the Attorney General
David J Hegarty	Corporate Enforcement Authority - Director of Legal and Policy
Cathy Shivanan	Corporate Enforcement Authority - Director of Insolvency Supervision
Cathy Smith SC	Bar Council of Ireland
Doug Smith	Restructuring and Insolvency Ireland (Addleshaw Goddard (Ireland) LLP)
Helena Keleher	DETE Representative
James Finn	Courts Service
Michael Halpenny	Irish Congress of Trade Unions (ICTU)
Neil McDonnell	Irish Small and Medium Enterprises Association (ISME)
Niamh Ryan	Irish Funds Industry Association CLG (Simmons & Simmons)
Tanya Holly	DETE – Company Law Legal Advisor

2.2. Section 1417 Companies Act 2014

Section 1417 of the 2014 Act (“s. 1417”) is a re-enactment of s. 250 of the Companies Act 1963 (**the 1963 Act**). The current section provides the following:-

“s. 1417 - **Recognition of winding up orders of non-European Union states and Denmark**

1) Any order made by a court of any state recognised for the purposes of this section and made for, or in the course of, winding up a company may be enforced by the High Court in the same manner in all respects as if the order has been made by the High Court.

(2) When an application has been made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

(3) In this section—

“company” means a body corporate incorporated outside the State;

“recognised” means recognised by order made by the Minister for the purposes of this section and no such order may be made in relation to a state that is a Member State (other than Denmark).¹

Prior to the enactment of the European Insolvency Regulation in 2000 and its re-enactment as the European Insolvency Regulation (Recast) 848/2015 (**the EIR**), there was a specific SI in place under the previous s. 250 of the 1963 Act, whereby the UK was a state recognised by order of the Minister. An order was made under this section in 1964, by virtue of the Companies (Recognition of Countries Order) 1964, SI 42 of 1964. Once the EIR was enacted, the use of this provision was no longer necessary. However, post Brexit, the UK is no longer covered by the EIR and so this issue is consequently of some importance.

In the intervening period, the CLRG considered the adoption of the UNCITRAL Model Law on Cross-Border Insolvency in a Report published in 2018. Provisions of the UNCITRAL Model Law were considered in detail and recommendations were made in relation to each Article with some modifications in relation to some Articles.²

Specifically in relation to the recognition of orders from a foreign court under Article 15 and 16 of the UNCITRAL Model Law, the report made the following recommendations:

- i. In relation to Article 15 (see Annex B of this Report for the text of this Article) the CLRG Report noted that

“It is the view of the Group that this article should be adopted with the inclusion in 15(3) of the phrase “and proceedings under Irish Insolvency Law” after the phrase “foreign proceedings”.”³

- ii. In relation to Article 16 (see Annex B of this Report for the text of this Article) the CLRG Report noted again that

“It is the view of the Group that this article should be adopted as drafted in so far as it applies to company law.”⁴

In addition, the UNCITRAL Model Law also relates to personal bankruptcy but this is outside the remit of the CLRG.

Furthermore, it was noted that whilst the UK had adopted the Model Law, it retained s. 426 of the Insolvency Act (UK) 1986 (**the UK Insolvency Act**) (see below).

The CLRG Report of 2018 made no specific recommendation as to the retention of s. 1417 if Articles 15 and 16 were to be adopted.⁵

¹ Even though Denmark is a member of the EU and would, in theory, be covered by the European Insolvency Regulation 848/2015 (‘the EIR’), Denmark has excluded itself from insolvency and bankruptcy matters by Protocol. For this reason, the provision specifically refers to Denmark in addition to non-EU States.

² www.clrg.org CLRG Report on adoption of the UNCITRAL Model Law On Cross-border Insolvency 2018. See specifically Chapter 3 of this Report.

³ www.clrg.org CLRG Report on adoption of the UNCITRAL Model Law On Cross-border Insolvency 2018. p. 33.

⁴ www.clrg.org CLRG Report on adoption of the UNCITRAL Model Law On Cross-border Insolvency 2018. p. 34.

⁵ www.clrg.org CLRG Report on adoption of the UNCITRAL Model Law On Cross-border Insolvency 2018. p. 53.

In Ireland, there are currently three means by which the Irish courts may recognise or enforce an order of a court of another jurisdiction in insolvency proceedings: -

- where the party requesting recognition is based in another EU Member State (apart from Denmark), through operation of the EIR;
- at common law, where comity between courts permits the Irish courts to recognise⁶ the orders of courts of another jurisdiction;
- where an order has been made under s. 1417 recognising a non-European Union State or Denmark such that the order of a court of any state recognised for the purposes of s. 1417 and made for, or in the course of winding up a company (being a company incorporated outside the State), may be enforced by the High Court in the same manner in all respects as if the order has been made by the High Court. No orders are currently in force under s. 1417.

3. Common Law Principles

Under the common law, in Ireland the principles laid down in the case of *Re Mount Capital Fund Limited (in Liquidation) and Another*⁷, apply. In this case, Laffoy J, in the High Court stated:

“the Court does have an inherent jurisdiction to give recognition to insolvency proceedings in jurisdictions outside the European Union. [H]owever...in the exercise of that jurisdiction, the Court should be satisfied that recognition is being sought for a legitimate purpose. I believe that a legitimate purpose has been demonstrated in this case in that the objective of the Liquidators is to seek to obtain relief of the nature provided in s. 245 of the Act of 1963, having demonstrated that, there is equivalence between the law of the British Virgin Islands (BVI) and the law in this jurisdiction in relation to corporate insolvency generally and, in particular, in relation to disclosure, production of documentation and such like for the purpose of performance by a liquidator of his principal duties of taking possession, protecting and realising the assets of the company and distributing the assets, or the proceeds of realisation, in accordance with law”⁸.

Accordingly, Laffoy J made an order recognising the orders of the BVI High Court and directing that the High Court of Ireland and its officers act in aid of the BVI High Court, in particular, by giving the liquidators liberty to apply for orders under s. 245 of the Irish Companies Act, and such further orders and other reliefs as appropriate. In recognition of the *ex parte* nature of the application, Laffoy J added the proviso that any party against whom the liquidators should apply for orders in reliance on the order

⁶ There is a distinction between recognition and enforcement of court orders, on the one hand, and the provision of assistance more generally. For example, in the EIR (“Recast”) co-operation obligations (which can be viewed as similar to assistance obligations) were imposed on courts and practitioners of member states under Articles 42- 44 in relation to corporate and individual insolvency and bankruptcy proceedings; and, under Articles 56-59, similar obligations were imposed in relation to corporate group insolvencies. These obligations are distinct from the recognition obligations which are provided for in Article 19(1) which states that “Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.”

⁷ *Re Mount Capital Fund Limited (in Liquidation) and Another* [2012] 2 IR 486.

⁸ *Re Mount Capital Fund Limited (in Liquidation) and Another* [2012] 2 IR 503.

should be at liberty, on notice to the liquidators, to challenge the jurisdiction of the Irish High Court to make the order insofar as it affects that party.

In *Re Mercer Agencies Limited (In Administration) and an Application for Recognition and Orders in Aid of Foreign Insolvency Proceedings* [2025] IEHC 261, a more recent decision of the High Court (Quinn J) the Court relied on *Re Mount Capital Fund Limited*, citing Laffoy J's conclusions that the Court had an inherent jurisdiction to recognise insolvency proceedings commenced outside the EU and that Laffoy J also held that the court must be satisfied that recognition is being sought for a legitimate purpose.

In case law arising before the English courts, a distinction has arisen between the recognition of a court order by the receiving court and its enforcement on the one hand, and the provision of more general assistance by a court to the process of the winding up on the other hand. The significant decisions are the decision of Lord Hoffman in *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc* and the subsequent decision of the Privy Council in *Re Singularis Holdings Ltd*.⁹ In *Cambridge Gas*, the UK Court of Appeal emphasised the collective nature of a bankruptcy or insolvency proceeding “to provide a mechanism of collective execution against the property of the debtor by creditors whose rights are admitted or established”¹⁰

Having identified the underlying theoretical principles of collectivity and of universality in relation to insolvency proceedings, Lord Hoffman went on to state that:

“...[t]he underlying principle of universality... is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England. In addition, as *Innes CJ* said in the *Transvaal case In re African Farms Ltd* [1906] TS 373, 377, in which an English company with assets in the *Transvaal* had been voluntarily wound up in England, ‘**recognition which carries with it the active assistance of the court**’ . . . “[Emphasis added].

However, in *Singularis*, the Privy Council retreated from this view, stating in relation to the decision in *Cambridge Gas* that:

“So far as it held that the domestic court had a common law power to **assist** [emphasis added] the foreign court by doing whatever it could have done in a domestic insolvency, its authority is weakened by the absence of any explanation of whence this common law power came and by the direct rejection of that proposition by the Judicial Committee in *Al Sabah v Grupo Torras SA* [2005] 2 AC 333, a case cited in argument in *Cambridge Gas* but not in the advice of the Board.”¹¹

In that context and in accordance with the work programme, this report is concerned with recognition only.¹² However, the distinction between recognition of an order of a foreign court and the provision of assistance is not always clear cut. This distinction, and the case law thereon, is described in further detail in Annex C to this Report.

⁹ See *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26 and for a retreat from the jurisdiction to assist see the later decision of the Privy Council in *Singularis Holdings Ltd v PricewaterhouseCoopers (Bermuda)* [2014] UKPC 36. See Lynch Fannon, et al *Corporate Recovery in an Integrated Europe* (Elgar, 2022) Chapter 12.

¹⁰ *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26 at Paras 13-14.

¹¹ *Singularis Holdings Ltd v PricewaterhouseCoopers (Bermuda)* [2014] UKPC 36, Lord Sumption at Para. 18

¹² For further information on the distinction between recognition and assistance that has developed in English law see further Annex C.

Finally, the discussion of relevant English case law in Annex C underlines the potential complexity of proceedings at common law. In a later submission from Restructuring and Insolvency Ireland ('the RII') to the Department on this matter, the RII pointed out that relying on common law proceedings added to the complexity of the relevant insolvency process (in this case a UK winding up), created unnecessary uncertainty in terms of outcome and added to the costs and expenses of the liquidation generally.¹³

4. Reciprocity

In terms of understanding what might be appropriate as a reciprocal measure as regards the UK specifically, s. 426 (11)(b) of the UK Insolvency Act currently allows for the recognition of

“any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.”

The section in its entirety relates to the recognition of “An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law...” Most of the section is concerned with recognition of court orders as between jurisdictions within the UK. It is only by the extension of this recognition under s. 426(11)(b) that the possibility of including recognition of court orders from other countries or territories is raised. The relevant text of the entire provision as it affects the issue is repeated in Annex A of this Report.

In the past, there have been two cases where this provision has been used by Irish practitioners. In *Re Silverpail Dairy (Ireland) Unlimited Co.*¹⁴ the High Court in England recognised an Irish examinership. A previous decision of the English High Court in *Re Business City Express Ltd (aka Cityjet)*¹⁵ also recognised an Irish order (prior to the EIR).

In terms of reciprocity with neighbouring jurisdictions in the UK, in particular as between England and Wales, and Northern Ireland, the Group was aware that, in accordance with the work programme, a consideration of the Minister making an order under the current s. 1417 in relation to the UK was a matter of specific concern. The Committee were of the view that it would be appropriate to recommend that the Minister would make such an order in relation to the UK, subject to the issues raised in this report and the recommendations made by the Committee.

It is worth noting that in its submission referred to above Restructuring and Insolvency Ireland pointed out that post Brexit other EU jurisdictions including France, Germany, Italy, the Netherlands and Luxembourg, amongst others, have instituted arrangements allowing for recognition of UK court orders.¹⁶

¹³ Submission received by the Department from Restructuring and Insolvency Ireland dated 13 January 2026.

¹⁴ [2023] EWHC 895 (Ch) *Re Silverpail Dairy (Ireland) Unlimited Co.*

¹⁵ [1997] 2BCLC 510. *Re Business City Express Ltd (aka Cityjet)*.

¹⁶ Reference is made by RII to *Guidance on Cross-Border Insolvencies: Recognition and Enforcement in EU Member States* 24 March 2021.

<https://www.gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states>

5. Review of s. 1417 and Recommendations

5.1. Ministerial Powers

Should the section be redrafted to clarify the power of the Minister to make an order under s. 1417?

As s. 1417 was simply modelled on the 1963 Act provision, there are a number of issues which have arisen for the Committee:-

Section 12 of the 2014 Companies Act provides the following:-

“ Regulations and Orders

12. (1) Subject to subsection (2), the Minister may make regulations prescribing anything referred to in this Act as prescribed or to be prescribed.

(2) Subsection (1) does not apply to anything that Part 11 or 15 provides is to be prescribed by another authority.

(3) Every regulation made by the Minister under this Act (other than a regulation referred to in sections 946 , 1313 or 1321) or order made by the Minister under this Act (other than an order under sections 1 (2) or 16 (1)) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.”

In the Explanatory Memorandum to the Act, it is stated that:

“Section 12 gives the power to the Minister to make regulations prescribing anything referred to in this Act as prescribed or to be prescribed, unless the regulation is specifically to be prescribed by another authority. Regulations or orders made by the Minister under the Act must be laid before each House of the Oireachtas as soon as possible after the making of the regulation or order and the Houses of the Oireachtas may then pass a resolution annulling the regulation or order within 21 days of it being laid before it (provided the House is sitting). “

There is no mention specifically of a matter ‘as prescribed or to be prescribed’ in s. 1417. The interface between s. 1417 and s. 12 is not seamless. Concerns were raised by members of the Committee as regards this point.

The Review Group recommends:

- ***S. 1417 should be amended to more explicitly give the Minister the power to make an order thereunder.***

5.2. Other Insolvency Processes

Should the terms of s. 1417 be extended to other insolvency processes in addition to winding ups?

Under s. 426 of the UK Insolvency Act, the English court has recognised examinerships in addition to windings up. Under the EIR, the only UK processes that were included in Annex A were liquidations (windings up) and administration. Specifically excluded under the terms of the EIR were English

Schemes of Arrangement under Part 26 of the Companies Act 2006 (**UK Companies Act**) as ‘proceedings based on general company law’ as described by the EIR.¹⁷

Initially, the Committee considered the possibility of redrafting s. 1417 to include liquidations and ‘other insolvency processes’ where a formal declaration of insolvency is part of the process. Hence there was a proposal that the section could be extended to processes involving a ‘formal declaration of insolvency.’ Such a definition could include administration orders which were included in the EIR when the UK was a Member State of the EU, and which was the relevant process considered by the court in *Re Mercer Agencies*.¹⁸

However, as currently drafted, s. 1417 does not anticipate the prescription of a range of insolvency processes of a particular jurisdiction by way of order. The Minister is empowered only to “recognise” a jurisdiction for the purposes of s. 1417. There is therefore, currently no mechanism under s. 1417 to specifically list the processes of any relevant jurisdiction. The Committee noted that s. 1417 is designed to be used in relation to jurisdictions in addition to the UK and may be used in the future to ground an order by the Minister in relation to other jurisdictions. The Committee noted that English Schemes of Arrangement under Part 26 of the UK Companies Act and the new UK process which includes a moratorium under the Corporate Insolvency and Governance Act (UK) 2020, which has inserted Part 26A into the 2006 Act, were and would be excluded under the EIR as described above. Both of these UK processes are designed to support restructuring. The English Scheme of Arrangement has an equivalent in Ireland under Part 9 of the 2014 Companies Act (as amended). These Irish Schemes of Arrangement are similarly excluded from the EIR under Recital 16, which excludes processes that are based in company law in general and which are not exclusively used in insolvency situations only.

On further discussion and consideration of this matter, and in light of the potential difficulties of predicting which jurisdictions might be recognised by Ministerial order and the variety of insolvency processes that might need to be anticipated, including for example the potential recognition of US Federal court orders, (as has occurred in relation to Chapter 11 proceedings) or orders from the Cayman Islands, or Bermuda (as has occurred in UK case law) the Committee took the view that it might be more appropriate to retain the reference to winding up orders and orders made in the course of a winding up, recognising that the principles at common law could provide a solution in respect of the recognition of other insolvency or rescue processes of third countries, including those of the UK.

The Review Group recommends:

- *The wording of s. 1417 should be retained as it refers to orders “made for, or in the course of, winding up a company”.*

5.3. Recognition and Assistance

Section 1417 refers to the High Court enforcing an order made by a court of a recognised state. There is a distinction, which may not be clear cut in all circumstances between recognition of court orders

¹⁷ See Recital 16 of the EIR states “This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency.”

¹⁸ *Re Mercer Agencies Ltd* [2025] IEHC 261.

and applications to a court for assistance during the course of a winding up process in another jurisdiction. Section 426(4) of the UK Insolvency Act refers to the court “assisting” the other court.

“(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory. “

However, as described above, the decisions of the English courts in *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc*¹⁹ and later cases underline the distinction between a simple recognition order (enforcement order) and a request for, and granting of, an assistance order. In *Cambridge Gas* the court took the view that there was an inherent jurisdiction to grant assistance. On the other hand, there was a retreat from the jurisdiction to assist in the later decision of the Privy Council in *Singularis Holdings Ltd v PricewaterhouseCoopers (Bermuda)*.²⁰

The Report acknowledges the distinction made in English law between recognition orders and the provision of assistance to a foreign liquidation process. In the absence of case law in Ireland which clearly adopts this line of jurisprudence, this Report is confined to the question of recognition.

5.4. Court Discretion

Should the terms of s. 1417 be amended to clarify that even where an order has been made by the Minister recognising a particular country or state, and where an order from a court from that particular state made in relation to an insolvency process is the subject of a request for recognition, that the court has discretion in this matter?

The Committee queries whether the section should be amended to clarify that the court has discretion in relation to recognising the order and perhaps amended to clarify that the court has discretion to attach conditions to the recognition of the order.

Furthermore, the Committee questions whether the provision should be amended to clearly provide for a process whereby an interested party can object to the request made.

In this regard the provisions of s 426(2) and (3) of the UK Insolvency Act are noteworthy because there is a particular treatment of issues arising in relation to property. These provisions state:-

“(2) However, without prejudice to the following provisions of this section, nothing in subsection (1) requires a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.

(3) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.”

¹⁹ [2006] UKPC 26 *Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc*.

²⁰ [2014] UKPC 36. *Singularis Holdings Ltd v PricewaterhouseCoopers (Bermuda)* See footnote 2 supra.

It may also be the case that s.1417 should be specifically amended to include such a derogation in relation to property. The difficulty is that this is not the only issue that might be treated differently in an insolvency.

It is possible that the recognition or enforcement of such an order may disadvantage local creditors and the question is raised as to whether in describing the discretion of the court generally should s. 1417 be amended to specifically include certain matters that the court may consider. Local creditors, public policy and so on.

The Review Group recommends:

- *S. 1417 should clarify that the court has discretion and may attach terms and conditions to its order as it sees fit.*

5.5. Criteria guiding the Court's exercise of its discretionary power

As regards criteria guiding the Court's exercise of its discretionary power to recognise court orders from another court, should specific criteria be mentioned as criteria for the courts to consider? These could include public policy as mentioned in the EIR or the issue of COMI as mentioned in the EIR?

Section 426 the UK Insolvency Act does not make a distinction between the decision of a court where the debtor has its Centre of Main Interest (**COMI**) and where the debtor merely has an establishment.

Whilst this distinction is made in Chapter 15 of the US Bankruptcy Code and in the UNCITRAL Model Law, in both instances, provision is made for enforcement of COMI based and non-COMI based orders.

In both cases the discretion of the court is not limited by this distinction. Reference is made to the text of Article 15 and, in particular, Article 16 of the UNCITRAL Model Law, bearing in mind that the CLRG has already recommended adoption of these Articles as described above.

The latter Article 16 is titled **Presumptions concerning recognition** and includes a presumption on two points:

"The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized."

"In the absence of proof to the contrary, the debtor's registered office [or habitual residence in case of an individual] is presumed to be the centre of the debtor's main interests."

As an overall principle, although mentioning criteria which may be relevant to the exercise of the court's discretion seems attractive, it is arguable that such an exercise is undesirable as a general approach to drafting.

The Review Group recommends:

- *that the issue of COMI or non-COMI cases should be treated in accordance with Article 16 of the UNCITRAL Model Law.*

6. UNCITRAL Model Law

As mentioned in Sections 2 and 5 of this Report, the UNCITRAL Model Law is also of relevance. In terms of the specific question raised in the current work programme, it is worth bearing in mind that the CLRG has already considered questions around the adoption of the UNCITRAL Model Law on Insolvency in its entirety in a report in 2018.²¹ The recommendation regarding the issue of COMI and non-COMI cases admittedly follows the template provided in Article 16 of the Model Law. However, it may be that isolating this matter, from the general adoption question without consideration of other matters, may give rise to unforeseen consequences, not all relevant to the specific issue addressed in this Report. For this reason, no recommendation is made regarding the adoption of a specific element of the UNCITRAL Model Law, with a general consideration of the adoption of the UNCITRAL Model Law on Insolvency, being outside the scope of the matter considered in the Report.

²¹ www.clrg.org CLRG Report on adoption of the UNCITRAL Model Law On Cross-border Insolvency 2018.

ANNEX A: Insolvency Act 1986 (the UK Insolvency Act)

Section 426 (1)- (11) of the UK Insolvency Act

Co-operation between courts exercising jurisdiction in relation to insolvency.

(1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part.

(2) However, without prejudice to the following provisions of this section, nothing in subsection (1) requires a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.

(3) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.

(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

(5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its discretion under this subsection, a court shall have regard, in particular, to the rules of private international law.

(6) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (3) or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purpose of subsection (4).

(7) Section 38 of the M1Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) applies to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.

(8) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom includes power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.

(9) An order under subsection (3) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section “insolvency law” means—

(a) in relation to England and Wales, provision extending to England and Wales and made by or under this Act or sections], 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act];

(b) in relation to Scotland, provision extending to Scotland and made by or under this Act, sections 6 to 10, , 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 [F3and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act], Part XVIII of the Companies Act or the Bankruptcy (Scotland) Act

(c) in relation to Northern Ireland, provision made by or under the Insolvency (Northern Ireland) Order 1989] or the Company Directors Disqualification (Northern Ireland) Order 2002];

(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;

and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time.

(11) In this section “relevant country or territory” means—

(a) any of the Channel Islands or the Isle of Man, or

(b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

ANNEX B: UNCITRAL Model Law

https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

Article 2. Definitions For the purposes of this Law:

- (a) “Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;
- (b) “Foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) “Foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;
- (d) “Foreign representative” means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;
- (e) “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Article 15. Application for recognition of a foreign proceeding

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
2. An application for recognition shall be accompanied by:
 - (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
4. The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

Article 16. Presumptions concerning recognition

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign

representative is a person or body within the meaning of subparagraph (d) of article 2, the court is entitled to so presume.

2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

ANNEX C: Case Law: Recognition of court orders and assistance with foreign insolvency proceedings under the common law

Cambridge Gas²²

1. Cambridge Gas was concerned with a judicial reorganisation by a Federal Bankruptcy Court in the USA of a group of Liberian ship-owning companies. The intended effect of that reorganisation was to vest the shares of an Isle of Man company in the committee of creditors of Navigator Holdings plc in circumstances where the US court did not have jurisdiction *in rem* over the shares, nor *in personam* jurisdiction over the shareholders. The principal shareholder objected on the ground that it was not bound by the decision of the US court. The Federal Bankruptcy Court sent a letter of request to the High Court of Justice in the Isle of Man asking for assistance in giving effect to the plan. The committee petitioned the High Court in the Isle of Man for an order vesting the shares in the committee and Cambridge Gas cross petitioned on the basis that it had never submitted to jurisdiction in the US and that no order of the US court could effect its rights of property in the Isle of Man.
2. In his judgment, Lord Hoffman identified in the English case law a consistent aspiration to produce a result equivalent to that which would obtain if there was a single universal bankruptcy jurisdiction ("the principle of universality"). The court considered that the principle justified the Isle of Man court giving effect to the US reorganisation plan.²³ The view of the Board was that the absence of a jurisdiction *in rem* or *in personam* was irrelevant because the jurisdiction was founded not on any obligation on the part of the shareholder to comply with the decision of the US court, but on the duty of the Isle of Man court to assist a foreign principal liquidation so as to achieve a universal distribution of assets on, as far as possible, a common basis. In this regard, Lord Hoffman stated as follows:

"Judgments *in rem* and *in personam* are judicial determinations of the existence of rights: in the one case, rights over property and in the other, rights against a person. When a judgment *in rem* or *in personam* is recognised by a foreign court, it is accepted as establishing the right which it purports to have determined, without further inquiry into the grounds on which it did so. The judgment itself is treated as the source of the right.

The purpose of bankruptcy proceedings, on the other hand, is not to determine or establish the existence of rights, but to provide a mechanism of collective execution against the property of the debtor by creditors whose rights are admitted or established."²⁴

3. The rationale for the decision was expressed in the following terms:

"... But the underlying principle of universality ... is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England. In addition, as Innes CJ said in the

²² **Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings plc** [2007] 1 AC 508

²³ **Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings plc** [2007] 1 AC 508 Paras. 16-21

²⁴ **Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings plc** [2007] 1 AC 508 Paras. 13-14

Transvaal case *In re African Farms Ltd* [1906] TS 373, 377, in which an English company with assets in the Transvaal had been voluntarily wound up in England, ‘recognition which carries with it the active assistance of the court’ . . .

Their Lordships consider that these principles are sufficient to confer on the Manx court jurisdiction to assist the committee of creditors, as appointed representatives under the Chapter 11 order, to give effect to the plan . . .

What are the limits of the assistance which the court can give? In cases in which there is statutory authority for providing assistance, the statute specifies what the court may do. For example, section 426(5) of the Insolvency Act 1986 provides that a request from a foreign court shall be authority for an English court to apply ‘the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction’. At common law, their Lordships think it is doubtful whether assistance could take the form of applying provisions of the foreign insolvency law which form no part of the domestic system. But the domestic court must at least be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency. The purpose of recognition is to enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum.”²⁵ (emphasis added)

4. The relevant provision of the domestic system in the Isle of Man were the statutory provisions for sanctioning a scheme of arrangement. As the Isle of Man provisions would have permitted the court to sanction a scheme of arrangement on substantially similar terms as those of the judicial reorganisation approved by the US court, it was held that the Isle of Man could give effect to the reorganisation plan pursuant to its common law power.
5. Lord Sumption subsequently stated in *Singularis* that the decision in *Cambridge* is authority for three propositions:
 - a) The principle of modified universalism i.e. that the court has a common law power to assist foreign winding up proceedings so far as it properly can;
 - b) That power includes doing whatever it could have properly done in a domestic insolvency, subject to its own public policy; and
 - c) That power is itself the source of its jurisdiction over those affected.

6. Lord Sumption further stated, however, as follows:

“**[Cambridge Gas]** marks the furthest that the common law courts have gone to developing the common law powers of the court to assist in a foreign liquidation. It has proved to be a controversial decision. So far as it held that the domestic court had jurisdiction over parties simply by virtue of its power to assist, it was subjected to fierce academic criticism and held by a majority in the Supreme Court to be wrong in **[Rubin]**. So far as it held that the domestic court had a common law power to assist the foreign court by doing whatever it could have done in a domestic insolvency, its authority is weakened by the absence of any explanation of whence this common law power came and by the

²⁵ *Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings plc* [2007] 1 AC 508 Paras. 20-22

direct rejection of that proposition by the Judicial Committee in *Al Sabah v Grupo Torras SA* [2005] 2 AC 333, a case cited in argument in Cambridge Gas but not in the advice of the Board.”

7. It appears, therefore, that the second and third Cambridge Gas propositions no longer represent good law. The first of the three propositions remains good law, however, and has been endorsed subsequently in both ***Rubin and Singularis***.

Rubin²⁶

8. This case involved two conjoined appeals. The issue raised by the appeals was whether, and if so, in what circumstances, an order or judgment of a foreign court in proceedings to adjust or set aside prior transactions (i.e. avoidance proceedings) would be recognised and enforced in England. The appeal also raised an issue as to whether enforcement could be effected through the international assistance provisions of the UNCITRAL Model Law or the assistance provisions under s. 426 of the Insolvency Act 1986.
9. The first of the cases (Rubin) concerned a judgment of the US Federal Bankruptcy Court in default of appearance in respect of fraudulent conveyances.
10. The second case (New Cap) concerned a default judgment in respect of unfair preferences under Australian law.
11. In each case, the judgments obtained were judgments in default of appearance. This was of significant because, were they not, they could have been enforced based on the defendants’ submission to jurisdiction and, if that had been the case, enforcement would have been possible under the common law or, in New Cap, at common law and under the Foreign Judgments (Reciprocal Enforcement) Act 1933.
12. In the first case, the applicant applied to the High Court for enforcement of the US Order on the basis that the court had the power to do so both at common law and under art. 21 of the UNCITRAL Model Law. In the High Court, it was held that the US Order fell within the ambit of the Model Law but that its provisions for cooperation did not extend to the enforcement of judgments. The High Court also refused to recognise the US judgment at common law on the ground that it was an *in personam* judgment which could not be enforced where the defendants had neither been present in the US nor submitted to the court’s jurisdiction.
13. On appeal, the Court of Appeal held that the US judgements, despite having the indicia of judgments *in personam*, were nonetheless judgments in and for the purpose of the collective enforcement regime of the bankruptcy proceedings with the result that the ordinary rule (requiring presence in the US or submission to jurisdiction) did not apply. The court held that since there should be an unitary bankruptcy proceeding in the court of the bankrupt’s domicile which received worldwide recognition, the judgment of the US court could be enforced against the defendants at common law. The question of enforcement under the UNCITRAL Model Law was not answered.
14. In the second case, the liquidator of a company brought proceedings in Australia to set aside payments made before the liquidator was appointed on the basis that they amounted to unfair preferences. Default judgment was obtained in Australia and the Australian Court issued a letter asking the English Court to exercise its jurisdiction under s. 426(4) of the 1986 Act to

²⁶ ***Rubin v. Eurofinance SA* [2013] 1 AC 236**

order the defendants to repay the sums. The High Court held that it was entitled to enforce the Australian judgment both at common law and under s. 426(4). The Court of appeal dismissed the defendants' appeal. In doing so, it held that the judgment was enforceable under the terms of the 1933 Act.

15. The defendants in both cases appealed to the Supreme Court.
16. In the first case, the Supreme Court (Lord Clarke dissenting) allowed the appeal. It was held that the common law would only enforce a foreign judgment *in personam* if the judgment debtors had been present in the foreign country when the proceedings had commenced or if they had submitted to its jurisdiction. The court held further that, as a matter of policy, it would not adopt a more liberal rule in respect of the enforcement of judgments in the interests of the universality of bankruptcy; that any change in the settled law regarding the recognition and enforcement of judgment was a matter for the legislature. Since the proceedings in the US had been *in personam* and the conditions for the enforcement of an *in personam* based order had not been met, the orders could not be enforced in the English Court.
17. In the second case, the Supreme Court allowed the appeal. It was held that, although an English court could give assistance under s. 426 of the 1986 Act, this did not extend to the enforcement of foreign judgments; that the defendants' participation in the Australian insolvency proceedings, *albeit* not the actual recovery proceedings, was sufficient for them to be taken to have submitted to the jurisdiction of the Australian Court; that it followed that there could be enforcement in England; and that since insolvency proceedings were not expressly excluded from the terms of the 1933 Act, the 1993 Act was the appropriate means of enforcement rather than the common law.
18. In the course of its judgment, the Supreme Court accepted the principle of modified universalism. Lord Collins summarised the position in the following way:

"29. Fourth, at common law the court has power to recognise and grant assistance to foreign insolvency proceedings. The common law principle is that assistance may be given to foreign office-holders in insolvencies with an international element. The underlying principle has been stated in different ways: 'recognition . . . carries with it the active assistance of the court: In re African Farms Ltd [1906] TS 373, 377; 'This court . . . will do its utmost to co-operate with the US Bankruptcy Court and avoid any action which might disturb the orderly administration of [the company] in Texas under Chapter 11': *Banque Indosuez SA v Ferromet Resources Inc* [1993] BCLC 112, 117.

30. In *Credit Suisse Fides Trust v Cuoghi* [1998] QB 818, 827, Millett LJ said:

'In other areas of law, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention . . . It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former.

31. The common law assistance cases have been concerned with such matters as the vesting of English assets in a foreign office-holder, or the staying of local proceedings,

or orders for examination in support of the foreign proceedings, or orders for the remittal of assets to a foreign liquidation, and have involved cases in which the foreign court was a court of competent jurisdiction in the sense that the bankrupt was domiciled in the foreign country or, if a company, was incorporated there . . .”

19. However, although accepting the common law principle of assistance to foreign insolvency proceedings, the Supreme Court in **Rubin** held that **Cambridge Gas** had been wrongly decided. It was held that there were no special rules for recognition and enforcement of judgment in insolvency proceedings and since the respondent in **Cambridge Gas** had not submitted to jurisdiction in the US Bankruptcy Court, the judgment of the court was not binding upon it as regards property located in the Isle of Man.

Singularis²⁷

20. A Cayman Islands incorporated company was wound up in the Cayman Islands. The liquidators wanted to obtain information relating to the company’s affairs from the Company’s auditors, a Bermuda registered partnership. They were granted an order by a Cayman Islands court, requiring the auditors to provide certain documentation. Under Cayman Islands law, however, that order extended only to material belonging to the company.
21. To obtain material belonging to the auditors, the liquidators made an application in Bermuda for an order requiring the liquidators to produce all documents in their possession relating to the affairs of the company. Under Bermudan legislation, the Supreme Court of Bermuda had the power to make that order only in relation to a company which that court had ordered to be wound up.
22. Notwithstanding that provision, the Chief Justice exercised what he described as a common law power to require the auditors to produce information which they could only have been required to produce under the legislation if the company had been wound up in Bermuda.
23. On appeal, the Court of Appeal expressed doubt as to whether such a jurisdiction existed but set aside the order on the basis that, in any event, it was not an appropriate exercise of discretion because it was an order made in support of a Cayman Islands liquidation which could not have been made in a Cayman Islands court.
24. The liquidator appealed to the privy Council.
25. Lord Sumption identified the following issues as arising on the appeal:
- a) Whether the Bermuda Court had a common law power to assist a foreign liquidation by ordering the production of information in circumstances where (a) the Bermuda Court had no power to wind up an overseas company, and (b) its statutory power to order the production was limited to cases where the company was wound up in Bermuda; and
 - b) In the event that such a power existed, whether it was exercisable in circumstances where an equivalent order could not have been made by the court in which the foreign liquidation was proceeding.²⁸

²⁷ Singularis holdings Limited v. PwC [2014] UKPC 36.

²⁸ Singularis holdings Limited v. PwC [2014] UKPC 36 Page 1686.

26. In the course of his judgment, Lord Sumption reaffirmed the view expressed in *Rubin* that *Cambridge Gas* had been wrongly decided insofar as the second and third principles identified at para. 7 above were concerned. At para. 18, however, he endorsed the principle of modified universalism and the power of the court to assist foreign insolvency proceedings insofar as it properly could. He continued, however to indicate some constraints to that power:

“In the Board’s opinion, the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers. What are those limits? In the absence of a relevant statutory power, they must depend on the common law, including any proper development of the common law. The question how far it is appropriate to develop the common law so as to recognise an equivalent power does not admit of a single, universal answer. It depends on the nature of the power that the court is being asked to exercise.”

27. At paragraph 23 of his judgment, the judge held that a power to order production of information by an entity within the personal jurisdiction of the Bermuda court did exist:

“The right and duty to assist foreign office-holders which the courts have acknowledged on a number of occasions would be an empty formula if it were confined to recognising the company’s title to its assets in the same way as any other legal person who has acquired title under a foreign law, or to recognising the office-holders right to act on the company’s behalf in the same way as any other agent of a company appointed in accordance with the law of its incorporation. The recognition by a domestic court of the status of a foreign liquidator would mean very little if it entitled him to take possession of the company’s assets but left him with no effective means of identifying or locating them.”

28. At paragraph 25 of his judgment, Lord Sumption described some of the limitations to the common law power to assist as follows:

“In the Board’s opinion, there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up. In recognising the existence of such a power, the Board would not wish to encourage the promiscuous creation of other common law powers to compel the production of information. The limits of this power are implicit in the reasons for recognising its existence. In the first place, it is available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It would not, for example, be available to assist a voluntary winding up, which is essentially a private arrangement and although subject to the directions of the court is not conducted by or on behalf of an officer of the court. Secondly, it is a power of assistance. It exists for the purpose of enabling those courts to surmount the problems posed for a worldwide winding up of the company’s affairs by the territorial limits of each court’s powers. It is not therefore available to enable them to do something which they could not do even under the law by which they were appointed. Thirdly, it is available only when it is necessary for the performance of the office-holders functions. Fourth, the power is subject to the limitation in *In re African Farms Ltd* [1906] TS 373 and in *HIH* [2008] 1 WLR 852 and *Rubin* [2013] 1 AC 236, that such an order must be consistent with the

substantive law and public policy of the assisting court, in this case that of Bermuda. It follows that it is not available for purposes which are properly the subject of other schemes for the compulsory provision of information. In particular, as the reasoning in *Norwich Pharmacal* [1974] AC 133 and *R (Omar) v Secretary of State for Foreign and Commonwealth Affairs* [2013] 1 All ER 161; [2014] QB 112 (at both levels) shows, common law powers of this kind are not a permissible mode of obtaining material for use in actual or anticipated litigation. That field is covered by rules of forensic procedure and statutory provisions for obtaining evidence in foreign jurisdictions which liquidators, like other litigants or potential litigants, must accept with all their limitations. Moreover, in some jurisdictions, it may well be contrary to domestic public policy to make an order which there would be no power to make in a domestic insolvency. Finally, as with other powers of compulsion exercisable against an innocent third party, its exercise is conditional on the applicant being prepared to pay the third party's reasonable costs of compliance."

29. The auditors contended that the order sought against them was not consistent with the law or public policy of Bermuda because the statutory power to compel the production of information under Bermuda legislation was limited to cases where a company was being wound up in Bermuda. On that basis, it said it would be inconsistent with the statutory scheme for the common law to recognise a power which was inconsistent with that scheme. The Board was not persuaded by that argument:

"PWC argued that the existence of a statutory power covering part of the same ground may impliedly exclude a common law power covering the whole of it. But it does not necessarily do so. An implied exclusion of non-statutory remedies arises only where the statutory scheme can be said to occupy the field. This will normally be the case if the subsistence of the common law power would undermine the operation of the statutory one, usually by circumventing limitations or exceptions to the statutory power which are an integral part of the underlying legislative policy... There is, however, no reason to suppose that the limitation of the power under [the Bermuda legislation] to companies in the course of winding up in Bermuda reflects a legislative policy adverse to assisting foreign courts of insolvency jurisdiction. It simply reflects the limits of the ambit of the Act"²⁹

30. The Board was, however, persuaded by the auditors' alternative argument, namely that the power could not be exercised on the basis that the material which the liquidators sought would not be obtainable under the law of the Cayman Islands pursuant to which the winding up was being carried out. On that argument, Lord Sumption held as follows:

"Where a domestic court has a power to grant ancillary relief in support of the proceedings of a foreign court, it is not necessarily an objection to its exercise that the foreign court had no power to make a corresponding order itself... It is right for the Bermuda court, within the limits of its own inherent powers, to assist the officers of the Cayman court to transcend the territorial limits of that court's jurisdiction by enabling them to do in Bermuda that which they could do in the Cayman Islands. But the order sought would not constitute assistance, because it is not just the limits of the territorial reach of the Cayman courts powers which impede the liquidator's work, but the limited nature of the powers themselves. The Cayman court has no power to

²⁹ *Singularis Holdings Limited v. PwC* [2014] UKPC 36 Para 28

require third parties to provide to its office-holders anything other than information belonging to the company. It does not appear to the Board to be a proper use of the power of assistance to make good a limitation on the powers of a foreign court of insolvency jurisdiction under its own law. This was in substance the ground on which the liquidators failed in the Court of Appeal when they characterised the present application as forum shopping. In the opinion of the Board it is correct.

31. The appeal by the liquidators' was dismissed, therefore.
32. Lord Collins delivered a concurring judgment. He identified the issue before the court as being whether **Cambridge Gas** correctly decided that the court had a common law power to assist foreign winding up proceedings by exercising powers which are analogous to statutory powers which would have been exercisable in the case of a domestic insolvency, but do not apply in an international insolvency. He reiterated his view that **Cambridge Gas** had been wrongly decided and summarised his decision in **Singularis** as follows:

'38. In my judgment the answer to the present appeal is to be found in the following propositions. First, there is a principle of the common law that the court has the power to recognise and grant assistance to foreign insolvency proceedings. Second, that power is primarily exercised through the existing powers of the court. Third, those powers can be extended or developed from existing powers through the traditional judicial law-making techniques of the common law. Fourth, the very limited application of legislation by analogy does not allow the judiciary to extend the scope of insolvency legislation to cases where it does not apply. Fifth, in consequence, those powers do not extend to the application, by analogy "as if" the foreign insolvency were a domestic insolvency, of statutory powers which do not actually apply in the instant case.'

Subsequent cases

33. The decision in **Singularis** has been referred to in a number of decisions since 2021. Those are:
- a) *Mitchell v. Al Jaber* [2022] Ch 212
 - b) *Kireeva v. Bedzhamov* [2021] EWHC 2281 (Ch);
 - c) *Kireeva v. Bedzhamov* [2023] Ch 45 (Court of Appeal);
 - d) *Standford Asset Holdings Ltd v. AfrAsia Bank Ltd* [2024] 1 WLR 1118
 - e) *Green v. CT Group Holdings Ltd* [2024] 2 All ER (Comm) 342;
 - f) *Kireeva v. Bedzhamov* [2025] AC 812 (Supreme Court);
 - g) *Beograd Innovation Ltd v. Somovidis* [2025] 1 WLR 3208; and
 - h) *Transworld v. First Curacao Internation Bank* [2025] EWHC 2480.
34. None of the decisions depart from the principles expressed in **Singularis** or suggest any error in the reasoning of that decision.
35. In case it is of interest: The Kireeva decisions deal with the immovables rule in the context of the common law power to provide assistance (the power to provide recognise a foreign bankruptcy order and to provide assistance in relation to that order did not displace the immovables rules – the court had no power at common law to deprive a bankrupt of his interests in land located in England in favour of a foreign trustee in bankruptcy. The immovables rules prevented the bankrupt's interest in land located in England from automatically vesting in the foreign trustee and, further, prevented the English court from

granting relief to assist the foreign trustee to get in the bankrupt's interest in land located in England. While the court accepted the principle of modified universalism, it did not permit the court to provide assistance which was inconsistent with substantive law such as the immovables rule.

ANNEX D: Letter from Restructuring & Insolvency Ireland



Restructuring
& Insolvency
Ireland

www.rii.ie

Helena Keleher

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13 January 2026

Re: Recognition of UK Insolvency Proceedings in Ireland

Dear Helena,

I am writing on behalf of Restructuring & Insolvency Ireland (“RII”) in relation to an issue arising from a recent decision of the High Court on the recognition of foreign insolvency proceedings in Ireland.

Restructuring and Insolvency Ireland

As you may already be aware, RII is an organisation established in 2004 by a number of leading insolvency practitioners to provide, amongst other things, a forum for the consideration and discussion of the practice and law of insolvency in Ireland, with a particular focus on enhancing the knowledge and expertise of its members. The membership of RII is largely drawn from the accountancy and legal professions in Ireland, many of whom provide specialist advice in relation to both contentious and non-contentious corporate restructuring and insolvency matters and personal insolvency arrangements/bankruptcy.

RII has played an active role in providing its expertise to assist government and regulatory authorities on necessary reforms to specific areas of insolvency law. For example, a representative of RII is a member of the Company Law Review Group established under Chapter 4 of Part 15 of the Companies Act 2014 (the “**2014 Act**”) and of the Employment Law Review Group which was formed last year. It is in that spirit that I am writing to you on behalf of RII.

High Court Decision in *Re Mercer Agencies Ltd*

An issue relating to the recognition of foreign insolvency proceedings, specifically UK insolvency proceedings, has come to light following a recent High Court judgment of Quinn J in ***Re Mercer Agencies Ltd***³⁰ which was delivered in May 2025. Mercer Agencies Ltd (the “**Company**”) is a company incorporated in the UK with its principal place of business in Northern Ireland. The Company was put into administration under the provisions of the Insolvency (Northern Ireland) Order 1989 by resolution of the directors of the Company to appoint administrators.³¹

The joint administrators of the Company (the “**Administrators**”) applied to the Irish High Court for orders recognising that the Company had entered administration in the UK. The primary purpose of this application was to facilitate the Administrators in enforcing the most significant debt owed to the Company against a company incorporated in Ireland, whether through proceedings in the courts of this jurisdiction or otherwise.

While Quinn J ultimately granted the orders sought by the Administrators, his judgment notes that the requirement to make an application of this nature to recognise insolvency proceedings, such as a UK law administration in Ireland, has arisen as a result of the UK’s departure from the EU. The Court observed while the UK was a Member State of the EU, the European Insolvency Regulation³² applied to ensure that the appointment of administrators under UK law was automatically recognised in Ireland “*without any further formality, subject to certain basic conditions of the Regulation, and limited exceptions such as the exercise of powers offensive to public policy in the State.*”³³ This previously had the effect of streamlining the recognition of administration and other UK insolvency proceedings in the State. However, following the UK’s departure from the EU and the expiry of the transition period on 31 December 2020, the benefit of this legislation is no longer available.

Mr Justice Quinn referred to previous case law which established that the High Court has an inherent jurisdiction to recognise foreign insolvency proceedings in jurisdictions outside the EU.³⁴ However, this required consideration of whether there was equivalence between the law of that jurisdiction in relation to insolvency generally and in relation to the purpose for which the recognition is sought. It was also necessary to consider whether the recognition was sought for a legitimate purpose. While Quinn J ultimately considered that there was such equivalence and that the recognition was sought

³⁰ ***Re Mercer Agencies Ltd*** [2025] IEHC 261.

³¹ The resolution was filed by the Directors with the High Court of Justice, Northern Ireland Chancery Division on 29 November 2024.

³² Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May on insolvency proceedings (recast) [2015] OJ L141/19 (the “**European Insolvency Regulation**”). This legislation is a recast version of similar legislation that had been in force since 31 March 2002. See Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [2000] OJ L160/1. The European Insolvency Regulation does not apply to Denmark.

³³ ***Re Mercer Agencies Ltd*** [2025] IEHC 261, §21.

³⁴ Quinn J referred in particular to ***Fairfield Sentry Ltd (in liquidation) v Citco Nederland NV*** [2012] IEHC 81 and ***Re Mount Capital Fund Ltd (in liquidation)*** [2012] IEHC 97.

for the legitimate purpose of initiating proceedings in Ireland to enforce a debt against an Irish company, the decision nevertheless demonstrates that such recognition is not granted automatically and that a specific application to the High Court is required.

Unnecessary Impediment

RII takes the view that the requirement to make such an application adds an additional layer of complexity and friction to the conduct of insolvency proceedings in the UK where the company in question trades with partners in Ireland.

This requirement has adverse consequences in that it imposes on the resources of companies, which are by definition under considerable financial pressure, an additional burden in the form of the time and expense of making an application to the High Court (in addition to any further proceedings they may need to bring before the Irish courts). In certain cases, it may also be a source of considerable uncertainty for the company and the insolvency officeholders involved.

Moreover, it is not clear what purpose this additional barrier to enforcement serves. Quinn J noted that as recently as 2020, recognition was automatically afforded to UK insolvency proceedings by virtue of the European Insolvency Regulation. In circumstances where Irish and UK insolvency law remain aligned with one another in important aspects, there is no clear rationale for the introduction of this additional barrier to trade, which has ultimately arisen by default by reason of the UK's departure from the EU. If anything, there is a particularly strong rationale in favour of default recognition of UK insolvency proceedings given the similarities between our legal systems, the very close trading relationship between the UK and Ireland and the importance of facilitating cross-border trade on the island of Ireland.

Partial Solution: Section 1417 of the 2014 Act

While granting automatic recognition to all insolvency proceedings before the UK courts would likely require an amendment to primary legislation (which R&I would support), the judgment of Quinn J in *Re Mercer Agencies Ltd* points in the direction of a more immediate solution that would address this issue in many cases. Section 1417 of the 2014 Act provides that:

“(1) Any order made by a court of any state recognised for the purposes of this section and made for, or in the course of, winding up a company may be enforced by the High Court in the same manner in all respects as if the order has been made by the High Court.

(2) When an application has been made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

(3) In this section—

“company” means a body corporate incorporated outside the State;

“recognised” means recognised by order made by the Minister for the purposes of this section and no such order may be made in relation to a state that is a Member State (other than Denmark).”

Quinn J noted that the predecessor of this provision was section 250(1) of the Companies Act 1963 (the “**1963 Act**”),³⁵ which similarly provided as follows:

“Any order made by a court of any country recognised for the purposes of this section and made for or in the course of winding up a company may be enforced by the High Court in the same manner in all respects as if the order had been made by the High Court.”

The effect of these provisions is to allow (and indeed mandate) the Irish courts to give automatic effect to orders made in relation to the winding up of companies by the courts of other countries designated by the Minister for Enterprise, Tourism and Employment by order. Quinn J noted that the only country which was recognised for the purpose of section 250 of the 1963 Act was the UK, which was recognised by an order made by your predecessor in 1964, shortly before the 1963 Act was commenced.³⁶ This ensured that orders made by courts in the UK in the course of winding up proceedings would be given effect in Ireland. This order was revoked at the time of the coming into force of the European Insolvency Regulation in Ireland in 2002.³⁷ However, as noted above, the European Insolvency Regulation now no longer applies in respect of the UK and there is no longer automatic recognition of UK insolvency proceedings in Ireland, as the Court held in **Re Mercer Agencies Ltd**.

R&I is strongly of the view that it is now an appropriate time for an order to be made granting recognition to the UK pursuant to section 1417 of the 2014 Act. It is important to note that this would not address this problem for every case. As Quinn J noted in **Re Mercer Agencies Ltd**, “*in this case I am not being asked to give recognition to an order made in the course of a winding up, but instead to administration proceedings, which are not winding up proceedings.*”³⁸ The effect of section 1417 is limited to winding up proceedings. While resolving this issue for administration proceedings might therefore require primary legislation, an order under section 1417 would nevertheless have the very welcome effect of granting automatic recognition to the orders of UK courts in relation to winding up proceedings.

Position in Other Member States

Since the departure of the UK from the EU, it is also the position in many other EU Member States that automatic recognition is not available for UK insolvency proceedings. However, Ireland would not be unique within the EU if it moved to provide for automatic recognition, either through an order made under section 1417 of the 2014 Act or through broader reform by primary legislation. In particular, a review of the rules on recognition across EU Member States published by the UK Insolvency Service suggests that at least some measure of automatic recognition of UK insolvency proceedings is provided by law in France, Germany, Italy the Netherlands, Austria, Croatia, Luxembourg and Sweden.³⁹ However, the precise conditions in which this automatic recognition arises and the extent to which

³⁵ **Re Mercer Agencies Ltd** [2025] IEHC 261, §33.

³⁶ Companies (Recognition of Countries) Order 1964, SI 1964/42.

³⁷ S.I. No. 333/2002 - European Communities (Corporate Insolvency) Regulations 2002.

³⁸ **Re Mercer Agencies Ltd** [2025] IEHC 261, §36.

³⁹ UK Insolvency Service, *Cross-border Insolvencies: Recognition and Enforcement in EU Member States* (24 March 2021) <https://www.gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states#contents-of-this-guide>

further applications are required to deal with assets in the country in which recognition is sought varies from country to country.

For example, it appears that Germany has adopted a similar approach to the European Insolvency Regulation in its domestic law. Under German law, there is automatic recognition of foreign insolvency proceedings provided that the courts of the country in which the proceedings have been initiated have jurisdiction in accordance with German law and recognition does not violate German public policy.⁴⁰ It appears that from their appointment, a UK insolvency officeholder will be able to deal with assets of the debtor in Germany.⁴¹ Similarly, in the Netherlands, a foreign insolvency judgment is automatically recognised in the Netherlands if (a) the jurisdiction of the foreign court is based on a ground which is generally acceptable under international standards; (b) the foreign proceedings meet the requirements of a fair trial; (c) recognition of the foreign judgment does not violate public policy; and (d) there is no conflicting judgment recognizable in the Netherlands.⁴²

It should also be noted that the UK has a provision of a similar nature in section 426 of the UK Insolvency Act 1986, which aim is to promote cooperation between the UK Courts and the courts of certain other designated countries and territories. Ireland is one of a limited number of countries (which are mainly Commonwealth countries) and the only EU member state that is designated to avail of the judicial assistance provisions of section 426 of the UK Insolvency Act 1986. In 2023, following Brexit, this provision was used to recognise and give the force of law in England and Wales to a scheme of arrangement in an Irish examinership.⁴³ This very important decision provides welcome clarity for the recognition of Irish cross-border restructurings in the UK post-Brexit and enhances Ireland's reputation as a key restructuring jurisdiction within the EU.

Conclusion

The facility for automatic recognition of UK insolvency proceedings in Ireland since the UK's departure from the EU is no longer available in Irish law. This appears to have occurred by default as a result of the disapplication of the European Insolvency Regulation to insolvency proceedings initiated in the UK. RII is of the view that there is no compelling rationale for removing this facility and that businesses, insolvency practitioners and creditors in Northern Ireland, the rest of the UK, and Ireland would be better served by the reintroduction of this facility.

The disadvantages of this lacuna are clear from the recent judgment of the High Court in ***Re Mercer Agencies Ltd***. Insolvency officeholders appointed in the UK can obtain recognition in Ireland, but this is decided on a case-by-case basis and must involve an application to the High Court, involving the incurring of further time and expense.

While RII is of the view that introducing some measure of automatic recognition for UK insolvency proceedings in Ireland would be beneficial,⁴⁴ it seems that this would require primary legislation to address in its entirety.

⁴⁰ *ibid* §9.2.

⁴¹ *ibid*.

⁴² *ibid* §12.2.

⁴³ Examinership of Silverpail Dairy (Ireland) Unlimited Company.

⁴⁴ As noted above, the position of certain other EU Member States may be instructive as to how this might be done.

However, RII submits that this should not prevent the implementation of a quick and effective solution in at least some types of UK insolvency proceedings. Section 1417 of the 2014 Act provides a power that could be straightforwardly exercised to allow the automatic recognition of UK insolvency proceedings relating to the winding up of a company. This could be done in the immediate term without the requirement for the enactment of amending legislation by the Oireachtas.

If an order recognising the UK (and / or its constituent jurisdictions) were to be made, it would see section 1417 of the 2014 Act applied in the manner in which its predecessor provision was originally intended be applied when section 250 of the 1963 Act was brought into force. It would also be broadly consistent with rules in other Member States of the EU which allow for automatic recognition of UK insolvency proceedings in at least some circumstances.

For all of those reasons, RII respectfully submits that making an order pursuant to section 1417 in those terms should be given serious consideration, with a full resolution of the issue dealt with in primary legislation as soon as possible thereafter

Yours sincerely

A handwritten signature in dark ink, appearing to read 'S. Scott', written in a cursive style.

Stephen Scott

Co-Chairperson, Law Reform Sub-Committee

Restructuring Insolvency Ireland