

## THE CROSS-BORDER INSOLVENCY REGULATIONS 2006

Mr Registrar Nicholls recently heard what are believed to be the first recognition application and article 21 relief application under the Cross-Border Insolvency Regulations 2006 ("the Regulations") (*Re Rajapakse*, unreported, 23 November 2006). The Registrar suggested that the following observations may be helpful to practitioners:

1 Article 15 (2) (a)

There must be filed at court original certified copies of the decision commencing the foreign proceedings and appointing the foreign representative. Photocopies will not be acceptable. Any certificate from the foreign court provided pursuant to Article 15 (2) (b) should also be an original.

2 Orders of the foreign court permitting the application to be made

If a foreign court has made an order permitting the foreign representative to issue a recognition application or an article 21 relief application, the affidavit filed by the foreign representative should state whether an appeal has been made against the foreign court's order. If no such appeal has been made, it should state the time limits within which an appeal may be made.

3 Schedule 2 paragraph 4 (2) (requirement for statement whether, in the opinion of the applicant, the EC Insolvency Regulation applies to any of the proceedings identified in accordance with article 15 (3))

The affidavit filed by the foreign representative should state (if it is the case) that there are no proceedings to which the EC Insolvency Regulation applies even where the foreign representative does not know of any other foreign proceedings, proceedings under British insolvency law or section 426 requests (see article 15 (3)), and there are, therefore, no proceedings to which the EC Insolvency Regulation could apply.

4 Schedule 2, paragraph 28 (applications to Chief Land Registrar following court orders)

If it is likely that the foreign representative will make an application for the registration of an interest to the Chief Land Registrar following the grant of article 21

relief, the order should follow the practice of the Companies Court and the Bankruptcy Court and include a statement to the effect that the applicant is permitted by the terms of the order to apply to the Chief Land Registrar at H. M. Land Registry for the purpose of registering his or her interest in the property in question.

5 Schedule 2, paragraph 26 (7) (advertisement of certain orders)

The Regulations do not require the Court to approve the advertisement to be placed in the London Gazette and a newspaper pursuant to paragraph 26 (7) of Schedule 2 to the Regulations. The form of the advertisement is prescribed by Form ML8. This contains sections that will not be required in every case. Practitioners may seek the guidance of the Court in so far as necessary as to the form of particular advertisements and should report any difficulties they encounter to the Court and the Insolvency Service Policy Unit.

6 Schedule 2 paragraphs 21, 22 and 77 (service of the application, the manner in which service to be effected and service outside the jurisdiction)

If a debtor does not have an address for service in England and Wales or if the debtor is an individual resident outside the jurisdiction, the Court will expect a sealed copy of the application issued by the court together with any affidavit in support of it and any documents exhibited to the affidavit, to be served upon the debtor at his usual or last known address outside the jurisdiction.

28 November 2006