



## Bankruptcy Petitions & Foreign Judgment Debts

In the recent decision of *Drelle v Servis-Terminal LLC [2024] EWHC 521 (Ch)* (11th March 2024), the High Court held, on appeal, that a putative creditor is permitted to prosecute a bankruptcy petition based on a sum arising under a foreign judgment debt, notwithstanding that that judgment is not automatically enforceable in the jurisdiction.

The debt in which the petition arose in this matter (£22 million in sterling terms) was from a judgment obtained from the Arbitrazh Court, a commercial court of the Yaroslavl region of Russia on 19 May 2019. Servis-Terminal LLC (the **“Plaintiff”**) subsequently issued a bankruptcy petition against Mr. Drelle (the **“Defendant”**), who was resident in England.

Orders of the Russian Courts are not judgments which have automatic recognition under the Foreign Judgments (Reciprocal Enforcement) Act 1933. In the ordinary course, the Plaintiff might have issued fresh proceedings in England on foot of that judgment seeking an order within the jurisdiction; these are known as recognition proceedings, in that they seek the recognition by the local court of a foreign judgment.

The Plaintiff did not do that, and simply issued a statutory demand on foot of the Russian judgment. As the Defendant did not comply, the Plaintiff presented a bankruptcy petition on the basis that the Defendant had not complied with the statutory demand, nor sought to have it set aside. A bankruptcy order was ultimately issued against the Defendant.

Mr. Drelle appealed the decision, arguing that the Russian judgment was not a debt within the meaning of Article 267 of the Insolvency Act 1986 as a foreign judgment could not be enforced without either registration under the 1933 Act or following an order in recognition proceedings.

The judge considered this argument but concluded that whilst that judgment might not be ‘enforceable’ in the jurisdiction, it still met the test for what constituted a debt as defined in the Insolvency Act 1986.

The decision indicates that a foreign judgment can form the basis for a bankruptcy petition in and of itself, so long as it is a judgment for a liquidated

*“The decision indicates that a foreign judgment can form the basis for a bankruptcy petition in and of itself, so long as it is a judgment for a liquidated sum payable and there is no contingency on payment.”*

sum payable and there is no contingency on payment. The effect of the decision is that registration or recognition proceedings could arguably be bypassed.

In reality, a defendant/debtor would likely – upon advice – argue that a foreign judgment is not enforceable in the jurisdiction and although that argument may eventually fail, a dispute on this point will create delays and increase costs. It would make practical sense to have any foreign judgment registered locally before commencing further proceedings to enforce that order.

In a Northern Ireland context, petitions can only be presented on foot of a ‘court judgment, decree or other similar court order’ (i.e Certificate of Taxation, Tribunal Award) as per the November 2023 guidance. It is expected that the above would not extend to foreign judgments, and therefore registration or recognition proceedings would be needed to validly present a petition in Northern Ireland.

At Davidson McDonnell, our Restructuring & Insolvency team has a wealth of experience in this sector and would be happy to assist you with any queries that you may have.

**Guidance:**

If you require further information about anything covered in this briefing, please contact **Shane McVeigh**, **Lindsey Harten** or your usual contact at the firm on **+44 (0)28 9099 8207**. This publication is not designed to provide legal or other advice and does not deal with every important topic or cover every aspect of the topics with which it deals. Publication date: April 2024.

*“It would make practical sense to have any foreign judgment registered locally before commencing further proceedings to enforce that order.”*



**Shane McVeigh**  
SENIOR SOLICITOR  
Restructuring & Insolvency  
E: [shane.mcveigh@davidsonmcdonnell.com](mailto:shane.mcveigh@davidsonmcdonnell.com)  
T: +44 (0)28 9099 2514



**Lindsey Harten**  
LEGAL DIRECTOR  
Restructuring & Insolvency  
E: [lindsey.harten@davidsonmcdonnell.com](mailto:lindsey.harten@davidsonmcdonnell.com)  
T: +44 (0)28 9099 2363