Cross-Border Insolvency Law in the United Kingdom: An Embarrassment of Riches

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Introduction

As a result of recent insolvency law provisions being brought into operation, there are now three systems for dealing with cross-border insolvencies in the United Kingdom. In date order of their introduction, they are section 426 of the Insolvency Act 1986 ('section 426'), the European Regulation on Insolvency Proceedings 2000 ('Insolvency Regulation') and the UNCITRAL Model Law on Cross-Border Insolvency 1997 ('Model Law'). The countries to which they apply form for the most part discrete groups, albeit with some overlap as Table 1 below illustrates. Furthermore, the numbers of countries to which the last two sets of provisions will apply in future is growing as a result of, respectively, the increase in membership of the European Union and the gradual adoption of the Model Law as its popularity increases. This provides the potential for some conflict where more than one set of provisions could apply to proceedings involving these jurisdictions and the United Kingdom. There is also a final complication related to the fragmented jurisdictional position in the United Kingdom, which results in having also to determine whether Acts apply to the constituent parts of the United Kingdom: the three jurisdictions of England and Wales, Scotland and Northern Ireland. It is the purpose of this article to outline possible outcomes for any conflict and to decide how a British court might be required to determine priorities in the event of conflict.

Table 1: At a Glance Mapping (as at 15 June 2006)

Section 426	Insolvency Regulation	Model Law
Anguilla	Austria	Eritrea
*Australia**	Belgium	Japan
Bahamas	Cyprus	Mexico
Bermuda	Czech Republic	Montenegro
Botswana	Estonia	*Romania***
Brunei	Finland	Serbia
*Canada**	France	United States
Cayman Islands	Germany	
Falkland Islands	Greece	
Guernsey	Hungary	
Hong Kong	Italy	
Isle of Man	Latvia	
Jersey	Lithuania	
Malaysia	Luxembourg	
Montserrat	Malta	
*New Zealand**	Netherlands	
St. Helena	Portugal	
Turks & Caicos Islands	Slovakia	
Tuvalu	Slovenia	
	Spain	
	Sweden	

Gibraltar*** Ireland		
	Poland	
British Virgin Islands South Africa		British Virgin Islands South Africa

* Countries known to be engaged in the process of adopting the Model Law.
** Romania is scheduled to join the European Union on 1 January 2007 (together with Bulgaria).
*** The Insolvency Regulation applies to Gibraltar by virtue of Article 299(4), EC Treaty.

Historical Summary

The first provision, now section 426 of the Insolvency Act 1986, can be traced to 19th century provisions on enforcement of orders given by courts within the United Kingdom and a requirement of assistance to and by other British courts, a definition which was extended to many of the courts in the then British Empire (later Commonwealth).[1] Prior to 1986, the last consolidation of these provisions occurred as part of the Bankruptcy Act 1914, which applied uniquely to the insolvency of individuals and partnerships.[2] The provisions of this Act were designed to co-ordinate proceedings and enabled the courts within the Commonwealth to request other courts to assist in the management of bankruptcy proceedings within their own jurisdiction, the making of an order being deemed sufficient authority to enable the other court to exercise the jurisdiction it would if the matter were before it for consideration. Owing to the consolidation of provisions relating to the insolvency of individuals and the insolvency procedures applicable to companies and other legal persons in the same Act in 1986, section 426 now applies to both types of insolvencies. Observations in the Cork Report in its chapter on extra-territorial aspects of insolvency law provide some of the reasoning for this position.[3] The report notes the aim of extra-territorial jurisdiction as being the avoidance of conflict and confusion in cases of concurrent jurisdiction, the obtaining of recognition and enforcement by other courts of orders as well as reciprocity in recognition and enforcement where this would not be repugnant to domestic concepts of public policy.[4] The statutory provisions then in existence were criticised insofar as they were ill fitted by their use of outmoded definitions to modern commercial reality, although the co-operation provisions were highlighted as affording a flexible framework for assistance. It was desirable, according to the report, that this assistance should include the situation of corporate insolvency and be extended as far as possible to other countries on the basis of reciprocity.[5]

Under section 426, the courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the

[1]Section 220, Bankruptcy Act 1849; sections 73-74, Bankruptcy Act 1869; sections 117-118, Bankruptcy Act 1883.
[2]Section 122, Bankruptcy Act 1914.
[3]Report of the Review Committee into Insolvency Law and Practice 1982 (Cmnd. 8558) ('Cork Report') in Chapter 49 at paragraphs 1902-1913.
[4]Ibid., at paragraph 1902.
[5]Ibid., at paragraphs 1909-1911.

corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.[6] Assistance under any request is deemed authority for the court to which the request is made to apply the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction. The number of countries to which the rules on assistance apply at present is limited, the section itself specifying automatic assistance internally between courts in different parts of the British Isles and also for Jersey, Guernsey and the Isle of Man. Subsequent statutory instruments extend co-operation to other countries and territories, which, although not limited in scope by the text itself, in practice means a category constituted predominantly of Commonwealth countries and some former members, such as Hong Kong and Ireland.[7]

The European Regulation on Insolvency Proceedings 2000 is the successor text to the European Insolvency Convention 1995, a project that began in the early 1960s and which stemmed in part from the work leading to the conclusion of the Brussels Convention 1968, whose Article 1 excludes insolvency matters from its remit. Although a number of drafts were produced from as early as the 1970s, work within the European Community was suspended in 1985 apparently after a failure to agree a consensus on the second draft of the convention. A fresh impetus seems to have been given by the initiation of a project by the Council of Europe which eventually resulted in a text later adopted as the Istanbul Convention 1990.[8] Perhaps because of the competition, a final discussion draft of a European Community text was produced in 1994, which formed the basis for the version that the Council of Ministers were to approve in 1995 as the European Insolvency Convention. The instrument, however, failed to enter into force because of a requirement for unanimity and the United Kingdom failed, for extraneous political reasons, to adhere in time.[9] The Insolvency Regulation, which revived this project without major amendment to its provisions, was adopted following a proposal co-authored by Germany and Finland in 1999 and applies to insolvencies with a cross-border element where the debtor (company or individual) concerned has its 'centre of main interests' within the territory of the European Union.[10]

Under the Insolvency Regulation, rules are provided for the allocation of jurisdiction in cross-border matters, for resolution of conflict of laws, for the recognition and enforcement of judgements as well as for co-ordination between proceedings that are instituted. The Insolvency Regulation entered directly into force on 31 May 2002 in all of the member states in the European Union subject to Title IV of the EC Treaty, a position that meant that it might not have applied to certain member states, Denmark, Ireland and the United

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[6]Section 426 applies to England and Wales and Scotland. It was also extended to Northern Ireland by virtue of section 441(1)(a), Insolvency Act 1986.

[7]The Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986 (SI 1986/2123), The Co-operation of Insolvency Courts (Designation of Relevant Countries) Order 1996 (SI 1996/253) and The Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998 (SI 1998/2766).

[8]The Istanbul Convention remains without force due to insufficient ratifications.

[9]See I. Fletcher, The European Community Convention on Insolvency Proceedings: An Overview and Comment, with US Interest in Mind (1997) 23 BJIL 25.

[10]Article 3(1), Insolvency Regulation.

Kingdom, that had secured opt-out provisions during negotiations for the Treaty of Maastricht. The opt-out provisions were complex, although both Ireland and the United Kingdom were able to declare an opt-in to the Insolvency Regulation and are bound by it. However, the opt out negotiated by Denmark meant that, unless the European Council was informed under Article 7 of the Protocols that it no longer wished to avail itself of the arrangement, whether wholly or in part, any instrument would not apply to this member state.[11] It was unclear whether Denmark could in fact opt in and the Insolvency Regulation was enacted on the assumption that it would not apply to Denmark. However, a subsequent report stated that the Danish Government would in fact enact domestic law legislation mirroring the terms of the Insolvency Regulation so as to enable the courts of that country to regulate cross-border insolvencies affecting Danish interests.[12] Furthermore, in preparation for the European Union being joined by 10 new member states on 1 May 2004, the Insolvency Regulation was amended by the Act of Accession, signed on 23 September 2003, with effect from the date of accession.[13]

The final text, although not the last in time, is the UNCITRAL Model Law on Cross-Border Insolvency 1997, which contains a similar jurisdiction and co-operation paradigm to the Insolvency Regulation text. The Model Law contains four key areas outlining the scope of the Model Law itself and rules for access by representatives of foreign insolvency proceedings, including those governing the treatment of foreign creditors. It also covers the effects of domestic recognition of foreign procedures and, most importantly, rules for co-operation and for co-ordination of simultaneous proceedings in several jurisdictions over the same debtor. The text represents essentially a compromise between different legislative traditions and is accompanied by a Guide to Enactment, which was produced in order to assist legislative draftsmen in adapting the Model Law to local conditions. From a slow start, the Model Law has increased in popularity and a number of major trading states have adopted or begun the process of adopting the text. In the United Kingdom, express recognition to the Model Law was given through section 14 of the Insolvency Act 2000, which included a provision allowing the Secretary of State to adopt regulations giving effect to the Model Law.[14] The provisions also allowed for amendment of the co-operation provisions of the Insolvency Act 1986 and for the modification of the application of insolvency law to foreign proceedings. All these elements have now been the subject of a statutory instrument, which was adopted on 3 April 2006.[15]

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[11]Ibid., Recital no. 33.

[12]Report by Professor Ian Fletcher at a session of the Clive Schmitthoff Symposium on 1-3 June 2000 in London.

[13]Council Regulation (EC) No. 603/2005 of 12 April 2005 also effects amendments to the lists of insolvency proceedings and officials in the annexes to the Insolvency Regulation.

[14]This Act applies to Scotland as well as to England and Wales, but according to its section 17, not to Northern Ireland. In a paper titled 'Assembling the jig-saw: UK recognition and assistance following enactment of the Model Law', delivered to the INSOL Academic Forum in Scottsdale AZ, USA on 20-21 May 2006, Professor Fletcher suggests that extension is expected to occur in 'due course' (at 1).

[15]The Cross-Border Insolvency Regulations 2006 ('SI 2006/1030'), which came into force on 4 April 2006.

Conflict Resolution between Instruments

For the most part, as the overlap areas in Table 1 indicate, it is more likely that two sets of provisions could have simultaneous application. A three-way conflict is possible, but would require the extension of section 426 to member states of the European Union that also adopt the Model Law, a proposition that is doubtful. Therefore, the three possible scenarios of conflict are outlined here.

(a) Section 426 - Insolvency Regulation

As Table 1 indicates, the only two countries affected by the overlap here are Gibraltar and Ireland. It is unlikely that section 426 will be extended to the other Commonwealth countries that are members of the European Union, Cyprus and Malta, and even more unlikely that any of the other member states will request extension to them by statutory instrument. To all intents and purposes therefore, the overlap list is closed. For those countries that are on the list, the issue is which text takes priority. The answer is in fact provided by Article 10 of the EC Treaty, which requires member states to take all possible measures to ensure fulfilment of the obligations they have entered into under the treaty, in practice setting out a principle of conduct in the interests of the Community and directly confirming the paramount status of European legal instruments over domestic ones. It may be surprising to have to refer to an extraneous legal instrument to determine the position, but it is necessary given that the Insolvency Regulation does not determine the issue. In fact, the only express statement in the Insolvency Regulation is that it replaces, insofar as matters are now dealt with within its text, specifically listed bilateral and multilateral conventions between member states as well as some potentially applicable to a number of member states, such as the Copenhagen Convention 1933 and the Istanbul Convention 1990.[16] However, it does not state expressly that the section 426 rules are overridden insofar as the countries subject to these rules and to the Insolvency Regulation are concerned. In principle, it may be that both section 426 and the Insolvency Regulation could be used in a complementary way, subject to the avoidance of conflict, it being likely that the more general and less specific wording of the former provision could give more latitude to a court, given that it has been held that the definition of insolvency contained in section 426 should be given as wide an interpretation as possible so as not to fetter the exercise of the court's equitable discretion.[17]

The Insolvency Regulation is, however, expressed so as not to apply in any member state to the extent it would be incompatible with external obligations entered into before the Insolvency Regulation comes into force.[18] For countries that are not on the overlap list, those outside the European Union, following the agreement of the United Kingdom to opt into the Insolvency Regulation paradigm, existing arrangements entered into by the United

[16]Article 44(1), Insolvency Regulation.
[17]*Hughes and others v Hannover Ruckversicherungs-AG* [1997] 1 BCLC 497.
[18]Article 44(3)(a), Insolvency Regulation.

Kingdom with these other Commonwealth countries are not to be affected by the Insolvency Regulation.[19] Although expressed using the wording 'obligations arising in relation to bankruptcy and the winding-up of insolvency companies', this can be taken to implicitly refer to the section 426 paradigm. However, one of the problems is what may be read as a limitation in the provision, where it qualifies the application to those relationships entered into by the United Kingdom with countries within the Commonwealth existing at the time the Insolvency Regulation entered into force. The section 426 paradigm after all has a potentially universal vocation and would still have a vocation even after this date. In order to avoid confusion, a declaration by the European Council expressly provided that the Insolvency Regulation was not intended to prevent member states from concluding agreements with other states on the same subject matter as the Insolvency Regulation, provided the other agreement did not affect the operation of the Insolvency Regulation.[20] Professor Virgos suggests that this was done so as to 'prevent any misunderstanding' following the 'communitarisation' of insolvency law in this way.[21] He does, however, go on to state that member states should avoid entering into arrangements that could 'jeopardise the uniformity' of the Insolvency Regulation and, for those that entered into that may be incompatible in any way, judges should expressly refrain from applying the incompatible text.

The assumption, however, behind the Insolvency Regulation is that it has uniquely an intra-Community effect. The text is to apply only where the centre of the debtor's main interests is within the Community.[22] However, one of the more interesting cases to emerge from the general jurisdictional contest that occurred in the period following the implementation of the Insolvency Regulation is *Re: Brac*,[23] where the company, formed in Delaware, traded as an overseas company in the United Kingdom, where the operations were largely conducted and where the majority of employees were based. The company had been placed under the protection of Chapter 11 proceedings in the United States. In order to make an administration order, which was felt to be desirable, and in the absence of specific authority under the section 426 co-operation provision, which does not apply to the United States, Mr Justice Lloyd was obliged to consider whether the paradigm in the Insolvency Regulation dealing with the exercise of jurisdiction as between member states could be applied by analogy to the position of a debtor incorporated outside the European Union, where its centre of main interests was clearly within a member state. The argument to the contrary relied on the proposition that European legislation should not be presumed to apply to entities incorporated overseas without express mention. Although the potential for an extra-

[19]Ibid., Article 44(3)(b).
[20]Declaration by the Council (2000/C 183/02) (OJ 2000 C183/1). The declaration was made largely with the Model Law in mind, although it could as easily apply to any further expansion of the section 426 model.
[21]See M. Virgos and F. Garcimartin, The European Insolvency Regulation: Law and Practice (2004, Kluwer Law International, The Hague) at paragraph 41.
[22]Recital 14 and Article 3(1), Insolvency Regulation.
[23]*Re: Brac Rent-A-Car International Inc.* [2003] EWHC 128 (Ch) (7 February 2003).

territorial effect was not dealt with expressly in the Virgos-Schmit Report,[24] the judge held that the commentary and Insolvency Regulation were neutral on the point and accepted that they were not inconsistent with the argument put forward for jurisdiction, which relied on the fact that the only test in the Insolvency Regulation for jurisdiction referred to the centre of main interests and that the absence of a specific exclusion for debtors formed outside the European Union tended strongly towards a presumption allowing for jurisdiction to be exercised.

The above case may be regarded as being impeccably reasoned in that it makes clear that the fortuitous location of the incorporation should not prevent the exercise of jurisdiction, thus avoiding what might have been a serious lacuna from developing. A similar case, *Re: Daisytek-ISA*, involving a parent company located in the United States which had filed for Chapter 11 protection, featured an English court granting administration orders in respect of its English subsidiary, as well as other English and European companies, located in France and Germany, on grounds that the English company was not only the holding company for the European operations of the group but also provided management support and co-ordination of the group's activities.[25] The extra-territorial effect represented by these cases could also apply in a situation where arrangements with a country under section 426 have already been made. It may be that one of the by-products of a request for assistance could include the opening and conduct of proceedings by a court in the United Kingdom using the Insolvency Regulation model, especially where business activities of a group were conducted throughout Europe. However, it might be conceivable that problems could arise where a request under section 426 comes into conflict with the exercise by another member state of the European Union of a similar extra-territorial jurisdiction, especially where this state claims to be the location of the debtor's centre of main interests. Under the Insolvency Regulation, this is a position which would require a British Court to defer to the resulting main proceedings and for any proceedings opened by the British court in compliance with the section 426 request to be converted to secondary proceedings.[26] Furthermore, a similar argument could be made with respect to Denmark, which, despite its exclusion from the Insolvency Regulation, would benefit from the principle of the '*comitas europaea*' (a form of mutual assistance and co-operation) requiring courts in other member states to give effect to Danish decisions (and vice versa) unless there were exceptional reasons for doing so.[27] The potential here may be that even with respect to a country not covered by the Insolvency Regulation, any conflict between a section 426 request by a third

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[24]The Virgos-Schmit Report was issued to accompany the European Insolvency Convention text, but is often referred to as an interpretative guide for the terms of the Insolvency Regulation. It has now had its status as an extrinsic aid to construction confirmed by Advocate-General Jacob's Opinion of 27 September 2005 in *Eurofoods IFSC Limited* (Case C341/04) at paragraph 2.

[25]*Re: Daisytek-ISA Limited and others* [2003] BCC 562.

[26]The mandatory nature of the deferral to the first court to declare its competence has been confirmed by the European Court of Justice in its judgment of 2 May 2006 in *Eurofoods IFSC Limited* (Case C341/04).

[27]See J. Israël, European Cross-Border Insolvency Regulation (2005, Intersentia, Antwerp) at 328.

country and a decision of a Danish court might have to be adjudged with priority given to the Danish decision.

(b) Insolvency Regulation - Model Law

At present, apart from the United Kingdom, the only European Union member state to have adopted the Model Law is Poland, although it will be joined by Romania when the later accedes on 1 January 2007. This position may well change in future years for the reasons stated earlier, namely that the Model Law is increasing in popularity and stands to be adopted by a number of states with which European Union countries have major trading links, thus prompting them in turn to consider its use. In states to which both the Insolvency Regulation and Model Law will apply, the same arguments rehearsed earlier will provide for the primacy of the European text within the European Union, irrespective of any need to make an express stipulation in the adopting instrument. However, in the United Kingdom, such an express stipulation has been made in the statutory instrument incorporating the Model Law.[28] Nonetheless, it is possible that a conflicting view could be taken. Although the Model Law is designed to be implemented as a domestic legal text, it nevertheless resorts from work carried out at the international level and the consensus achieved by UNCITRAL as to its contents. To that extent, the measure may be said to reflect international insolvency law and principles given effect through acceptance into the domestic legal hierarchy in the same way as the Insolvency Regulation represents a consensus at European level of principles that are then given direct and automatic effect through enactment in regulation form. In fact, a reminder of the roots of the Model Law comes in the British text incorporating it and the interpretation clause, which requires 'regard to its international origin and to the need to promote uniformity in its application' with, furthermore, good faith to be observed in its use.[29]

The issue is whether the European text should be paramount if it represents a different consensus to the international text. Professor Virgos agrees that the Model Law represents a 'genuine international standard' in insolvency matters.[30] He is of the view, however, that there is no risk of incompatibility or conflict between the texts given that it is not an international treaty in the strict sense, but a text given effect through domestic law. Furthermore, an observation that may be made comparing the texts is that the Model Law bases its jurisdictional paradigm on that in the Insolvency Regulation and to that extent would not be incompatible.[31] This is a view echoed by the Guide to Enactment accompanying the Model Law text.[32] Nonetheless, there are differences between the texts, for example the conflict of laws provisions absent from the Model Law and the different formulation of the co-operation paradigm in Article 31 of the Insolvency Regulation and Part IV of the Model Law. Again, it may be possible for both texts to be used in a complementary way, absent any conflict. That said, with especial relevance to countries

[28]Article 3, Schedule 1, SI 2006/1030.
[29]Ibid., Article 8, Schedule 1.
[30]Virgos and Garcimartin (note 21 above) at paragraph 42.
[31]The same is true of the OHADA Uniform Law on Insolvency 1998.
[32]Guide to Enactment, paragraph 18.

outside the European Union, the observations made earlier with respect to the *de facto* extra-territorial operation of the Insolvency Regulation also apply here. This is despite the view taken in the Guide to Enactment that the Insolvency Regulation has no extra-territorial vocation and that consequently the Model Law offers those European states adopting it a 'complementary regime of considerable practical value' of application to their cross-border relations.[33] It is conceivable that the co-ordination of a group insolvency begun outside the European Union with the assumption of jurisdiction to open main proceedings and requiring a European court to initiate non-main[34] proceedings may come into conflict with a purported exercise of jurisdiction by a different European court claiming authority to open main proceedings. There would be a straightforward clash here with the issue of to which court the obligation to conduct ancillary proceedings would be owed.

(c) Section 426 - Model Law

This last area of overlap includes for the moment only the two jurisdictions of South Africa and the British Virgin Islands. This position will change rapidly given the interest shown by Australia, Canada and New Zealand in the Model Law and possible imminent enactment.[35] Given that the Model Law has a universal vocation, it is conceivable that all of the countries on the section 426 list could adopt it. The Guide to Enactment specifically states that the scope of the Model Law is limited to certain procedural aspects of cross-border insolvency law and is designed to be used as an 'integral part of the existing insolvency law' of the state enacting its provisions.[36] To that extent, the willingness to avoid conflict may be seen. The interpretation provision referred to earlier will certainly guide British courts to consider the international origins and purpose of this text when using it, which may well serve to avoid overt conflict between the Model Law and the section 426 paradigm.[37] However, to put matters beyond dispute, a conflict resolution provision is contained in the statutory instrument adopting it, which provides not only that British insolvency law is treated as being modified to the extent required to give effect to the Model Law, but that any conflict between domestic law and the rules introduced by the statutory instrument will be adjudged in favour of the Model Law.[38] Nevertheless, the Model Law rules are not themselves treated as preventing the court or insolvency officeholder from providing assistance to a foreign court or representative under other domestic laws.[39] This would certainly include the traditional rules at common law created by the courts before the advent of the statutory co-operation rule.

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[33]Ibid., paragraph 19.
[34]The equivalent in the Model Law to secondary proceedings under the Insolvency Regulation.
[35]See, *inter alia*, recommendations in Cross-Border Insolvency: Promoting International Cooperation and Coordination (Australian Corporate Law Economic Reform Program Paper No. 8) (2002) at 36) and Law Commission of New Zealand Report No. 52: Cross-Border Insolvency: Should New Zealand adopt the UNCITRAL Model Law on Cross-Border Insolvency (1999) at 95.
[36]Guide to Enactment, paragraph 20.
[37]Article 8, Schedule 1, SI 2006/1030.
[38]Ibid., Regulation 3.
[39]Ibid., Article 7, Schedule 1.

This suggests a conscious effort here to ensure that the Model Law and domestic provisions, including the section 426 paradigm, are used in as efficient a way as possible. In fact, the Model Law is intended to be facilitative in this way. In structure, it is a legislative text recommended by UNCITRAL to member states of the United Nations for adoption into their domestic legal system. A member state may choose for the purposes of incorporation to tailor the text to its needs and to modify or exclude some of its provisions, although the recommendation by UNCITRAL is that member states make as few changes as possible so as to encourage a greater degree of unification.[40] It was certainly open to those drafting the British text to integrate the Model Law and section 426 rules. Nevertheless, there are known to be differences, including in the transaction avoidance rules and co-operation paradigms,[41] not to mention the wholesale exclusion of a considerable number of debtors,[42] which leaves open in some instances the desirability of continued resort to the section 426 co-operation framework.

Summary

There is a long history in the United Kingdom of judicial and statutory attempts at the resolution of cross-border insolvency. Early rules framing jurisdiction widely where there was a conceivable benefit in doing so allowed the courts to assert control over debtors and cases with international elements. The concomitant development of the *forum non conveniens* and ancillary assistance doctrines refined the nature of this co-operation. The advent of assistance in statutory form, including the development of the section 426 provision, offered the courts a number of practical tools, incidentally doing much to develop the reputation of the United Kingdom as a jurisdiction within the universalist tradition in international insolvency. The participation of the United Kingdom, despite the regrettable political controversy in 1995, within the initiative leading up to the advent of the Insolvency Regulation helped to continue this tradition within the framework of the European Union, thus contributing to the formation of a culture of co-operation. The influence of the jurisdictional paradigm developed in Europe on developments at the international level, represented by the Model Law and other texts, has carried the quest for international resolution further forward, with the adoption of the Model Law through the Insolvency Act 2000 allowing for its use in the United Kingdom. The result of all of this is to provide courts in the United Kingdom with a number of different tools applicable at present to discrete groups of countries. There are problems of overlap and possible conflict in a number of instances with parallel sets of rules potentially applying. Nevertheless, courts will soon learn to navigate their way through what is described by Professor Fletcher as a 'jig-saw puzzle'.[43] Eventually, a body of case law will build up illustrating how conflicts will be resolved and how in practice a hierarchy of

[40]Guide to Enactment, paragraphs 11-12 and 21.
[41]Fletcher (note 14 above) at 4 makes the point that the 'numerous divergences' from the Model Law text require the warning of 'caveat lector'.
[42]More than those excluded from the remit of the Insolvency Regulation.
[43]Fletcher (note 14 above) at 2.

rules will be established within which the various heads of jurisdiction and their interaction will be defined.

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