ownership. When the last Shah of Persia died in an Egyptian military hospital in 1980, a creditor of one of his heirs tried to freeze the late Shah's villa in St. Moritz (Switzerland). The Federal Supreme Court of Switzerland justifiably refused this in a last-instance ruling, since not the villa, but only the quota of the yet undivided inheritance constituted a sizable asset of the respective heir. In domestic cases such a quota is considered to be located at the descendant's last domicile. Nonetheless, the Federal Supreme Court of Switzerland later decided in several questionable decisions that Switzerland has no jurisdiction for the freezing of assets against foreign heirs despite the descendant's last domicile being in Switzerland. Now, the Swiss legislator has become active and enacted on 1 January 2017 a new law according to which assets belonging to an undivided inheritance may be frozen in Switzerland if the descendant's last domicile is located in Switzerland but it is not relevant whether the other assets of the descendent are actually located in Switzerland. ■

Ireland:
Court of Appeal clarification of issue of discretion in examinership applications

The Court of Appeal has allowed an appeal by the Edward Holdings group of companies against a decision of O'Connor J in the High Court refusing to appoint an examiner to four of the seven group companies in respect of which an examiner was sought to be appointed.[1] The group, which is controlled by Gerry Barrett, owns, amongst other assets, the Meyrick and G hotels in Galway.

The Court of Appeal rejected all of the findings which underpinned the decision of the High Court to refuse to appoint the examiner, including non-disclosure and abuse of process findings. The central issue for consideration by the Court of Appeal was the argument by the secured creditor that a settlement agreement between the group and the secured creditor in January 2017 was inconsistent with the concept of the group of companies seeking to have an examiner appointed to the relevant companies and that this should cause the court to exercise its discretion to refuse the application to appoint the examiner.

In the Court of Appeal, Finlay Geoghegan J and Hogan J, in separate judgments, with which Peart J agreed, both concluded that the existence of the settlement agreement was not a sufficient basis upon which to exercise their discretion to refuse the application. Hogan J explained the position as follows.

"*The fact … that an application for examinership would be inconsistent with the performance of the obligations imposed on a company under the terms of a settlement agreement cannot in itself – and I stress these words – be a dispositive consideration for a court determining whether to appoint an examiner … precisely because the entire examinership system is premised on the assumption that pre-existing commercial contracts (of whatever kind) will be overridden, varied, negated and dishonoured in the wider public interest of rescuing an otherwise potentially viable company*".

This constitutes a useful clarification of this issue particularly in light of a recent decision of the High Court which suggested otherwise (*Re JJ Red Holdings Ltd*), with which Hogan J expressly disagreed. ■

Footnote

1 Examinership is the Irish legal mechanism for the rescue or reconstruction of an ailing but potentially viable company.

THE COURT OF APPEAL REJECTED ALL OF THE FINDINGS WHICH UNDERPINNED THE DECISION OF THE HIGH COURT

TONY O'GRADY
Partner, Matheson, Ireland

KEVIN GAHAN
Senior Associate, Matheson, Ireland