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3HR Legal Weekly

Commercial

Serving proceedings at a UK establishment of an overseas country

International businesses should be aware that their registered offices in the UK could be issued with legal proceedings, regardless of whether or not they have started trading or carrying on business from that address.

The Commercial Court has found that proceedings can be served on an overseas company at the registered address of its UK establishment under section 1139 of the Companies Act or under part 6 of the Civil Procedure Rules ('the CPR'), regardless of whether the claim relates to the business of that establishment.

In *Teekay Tankers Limited v STX Offshore & Shipping Co*, the defendant company was incorporated in South Korea but had a registered UK establishment at Companies House, and an identified individual who was authorised to accept service at a London address. The claimant served proceedings on the defendant at the London address, relying on both the Companies Act and the CPR. The Defendant argued that the proceedings did not relate to the UK establishment and so the London address did not constitute a place of business.
The Court held that registering a UK establishment involved opening that establishment as a place of business in the UK, even if it had yet to start carrying on business. In any event, the court found that in this case, the defendant was in fact carrying out business activity from the London address.

This decision simplifies the process for claimants who wish to serve English proceedings on overseas companies or directors who have registered a UK address. It should also put directors of international companies on notice that the registration of a UK establishment, regardless of whether or not it is being actively used for business, is enough for the company to have potential liability in legal proceedings. All correspondence sent to registered addresses should therefore be monitored carefully to deal with any issues as swiftly as possible.

3HR Legal can offer you a fully comprehensive company secretarial and commercial litigation service. We can monitor the correspondence that you receive at your registered address and advise you should any problems arise. Should you be contemplating taking action, or are currently involved in an ongoing matter, please do not hesitate to contact our Commercial team.

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Employment

The "Woolworths case" and the duty to collectively consult

Large and multi-site employers can breathe a sigh of relief thanks to the European Court of Justice's (ECJ) decision in the "Woolworths case" regarding the duty to collectively consult. Collective consultation is required when an employer is contemplating carrying out 20 or more redundancies in a period of 90 days at one establishment.

The "Woolworths case" was about how employers must count the number of proposed redundancies for the purposes of triggering collective redundancy information and consultation duties, in particular defining the meaning of "establishment".

The ECJ decided that "establishment", in the collective redundancy legislation, refers to an individual workplace (or, more accurately, the entity to which the workers made redundant are assigned to carry out their duties), and not to the employer as a whole.

The decision means that employers are not required to aggregate dismissals across multiple establishments – each establishment is to be considered separately, although determining that establishment will remain a question of fact for the Tribunal.

The ECJ has formally referred the case back to the Court of Appeal, but the Court of Appeal's decision is now likely to be a formality, which means that we expect that the Court of Appeal will simply overturn the earlier Employment Appeal Tribunal decision and affirm that Woolworths was correct in treating each store as a separate establishment for the purposes of consultation obligations.

So, for employers considering making redundancies, this means that when establishing headcount to see whether a business needs to engage in collective consultation, employers are not required to aggregate dismissals across multiple establishments.

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