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## HIGH COURT OF JUSTICE (CH.D) LEEDS DISTRICT REGISTRY

### 16 MAY 2003

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**FAILLITE**

**Faillite internationale – Règlement CE 1346/2000 relatif aux procédures d’insolvabilité – Groupe de sociétés – Reconnaissance des décisions d’ouverture de procédures d’insolvabilité**

*La cour ouvre une procédure principale d’insolvabilité à l’égard de dix sociétés de droit anglais, de trois filiales allemandes et d’une filiale française appartenant au groupe Daisytek-ISA.*

*Selon la cour, la preuve est établie que les filiales du groupe sont gérées et contrôlées dans une logique de groupe en sorte que les activités du groupe pour l’Europe sont coordonnées par le siège central situé à Bradford, Royaume-Uni.*

*La cour justifie dès lors sa compétence par le fait que le centre des intérêts principaux de la filiale française (et des trois filiales allemandes) est situé à Bradford.*

**FAILLISSEMENT**

**Internationaal faillissement – Verordening (EG) nr. 1346/2000 betreffende insolventieprocedures – Groep van vennootschappen – Erkenning van beslissingen tot opening van insolventieprocedures**

*Het Hof opent een hoofdinsolventieprocedure voor tien Britse vennootschappen, drie Duitse dochtervennootschappen en een Franse dochtervennootschap die tot de groep Daisytek-ISA behoren.*

*Volgens het Hof is bewezen dat de dochtervennootschappen van de groep met het oog op het groepsbelang bestuurd en gecontroleerd worden doordat de activiteiten van de groep in Europa gecoördineerd worden door de centrale zetel in Bradford (Verenigd Koninkrijk).*

*Het Hof steunt zijn bevoegdheid op het feit dat het centrum van de voornaamste belangen van de Franse dochtervennootschap (en van de drie Duitse dochtervennootschappen) zich in Bradford bevindt.*

*ISA Daisytek SAS e.a.*

*His Honour Judge McGonigal*

(...)

3. The group of companies of which Daisytek-ISA Limited is the holding company (‘the Group’) is a pan-European reseller and wholesale distributor of electronic office supplies. About 50% of the business of the Group is as a wholesaler; the Group sells to large retailers, such as PC World or Tesco and to smaller retailers. The other 50% of the Group’s sales are to end users. The evidence shows that the trading companies in the group are managed to a large extent from Bradford and that they are managed and controlled as a group so that the activities of the group companies throughout Europe are co-ordinated by the head office in Bradford.

(...)

11. I was also satisfied that the three German companies and the French company were either insolvent at 16 May 2003 or likely to become insolvent within a short time and that the assets of those companies would probably be realised for a greater amount in administration than would be the case in the German or French equivalent of liquidation. I concluded that it was appropriate to make administration orders in respect of these German and French companies provided the English Court had jurisdiction to do so.

12. The English Court has jurisdiction to open insolvency proceedings by making administration orders in respect of

the German and French companies if ‘the centre of [the] debtor’s main interests’ is centred in England or Wales (Article 3(1) of Council Regulation 1346/2000 – ‘the Regulation’). Recital (13) of the Regulation reads:

‘(13) The ‘centre of main interests’ shall correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties’.

Article 3(1) provides that in the case of companies, ‘the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary’. Accordingly, before the English Court can open insolvency proceedings in respect of any of the German and French companies in the Group, the petitioning company must provide sufficient proof that its centre of main interests is in England to rebut the presumption in Article 3(1).

(...)

14. I am satisfied from this evidence that Bradford is a place where each of the German Companies conducts the administration of its interests on a regular basis (Recital(13)). Recital (13) refers to the place ‘where the debtor conducts the administration of its interests on a regular basis and is therefore ascertainable by third parties’, while Article 3(1) requires that the centre of the debtor’s main interests should

be in this country if an English Court is to have jurisdiction to open insolvency proceedings. In my view the identification of ‘the debtor’s main interests’ requires the court to consider both the scale of the interests administered at a particular place and their importance and then consider the scale and importance of its interests administered at any other place which may be regarded as its centre of main interests, whether as a result of the presumption in Article 3(1) or otherwise.

15. The requirement in Recital (13) that, as a result of the administration of its interests at a particular place, the fact that such place is the centre of the debtor’s main interests must therefore be ‘ascertainable by third parties’ is very important. In *Geveran Trading Co Ltd/Skjevesland* [2003] BCC 209 Registrar Jacques stated (at 223A) that

‘It is the need for third parties to ascertain the centre of a debtor’s main interests that is important, because, if there are to be insolvency proceedings, the creditors need to know where to go to contact the debtor’.

This reflects paragraph 75 of the *Virgos-Schmidt Report* which explained the rationale for the rule in these terms:

‘Insolvency is a foreseeable risk. It is therefore important that international jurisdiction (which, as we will see, entails the application of the insolvency laws of that Contracting State) be based on a place known to the debtor’s potential creditors. This enables the legal risks which would have to be assumed in the case of insolvency to be calculated’.

16. In my view the most important ‘third parties’ referred to in Recital (13) are the potential creditors. In the case of a trading company the most important groups of potential creditors are likely to be its financiers and its trade suppliers. The evidence in this case is that the financing of the business of the German companies by a factoring agreement was

organised for them by International in Bradford and that 70% of goods supplied to the German companies are supplied under contracts made by International in Bradford. It appears that a large majority of potential creditors by value (which I regard as the relevant criterion) know that Bradford is where many important functions of the German companies are carried out. It is clear that the functions carried out in Bradford are important and that the scale of those functions is very significant. By comparison the local functions of the German companies in Germany are limited. They require approval from Bradford to buy anything costing more than 5,000 euros. Only 30% of stock purchases are negotiated locally. These activities are the most relevant because they involve dealings with potential creditors. 85% of sales are negotiated by the German companies but those activities carry less weight as customers are normally debtors rather than creditors. I was therefore satisfied that Bradford is the centre of the main interests of each of the German companies.

17. The French company, ISA Daisytek SAS, trades from premises which are also its registered office. The Bradford office of International operates in relation to the French company in the same way as it operates in relation to the German companies as set out in paragraph 13 above save that the French company also relies on financial support from International and the Chief Executive Officer spends 40% of his time (mainly in Bradford) on the management of the French company. The French company is controlled from Bradford in the same way as the German companies and International in Bradford carries out the same functions of the French company as it does for the German ones. For the reasons set out in paragraphs 14 to 16 above I was satisfied that Bradford is the centre of the main interests of the French company.

## Note

*Candice Barbé*<sup>1</sup>

1. À la suite de l’insolvabilité de Daisytek International Corporation et de ses filiales américaines<sup>2</sup>, les filiales européennes du groupe Daisytek soumièrent aux juges anglais une demande d’*administration order*<sup>3</sup>. Le 16 mai 2003, la High Court of Justice (Leeds – Royaume Uni) l’octroya à quatorze d’entre elles; il s’agit de la deuxième des trois décisions reproduites. Parmi ces filiales, trois avaient leur siège en

Allemagne, et une, ISA Daisytek SAS, en France. La compétence des juges anglais à leur égard fut longuement motivée: la High Court a en effet souligné qu’elle ne se déclarait compétente que parce que les sociétés requérantes avaient démontré que le centre de leurs intérêts principaux était situé en Grande Bretagne, afin de renverser la présomption établie

<sup>1</sup> Assistante à l’Université libre de Bruxelles, Unité de droit international privé, www.dipulb.be.

<sup>2</sup> Ces sociétés ont bénéficié d’une procédure du *Chapter 11* en date du 7 mai 2003.

<sup>3</sup> Pour bénéficié de cette procédure, il faut que la désignation d’un administrateur soit susceptible de mener soit à la survie de la société, ou d’une partie de ses activités, soit à une réalisation plus avantageuse de ses actifs que par le biais d’une liquidation. Cette procédure est visée par l’annexe A du Règlement CE n° 1346/2000 du Conseil du 29 mai 2000 relatif aux procédures d’insolvabilité (*J.O.C.E. (L) 160* du 30 juin 2000, p. 1, ci-après, *le Règlement*), qui énonce limitativement les procédures visées à l’art. 2, a), c’est-à-dire celles qui sont susceptibles d’être des procédures principales, au sens de l’art. 3, § 1 du Règlement.