

## Unjustly Frozen : Section 127 of the IA reinterpreted

By Mark Hubbard

Section 127 of the Insolvency Act 1986 provides that after the commencement of a winding-up action any disposition of the company's assets is void unless the Court otherwise orders. The meaning and effect of this section have now been radically re-interpreted by the Court of Appeal : *Hollicourt (Contracts) Limited v Bank of Ireland* [2001] 2 W.L.R. 290 [2001] 1 All ER 289.

On the understanding that payments from the company's bank accounts were dispositions within the meaning of the act, hitherto, as soon as they caught wind of the presentation of a petition, banks have refused to act on the company's mandate unless and until the company obtains an order of the court validating its ordinary business transactions, lest they be forced to repay the value of any transactions to the company's liquidator. This freezing of the company's accounts has often caused businesses to fail or prompted emergency applications to the Court for validation.

*Hollicourt* decides that section 127 has no application to the company's bankers in so far as they act as its agents in paying cheques or otherwise act on its instructions as paying bank following the presentation of the petition; the section operates between the company and the payees of its cheques or other recipients of its assets only. In reaching this decision the Court of Appeal determined that it was not bound by what had been considered by many to be the decision of the Court of Appeal on the point in *Gray's Inn Construction Co. Ltd* [1980] 1 WLR 711 and that, in effect, in so far as dicta in that case supported a contrary view, they were wrong. The court preferred to follow a number of Australian decisions on similar provisions in the Australian insolvency legislation.

The *Hollicourt* decision is likely to have the following consequences:

- (1) astute banks will cease freezing company accounts on notice of winding-up proceedings
- (2) less astute banks will continue to do so, and in doing risk breaching their duties to their client and consequential claims from the company or its liquidator
- (3) applications for validation orders will continue to be necessary in law but in practice may become fewer and less pressured
- (4) banks will arguably remain vulnerable to a liquidator's claim in so far as they themselves are the recipients of the company's assets, i.e. in circumstances where an overdraft is repaid following the presentation of a petition, but it seems unlikely that banks will refuse to accept payments on this basis.