JURISDICTION IN COMPANY CASES:

ARTICLE 24 OF THE BRUSSELS I (RECAST) REGULATION (1215/2012)

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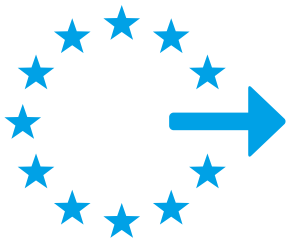
Background

The Brussels I (Recast) Regulation (1215/2012) (the "Recast Regulation") is intended to lay down common rules governing jurisdiction assumed by member states. Persons domiciled in a member state should generally be sued in that member state (article 4), but pursuant to article 5 may also be sued in the courts of another member state in certain cases (specified in sections 2 to 7 of Chapter II of the Recast Regulation). Article 8 provides, among other things, that a person domiciled in a member state who is one of a number of related defendants may be sued in the courts of the place where any one of them is domiciled, provided the claims are closely connected.

The cases of exclusive jurisdiction within article 24 comprise situations where reasons exist to recognise an especially strong and fixed connection between the subject matter of a dispute and the courts of a particular member state. For the cases falling within article 24, the principle of exclusive jurisdiction cuts across and takes priority over the other principles underlying the Recast Regulation, including the principle of jurisdiction for the courts of the member state where the defendant is domiciled and the principle of respect for party autonomy referred to in recital (19) and reflected in various provisions of the Regulation. Article 45(1)(e) provides that the recognition of a judgment shall be refused if the judgment conflicts with the provision for exclusive jurisdiction contained in article 24, and article 46 states that enforcement of a judgment shall be refused in cases falling within article 45.



Effect of Brexit on the applicability of the Recast Regulation

The Recast Regulation now applies to proceedings instituted before the end of the transition period (11pm on 31 December 2020). For proceedings instituted after the end of the transition period, the Recast Regulation does not apply, and such proceedings are instead governed by the 2005 Hague Convention on Choice of Court Agreements (where applicable) or common law rules.

Therefore, decisions of the Court of Justice of the European Union (CJEU) relating to the Recast Regulation made before the end of the transition period continue to be binding on all courts in the UK for disputes instituted before the end of the transition period.[1] CJEU decisions made after the end of the transition period relating to the Recast Regulation are not binding on courts in the UK when interpreting the Regulation, but they should have due regard to them. [2]

Consideration of Article 24 of the Recast Regulation by the Courts

In Akçil v Koza Ltd [2019] UKSC 40, [3] the Supreme Court unanimously overturned the decision of the Court of Appeal [4] regarding the interpretation of the exclusive company law jurisdictional provisions in Article 24(2) of the Recast Regulation.

1 Article 4(4), Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European and the European Atomic Energy Community ("Withdrawal Agreement").
2 Article 4(5), Withdrawal Agreement.
3 https://www.supremecourt.uk/cases/docs/uksc-2017-0195-judgment.pdf.
4 ([2017] EWCA Civ 1609).

The Turkish parent company, Koza Altin, operates a gold mining business and is part of a group of Turkish companies known as Koza Ipek Group ("the Group"), formerly controlled by Mr Ipek.

Mr Ipek claimed that the Turkish government had launched unfounded criminal investigations into the Group. The Turkish criminal courts appointed trustees to control Koza Altin and in response, Mr Ipek changed the constitution and structure of Koza Ltd, an English subsidiary of Koza Altin. These changes were designed by Mr Ipek to prevent alterations to the articles or directors of Koza Ltd by the trustees, without his consent.

The trustees subsequently served a notice first under s303 and then s305 of the English Companies Act 2006 (the "2006 Act") to convene a general meeting of Koza Ltd to amend its articles of association and change its directors, to remove Mr Ipek. Mr Ipek and Koza Ltd applied for an injunction to prevent the meeting, on two bases:

1. that the two notices were void under s303(5)(a) of the 2006 Act as Mr Ipek did not consent to the proposed resolutions, required by the new provision in the articles which he had introduced ("the English company law claim"); and
2. that the English courts should not recognise the authority of the trustees to cause Koza Altin to do anything as a shareholder of Koza Ltd, because they were appointed on an interim basis only and in breach of Turkish law, the European Convention on Human Rights and natural justice, so that it would be contrary to public policy for the English courts to recognise the appointment ("the authority claim").

The parties agreed that the English court had exclusive jurisdiction to determine the company law claim, under Article 24(2) of the Brussels I Regulation (EC 1215/2012) ("Article 24(2)") as follows:

"The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties: […] (2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies […], or the validity of the decisions of their organs, the courts of the Member State in which the company […] has its seat. In order to determine that seat, the court shall apply its rules of private international law".

However, Koza Altin and the trustees filed a jurisdiction challenge to the authority claim. Asplin J considered that the authority claim was inextricably linked to the English company law claim. The Court of Appeal upheld that decision. The Supreme Court unanimously disagreed with the interpretation of Article 24(2) by the Court of Appeal, concluding that:

i. Article 24(2) must be interpreted narrowly because it is an exception to general principles (in providing for exclusive jurisdiction).

ii. The 'evaluative judgment' as to what the case principally concerned was designed by the European Court to narrow the scope of Article 24(2) to focus on the key issues in the case, not to expand it to include ancillary claims not inextricably linked to the company and its place of incorporation.

iii. There must be a 'particularly close link' between the dispute and the state whose courts are said to have exclusive jurisdiction, so that those courts are best placed to decide the issue (EON Czech Holdings AG v Dedouch). [5]

iv. Article 24(2) only applies to disputes in which a party is challenging the validity of a decision of a company, rather than the decision itself, or an organ of a company under the applicable company law or the company's articles of association (Hassett v South Eastern Health Board). [6] It also does not apply when ancillary claims are made challenging the company's powers, such as in a dispute as to the validity of a contract said to be ultra vires, as in Berliner Berkehrsbetriebe (BVG) v JP Morgan Chase Bank NA. [7]

Commercial Relevance

This line of case law impacts litigation involving multinational corporate groups, preventing litigants from using a dispute about the internal affairs of one company to include all other claims concerning the group and, in the process, undermine normal jurisdictional rules.

It also emphasises that the courts of the place of incorporation are best placed to decide on issues which genuinely concern the validity and internal affairs of the company. This principle applies equally to companies incorporated in non-EU member states.

5 Case C-560/16) [2018] 4 WLR 94.
6 Case C-372/08) [2008] ECR I-7403.
7 Case C-144/10) [2011] 1 WLR 2087.