

## Cayman Islands Restructuring – current state of play

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Until the Cayman Islands introduces any changes to its corporate insolvency regime, with the COVID pandemic pushing many groups into the zone of insolvency, the following considerations remain relevant to structures involving a Cayman Islands entity:

- In recent years the Cayman Islands courts have become increasingly sympathetic to the needs of debtor companies looking to implement a viable restructuring plan
- Secured creditors can enforce their security in accordance with contractual terms independently of any formal insolvency proceeding and unaffected by the automatic stay arising from such proceedings
- Solvency in the Cayman Islands is determined by reference to a cash-flow test but balance sheet solvency will nonetheless be relevant to the exercise of directors' duties and the viability of a restructuring proposal
- When a Cayman company is within the zone of insolvency the directors must prioritise the interests of creditors when exercising their fiduciary duties to the company
- The appointment of voluntary liquidators does not itself involve a court process or impose a moratorium on legal proceedings, but voluntary liquidators (or any creditor or contributory) may subsequently apply for Court supervision where enhanced liquidator powers and/or a stay on proceedings would be in the best interests of stakeholders
- A company facing court-ordered liquidation may apply to appoint liquidators on a provisional basis in order to promote a plan of reorganisation, including a scheme of arrangement
- An onshore liquidation proceeding or restructuring arrangement will generally not bind creditors of a Cayman company that are not subject to the jurisdiction of the onshore court, such that a parallel Cayman process will often need to be considered

Members of Ogier's Restructuring and Insolvency team have been at the forefront of legal developments in relation to restructuring in the Cayman Islands, with significant roles in the major cases in recent years and substantial experience of the different methods utilised to assist an onshore restructuring process. Please contact your usual Ogier contact if you need advice in this area.

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