



Latitude: Ogier's Restructuring and Insolvency digest, May 2022

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With a sharp global increase in energy costs, localised inflation at record highs and interest rates trying to offer some counterbalance to the soaring costs of living driven by the increases in prices of goods and services, many companies will now, literally, struggle to keep the lights on, so an increase of insolvent restructuring is inevitable to some degree.

However, emergence into the world's "new normal" during this late stage of the pandemic will see some businesses turning keener focus to long-term sustainability, good governance and management, structural rationalisation and a drive for cost efficiencies. We should see larger volumes of non-contentious restructuring as a result, whether through private equity-backed takeovers, bond or debt restructurings and/or intricate internal reorganisations, all of which we are starting to see in the market.

Credit institutions will undoubtedly play their part in the financial markets by working with businesses to amend existing credit facilities to help stabilise the uncertainty of potential insolvent restructuring scenarios.

However, with China – one of the world's largest net-exporters – continuing to pursue a zero-COVID policy, and with soaring energy prices exacerbated by Russia's invasion of Ukraine, the longer-term global supply-chain disruption may well lead to further insolvent casualties that non-contentious restructuring may not be able to save.

Please get in touch with your usual Ogier contact or any member of the team to discuss these topics further.

Meet our restructuring and corporate recovery team.

Reflections from the FIRE Starters Global Summit in Dublin

Jersey partner James Angus, Guernsey partner Alex Horsbrugh-Porter, Cayman partner Shaun Maloney and Cayman senior associate Marie Skelly recently attended the FIRE Starters Global Summit in Dublin. In this article, they share a short overview of some of the sessions they attended.

Essential considerations for BVI funds in challenging times

To help BVI hedge funds navigate the myriad of issues brought on by recent events, this advisory offers a high-order checklist for fund directors and investment managers to consider. This checklist is arranged under three main topics: operational issues, issues around liquidity and possible termination, and communication and reporting considerations.

Considerations in relation to commercial landlords: a Jersey perspective

The UK government attempted to ease the financial strain of the COVID-19 pandemic with, among other things, rent "holidays" for tenants and the opportunities for loans for certain businesses. While some businesses were able to avail themselves of such measures, not all were eligible or able to utilise such schemes. It seems that commercial landlords have been one of the sectors that have been hit hard, especially with some commercial tenants not surviving the downturn.

Just and equitable winding up: the status quo in Jersey

The Royal Court of Jersey may grant a winding up order on the grounds that it is just and equitable to do so pursuant to article 155 Companies (Jersey) Law 1991. This can apply to a solvent or insolvent company. It is similar to the statutory powers of the English courts under section 122(1) (g) Insolvency Act 1986. Although the Royal Court will have regard to English case law in assisting their interpretation of "just and equitable", recent Jersey case law appears to have developed a much wider discretionary application. This has inevitably led to the widening of circumstances in which such an order will be granted in Jersey.

Jersey insolvency: a new beginning for creditors

After a lengthy consultation period, Jersey's legislature recently passed the Companies (Amendment No.8) (Jersey) Regulations 2022 amending the Companies (Jersey) Law 1991. This amendment has introduced a new insolvency remedy for creditors of Jersey companies with effect from 1 March 2022. This is an important development for the insolvency legislation of Jersey, bolstering the jurisdiction's position as a leading international finance centre.

Cayman Court supports practical approach to adjudication of debts in liquidation

How should liquidators deal with the administrative burden of adjudicating thousands of low-value proof of debts in a liquidation estate, without exhausting the limited assets available in the liquidation estate? The Grand Court recently sanctioned a pragmatic solution.

Insolvent Cayman companies: will the Court wind up or allow an opportunity to restructure?

In its January 2022 decision of *In the matter of Evergreen International Holdings Limited*, the Grand Court of the Cayman Islands ordered the immediate winding up of Evergreen International Holdings Limited. This decision builds on a consistent thread running through the cases: while the Cayman Court remains willing to support genuine efforts by companies to restructure, when an insolvent company fails to be proactive and take tangible steps for a restructuring in the face of undisputed creditor claims, the Court will enforce the creditors' rights to an immediate winding up order.

Snapshot: Cayman Islands Court of Appeal clarifies test for security for costs in context of recovery claims by official liquidators against former management

The Cayman Islands Court of Appeal has recently delivered helpful clarification on the principles which apply with respect to security for costs when the official liquidators of an insolvent fund seek to bring claims against its former management. Where it is clear to the Court that a defendant was responsible for management decisions immediately before a company entered insolvency, the Court may exercise its discretion, notwithstanding the impecuniosity of the plaintiff company, not to order payment of security for costs.

Modified Universalism: an analysis of the Royal Court of Jersey's ruling

The principle of "modified universalism" has recently come under scrutiny in the case of *Investin Quay House Limited (in liquidation) v BUJ Architects LLP*. While the Royal Court of Jersey was principally concerned with whether or not to exercise its discretion to impose an interim injunction, the underlying legal issue was the application of Universalism.

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Meet the Author



[Michael Killourhy](#)

Partner

[British Virgin Islands](#)

E: michael.killourhy@ogier.com

T: [+1 284 852 7309](tel:+12848527309)

Key Contacts



[Simon Schilder](#)

Partner

[British Virgin Islands](#)

E: simon.schilder@ogier.com

T: [+44 1534 514298](tel:+441534514298)



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: +1 345 815 1880



Shaun Maloney

Partner

Cayman Islands

E: shaun.maloney@ogier.com

T: +44 1534 514416



Jordan Constable

Associate

Cayman Islands

E: jordan.constable@ogier.com

T: +1 345 815 1808



Max Galt

Associate

Cayman Islands

E: max.galt@ogier.com

T: +1 345 815 1830



Alex Horsbrugh-Porter

Partner

Guernsey

E: alex.horsbrugh-porter@ogier.com

T: +44 1481 752272



Mathew Newman

Partner

Guernsey

E: mathew.newman@ogier.com

T: [+44 1481 752253](tel:+441481752253)



Kate Hodson 何嘉欣

Partner and Head of ESG (Legal) 何嘉欣

Hong Kong

E: kate.hodson@ogier.com

T: [+852 3656 6049](tel:+85236566049)



Michael Snape 麥斯臣

Consultant 麥斯臣

Hong Kong

E: michael.snape@ogier.com

T: [+852 3656 6066](tel:+85236566066)



Maria On 劉瑪麗

Counsel 顧問

Hong Kong

E: maria.on@ogier.com

T: +852 3656 6144



James Angus

Partner

Jersey

E: james.angus@ogier.com

T: +44 1534 514316



Katrina Edge

Partner

Jersey

E: katrina.edge@ogier.com

T: +44 1534 514192



James Lydeard

Group Partner, Ogier Legal L.P.

Jersey

E: james.lydeard@ogier.com

T: [+44 1534 514270](tel:+441534514270)



Bruce MacNeil

Partner

Jersey

E: bruce.macneil@ogier.com

T: [+44 1534 514394](tel:+441534514394)



Kate McCaffrey

Partner

Jersey

E: kate.mccaffrey@ogier.com

T: +44 1534 514355



Oliver Passmore

Partner

Jersey

E: oliver.passmore@ogier.com

T: +44 1534 514247



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: +44 1534 514318



Jennifer Cox

Managing Associate

Jersey

E: jennifer.cox@ogier.com

T: [+44 1534 514174](tel:+441534514174)



Charlie Dessain

Associate

Jersey

E: charlie.dessain@ogier.com

T: [+44 1534 514425](tel:+441534514425)



Sophie Treanor

Senior Associate

Jersey

E: sophie.treanor@ogier.com

T: [+44 1534 514256](tel:+441534514256)

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