

Three Arrows case sees what is believed to be BVI's first ever extra-territorial summoning of company directors to appear for a private examination by joint liquidators

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The BVI Court has endorsed what is believed to be its first extra-territorial order summoning directors of a BVI company (in liquidation) to appear for private examination by joint liquidators - *In BVIHC(COM) 2022/0119, Russell Crumpler and Christopher Farmer as Joint Liquidators of Three Arrows Capital Ltd (in liquidation) -and- (1) Zhu Su (2) Kyle Davies.*

Three Arrows conducted a high-profile and prominent cryptocurrency business as a digital asset hedge fund, reportedly operating assets in excess of US\$10 billion at one stage. Owing to the volatility in the crypto market the company entered liquidation in June 2022 with significant liabilities.

Upon a company entering insolvent liquidation it is paramount that officers of the insolvent company urgently coordinate with the liquidators so that immediate steps can be taken to protect and secure what remains of the company's assets. Without this assistance a liquidator must build the company's books and records from scratch, which not only wastes valuable time and increases costs, but also puts any unsecured assets at considerable risk.

The founders of Three Arrows are Mr Su Zhu and Mr Kyle Davies, who remained in office as directors of the company prior to its insolvency. It became clear soon after the joint liquidators' appointment that the founders were not going to cooperate or lend their assistance to the ailing company in any meaningful way, particularly after the founders failed to respond to a section 276 notice (under the Insolvency Act, 2003) requiring them to prepare and submit a Statement of Affairs of the Company. Failure to comply with a section 276 notice alone is an offence under the Insolvency Act and carries a fine for non-compliance.

Section 282 of the Act gives liquidators a power where, by giving notice in writing, certain

individuals who are thought likely to be in possession of relevant information concerning a company's affairs (including its directors) are required to provide information, to attend on the officeholder or to be examined on oath. A failure to comply with such a notice without reasonable notice constitutes an offence under section 282(3) of the Act. In addition, section 284 of the Act provides for applications to be made for the same persons (including the company's directors) to be examined before the Court.

In the present case, despite multiple further requests, the founders have not cooperated with the joint liquidators, despite the clear and pressing need for them to do so. The joint liquidators accordingly felt compelled, in fulfilment of their duties, to apply to the BVI Court to seek an order summoning the founders for examination. While section 284 of the Insolvency Act is clear that such a power exists, there are no reported cases of directors, who are resident outside of the BVI, being compelled to appear before the BVI Court.

On its face, it is surprising that there is no existing authority confirming the extra-territorial effect of section 284. Particularly in a jurisdiction where hundreds of thousands of offshore companies are run by directors who reside outside of the country. Indeed, the present case shows the stark need for liquidators to have access to such powers.

To date, the Court has not rendered a written judgment and the order was obtained ex parte, however, confirmation of the availability of this power to a liquidator's arsenal will come as welcome news to the many prominent insolvency practitioners in the BVI.

The joint liquidators were represented by Ogier, who instructed leading counsel Richard Fisher KC and Henry Phillips of South Square.

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Key Contacts



Brian Lacy

Partner

British Virgin Islands

Jersey

E: brian.lacy@ogier.com

T: [+44 1534 514493](tel:+441534514493)



Justin Davis 戴正霆

Partner 合伙人

Hong Kong

E: justin.davis@ogier.com

T: [+852 3656 6141](tel:+85236566141)



Oliver Payne 彭奥礼

Partner 合伙人

Hong Kong

E: oliver.payne@ogier.com

T: [+852 3656 6044](tel:+85236566044)



Romauld Johnson

Associate

British Virgin Islands

E: romauld.johnson@ogier.com

T: [+1 284 852 7387](tel:+12848527387)



Ewelina Clyde-Smith

Counsel

British Virgin Islands

London

E: ewelina.clyde-smith@ogier.com

T: [+44 1534 514187](tel:+441534514187)

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