

Cayman Court makes winding up order in respect of foreign registered Silicon Valley Bank

Insights - 04/07/2023

The Grand Court of the Cayman Islands has sought to protect Cayman investors and creditors whose interests may not otherwise be safeguarded in the context of the multijurisdictional liquidation.

On 29 June 2023, the Grand Court of the Cayman Islands (the **Court**) concluded that the foreign-registered Silicon Valley Bank should be wound up following the presentation of a petition by its Cayman branch creditors and addressed further ancillary issues.

| Background

Following the collapse on 10 March 2023 of Silicon Valley Bank, the US Federal Deposit Insurance Corporation (**FDIC**) was appointed as a receiver to act as custodian for the entity's property, finances, general assets and business operations (the **Receiver**). The FDIC confirmed three days later on 13 March 2023 that all assets of the bank were transferred to the Receiver and assured depositors that their debts would be made whole.

However, depositors of the Cayman branch of Silicon Valley Bank, which had been registered in the Cayman Islands as a foreign company under Part IX of the Companies Act (2023 Revision) since 2007, subsequently received notice that deposits within the Cayman branch were not covered by this surety. Shortly thereafter, the Cayman branch depositors' bank statements showed a bank balance of zero, leading to the inference that their funds had been transferred by the Receivers without their authorisation (despite their exclusion from the insurance regime, and despite the transfer of the loan book of the Cayman branch as part of the Silicon Valley Bank asset sale to First Citizens Bank & Trust Co).

The FDIC has indicated that all depositors of the Cayman branch of Silicon Valley Bank will be treated as general unsecured creditors and has requested that any claims be lodged by 10 July

2023. Nonetheless, three such depositors recently presented a petition to wind up the Cayman branch on grounds of insolvency under sections 91(d) and 92(d) of the Companies Act (**Petition**) and a winding up order was made appointing liquidators on 29 June.

Anonymity and advertisement

Prior to considering the substance of the Petition the Court first considered two important procedural questions which are relevant to the nature of a winding up proceeding as a class remedy.

First, due to the short window of time between the presentation and hearing of the Petition, the petitioners had not been able to comply with the advertising requirements of the Companies Winding Up Rules (2008 Revision) (**CWR**). While the strict timeframes specified in the Rules had not been complied with, the Honourable Justice Doyle (**Doyle J**) determined that the non-compliance was mitigated by having advertised the Petition on short notice in Hong Kong (where many of the depositors are understood to be located) and the contemporaneous media coverage of the petition in both the United States and the Cayman Islands. He felt that, as a practical matter, adequate notice had been provided to the creditors of the company, albeit not in the traditional manner.

Second, in circumstances where the Petition had initially been presented by a number of depositors who sought to remain anonymous contrary to procedural requirements, the Court had to consider the importance of open justice as part of the exercise of ensuring the proper administration of justice. It had been argued that the risk of reputational harm to the petitioners of disclosing their names was sufficient to justify retaining their anonymity. However, the potential harm to the petitioners' economic interests was ultimately not enough to satisfy Doyle J that there were exceptional circumstances justifying derogation from the procedural requirements of Order 24, rule 1 of the CWR, which provides that the name and address of the petitioner(s) be included in the petition and advertisement and the general principle that justice be administered in public.

Three of the original petitioners were willing to pursue the Petition on an open basis and so Doyle J granted an application for leave to amend the petition to name those parties and remove the petitioners who did not wish to be named.

Winding up

Doyle J concluded that he had jurisdiction under section 91(d) (iv) of the Companies Act to wind up Silicon Valley Bank as a foreign registered company and confirmed that he was not only satisfied that the company ought to be wound up, but also that it was just and equitable to do so since the position of the Cayman branch depositors needs to be investigated by official liquidators and their interests protected.

Conclusion

The Court's consideration of the Silicon Valley Bank petition and the ancillary issues that arose during the hearing demonstrated the extent to which the Cayman Court is willing, where appropriate jurisdictional thresholds are satisfied, to take steps to protect Cayman investors and creditors whose interests may not otherwise be safeguarded in the context of a multijurisdictional liquidation. The Court also adopted a practical approach to managing both advertisement and amendment of the Petition, seeking to balance the importance of upholding fundamental principles of open justice against the need to take action in a timely manner to protect creditors.

It is not clear at this stage what, if anything, the appointed liquidators will be able to do to recover the assets of Cayman branch depositors, given the position adopted by the FDIC with respect to standing to bring claims in the receivership. It will be important that any Cayman branch depositors seek US law advice as to their obligation to lodge their claims under the FDIC Receivership regime by the Claims Bar Date of 10 July 2023 to ensure they do not lose a potential remedy, as the FDIC Notice indicates that "the Receiver will not accept a claim filed on behalf of a proposed class of individuals or entities or a class of individuals or entities certified by a court. Each individual or entity must file a separate claim with the Receiver."

For any depositors who have questions on Cayman Islands law arising from the Receiver appointment or winding up of the Cayman branch, please feel free to contact Marc Kish or Gemma Lardner of Ogier.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Holly Johnston

Associate

Cayman Islands

E: holly.watling@ogier.com

T: [+1 345 815 1807](tel:+13458151807)

Key Contacts



Marc Kish

Partner

Cayman Islands

E: marc.kish@ogier.com

T: [+1 345 815 1790](tel:+13458151790)



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: +1 345 815 1880

Related Services

Legal

Dispute Resolution

Related Sectors

Restructuring and Insolvency