

The first ever "soft touch" provisional liquidation in the BVI Constellation Overseas Ltd And Others

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The first ever "soft touch" provisional liquidation in the BVI: Constellation Overseas Ltd And Others - insights from the Ogier lawyers involved

Ogier has successfully represented the applicants in the first ever "soft touch" provisional liquidation in the BVI.

Working on the application in conjunction with White & Case in New York and Galdino & Coelho Advogados in Brazil, Ogier's Grant Carroll and Brian Lacy advised Constellation Oil Services Holding - a Brazilian-headquartered oil and gas drilling group that is restructuring in Brazil and the US - and its joint provisional liquidators, Kalo managing partners Eleanor Fisher and Paul Pretlove.

Grant Carroll said: "This decision puts beyond doubt the fact that the BVI does indeed have jurisdiction to appoint "soft touch" provisional liquidators and therefore has a similar restructuring tool kit to other offshore jurisdictions such as the Cayman Islands and Bermuda."

A copy of the written judgment handed down by BVI Commercial Court Judge Justice Neville Adderley on 5 February 2019, which contains an extensive review of relevant decisions from other jurisdictions including England and Wales, the Cayman Islands, the Bahamas, Bermuda and Hong Kong, can be found [here](#).

Justice Adderley appointed soft-touch joint provisional liquidators over a group of BVI-registered companies belonging to Constellation. The 'soft-touch' approach has been used to help the businesses restructure when there is no alleged wrongdoing by directors. Constellation, which has eight drilling rigs, filed for judicial reorganisation in Rio and Chapter 15 bankruptcy protection in New York on 6 December, citing the oil and gas slump and economic recession in Brazil.

"The "soft touch" joint provisional liquidation order leaves the management of the applicants in

place, with the joint provisional liquidators overseeing and assisting in the restructuring process," explained Grant. "With over 400,000 active companies in the BVI, this is a significant development for jurisdiction and ensures that those companies can form part of domestic or cross-border restructuring."

Ogier continues to be at the forefront of global legal developments in restructuring, having acted recently for the joint provisional liquidators in Ocean Rig and acts for Toys "R" Us in its restructuring.

"The availability of soft-touch liquidation in the BVI is a necessary development for the BVI's role in corporate restructurings," Grant added. "It provides the BVI with similar restructuring tools as a number of other offshore jurisdictions and, as Judge Adderley said, it is a protective measure to 'ward off predatory creditors who may wish to take satellite ex parte actions against the companies registered in the BVI in an attempt to steal a march on creditors generally.'"

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