



## Latitude October 2020

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### Latitude: Ogier's restructuring and corporate recovery digest October 2020

Latitude is the latest addition to Ogier's bank of sector-specific newsletters keeping you up to date on the issues that matter. Latitude brings together briefings, guides and news stories from the world of restructuring and corporate recovery, providing to-the-point, no-nonsense guidance as we navigate a changing business environment.

Each edition of Latitude will feature a detailed guide to the restructuring, insolvency and corporate recovery procedures in one of Ogier's jurisdictions. This month's edition shines the spotlight on Cayman, which has been the locus of a number of significant matters in restructuring and corporate recovery over the past few years.

Read our Cayman guide here: [Restructuring and Corporate Recovery Jurisdiction Guide: Cayman](#)

Our Cayman law team includes partners based in Cayman, Hong Kong, Jersey and London, providing round-the-clock advice to clients.

Enjoy this edition of Latitude - should you wish to discuss any of the matters covered here, please get in touch with our team following the link below.

### Meet our Restructuring and Corporate Recovery team.

Read more articles from the team here:

### The Cayman Islands Court of Appeal relieves the tension between arbitration clauses and the just and equitable winding up jurisdiction

In a comprehensive judgment published on 23 April 2020, the Cayman Islands Court of Appeal, comprising Moses JA, Martin JA and Rix JA, has provided welcome clarification of the interplay

between a contractual agreement to arbitrate disputes arising between shareholders and the exclusive jurisdiction of the Court to determine whether a company should be wound up on the just and equitable ground.

Read the full briefing here: [The Cayman Islands Court of Appeal relieves the tension between arbitration clauses and the just and equitable winding up jurisdiction](#)

## Snapshot: Bringing claims against Cayman entities subject to insolvency processes

Rumours that a company is in the zone of insolvency may create a race to the assets, with potential creditors or interested parties commencing proceedings in an attempt to secure payment from the company before its assets are fully dissipated or tied up in the insolvency process. This can destroy the collective value in the enterprise or scupper a restructuring and result in significant duplicative costs.

Read the briefing from Jennifer Fox and Sam Keogh here: [Snapshot: bringing claims against Cayman Islands entities subject to insolvency processes](#)

## Snapshot: Cayman Islands restructuring - current state of play

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

Read the briefing from Jeremy Snead here: [Snapshot: Cayman Islands restructuring - current state of play](#)

## Snapshot: Determining whether a petition debt is disputed on substantial grounds

It is trite law that where a petition debt is disputed in good faith and on substantial grounds, the ordinary practice of the Court is to dismiss or strike out the winding up petition. However, this principle is more easily applied in theory than in practice. As a result, the Grand Court of the Cayman Islands has observed recently that "It is remarkable how much case law has been generated in relation to a legal test which has essentially been settled for many years" (Re Sky Solar Holdings Ltd).

That body of case law has been swelled in 2020 by a number of decisions of the Grand Court which provide further guidance as to whether a petition debt is to be considered genuinely disputed on substantial grounds, requiring that the creditor's winding up petition be struck out for abuse of process.

Read the briefing from Gemma Lardner here: [Snapshot: Determining whether a petition debt is](#)

disputed on substantial grounds

## Constellation: a dazzling success for BVI restructuring

In February 2020 the British Virgin Islands Commercial Court (the "BVI Court") sanctioned a creditor scheme of arrangement, which was part of a much larger cross-border restructuring. This scheme of arrangement, which as a creditor scheme was itself rare for the BVI, was preceded by the BVI's first ever "soft touch" provisional liquidation (in linked proceedings), which commenced in December 2018.

The proceedings in the BVI utilised provisions of the BVI Business Companies Act 2004 (the "BC Act") as well as the BVI Insolvency Act, 2003 (the "IA"). In total, 11 BVI companies were restructured, by way of the ground breaking "soft touch" provisional liquidation in the BVI, a simultaneous judicial reorganisation in the Brazilian courts, a BVI Scheme of Arrangement, as well as ancillary relief for recognition and protection under Chapter 15 of the US Bankruptcy Code.

Read the briefing here: [Constellation: a dazzling success for BVI restructuring](#)

## Recognition of UK insolvency practitioners in Jersey

In the current COVID-19 environment it is likely that there will be more businesses becoming insolvent. Some of those businesses will have an interest in Jersey property. For example as owners of Jersey property or holders of a lease of retail premises situated in the Island. The business may also have locally employed employees to consider.

Insolvency practitioners appointed outside Jersey in respect of an overseas person or company (or of a Jersey company subject to English insolvency proceedings) need to be recognised in Jersey before they can deal with certain forms of Jersey property. This is because Jersey immovable property can only be transacted by passing a contract before the Royal Court.

Read the briefing by Jonathan Hughes here: [Recognition of UK insolvency practitioners in Jersey](#)

## Snapshot: Guernsey injunctions in aid of foreign proceedings

Where a potential judgment debtor in "onshore" proceedings threatens to dissipate its assets, the plaintiff may face a Pyrrhic victory with no assets against which to enforce its judgment. Where the defendant is a Guernsey company or has assets in Guernsey, the Royal Court of Guernsey has a statutory jurisdiction to grant an injunction in aid of those foreign proceedings including freezing injunctions to prevent defendants dealing with the relevant assets in Guernsey.

Read the briefing from Sandie Lyne here: [Snapshot: Guernsey injunctions in aid of foreign proceedings](#)

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.

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