



Latitude March 2021

Newsletters - 12/03/2021

Latitude: Ogier's restructuring and corporate recovery digest, March 2021

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Q4 2020 and Q1 2021 saw some significant developments in offshore restructuring, insolvency and corporate recovery, with the passage of new legislation and the handing down of judgments providing welcome clarification on laws relevant to practitioners in this area.

In Cayman, the landmark Private Funding of Legal Services Act 2020, when gazetted, will enable parties to enter into agreements with funders and attorneys on negotiated terms without the need for Court approval, while in Guernsey the Royal Court recently handed down judgment clarifying that liquidators can approach the court to approve a significant decision that they have taken to enter into a transaction. Both of these developments are examined in the briefings below.

In team news, we were delighted to see newly appointed global head of Restructuring and Corporate Recovery Mathew Newman named Litigator of the Year at the Citywealth IFC Awards. Rachael Reynolds has been appointed global senior partner and Marc Kish has been appointed global head of Dispute Resolution.

The Restructuring and Corporate Recovery team has also welcomed a number of new senior members, with Alex Horsbrugh-Porter and Sandie Lyne joining the partnership in Guernsey, Justin Davis and Michael Snape joining the partnership in Hong Kong, and Christopher Levers joining as counsel in Cayman. Industry recognition of our team continues, with Ogier named in the GRR list of top firms for Restructuring and Corporate Recovery and our BVI team achieving top-tier rankings across the board in Chambers 2021. A cross-jurisdictional Ogier team recently represented UK insurance intermediary Ardonagh Group on its recent \$2 billion corporate restructuring and debt financing.

Enjoy Latitude - if you would like to discuss any of the matters covered here, please get in touch with your Ogier contact or our team following the link below.

[Meet our Restructuring and Corporate Recovery team](#)

Guernsey in the spotlight: a guide to Guernsey's restructuring and insolvency law

Our latest snapshots: to the point summaries of key areas of law

- [To debt or not to debt? BVI structures for private equity funds and debt providers](#)
- [Compulsory liquidation in Cayman](#)

Practising modified universalism in the Cayman Islands: from China Agrotech to Sun Cheong

The Cayman Islands and Hong Kong courts have both provided useful directions in recent months as to the manner in which the courts in the respective jurisdictions will manage cross-border applications to restructure Cayman Islands companies, consistent with the principles of international comity and modified universalism.

Third Party Litigation Funding and Private Funding of Legal Services Act - Cayman Islands

On Monday 14 December 2020, the Cayman Islands Parliament passed the landmark Private Funding of Legal Services Act 2020. The Act was Gazetted on 7 January 2021, but is subject to a commencement order and is therefore not yet in force. The Act has been several years in the making, and builds on case law endorsing the use of regulated litigation funding in the Cayman Islands. It will give litigants greater access to justice and a wider range of funding options enabling parties to enter into agreements with funders and attorneys on negotiated terms they consider to be attractive without the need for Court approval (other than in cases involving the statutorily prescribed exceptions).

Principles for liquidators to get decisions blessed by the Guernsey Royal Court

The Royal Court recently handed down judgment in *In the matter of CanArgo Limited (in liquidation)* [2020] GRC064, bringing to an end an important chapter in a long-running dispute regarding control of the exploration and exploitation of the oil and gas reserves of Georgia. This judgment makes it clear that liquidators can approach the court to approve a significant decision that they have taken to enter into a transaction and that such decision is akin to a Public Trustee v Cooper blessing of a momentous decision in a trusts context.

Recent legal trends in Dispute Resolution in the Cayman Islands

Recent perturbations in the world economy have led to an increase in enquiries from funds in some form of distress or from investors in connection with such funds. Although this has not led to a downturn in fund formations (indeed, the Cayman Islands have benefited strongly from a “flight to quality” of fund firms from less established jurisdictions), we expect to see an increase in this area of work and insolvency filings will ultimately follow.

Jersey corporate insolvency procedures

The financial impact of the COVID-19 pandemic has put pressure on a wide range of structures and, as a result, lenders, borrowers and other counterparties are looking more closely at the impact of possible insolvency proceedings. As Jersey entities are often used in cross-border finance transactions, it is important to be aware of the differences between Jersey and English insolvency procedures for companies, trusts and limited partnerships.

Commencing proceedings against a Cayman Islands company in liquidation

The Grand Court of the Cayman Islands (the “Grand Court”) recently considered the statutory moratorium against commencing proceedings against a Cayman Islands company which has been placed into liquidation. In the case of *BDO Cayman Ltd. and BDO Trinity Ltd. v Ardent Harmony Fund Inc. (in Official Liquidation)*[1] the Grand Court held that a plaintiff which launches originating proceedings against a company in liquidation, seeking adverse orders against that company, “patently requires leave” of the Court to bring the proceedings. The Grand Court also held that the plaintiffs in that case did not have “a case worth entertaining” in respect of either basis on which they had brought the applications in question.

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.

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