



## Latitude June 2021

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

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Across the world, government support has kept insolvency rates down but as jurisdictions look to loosen restrictions and ease back into some kind of normality, governments can't foot the bill forever.

As financial support is withdrawn, restructuring, insolvency and corporate recovery practitioners will likely see a spike in activity, and offshore firms are braced for an increase in demand from clients. After that, there'll likely be lender enforcement resulting in formal insolvencies by the end of the year and into next year.

All of these issues, and others, were explored in the recent INSOL seminar, chaired by head of Ogier's Restructuring and Corporate Recovery, Mathew Newman.

Enjoy Latitude, and please get in touch with your usual Ogier contact or any member of the team to discuss these topics further.

[Meet our restructuring and corporate recovery team.](#)

### BVI Court demonstrates it will continue to aid creditors pursuing unpaid debts

A recent matter which came before a strong Court of Appeal panel demonstrates that the BVI Court will continue to come to the aid of creditors pursuing unpaid debts and that they should not necessarily be deterred from pursuing a debt in the BVI even if the security over the debt is in

issue.

## Using provisional liquidation offshore to preserve bondholder claims under keepwell deeds

Offshore companies are frequently used to facilitate debt finance transactions for large PRC based corporate groups. In the context of a bond issue, the corporate group will often incorporate an offshore subsidiary for the sole purpose of acting as the bond issuer.

Bondholders, naturally, expect some form of credit protection, which the offshore subsidiary cannot usually provide by itself. That is where keepwell deeds (also known as letters of comfort) come in.

## Grand Court of the Cayman Islands comments on the relationship with arbitration clauses

In the recent case of *Re Grand State Investments Limited*, the Grand Court of the Cayman Islands (**Grand Court**) struck-out a winding-up petition presented against Grand State Investments Limited (**Company**) by a shareholder claiming a debt (**Petitioner**) on the ground that the alleged debt was disputed on bona fide and substantial grounds. In addition, Mr Justice Parker went on to hold that, had the petition not been struck out, it would have been stayed anyway in favour of arbitration.

## Frozen in time: do limitation periods apply to claims against Cayman companies in liquidation?

Legal claims can only be brought within the applicable limitation period prescribed by the Limitation Act (1996 Revision). A defendant to any claim that is time-barred has a complete defence. Prior to the recent decision of *Ritchie Capital Management LLC et al (Ritchie) v Lancelot Investors Fund Ltd (Lancelot) and General Electric Company (GE)*, it had been generally understood that the Cayman approach to claims against companies in liquidation would follow the English position on the issue of limitation. That is, the limitation period will cease to run once the company goes into liquidation, with some exceptions. The Cayman Grand Court, however, in the unreported case of *Ritchie*, has challenged this assumption and reinterpreted the principles from the English authorities on this important point.

## The rise in debt for equity swaps structured through Jersey

The use of Jersey as a jurisdiction of choice for restructurings involving debt for equity swaps has been growing - particularly for restructurings of UK and international corporate groups. While no doubt driven in part by the current economic environment, it marks a continuing trend, with a number of debt for equity restructuring transactions having taken place in the last 12 months involving a Jersey structure.

## Principles applicable to an 'insolvent' trust in Jersey

It is important that trustees understand their obligations if their trust structure comes under financial stress. Helpfully, the Jersey courts have provided guidance on the principles applicable to "insolvent" trusts, which is likely to be highly persuasive in other jurisdictions.

## Recent trends: provisional liquidation in the Cayman Islands

There are two grounds on which provisional liquidators (PLs) may be appointed in the Cayman Islands under the Companies Act (2021 Revision) (the **Companies Act**), following the presentation of a winding up petition and before the making of a winding up order. The first is what is commonly referred to as a "full powers" PL appointment under section 104(2) of the Companies Act and the second is known as a "restructuring" or "light touch" PL appointment under section 104(3) of the Companies Act.

## Restructuring and corporate recovery: an outlook for 2021

Across the world, government support has kept insolvency rates down but as jurisdictions look to loosen restrictions and ease back into some kind of normality, governments can't foot the bill forever.

## INSOL Europe insights: cryptoassets and insolvency

It's probably becoming a cliché to say that the future is already here, but it's hard to resist. New technology increasingly pervades every professional sector, including that of insolvency.

Cryptoassets were the topic of the morning session at this year's INSOL Europe online conference. Experts provided cutting-edge insight into the legalities and practicalities of cryptoassets in insolvency proceedings, as well as discussing some of the more famous crypto-related insolvency case law.

### 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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