



Latitude: Ogier's restructuring and insolvency digest, December 2021

Newsletters - 20/12/2021

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As government financial support introduced during the pandemic is withdrawn, restructuring, insolvency and corporate recovery practitioners are braced for an increase in demand from clients. After that, there will likely be lender enforcement resulting in formal insolvencies by the end of the year and into next year.

The nexus of offshore centres with the City of London is well known, but demand for offshore restructuring and insolvency legal support is also coming from Europe, the US, the Middle East and the greater China region, among other areas.

Onshore counsel operating in this space are therefore likely to find themselves working alongside offshore counterparts at some point, and frequently have a number of questions around procedures and the differences between different centres' insolvency regimes. As an international firm spanning Asian, European and US time zones, Ogier regularly advises onshore counsel on all aspects of restructurings across the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and Luxembourg laws. Our expertise extends to all aspects of restructurings from consensual workouts to contentious schemes of arrangement.

Below, we cover the insolvency procedures of the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and Luxembourg, alongside some of the key trends in this space we are seeing - some of which are universal and others that are unique.

A key aspect to be aware of is that every jurisdiction has its own insolvency regime which can vary dramatically from other offshore locations, even those in the same region. The regimes in Guernsey and Jersey are significantly different for example, and there are also key differences between BVI and Cayman insolvency laws.

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 insolvency team.](#)

Read our jurisdiction guides to restructuring and insolvency law:

- [BVI](#)
- [Cayman](#)
- [Guernsey](#)
- [Jersey](#)
- [Luxembourg](#)

Cayman Islands publishes reforms to restructuring regime

The Cayman Islands Government has published the Companies (Amendment) Bill, 2021 which will introduce welcome amendments to the Companies Act (2021 Revision), to facilitate the efficient restructuring of distressed companies for the benefit of their stakeholders. The amendments introduce a formal restructuring procedure for companies outside the traditional winding up process and under the supervision of a "restructuring officer" and the Grand Court of the Cayman Islands.

Guernsey cross-border insolvency: assisting foreign insolvency office holders

Guernsey is a jurisdiction that is well used to requests from foreign insolvency office holders for assistance in collecting assets located in Guernsey. Occasionally, these requests involve assistance in interviewing former directors of companies in an insolvency process.

When the need arises for cross-border insolvency proceedings, there are several international treaties which allow for the recognition of foreign insolvency office-holders and the implementation of powers they may wish to exercise in the domestic jurisdiction.

Snapshot: enforcement of security in the BVI

In relation to a secured party enforcing its rights under a mortgage or charge of shares in a BVI company, the secured party will typically exercise its rights under BVI law to sell the shares or to appoint a receiver in respect of them. Such rights may generally only be exercised after a default has occurred and has continued (without rectification for 14 days following notice of the default) for a period of at least 30 days. These time periods can be shortened by contractual agreement in the relevant security document.

The Cayman Court re-considers its jurisdiction to wind up exempted limited partnerships

In the recent decision *In the Matter of Padma Fund L.P.* (unreported, 8 October 2021), Justice Parker found that the Grand Court of the Cayman Islands has no jurisdiction to wind up a Cayman Islands exempted limited partnership on the basis of a creditors' petition. Instead, the Court found that an unpaid creditor must present a petition against the general partner of the exempted limited partnership. This represents a considerable departure from prior practice in the Cayman Islands, where creditors have routinely sought the winding up of the exempted limited partnership itself (and not the general partner).

Court and out of court restructuring options in Jersey and Guernsey

Ogier has recently updated the combined Jersey and Guernsey analysis article in Practical Law's Global Guide to Restructuring and Insolvency law for 2021/22.

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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