

Cayman Islands welcomes introduction of reforms to restructuring regime

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The Cayman Islands insolvency and restructuring industry is welcoming the introduction of the much-anticipated reforms to the jurisdiction's restructuring regime. These will come into force on 31 August 2022.

The reforms, which were originally published in 2021, will facilitate the efficient restructuring of distressed companies for the benefit of their stakeholders by, among other things:

- a. retaining the **flexibility** of the existing regime, including the ability of the Court to adapt powers of restructuring officers to particular circumstances
- b. improving **accessibility** to the restructuring regime, including dispensing with the need to present a winding up petition to initiate a court-supervised restructuring
- c. providing additional **debtor protection** to facilitate restructuring beyond those available under the existing regime, including by imposing an automatic stay, with extra-territorial effect, upon presentation of the restructuring petition; and
- d. preserving and enshrining in statute important **creditor rights**, including the right to receive notice of any application in the ordinary course

Restructuring Petitions

Under the new regime, a company may petition the Court for the appointment of a restructuring officer on the grounds that it is or is likely to become unable to pay its debts and intends to present a compromise or arrangement to its creditors (**Restructuring Petition**). The Restructuring Petition will be a welcome tool for debtor companies seeking to reorganise their debts as:

- a. the company (or a "friendly" creditor) is no longer required to present a winding up petition, which can be accompanied by adverse reputational and contractual consequences for the

debtor company

- b. the presentation of the Restructuring Petition immediately triggers an automatic stay of proceedings for the benefit of the Company (prior to the appointment of any restructuring officer) – including all foreign proceedings, the presentation of a winding up petition or the passing of any resolutions for a company to be wound up – without leave of the Court
- c. it enables the Court to adopt a flexible approach to the powers of a restructuring officer, though the rules provide that the Court may make orders in respect of matters including but not limited to the entry into an international protocol with a foreign officeholder, convening meetings of creditors and members, validation of dispositions, and the provision of reports about the financial condition of the company

The new restructuring regime also provides creditors with a number of important protections, some of which have been imported from the existing regime, and others which have enhanced prior protections. In particular:

- a. the default position is that all Restructuring Petitions must be advertised and heard on notice to stakeholders
- b. subject to further order of the Court, all Restructuring Petitions should be heard within 21 days of presentation. This provision both enables debtor companies to seek relief quickly and efficiently while also protecting creditors from debtor companies who may seek to use the statutory moratorium without progressing the substantive application or who do not have a bona fide intention to restructure the company
- c. creditors may, with leave of the Court, present a winding up petition during the pendency of the Restructuring Petition and where possible, this may be listed together with the Restructuring Petition. Creditors can also propose alternative nominees and otherwise seek to be heard upon the hearing of the Restructuring Petition
- d. the new rules prescribe specific matters which must be addressed in a debtor company's affidavit filed in support of a Restructuring Petition, including confirmation that appropriate enquiries have been made and advice taken, details of the company's financial circumstances and details of how the company is to be funded. This will go some way to ensuring that applications are bona fide and less vulnerable to abuse
- e. once appointed, the new restructuring officers must report to the Court within 28 days of their appointment, reflecting the close supervision that is intended to be provided by the Court over a Restructuring Petition, with a view to monitoring its progress and protecting stakeholders from prolonged, expensive, and ultimately unsuccessful restructuring efforts

Schemes of arrangement

Upon the appointment of restructuring officers pursuant to a Restructuring Petition, a number of measures have been introduced to streamline the reorganisation process, for the benefit of both debtor companies and their stakeholders. In particular:

- a. an application may be made in the restructuring proceedings to sanction a compromise or arrangement with the creditors or members of a company, without the need to commence separate proceedings to sanction the scheme of arrangement under section 86 of the Companies Act. This amendment will remove a significant financial and administrative burden, which will be particularly helpful for the restructuring of corporate groups
- b. there is no longer a requirement to comply with the "headcount test". A members' scheme of arrangement will be deemed to be binding on the members of a company if the scheme is approved by a majority of 75% of members in value and no longer also requires the approval by the majority of members in number. This is particularly helpful for listed companies where shares are held through custodians and by many smaller shareholders

Conclusion

The increased accessibility and flexibility introduced by the new restructuring regime will enable Cayman Islands companies to reorganise efficiently for the benefit of their stakeholders while ensuring that robust protections remain in place to provide creditors and shareholders with confidence in the restructuring process. It also demonstrates the Cayman Islands' commitment to developing and adapting its legislative regime to meet the ever-changing needs of large-scale cross-border restructuring in the modern economy.

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