

Cayman Grand Court permits joint provisional liquidators to control the timing of their discharge

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The approach of the Cayman Grand Court to the terms and timing of the discharge of provisional liquidators of *In the Matter of Star International Drilling Ltd* (unreported, FSD 88 of 2021 ASCJ) may provide a window into what is expected to be a similarly flexible approach to the appointment of restructuring officers.

Star International Drilling Ltd's application to discharge its joint provisional liquidators

Star International Drilling Ltd (**Star International**) applied for orders discharging its joint provisional liquidators, Ms Eleanor Fisher and Mr Roy Bailey respectively of EY Cayman and BVI (the **JPLs**), and to withdraw the winding up petition it had previously presented against itself.

Star International is part of a large onshore and offshore drilling organisation called the Constellation Group. The Constellation Group was operating under a restructuring proceeding supervised by the First Business Court of Rio de Janeiro, Brazil. Entities within the Constellation Group were variously located in Brazil, the BVI, the Cayman Islands, and the USA.

As part of a large restructuring exercise which involved coordinated, complementary insolvency processes in each of those jurisdictions (including Chapter 15 recognition in the United States, joint provisional liquidator appointments in the BVI, and a judicially supervised restructuring in Brazil), Star International applied for the appointment of the JPLs in a "light touch" capacity to prevent any uncoordinated creditor action in this jurisdiction and to assist with the restructuring.

Ultimately, the Constellation Group's wider restructuring efforts were successful with a restructuring plan being unanimously approved by the creditors of the Constellation Group at a general creditors meeting in Brazil on 24 March 2022 (the **Plan**). That Plan was to be implemented by, among other things, a series of agreements including new financing agreements across the group (the **Finance Documents**).

Given that the restructuring had been achieved, the JPLs applied for their discharge and the Court acceded to that application.

The application was novel in that it sought an order granting the JPLs control over the timing of their discharge. Moreover, in dealing with that issue the Court, with the assistance of counsel, identified a lacuna in the Companies Winding Up Rules concerning the discharge of joint provisional liquidators in circumstances where they were appointed by the company itself; rather than by creditors or contributories.

Timing of the JPLs' discharge

It was important to give the JPLs control over the timing of their discharge in the Cayman Islands for the following reasons: (1) it was a condition precedent of the Finance Documents that Star International was no longer in provisional liquidation by the time the Finance Documents were entered into; (2) it was desirable for the JPLs to be discharged prior to the Finance Documents being entered into to avoid unnecessary costs that would be incurred if that were not the case; and (3) it was desirable to keep the JPLs in office until the closing date of the restructuring to avoid any uncoordinated creditor action (albeit this was very unlikely) in the Cayman Islands.

The Chief Justice noted that, while novel, he agreed with Star International that the order was justified in the circumstances of this case, and the JPLs would be discharged only at such time as they filed the Order pertaining to their discharge with the Registrar of Companies. The Chief Justice also noted that the BVI Court had made similar orders in the parallel proceedings taking place in that jurisdiction.

The Court's jurisdiction to discharge provisional liquidators

The only provision in the Companies' Winding Up Rules (the **CWR**) dealing with the discharge of orders appointing joint provisional liquidators is Order 4, rule 5, which is headed "Application by Creditor or Contributory". There is no equivalent rule in the part of the CWR headed "Application by the Company". Accordingly, there is no express rule in the CWR that applies to the discharge of JPLs in circumstances where their appointment was secured by the company itself.

The Chief Justice considered whether, notwithstanding the wording of Order 4, rule 5 of the CWR, the Court could treat that provision as being applicable where the appointment of joint provisional liquidators was made pursuant to an application brought by the company itself and not by a creditor or contributory.

Although he held that he could not, and identified this as a lacuna in the CWR, the Chief Justice nonetheless held that the Court had an inherent jurisdiction to discharge joint provisional

liquidators who had been appointed on application of the company. In this respect, he considered that the principles and factors which the Court ought to have in mind when dealing with an application under its inherent jurisdiction should be the same as those to which the Court should have reference when dealing with an application under Order 4, Rule 5 of the CWR (ie an application by a creditor or contributory).

The Chief Justice noted in the judgment that he intends to refer the issue to the Insolvency Rules Committee.

Conclusion

The judgment is notable in that it shows the Grand Court's pragmatic approach to restructurings. While the Court's jurisdiction to discharge the appointment of joint provisional liquidators will have become less important given the introduction of Cayman's first restructuring officer regime (see our briefing: [Cayman Islands welcomes introduction of reforms to restructuring regime](#)), the flexible and pragmatic approach to the terms and timing of the discharge of provisional liquidators provides a window into what is expected to be a similarly flexible approach to the appointment of restructuring officers.

If that proves correct, it will only continue to solidify the Cayman Islands as a pre eminent jurisdiction for large-scale, cross-border restructurings.

A cross jurisdictional and multidisciplinary team from Ogier's Restructuring and Corporate Recovery team assisted The Constellation Group with its successful restructuring. For more information about how we can assist you find commercial solutions for your restructuring needs visit:

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