

## Appointing a receiver over assets of a British Virgin Islands company

### QUESTIONS AND ANSWERS

**Q1. Is it possible to appoint a receiver over assets which have been charged by a British Virgin Islands ('BVI') company (a 'Company') under a security document?**

**A1.** Yes, provided that the security interest which has been granted by the Company to the beneficiary (the 'mortgagee') over the Company's assets allows the mortgagee to appoint a receiver. Appointing a receiver is probably the most common way of enforcing security interests granted by Companies.

**Q2. Are there any restrictions under BVI law applicable to appointing a receiver?**

**A2.** BVI law imposes relatively few restrictions in relation to the appointment of a fixed charge receiver. However, there are certain types of persons who are not permitted to act as a receiver of a Company. These include the mortgagee itself, or any person who is (or has been within 2 years prior to the appointment) an officer, employee or shareholder of the mortgagee; a person who is disqualified from holding an insolvency practitioner's licence in BVI, or would not be eligible to be appointed as an insolvency practitioner of the Company; a body corporate or the Official Receiver.

If the receiver is to be appointed as an administrative receiver, then they are required to hold an insolvency practitioner's licence in the BVI, or be jointly appointed with a person who holds such a licence.

**Q3. Do these requirements apply even when the security document is governed by a foreign law, and the charged assets are located outside of the BVI?**

**A3.** Yes, subject to certain qualifications.

The legislation in the BVI applies restrictions in relation to any receivership where the receiver is appointed (i) by the BVI court, (ii) under a debenture or other instrument, or (iii) pursuant to 'any other enactment', which we interpret to mean any other BVI statute.

**Q4. Are there any filings required in the BVI in relation to the appointment of a receiver?**

A4. Yes. When a receiver is appointed, they are required to send notice of their appointment to the Company and to the Registrar of Corporate Affairs (the 'Registrar'). If the Company is a regulated company under BVI law (such as an insurance company or an investment fund) the receiver is also required to notify the Financial Services Commission in the BVI.

Further, if the receiver is an administrative receiver, then they must (i) within 5 days of being appointed, cause their appointment to be advertised, and (ii) within 28 days, notify all creditors of the company.

**Q5. Does a failure to file notice of an appointment affect the validity of the receivership?**

A5. No. But under the Insolvency Act it could result in a fine being imposed on the receiver.

**Q6. Will a search at the BVI Registry of Corporate Affairs ('Registry') reveal any receivers which have been appointed in relation to a Company?**

A6. In theory that is the case, but in practice one needs to be cautious about concluding that a 'clean' search means that no receiver has been appointed.

Firstly, a failure to file notice of appointment does not invalidate the receivership, and there is a risk that a receiver may not file notice of their appointment, particularly if they are not located in the BVI and none of the Company's assets are in the BVI.

Secondly, even if a receiver does file notice of their appointment with the Registrar, such filings fall outside of the Registry's electronic filing system, and the Registry have been inconsistent in the past in their approach to putting the paper copies of such notices of appointment on company files maintained by them.

**Q7. If a Company has been struck off for non-payment of its annual licence fees, can a receiver still be appointed?**

A7. Yes and no. There is nothing to stop a receiver being appointed over a Company which has been struck off, but the BVI legislation provides that where a Company has been struck off, a receiver (amongst other people) is not entitled to deal in any way with the assets of the Company, or act in any way with respect to the affairs of the Company.

However, any interested person can restore a Company which has been struck off for non-payment of licence fees simply by paying back fees,

penalties and a restoration fee. Where a receiver is appointed over a Company which has been struck off for this reason, they will need to arrange for the Company's restoration.

**Q8. Are there any filings required in the BVI upon the completion of a receivership?**

**A8.** Yes. Receivers are required to prepare and file accounts with the Registrar, and, if the Company was a regulated company, the Financial Services Commission. The receiver is also required to file notice of completion of receivership with the Registrar, and to the Financial Services Commission (if the Company is regulated), and to (in each case, if applicable) any administrator, liquidator, administrative receiver or creditors' committee appointed with respect to the Company.

*The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.*

## **FURTHER INFORMATION**

Please contact any of the following Harneys lawyers if you require additional information on the registration of security in the British Virgin Islands.

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