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Global Restructuring Review is a leading source of news and insight on cross-border restructuring and insolvency law and practice, read by international lawyers, insolvency practitioners and accountants, judges, corporate counsel, investors and academics.

We deliver on-point daily news, surveys, and features which gives our subscribers the most readable explanation of all the cross-border developments that matter allowing them to stay on top of their game (even more so than they already are).

In the past couple of years, we have published exclusive interviews with bankruptcy judges around the world, unearthed nuggets from court hearings other services missed, released several original surveys, including on what it’s like for female professionals working in restructuring, and features including a look at the retail sector and a retrospective on the 10-year anniversary of Lehman Brothers. Our newly-introduced Worked Out series, profiling key jurisdictions around the world, has so far published popular and well-read profiles of Singapore, Ukraine and Delaware, with profiles on the Cayman Islands, Hong Kong and China still to come. Our book-length Art of the Ad Hoc gathers the wisdom and perspectives of some of the leading practitioners in this area.

Complementing our news coverage, The Asia – Pacific Restructuring Review provides exclusive insight, direct from pre-eminent practitioners. The Review gathers the expertise of 24 different leading figures from 11 different firms in 10 different jurisdictions. Contributors are vetted for international standing and knowledge of complex issues before being approached.

In this volume our experts in Singapore take a look at the key developments and unresolved issues following the significant amendments to the Companies Act across two chapters, firstly one providing a brief overview of the changes to Singapore’s restructuring regime with discussion of the key restructurings that took place since the new regime came into force, in particular, those that took advantage of the enhancements such as “pre-pack” schemes, super priority rescue financing, and court-ordered moratoriums. Our second chapter focusing on Singapore provides an overview of its cross-border insolvency laws.

One note to our readers is that the Singapore section was written before the new omnibus insolvency bill was tabled before Singapore’s parliament on 10 September. The bill consolidates Singapore’s insolvency regimes into a single statute, mandates qualifications and disciplinary rules for insolvency practitioners and restricts the use of ipso facto clauses in restructurings. The bill is expected to pass into law in time for the next edition.

Global Restructuring Review named India the most improved jurisdiction at our annual awards this year and it has been described in this edition as a jurisdiction ‘in the process of laying the foundations of a mature market economy’. Our expert considers the amendments made to the Insolvency and Bankruptcy Code since its enactment and implementation.

In China, our experts consider the notice of the Supreme People’s Court on issuing the minutes of the national court work conference on bankruptcy trails, which is considered the most important update to the legal practice of bankruptcy law in recent years. Particular consideration is given to the major aspects of the meeting minutes, selection of bankruptcy administrators, detailed rules on reorganisation, substantive consolidation and cross-border bankruptcy.

This edition also provides an overview of the Insolvency Reform Act in Australia, with case analysis on landmark cases including Bis Industries which was the largest restructuring of 2017 in the Australian market. Additionally, our expert panel consider the criticisms of the Indonesian restructuring legislation and provide jurisdictional updates in Japan, Malaysia, Korea and the Cayman Islands.

The Review is annual and will expand each edition. If you have a suggestion for a topic to cover or would just like to find out how to contribute please contact Mahnaz.Arta@globalrestructuringreview.com.

GRR would like to thank all our contributors for their time and effort.

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The success of the Cayman Islands’ financial services industry is the result of a number of factors, including its freedom of investment decisions for fund managers, its tax-neutral status and the knowledge of experienced professional service providers on the Islands. The Cayman Islands’ globally renowned legal system has also provided a robust framework to effectively address restructuring and liquidity issues arising from the lingering effects of the credit crisis. The Cayman Islands has a globally recognised, comprehensive and creditor-friendly regime to facilitate domestic and cross-border insolvencies and restructurings, with effective procedural rules in place both for practitioners and the courts.

The United States remains the largest source of foreign direct investment into the Cayman Islands (US$260 billion), followed by Hong Kong (US$56 billion), the Netherlands (US$53 billion) and Brazil (US$52 billion).4 There has been a huge increase in Japanese portfolio investment in the Cayman Islands, from US$574 billion in mid-2015 to US$713 billion a year later. This is double the portfolio investment from Hong Kong, which stands at US$337 billion and is largely due to special legislation enacted to attract investment funds specifically targeted at Japanese investors.5 Outward direct investment from the Cayman Islands goes to Luxembourg, the United States, Hong Kong, Singapore, the Netherlands and China.6

Investors and opportunistic funds continue to keenly examine Chinese debt burden and the far-reaching impact any market correction is likely to have on the global economy. Chinese regulators and banks have been on the offensive in reining in credit creation in light of the trend of deteriorating credit quality since 2014.4 With overdue and non-performing loans rising as economic growth moderates, it remains to be seen if (as currently projected) China can curb credit creation without jeopardising its goal of sustaining GDP growth rates at above 6 per cent.7 Chinese banks are still by far the largest source of funding, facilitating massive lending to fund investment projects that are driven by the need to generate economic activity and employment.6

Below is a precis of the most recent developments in the restructuring and insolvency sphere in the Cayman Islands.

Developments in restructuring and insolvency

Light-touch restructuring

‘Light-touch’ restructurings by way of the appointment of provisional liquidators in the Cayman Islands continue to be a prominent feature for consideration by interested stakeholders, and we see no immediate signs of this trend abating, given the propensity of Asian clients to use companies incorporated in the Cayman Islands as their listing vehicle.

The Cayman Islands’ legislative framework does not currently contain a regime that is equivalent to the United States’ Chapter 11 Bankruptcy Code or the United Kingdom’s administration to facilitate the rescue of an insolvent company. As a result, and in order to obtain the benefit of a moratorium against any proceedings continuing or being commenced against a company without leave of the Grand Court of the Cayman Islands (the Grand Court), companies tend to utilise the light-touch restructuring tool by seeking to appoint provisional liquidators pursuant to Part V of the Companies Law (2018 Revision) (the Companies Law), specifically section 104(3), to assist the company in promoting a compromise or arrangement with its creditors or members. An application under section 104(3) can be made by the company on an ex parte basis on the grounds that the company is or is likely to become unable to pay its debts as they fall due and, as mentioned above, the company intends to present a compromise or arrangement to its creditors or members, most commonly by the promotion of a scheme of arrangement pursuant to section 86 of the Companies Law. On the appointment of provisional liquidators, the Grand Court will determine which powers will remain with the directors and which will be vested in the provisional liquidators.

The past year saw the introduction of the Companies Law (2018) Revision and the Companies Winding Up Rules 2018, which principally regulate corporate insolvency and restructuring in the Cayman Islands. The Insolvency Practitioners Regulations 2018 also came into force.

Restructuring provisional liquidators

The benefit of the light-touch restructuring process is that the appointment of provisional liquidators invokes the statutory moratorium on any proceedings (including winding-up proceedings by a disgruntled creditor) being brought against the company without leave of the Grand Court.

The area of light-touch restructuring is still developing in the Cayman Islands, as evidenced in the ruling in Re Grant T G Gold Holdings Limited. Justice Segal released an outline ruling in the case, in which he considered a creditor’s winding-up petition and application for the appointment of liquidators. The company sought an adjournment of the petition in order to allow it to progress a proposal to resume trading. Justice Segal found that in light of all the circumstances it would not be appropriate to order an immediate winding up of the company. In refusing the winding-up order, Justice Segal distinguished the present case with Re Demaglass Holdings Ltd, in which it was held, in the absence of a good reason, that a company’s unpaid creditor is entitled to a winding-up order virtually as of right. In the present case, the resumption proposal had the support of a significant group of creditors who also opposed the winding-up order and there was evidence that the appointment of liquidators might have a negative effect on the proposal. Though thoroughly considering the proper and serious concerns raised by the petitioner, on balance, Justice Segal favoured a short adjournment over a winding-up order so that the resumption proposal could be further advanced, while ensuring that the court could review the company’s situation in a timely manner to safeguard the position of all creditors.

In a similar case before Chief Justice Ian Kawaley in the Bermuda Supreme Court, Up Energy Development Group Limited, Justice Segal’s ruling was relied upon by the company in an attempt to resist a creditor’s application for the appointment of provisional liquidators on the basis that it had appointed its own restructuring advisers and that...
deference should be given to the position of the majority of creditors, who also opposed the appointment of the provisional liquidators. Chief Justice Kawaley did not appear to place much weight on Justice Segal’s ruling and instead held that the role of provisional liquidators in insolvency restructurings is so deeply entrenched in Bermudian insolvency law practice that it is now a legitimate expectation of stakeholders. The Chief Justice went on to state that there was a strong starting presumption in favour of the appointment of provisional liquidators and it would be a heavy burden to displace. Chief Justice Kawaley appeared to distinguish the position in respect of the weight to be given to the view of the majority creditors when deciding:

- whether or not to adjourn for restructuring purposes rather than immediately order a winding up – which would ordinarily be considerable (consistent with Re Demaglass Holdings); and
- whether to appoint provisional liquidators to monitor a restructuring process – where the court was not obliged to blindly follow the view of majority creditors.

In Natural Dairy (NZ) Holdings the Grand Court granted the joint provisional liquidators full and unfettered powers over all the assets of the company. The joint provisional liquidators convinced the Grand Court that such powers were required in order for them to carry out the tasks for which they were appointed, being to investigate possible mismanagement and misconduct; and to prepare a resumption proposal. The provisional liquidators argued that ‘the retention of residual powers by the Company’s directors was seriously unhelpful and damaging to the ability of the [joint provisional liquidators] to perform their functions and also has resulted in confusion, complications, additional work and unnecessary delays and costs.’

Justice Segal held that:

Once the statutory pre-conditions for the appointment of provisional liquidators are established, the Court has a discretion to grant the provisional liquidators such powers as the Court considers necessary and appropriate to prevent such dissipation, misuse, mismanagement and misconduct and to ensure that the Company’s assets are properly protected pending the hearing of the winding-up petition.

Although the initial intention of section 104 was to prevent fraudulent dissipation of assets, it is now commonly used to enable companies to pursue a scheme of arrangement under section 86 of the Companies Law, without the risk of winding-up proceedings being commenced by an aggressive and dissatisfied creditor in the interim.

At the very least, these decisions are interesting to the extent that they appear to evidence a dichotomy between the Cayman and Bermuda positions regarding the appointment of light-touch provisional liquidators when a restructuring is proposed.

Schemes of arrangement

Z-Obee Holdings Limited is another Bermudian case that is likely to be significant in the development of the law concerning light-touch provisional liquidators and schemes of arrangement. In Z-Obee, Chief Justice Kawaley appointed Hong Kong-based restructuring provisional liquidators as joint provisional liquidators for the express purpose of initiating a restructuring. It was explained to the Bermuda court that an important reason for the application was the inability of the Hong Kong court to use provisional liquidators for restructuring purposes under Hong Kong law where the primary purpose was to implement a restructuring. Once the Bermuda provisional liquidators were appointed, they were expected to ask the Bermuda court to issue a letter of request to the Hong Kong court for recognition and assistance in the standard form acceptable to the Hong Kong court.

In a remarkable piece of judicial cooperation, Mr Justice Harris of the Companies Court of the High Court of Hong Kong had earlier adjourned a winding-up petition in relation to the company in Hong Kong precisely so that an application to appoint restructuring provisional liquidators in Bermuda could be made, thereby making modern restructuring law available to an offshore-incorporated, but Hong Kong-listed, company. To progress the restructuring, the Hong Kong provisional liquidators were later discharged so that the provisional liquidators appointed in Bermuda could seek recognition of their appointment in Hong Kong. At that point, the joint provisional liquidators could introduce parallel schemes to ultimately effect the restructuring of the company in Hong Kong and Bermuda.

The decisions by Chief Justice Kawaley in the Bermuda Supreme Court and Mr Justice Harris in the High Court of Hong Kong demonstrate the common law recognition and assistance techniques available to the courts and practitioners in approaching to solve problems encountered in cross-border insolvency.

Furthermore, the case of Z-Obee went some way to mitigate the effects of the Hong Kong Court of Appeal decision in Re Legend International Resorts Ltd, which held that the statutory power to appoint provisional liquidators under the Companies Ordinance in Hong Kong to restructure a company’s debt and not to achieve a liquidation is impermissible. Since then, Re Legend International has been clarified in China Solar Energy Holdings Ltd where Mr Justice Harris held that:

- the law has never been that provisional liquidation is meant to lead to a winding up, but rather that it ensures that winding up will not be frustrated;
- where matters associated with a winding up are absent, in particular where the company’s assets are not in jeopardy, it would not be appropriate to order provisional liquidation despite the company’s need for restructuring; and
- post-Re Legend, case law states that even after the provisional liquidators have secured the company’s assets, they may continue to exercise their restructuring powers pending the resolution of the winding-up petition.

With the judicious use of these staged applications in the offshore and onshore courts, Z-Obee has successfully introduced modern offshore restructuring law into an onshore jurisdiction. It will be interesting to see how the decision of Z-Obee will affect cross-border insolvency in the future, particularly for the Cayman Islands, given the similie 

tivities of the two jurisdictions’ light-touch restructuring regimes. There is no reason, in principle, why the procedure used in Z-Obee could not be used for a Cayman Islands company.

The full extent of the light-touch restructuring jurisdiction was demonstrated in the restructuring of Mongolian Mining Corporation in the first half of 2017. Mongolian Mining was a Cayman-incorporated, Hong Kong Stock Exchange-listed coking coal producer and exporter operating in Mongolia. The company needed to restructure more than US$760 million in offshore debt. The restructuring involved light-touch provisional liquidators in the Cayman Islands, parallel schemes of arrangement under the laws of the Cayman Islands and Hong Kong, bespoke out-of-court consensual arrangements with certain creditors, and recognition of the Cayman Islands’ provisional liquidation proceedings as well as proceedings under Chapter 15 of the US Bankruptcy Code. This successful restructuring was a favourable outcome for Mongolian Mining and its stakeholders, and has reaffirmed the Cayman Islands’ status as a leading restructuring jurisdiction.
A company may seek to promote a scheme of arrangement, without any need for provisional liquidation, to make a compromise or arrangement with its members or creditors (or any class of them). An application may be brought by the company itself, any creditor or member of the company or, where the company is being wound up, by the liquidator. The Grand Court will order a meeting of the company’s creditors or members to vote on the proposed scheme. If a majority representing 75 per cent in value of creditors or members present, either in person or by proxy and entitled to vote at the meeting, agree to the terms of the proposed compromise or arrangement, then, subject to the Grand Court’s sanction, the scheme will be binding on all the creditors or members of the company and against the company itself and, if the company is in liquidation, against the liquidator and contributories of the company. The scheme becomes effective only once a copy has been delivered to the Registrar of Companies for filing.

Where a scheme is being promoted outside provisional liquidation, the directors of the company will remain in control of the company and will formulate the terms of the proposed compromise to be put to its creditors or members (practically, this will almost always be done with the assistance of qualified insolvency practitioners who will become the scheme supervisors once the company’s creditors or members and the Grand Court have approved the scheme). The promotion of a scheme of arrangement outside provisional liquidation does not afford the company the benefit of the moratorium. The company remains at risk of aggressive creditor action unless it can persuade the Grand Court to use its extensive discretionary powers to stay any proceedings or suspend the enforcement of any judgment or order for a period of time.14

Compulsory liquidation
In the matter of Primeo Fund (in Official Liquidation), the Court of Appeal distinguished between the statutory obligations of liquidators under the Companies Law and their obligation as litigants before the court.15 In these proceedings, the joint official liquidators of Primeo sought damages against the Bank of Bermuda and HSBC.

Initially, on the basis of an application by the banks, Justice Jones in the Grand Court ordered that the liquidators issue a letter of request under sections 103 and 138 of the Companies Law in order to obtain books and records of the company from a bank in Austria. The banks argued that the liquidators had not complied with their discovery obligations.

The decision was overturned by the Court of Appeal on the basis that:
• the defendants were attempting to use the liquidators’ statutory powers to seek documents from a third party in circumstances where the Grand Court Rules did not provide for third-party discovery;
• the first-instance judge had conflated the liquidators’ statutory duties with the obligation to give discovery under civil procedure law and had wrongly suggested liquidators have to go as far as to assist adversaries to obtain documents in the course of litigation;
• the court should not interfere with the conduct of a liquidator other than in exceptional circumstances and the rationale for making the order came ‘nowhere near’ meeting the exceptional circumstances test set out in Eddonote;16
• the statutory powers of the liquidators are not for the benefit of a party in the liquidation, where the exercising of those powers does not serve the liquidation; and
• it is an abuse of power if statutory powers conferred for a certain purpose are deliberately used to obtain a result outside the contemplation of the law creating the power.

Voluntary liquidation
In the case of In the matter of CHC Group Ltd,17 Justice McMillan considered Re China Milk Products Group Limited,18 in which it was held that directors of an insolvent company can present a winding-up petition on behalf of their company without approval by the shareholders, and Re China Shanshui Cement Group Limited,19 in which Justice Mangatal held that directors of a company do not have the standing or authority to present a winding-up petition, and therefore consequently cannot apply for the appointment of joint provisional liquidators, unless they are expressly authorised to do so by the company’s articles of association or a valid shareholder resolution has been passed.

In CHC Group, Justice McMillan distinguished both China Milk and China Shanshui on the basis that they had no bearing on the case before him. In CHC Group, there was a preexisting creditor’s winding-up petition, which was then followed by an application by the company, acting by its directors, for the appointment of joint provisional liquidators for the purpose of restructuring. It was held that where a creditor has already filed a winding-up petition in respect of a company, not only may the directors of the company apply for the appointment of joint provisional liquidators, they may do so even without a shareholders’ resolution or express provision in the company’s articles of association. This interpretation appears to contradict the English common law position in Re Emmadart Ltd20 as well as the common law position in the Cayman Islands in China Shanshui, though Re Emmadart was not concerned with restructuring. A cynical interpretation of CHC Group would suggest that one should have a creditor, not the company, file the petition seeking the winding up of the company in order to best achieve a company-driven restructuring where it would not otherwise be permissible.

Clawback actions
In the matter of Re Weavering Macro Fixed Income Fund Ltd (in Liquidation),21 the Court of Appeal considered in substantial detail each stage of the test to be applied in identifying voidable preferences under section 145(1) of the Companies Law. Re Weavering concerned an appeal against an order of Mr Justice Clifford declaring that certain payments were voidable preference payments. In considering the solvency test under section 145(1), the Court of Appeal confirmed the applicability of the cash flow test in the Cayman Islands and clarified that this test was not confined to debts that are immediately due and payable, but also extends to debts that ‘will become due in the reasonably near future’ and that any other conclusion would lead to artificiality. This was recently considered by the Grand Court in In The Matter of the NBRL Global Ltd,22 where it was held that deferred debts remain enforceable and payable, but subject to timing of payment by the terms in the deferral arrangements. The arrangements may be binding legal arrangements to pay later or a goodwill extension of time to pay. The Grand Court further stated that a goodwill extension is no defence to a statutory demand.

On the question of establishing an intention to prefer on the part of the company in liquidation, in Re Weavering, the Court of Appeal dismissed the suggestion that a ‘taint of dishonesty’ is required in order for a payment or transfer to be deemed preferential. The Court of Appeal explained that the ‘preference’ referred to in section 145 refers to one creditor receiving more than the amount to which they would be entitled on a pari passu basis, not necessarily a preference of a fraudulent nature. It is also irrelevant to the question of identifying a preference that the recipient of the payment was paid by mistake. The liquidator need only prove that the company intended to prefer one creditor (not that particular creditor) to others.
The Court of Appeal also confirmed that common law defences, such as change of position, are not available to statutory claims under section 145(1) and as such, where the elements of section 145(1) are made out, the payment is automatically voided and must be returned.

**Significant transactions, developments and active industries**

In the case of *Natural Dairy (NZ) Holdings Limited*, the Grand Court confirmed that the court may substitute a contributory petitioner on a contributory’s winding-up petition, even though there was (at that time) no express power to do so under the Companies Winding Up Rules. Following the issue of the petition, the petitioner discovered that it was the beneficial, rather than registered, owner of its shares and therefore did not have any standing to petition to wind up under the Companies Law. The company argued that substitution was not possible and sought to strike out the petition as a nullity. It was successfully argued that the court should allow substitution and pointed to the practice of the Grand Court prior to the introduction of the Companies Winding Up Rules, and the modern practice of the English High Court, to permit substitution on a contributory’s petition, notwithstanding the absence of an express power to do so under the Insolvency Rules 1986 (the predecessor of the Companies Winding Up Rules). The petitioner relied on a series of decisions, starting with *HSH Cayman I GP Limited*, in which the Cayman courts confirmed their inherent jurisdiction to deal with irregularities in Companies Winding Up Rules proceedings. Mr Justice Segal permitted substitution, pointing out that the lack of an express power to substitute on contributories’ petitions – in contrast with the position regarding creditors’ petitions – was probably because the rule was intended to prevent companies paying off petitioning creditors one by one, and there was less need for such a rule regarding contributories’ petitions as contributories are not so easily bought off. Order 21 of the Companies Winding Up Rules 2018 has now been enacted to cease this lacuna which provides that where a company petitions and is later found not to have been entitled to do so or where the petitioner fails to advertise, withdraws the petition, fails to appear, seeks to adjourn, seeks dismissal of the petition or does not apply for an order it sought in its petition, the Grand Court may substitute that petitioner and the date of the original petition shall stand as the date of the original petition.

The Grand Court in *Unu-Asia Holdings Limited* recently sanctioned a meeting of a company for the purpose of considering a ‘migration’ scheme of arrangement. The arrangement proposed by the Cayman company was that its members exchange their shares for shares in a Singaporean company. The intended objective was an internal restructuring whereby the Singaporean company became the new holding company for the group and the Cayman company became its subsidiary.

In the recent case of *Ocean Rig*, four companies in the Ocean Rig Group (three of which were Marshall Islands companies) successfully restructured US$3.7 billion New York law-governed debt using the Cayman Islands provisional liquidation and schemes of arrangement regime. The schemes were effected through the provisional liquidation mechanism and are clear examples of the Cayman Islands Courts’ willingness and ability to sanction complex restructurings. *Ocean Rig* is novel both for its complexity and the size of the restructured debt. Unusually, the schemes were promoted by scheme companies themselves, rather than the provisional liquidators (but who oversaw and supported the schemes in any event). The statutory moratorium on adverse creditor action and the appointment allowed the companies to seek a temporary restraining order in the United States, pending Chapter 15 US Bankruptcy Code recognition. The Grand Court appointed provisional liquidators to the Marshall Islands companies which confirmed the breadth of Cayman Islands’ restructuring jurisdiction. The Grand Court sanctioned the proposed schemes despite dissent from minority creditors, who argued that they belonged to a separate class of creditors. The Grand Court applied the relevant test and ruled against the minority creditors. This restructuring-friendly analysis further boosts the Cayman Islands’ reputation in circumstances where other common law jurisdictions are also prepared to be flexible in the interests of facilitating restructuring.

**International**

The Cayman Islands has elected not to adopt the UNCITRAL Model Law on Cross-Border Insolvency. However, the Cayman Islands comprehensively revamped its cross-border insolvency legislation in 2009, inserting international cooperation provisions in the form of Part XVII of the Companies Law, which are supplemented by the Foreign Bankruptcy Proceedings (International Co-operation) Rules 2018. Part XVII of the Companies Law codifies the Grand Court’s powers to make orders in aid of foreign insolvency proceedings in terms that are not dissimilar to the provisions of the UNCITRAL Model Law. Order 21 of the Winding Up Rules also provides for an official liquidator in the Cayman Islands to enter into an international protocol regime with a foreign officeholder (which could include a liquidator or trustee) when a company subject to Part V of the Companies Law (winding up by the Grand Court) in the Cayman Islands has assets located in other jurisdictions.

In *China Agrotech Holdings Limited*, Justice Segal held that the Grand Court could grant common law assistance to a liquidator who was not appointed in the place of incorporation of the company. *China Agrotech* was recently considered by *Changgang Duxin Enterprise Company Limited*, where the Grand Court granted common law recognition of joint provisional liquidators that were appointed in Hong Kong to act in the name of, and on behalf of, the company for the purposes of presenting a winding-up petition to the court on behalf of the company.

In October 2016, judges from 10 different jurisdictions, including the Cayman Islands, met in Singapore for the inaugural Judicial Insolvency Network (JIN) Conference. The result of the conference was the JIN Guidelines for Cooperation in Cross-Border Insolvency Matters (the JIN Guidelines). On 30 July 2018, the Cayman Islands adopted the use of the JIN Guidelines pursuant to Practice Direction No. 1 of 2018 (joining Bermuda and the British Virgin Islands) (the Practice Direction) and the American Law Institute/International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the American Guidelines). The Practice Direction requires Cayman Islands-appointed officeholders to consider, at the earliest opportunity, whether to incorporate some or all of the guidelines with suitable modification either into:

- an international protocol to be approved by the court; or
- by an order of the court adopting the guidelines.

The guidelines were designed primarily to enhance communication between courts, insolvency representatives and other parties in the context of global restructurings and insolvencies. They apply in insolvency or restructuring proceedings that are supervised by, or involve related applications to, courts in more than one jurisdiction. Accordingly, this includes schemes of arrangement relating to a company being supervised by the Grand Court that also involve a parallel scheme (or debt adjustment proceeding) or ancillary proceedings in another jurisdiction. As a result of the increased efficiency, it is hoped that stakeholders will see a reduction in delays and costs.

**Future developments**

The Companies Law in the Cayman Islands is substantially derived from the UK Companies Act 1948 and although Part V was revised...
considerably in 2009, it has not enjoyed the same developments as its English counterpart and many other offshore jurisdictions. For example, only 67 sections concern insolvency, whereas the BVI Insolvency Act comprises 505 sections. To fill the various lacunae in the Companies Law, the Grand Court has adopted a purposive approach to its interpretation and developed a set of principles that largely complement the contemporary common law position.

Notwithstanding the status of the Companies Law, the Cayman Islands Law Reform Commission (the Commission) can, and regularly does, make recommendations in respect of proposed changes to the Companies Law. In 2014, the Commission circulated a consultation paper examining the position of directors in the Cayman Islands and discussing whether there is a need for codification of directors’ duties. The Commission published its Final Report on 30 March 2017. Taking into account the extensive comments from stakeholders, the Commission was persuaded that codification in this area of law was not appropriate in light of the principles established under common law but that the issue may be revisited in the future. The Commission also concluded that there was no need to expand the legislative regime for the disqualification of directors or to introduce legislation concerning the indemnification of directors. The Law Reform Commission, in its Annual Report No. 13 dated 31 March 2018, reports that it has been requested to examine the laws and Practice Directions applicable when dealing with the rights and obligations of the mortgagor and mortgagee in relation to bank foreclosure proceedings. Underpinning the role of the Law Reform Commission is the Insolvency Rules Committee, which is constantly reviewing the Companies Winding Up Rules. It is expected that the monitoring of the Companies Law by the Law Reform Commission and the Insolvency Rules Committee will be a continuing venture to ensure that the legislation meets the needs of the Cayman Islands’ financial services industry.

Section 104(3) of the Cayman Islands Companies Law allows the appointment of provisional liquidators in circumstances where a company is or is likely to become unable to pay its debts and intends to propose a compromise or arrangement to its creditors. This is a well-established and effective company-driven restructuring tool with which a company is or is likely to become unable to pay its debts and intends to propose a compromise or arrangement to its creditors. This is a well-established and effective company-driven restructuring tool with which the appointed provisional liquidator can drive the restructuring provisional liquidator process.34 There is no economic interest in the outcome of a winding up, namely shareholders in an insolvent company, should stay out of it.

It is hoped, however, that any amendments will maintain the present balance in Cayman Islands restructuring provisions between the rights of all interested parties.

Notes
2. ibid.
3. ibid.
6. ibid.
14. Although untested in the Cayman Islands, English case law suggests this is possible. See Bluecrest Mercantile BV and another v Vietnam Shipbuilding Industry Group and others [2013] EWHC 1146 (Comm) (22 April 2013).
15. FSD 30 of 2010.
16. [1996] 2 BCLC.
17. FSD 5 of 2017.
22. FN FSD 83 of 2017 (unreported, 20 June 2017).
24. FSD 186 of 2016.
27. [FNS 82 FSD 100, 101, 102 and 103 of 2017, (unreported, 18 September 2017)].
28. The test is whether the persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest as applied in Sovereign Life Assurance Co v Dodd [1892] 2 QB 573.
30. FN FSD 157 of 2017 (unreported, 19 September 2017).
31. FN FSD 270 of 2017 (unreported, 1 March 2018).
33. Re Fruit of the Loom Ltd (unreported, 30 October 2000).
34. In the matter of Titan Petrochemicals Limited [2013] SC (Bda) 74 Com.
35. [1879] 11 Ch D 36.
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Ian is the long-term head of Harneys’ Asia litigation and restructuring practice group and is based in our Hong Kong office. He is a leading offshore litigator, senior tactician and thought leader.

He has been involved in every major recent restructuring in the region that involves offshore entities and is a specialist in cross-border and conflict of law dilemmas, including Birmingham City Football Club, Centaur, China Fisheries, China Shanshui, Greens Holdings, China Lumena, Mongolian Mining Corporation, Rightway, Titan Petrochemicals Group, Suntech Power Holdings Co Ltd, LDK Solar Co, Kaisa Group Holdings Ltd and Z-Obee Holdings Ltd.

Ian lectures regularly to judicial, professional and academic bodies. He is the author of both the leading offshore textbooks on British Virgin Islands Commercial Law and Bermuda Commercial Law (Sweet & Maxwell Thomson Reuters), and is a regular contributor to The Offshore Litigation Blog, a Harneys blog that shares news and views about litigation, dispute resolution, restructuring and insolvency offshore. He is a fellow of INSOL International as well as a qualified trust and estate practitioner. He is regularly asked to provide his expert opinion on offshore law to various Courts of Law.

Ian is recognised as a leading lawyer in his field by each of the leading legal directories. He is consistently ranked as a Tier 1 offshore dispute resolution lawyer in Asia by Chambers and Partners, which describes him as being a ‘very seasoned adviser’. He is also recommended by The Legal 500, which describes him as ‘a pleasure to work with’ and as ‘friendly and hardworking’. Ian is also recognised as being among the world’s leading asset recovery, restructuring and insolvency and private client lawyers by Who’s Who Legal, which describes him as ‘a gifted advocate who leaves no stone unturned’. He is also one of 10 offshore lawyers recognised for outstanding client service in Asia by Asian Legal Business readers in each of the 2016, 2017 and 2018 Offshore Client Choice lists.

Chai Ridgers  
Harney Westwood & Riegels

Chai is a partner in Harneys’ restructuring and insolvency group in Hong Kong and leads the restructuring practice in Asia.

Chai specialises in cross-border restructurings, insolvency and workouts of distressed companies. He advises leading international and regional accountancy practices, onshore law firms, financial institutions, insolvency officeholders, official and unofficial creditors’ committees, private equity sponsors, hedge funds, debtor-in-possession loan providers, directors, trustees, shareholders and corporate debtors. He has worked extensively on assignments throughout Asia, including in China, Hong Kong, Japan, Singapore, South Korea and Taiwan.

Recently, Chai has played an instrumental role in a number of global restructurings concerning offshore entities including Mongolian Mining Corporation, the Pacific Andes group of companies, Global A&T Electronics Ltd (GATE), Z-Obee Holdings Ltd, Noble Group, Centron Telecom International Holding Limited, China Lumena New Materials Corp, Kaisa Group Holdings Ltd, LDK Solar Co, Birmingham City Football Club, China Shanshui Cement Group Limited, Greens Holdings Limited, Titan Resources Management Limited (part of the Titan Petrochemicals Group), Dalian Rightway Real Estate Development Co Ltd and Suntech Power Holdings Co, Ltd.

Prior to joining Harneys, Chai was a senior associate at a global law firm in Singapore and London. Chai is recommended as a leading lawyer by The Legal 500, which calls him ‘very personable and pragmatic’ and an ‘up-and-coming partner’.
Lorinda Peasland
Harney Westwood & Riegels

Lorinda is a consultant in Harneys’ restructuring and insolvency group and is based in Hong Kong. She is highly skilled in all types of corporate restructuring and formal insolvency transactions, and is trusted advisor to a wide range of leading professional services clients including financiers, accountants and regulators.

Prior to joining Harneys in 2017, Lorinda was an equity partner at DLA Piper for many years. She has over 25 years’ experience in the restructuring and insolvency field, with particular expertise in cross-border insolvency issues and finance-related contentious matters. Lorinda also has specialist skills in banking and asset-based lending within the distressed corporate climate. She has a number of reported cases on novel points of law.

Lorinda is recommended for her advanced expertise in corporate recoveries and asset based lending-related restructurings by The Legal 500, which calls her ‘responsive and knowledgeable’.

Harney Westwood & Riegels has acted in some of the largest and most complex cross-border restructurings and insolvencies of recent times.

Our client base is diverse, encompassing leading international accountancy practices, onshore firms, financial institutions, insolvency officeholders, official and unofficial creditors’ committees, private equity sponsors, hedge funds, debtor-in-possession lenders, directors, trustees, shareholders and corporate debtors.

We frequently advise lenders and investors at all levels of the capital structure, corporates and insolvency officeholders on the use of offshore schemes of arrangement when used in parallel with other jurisdictional processes, such as Chapter 11 of the US Bankruptcy Code, or parallel schemes of arrangement in the common law jurisdictions. Other areas of expertise include: debt and equity rescheduling and refinancing; distressed mergers and acquisitions; distressed funds advice and debt recovery; formal insolvency proceedings and office holders’ conduct, powers and regulation; out-of-court restructurings and refinancings; contingency planning and implementation; schemes of arrangement; security enhancement and prioritisation; debt for equity swaps; recognition and joint protocol proceedings; workouts and enforcement of security; and directors’ duties and claims against auditors, fund administrators and other service providers.