

ALL CHANGE IN THE CAYMAN ISLANDS

The changes proposed in the Cayman Islands' Companies (Amendment) Bill 2021 are likely to have significant consequences for practitioners in the UK explains CHAI RIDGERS, Head of Restructuring, and NICK HOFFMAN, Cayman Islands Managing Partner of Harneys

The Cayman Islands government has published a Bill which, if passed, will provide a company breathing space to restructure its debts through a refined scheme of arrangement process. The scheme will be protected by an automatic extraterritorial moratorium (viz. unsecured creditors) and a Court appointed supervisor (a Restructuring Officer (**RO**)). With this, it is hoped the new process will qualify as a “collective insolvency proceeding” for recognition and assistance purposes by Model Law countries and similar jurisdictions.

The refined scheme process will be available to both Cayman Islands and foreign debtors (with qualifications) and will, so long as “efficacy” is likely, compromise both Cayman Islands and foreign law governed debt. This will maintain and improve the necessary ecosystem for the Cayman Islands to continue as a global restructuring hub.

For English law debt, a Cayman Islands scheme can restructure foreign debt if the Court can be persuaded that it will be given “efficacy” in that foreign jurisdiction either by recognition or the absence of dissentient creditors. The Cayman Islands will therefore continue to follow the “rule in *Gibbs*”. In view of Brexit, England may no longer be a gateway for European recognition of Cayman Islands Court restructurings, and further recognition applications may need to be made on the continent.

The RO regime has been designed to be used alongside English Court processes. Furthermore, English insolvency practitioners are permitted to be appointed together with a Cayman Islands RO. English legal practitioners are likely to be particularly interested in their role in making applications to “recognise and assist” restructurings within the Cayman Islands courts. A test case is needed, however, to establish the boundaries of any assistance that

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the English Court will grant. It is hoped that the Grand Court of the Cayman Islands and the English Courts will work together to compromise debts and rescue companies within the spirit of the new regime.