

Insolvency & Restructuring Q&A - Cayman Islands

The Cayman Islands renowned for their beautiful beaches and glorious weather all year round also act as an important financial hub. With many businesspeople creating cross border relations and investments, it is only natural that recent austere times may have lead several companies to rethink their future and restructure their business. To find out more insolvency and restructuring Lawyer Monthly talks to Andrew Bolton from distinguished law firm Appleby.

Q Has insolvency and restructuring increased since the recession? What affect has it had on locally based businesses?

There has been an increase, but it has not been as marked as in the last recession. Insolvency practitioners have not been consistently as busy as might have been expected. Due to the nature of the jurisdiction, the most significant insolvency cases tend to be cross-border in nature and usually relate to Cayman-incorporated companies doing business elsewhere. Large-scale insolvency work in the Cayman Islands rarely involves locally-based trading companies (the notable exception being the period after Hurricane Ivan hit Grand Cayman in 2004 which led to the insolvency of a significant insurance company). Unlike the situation in the UK and the US, there have been no bank failures during the recession, so Cayman has not seen insolvency work of the kind involved in relation to Lehman Brothers, Northern Rock or Kaupthing, though some of those matters have given rise to associated issues in Cayman. There have however been a number of significant schemes of arrangement coming before the courts for approval, and several decisions of the Grand Court over the last year or so in relation to winding up on 'just and equitable' grounds.

Q What would you advise companies who are unable to reconcile their debts, are there any preventive steps they can put into place?

Cayman is and always has been a creditor-friendly jurisdiction, so there are limited options open to debtors: there is no equivalent of Chapter 11 or administration. In appropriate cases a scheme of arrangement may provide a solution. Hedge funds, which make up a significant proportion of entities established in the Cayman Islands, of course often have specific devices and arrangements built into their structures, such as the ability to suspend redemptions or the payment of redemption proceeds, which can help protect them while they deal with liquidity problems. Similarly, SPVs used in structured finance transactions often benefit from limited recourse provisions (whereby the only obligations that they incur are contractually limited to the amount of their

assets) and from contractual covenants from their creditors not to petition to wind up. Such covenants are now binding under Cayman law. However those arrangements by their nature need to be in place from the outset and are confined to entities engaged in specific types of business.

Q What sort of approach has the government taken vis-à-vis companies that are unable to pay their debts?

Historically, governments in the Cayman Islands have largely left matters to the market to resolve. The political environment is rather different from jurisdictions with large populations and extensive manufacturing bases. As mentioned above, the government in the Cayman Islands has not had to contend with any bank failures during the global recession.

Q What are the typical errors committed by companies involved in restructuring?

Whilst the circumstances of each case will vary, a theme that commonly arises in relation to restructuring is to start the process too late. The process of putting together a scheme of arrangement takes time and involves creditor meetings and court hearings, all of which require adequate notice. Particularly in the absence of any interim moratorium or 'breathing space' provision, it is important to start the process early enough to allow its completion before the company's situation becomes irremediable.

Q What if any legislative progressions do you see for insolvency and restructuring?

The insolvency law of the Cayman Islands has recently undergone a major overhaul, including the adoption of new procedural rules and a specific regime for international cooperation in insolvency matters. This, combined with the creation of a dedicated Financial Services Division of the Grand Court, which handles all significant insolvency matters, has transformed the insolvency and restructuring process in the Cayman Islands. It is therefore not likely that there will be further major changes in the immediate future. **LM**

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Litigation & Insolvency Practice Group

The firm provides litigation services in Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and Mauritius. The Litigation and Insolvency Practice is recognised as a leader in the field. The respective local teams and several of their members are given high recommendations in publications such as Legal 500, PLC Which Lawyer? and Chambers Global.

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“ Having resided in Indonesia for over 30 years, Darrell has been noted for “his exceptionally broad practice and deep knowledge of the local market” (Chambers Asia, 2009). Darrell has been recognized as one of the leading lawyers in Indonesia for project finance, mergers & acquisitions, energy and natural resources, capital markets, banking, and insurance by Who's Who Legal, Asia Law, Legal 500 and the International Financial Law Review. He is also noted as a leading insolvency and restructuring lawyer.



Darrell is a member of the Board of Governors of the American Chamber of Commerce in Indonesia, the American Bar Association, the Inter-Pacific Bar Association, and the International Bar Association. He is also a member of the board of advisers of the Asia Pacific Centre of the American Arbitration Association and the International and Comparative Law Centre of the Southwestern Legal Foundation. Darrell is a founding member of the International Insolvency Institute.

He has written and spoken frequently on Indonesian legal matters and recently was a speaker at the Euromoney Indonesia Investment Conference in September 2010.

A 1966 honors graduate in political science from the University of Southern California and Cambridge University, Darrell earned a 1969 J.D. degree from Stanford Law School. ”

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