Restructuring and Insolvency in Cayman Islands Overview

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A Q&A guide to restructuring and insolvency law in Cayman Islands

The Q&A gives a high level overview of the most common forms of security granted over immovable and movable property; creditors' and shareholders' ranking on a company's insolvency; mechanisms to secure unpaid debts; mandatory set-off of mutual debts on insolvency; state support for distressed businesses; rescue and insolvency procedures; stakeholders' roles; liability for an insolvent company's debts; setting aside an insolvent company's pre-insolvency transactions; carrying on business during insolvency; additional finance; and multinational cases.

Forms of Security

1. What are the most common forms of security granted over immovable and movable property? What formalities must the security documents, the secured creditor or the debtor comply with? What is the effect of non-compliance with these formalities?

Immovable Property

Common forms of security and formalities. Immovable property is land, buildings, and structures and is generally governed by the *Registered Land Act (2018 Revision)*.

The most common forms of security are:

- Mortgages. The borrower will retain possession of the property, but the lender has rights over the property if the borrower defaults. There are two common types of mortgage:
  - a legal mortgage, which transfers legal title to the mortgagee (lender) and prevents the mortgagor (borrower) from dealing with the asset. Legal title is returned to the mortgagor once the secured debt is repaid; and
  - an equitable mortgage, which transfers beneficial title to the mortgagee. The mortgagor retains legal title. An equitable mortgage does not take priority over a third party who has no notice

of the security interest and who acquires legal title to the property in good faith for valuable consideration.

- A fixed charge. The borrower, who retains possession, provides the lender with security over a charged asset(s) which typically include the right to take possession and/or exercise a power of sale in satisfaction of a debt (but on specified events of default. Legal title is not transferred to the lender by the creation of the charge.

Mortgages and fixed charges must be in writing and are almost always created by deed.

Security interests over real property should be registered with the *Land Registry*. The register is centrally maintained and relates to any form of charge over land. Registering the security provides secured creditors with priority over non-registered creditors.

There is no statutory regime for the mandatory filing or registration of security interests created by companies and the security is not void for failure to do so. However, a limited company must keep a register of all mortgages and charges affecting the property of the company at its registered office (section 54, *Companies Act (2025 Revision)* (Companies Act)).

Effects of non-compliance. There is no statutory regime that will make the security void if unregistered. If a mortgage or fixed charge is not registered at the Land Registry:

- It will be unenforceable against third parties, for example, future buyers in good faith without notice, other creditors, liquidators, or receivers.
- The debt will typically be deemed unsecured and the lender will lose priority to other creditor who register their security, including those created subsequently.
- In the case of insolvency, the lender may be treated as an unsecured creditor, ranking behind secured and preferential creditors, and consequently lose the right to receive the proceeds of sale to the value of debt owed when the asset (over which the lending was to be secured) is sold.
- The lender will lose its statutory right to exercise a power of sale of land (over which the lending was to be secured) as the power to sell only exists where a lender has secured a charge. The lender will instead need to pursue a contractual claim for a court order to enforce the charge and recover the debt, which makes the enforcement process longer and more costly and invites a greater risk of legal challenge from the borrower.

If a limited company fails to register a security interest in the register of mortgages and charges, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of an entry can be penalised by a fine of USD100 (section 54(2), Companies Act).

Movable Property

Common forms of security and formalities. The most common forms of security taken over moveable property, such as shares in a company, aircrafts, ships, and yachts are:

- A mortgage (see above, *Immovable Property*).

- A (fixed) charge (see above, *Immovable Property*).
- A floating charge. The holder of a floating charge cannot sell the (fluctuating) pool of assets over which it exists unless the debtor/borrower defaults, at which point the floating charge crystallises to become a fixed charge.
- A pledge, under which possession of an asset is delivered to the pledgee (lender/creditor) to sell and secure the payment of the debt in the event of default.
- A lien, under which the holder of the lien retains possession of the asset belonging to the debtor/borrower, until the debt owed is paid.

An instrument creating any security over a registered ship or a share in a ship must be registered with the Islands' Registrar of Shipping (section 74, *Merchant Shipping Act, 2024*).

A limited company must keep a register of mortgages at its registered office (see above, *Immovable Property*).

Effects of non-compliance with formalities. The effects of non-compliance with the formalities are:

- A penalty fine for failure to maintain a limited company's register of mortgages and charges (see above, *Immovable Property*).
- If a security interest over a ship is not registered:
  - it will be unenforceable against third parties, for example, future buyers or other creditors;
  - it will lose priority in the event of a company's liquidation; and
  - the debt may be unsecured if subsequent security is registered over that asset.

Creditor and Contributory Ranking

2. Where do creditors and contributories rank on a debtor company's insolvency?

The order of priority applicable in a debtor company's insolvency is set out in the Companies Act, *Companies Winding Up Rules 2023*, and common law.

Property which is subject to valid fixed security interests is reserved to the secured creditors benefiting from that security. Secured property does not form part of the liquidation estate. Therefore, a creditor who has security over the whole or part of the assets of a company is entitled to enforce its security without the leave of the Grand Court of the Cayman Islands (Grand Court). After payment of secured debts, the order of priority is as follows:

- Payment of the liquidation expenses.
- Payment of the preferential debts set out in full in Schedule 2 of the Companies Act and including:
    - money due to or payable on behalf of employees;
    - taxes due to the Cayman Islands government; and
    - money due to depositors in the case of a bank in liquidation.
- Payment to holders of floating charges (floating charges crystallise on a debtor company going into liquidation).
- Payment of the ordinary unsecured creditors, unless subordinated or deferred by agreement.
- Payment to preferred shareholders.
- Payment in respect of shares redeemed or bought back by the company.
- Payment of any surplus remaining to shareholders in accordance with their rights and interests in the company as set out in the articles of association (articles) or any shareholders' agreement.

Unpaid Debts and Recovery

3. Can trade creditors use any mechanisms to secure unpaid debts? Are there any legal or practical limits on the operation of these mechanisms?

In addition to taking security, for example, by way of a lien or charge over goods, trade creditors can include a retention of title (ROT) clause in their contract with a customer to secure unpaid debts. This allows trade creditors to retain legal title of any goods supplied to the customer, until payment for the goods has been made. An ROT clause should be drafted to mitigate against circumstances where goods are no longer capable of being identified or are sold.

4. Can creditors invoke any procedures (other than the formal rescue or insolvency procedures described in *Questions 6* and *7*) to recover their debt? Is there a mandatory set-off of mutual debts on insolvency?

The following procedures are available to creditors for the purpose of recovering a debt:

- Court proceedings. A creditor can bring proceedings in the Grand Court. If the debt is disputed, the creditor must litigate the dispute until it obtains a judgment in its favour, at which time it can seek to enforce that judgment against the debtor through a variety of tools, for example:
    - a charging order; or
    - a garnishee order, which is a Grand Court order directing one or more third parties (garnishees) who owe money to a judgment debtor to pay that debt directly to the judgment creditor.
- Freezing injunction (or Mareva injunction). A creditor can make an ex parte application to the Grand Court for a freezing injunction to prevent a debtor from disposing of assets that could otherwise satisfy a potential future judgment. The Grand Court can also order the debtor to disclose information about their assets to ensure the effectiveness of the freezing injunction. In the Cayman Islands, the Grand Court has the jurisdiction to grant worldwide freezing injunctions (in aid of foreign proceedings) and, in some cases, will grant these orders against third parties.
- Receivership. Where a creditor holds a fixed or floating charge, and where the security documents allow it, the creditor can appoint a receiver to take in and sell the secured asset.

In the context of insolvency in the Cayman Islands, mutual debts between a company and a creditor are subject to a mandatory set-off, meaning that where the creditor also owes a debt to the debtor company, only the net balance of the account (if any) can be claimed in insolvency proceedings. This automatic set-off will not apply:

- If there is a contractual agreement between the parties that overrides statutory set-off provisions, either by waiving or limiting set-off rights.
- If the creditor had notice of the debtor company's insolvency at the time the credit was extended.

There are no specific rules relating to debt recovery by foreign creditors. If a foreign bank wishes to enforce its rights over secured assets located within the jurisdiction in the case of a loan default, it must follow the same procedures as a local creditor.

State Support

5. Is state support for distressed businesses available?

The Cayman Islands government does not offer any direct state aid or bailout programs for companies in financial distress. There are no statutory schemes of government support for restructuring or insolvency.

Rescue and Insolvency Procedures

6. What are the main rescue/reorganisation procedures in your jurisdiction?

Scheme of Arrangement

Objective. A scheme of arrangement is available to any company that is liable to be wound up by the Grand Court under section 92 of the Companies Act (see *Question 7, Compulsory Court Liquidation (Official Liquidation)*), (section 86, Companies Act). For distressed companies, a scheme of arrangement can be used as a flexible court-supervised debt-restructuring tool to avoid a formal insolvency procedure. Otherwise, a scheme of arrangement can be used as a mechanism to reorganise a solvent company and for mergers, consolidations, and take-private transactions.

Initiation. There is no statutory duty to initiate a scheme of arrangement process, including in circumstances where the company is or is likely to be insolvent (although directors should be aware that they have an actionable duty to act in the interests of the company, and where the company is insolvent, the interests of the company includes the interests of creditors (creditor duty)). The company, a creditor, a member, a restructuring officer, or a liquidator where a company is being wound up, can apply to the Grand Court by petition for a convening order. The petitioner must satisfy the Grand Court that:

- All classes of shareholders or creditors (as applicable) have been properly constituted for the purpose of the meeting(s) (a class in this context is not necessarily limited to whether different classes of shares have been issued; the Grand Court will need to be satisfied that there is a sufficient common interest among those treated as part of the same class that they are able to consult and decide on any compromise of their legal rights).
- Sufficient information has been or will be provided to the stakeholders to allow them to make an informed decision about whether to approve the scheme.
- Proper notice of the meeting will be given to the stakeholders.

As the scheme will ask stakeholders to give up or vary some of their rights, the Grand Court will order a meeting of the relevant stakeholders (or meetings if there is more than one class) to ensure that the requisite majority approve of the scheme.

Substantive tests. The scheme must be approved by:

- A majority in number representing 75% in value of the creditors or class of creditors, voting in person or by proxy, in a scheme or arrangement which seeks to vary the rights of creditors.
- 75% in value of the shareholders or a class of shareholders, voting in person or by proxy, in a scheme of arrangement which seeks to vary the rights of shareholders.

(Section 86(2) and (2A), Companies Act.)

The Grand Court will consider at a further hearing whether to sanction the scheme by order of the Grand Court. The Grand Court will focus on procedural and fairness considerations, such as whether:

- The meetings were held and conducted in accordance with the Companies Act and the Grand Court's convening order.
- The scheme represents a better result than if the company were to be wound up, where the goal is to avoid a winding-up.

Anyone who voted at the meeting is entitled to be heard at the sanction hearing. Unlike the other rescue procedures, there is no need to show the company is unable to pay its debts.

Consent and approvals. Members' and creditors' schemes require an affirmative vote of at least a 75% majority in value (and for creditors' schemes, also a majority in the number of creditors) to proceed to Grand Court approval. Once sanctioned by the Grand Court and registered (see below, *Conclusion*) the scheme will bind all shareholders or creditors (as applicable), including those who dissented.

Supervision and control. The Grand Court supervises a scheme of arrangement, but it does not change who is in control of the company (whether that is the directors, a restructuring officer, or a liquidator). During the scheme process (if not combined with provisional liquidation or a restructuring officer appointment), the company's directors remain in control of day-to-day operations.

Protection from creditors. The commencement of a scheme of arrangement procedure (by itself) does not trigger a moratorium on proceedings against the company, such as creditor actions. For that reason, companies have often paired the scheme process with protective proceedings, such as "light-touch" provisional liquidation, to benefit from a stay on claims while the scheme is developed (see below, *Provisional Liquidation*). Trading partners are not restricted from terminating or rescinding contracts with the debtor, for example, on the basis of an event of default.

Length of procedure. There is no minimum or maximum timeframe. Where the proposed scheme is well advanced before the petition, the approval process for the scheme can be concluded in as short a period as three months. However, a contentious scheme can take longer due to protracted negotiations or court challenges. The timeframe will depend on the complexity of the proposed arrangement or compromise and stakeholder co-operation.

Conclusion. A court-sanctioned scheme will bind the affected stakeholders (including those who dissented or did not vote) once it is registered with the Registrar of Companies. The company's obligations are modified according to the scheme terms, allowing the company to continue trading under a restructured balance sheet. If the scheme fails, the company may be the subject of insolvency proceedings (if they have not already begun).

Appointment of Restructuring Officers

Objective. The appointment of a restructuring officer under section 91B of the Companies Act gives a company breathing space, in the form of a statutory moratorium, to restructure its debts with the assistance of a court-appointed restructuring officer (a qualified insolvency practitioner). The goal is to avoid a costly formal liquidation procedure.

Initiation. A company that is liable to be wound up under section 92 of the Companies Act (see *Question 7*, *Compulsory Court Liquidation (Official Liquidation)*) can present a petition to appoint a restructuring officer (including on an ex parte basis). The directors do not need an express power in the company's memorandum and articles to present such a petition. There is no statutory duty to seek the appointment of a restructuring officer including in circumstances where the company is insolvent (although directors should bear in mind the creditor duty (see above, *Scheme of Arrangement*).

Substantive tests. To secure the appointment of a restructuring officer (and the accompanying moratorium), the company must demonstrate to the Grand Court that it:

- Is or is likely to become unable to pay its debts (a cash-flow test).
- Intends to present a compromise or arrangement to its creditors or a class of creditors (including a compromise or arrangement under the law of a foreign country). The company must evidence a sufficiently well-advanced proposal for the proposed compromise or arrangement, satisfying the Grand Court that the restructuring efforts are genuine.

Consent and approvals. A shareholders' resolution is not a precondition to a company's ability to petition for the appointment of a restructuring officer. Other consent or approvals are dependent on the particular compromise or arrangement being proposed.

Supervision and control. The process is court-supervised. The restructuring officer, a creditor, or a contributory of the company can apply to the Grand Court to determine any question arising in the course of the restructuring officer's appointment. Once appointed, the restructuring officer's role is to oversee and facilitate the proposed restructuring, with the Grand Court's appointment order specifying the manner and extent to which the restructuring officer's powers and functions affect or modify the powers of the company's board. The company's directors otherwise remain in control of the company.

Protection from creditors. An automatic moratorium is triggered immediately on the presentation of the petition to appoint the restructuring officer. However, a secured creditor is entitled to enforce the creditor's security without leave of the Grand Court and without reference to the restructuring officer. Trading partners are not restricted from terminating or rescinding contracts with the debtor, for example, on the basis of an event of default.

Length of procedure. There is no minimum or maximum timeframe. The process to appoint a restructuring officer is intended to be relatively swift. The timeline for the conclusion of the restructuring efforts will depend on the complexity of the compromise or arrangement proposed and stakeholder co-operation.

Conclusion. On application to the Grand Court, the restructuring officer can be discharged and full control returned to the directors on conclusion of the restructuring efforts. If successful, the company can continue as a going concern. If the

restructuring fails, the company is likely to continue into official liquidation (see *Question 7*, *Compulsory Court Liquidation (Official Liquidation)*).

Provisional Liquidation

Objective. "Light-touch" provisional liquidation can be used to restructure debts and ultimately avoid official liquidation. The objective is to stay creditor actions and buy time for the company to formulate and implement a rescue plan (often through a scheme of arrangement) under the Grand Court's supervision.

Initiation. A company, creditor, or shareholder can petition the Grand Court to appoint a provisional liquidator. The Grand Court can appoint a provisional liquidator at any time after the presentation of a winding-up petition but prior to the hearing of the petition (section 104, Companies Act). There is no statutory duty to seek the appointment of provisional liquidators including in circumstances where the company is insolvent (although directors should bear in mind the creditor duty (see above, *Scheme of Arrangement*)).

Substantive tests. If the petitioner is a creditor or contributory, they will need to satisfy the Grand Court that:

- There is a prima facie case for making a winding-up order.
- The appointment of a provisional liquidator is necessary to prevent:
    - the dissipation or misuse of the company's assets;
    - the oppression of minority shareholders; or
    - mismanagement or misconduct on the part of the company's directors.

(Section 104(2), Companies Act.)

If the petitioner is the company itself, it need only persuade the Grand Court that it is appropriate to appoint a provisional liquidator (section 104(3), Companies Act). To do so, it should provide evidence it is or is unlikely to be able to pay its debts and intends to present a compromise or arrangement to its creditors.

Consent and approvals. The provisional liquidator is appointed by the Grand Court and stakeholder consent is not required.

Supervision and control. The Grand Court supervises the provisional liquidation and the provisional liquidator must report to creditors and the Grand Court periodically. The provisional liquidator's powers are set by the Grand Court in the appointment order. The board's powers are suspended on the provisional liquidator's appointment by default and the provisional liquidator becomes the principal agent of the company. However, provisional liquidation usually allows the directors to maintain a level of control over the day-to-day operations of the company, subject to the oversight of the provisional liquidator and the Grand Court.

Protection from creditors. The appointment of a provisional liquidator triggers a moratorium on unsecured creditor actions similar to that in an official liquidation. Trading partners are not restricted from terminating or rescinding contracts with the debtor, for example, on the basis of an event of default.

Length of procedure. There is no maximum or minimum timeframe. The duration of a restructuring provisional liquidation will be case-specific. In general, the Grand Court will adjourn the pending winding-up petition for an initial period to allow the provisional liquidator to pursue restructuring efforts.

Conclusion. As a provisional liquidation is auxiliary to a pending winding-up petition, the provisional liquidator will be discharged on either a successful restructuring (accompanied by the withdrawal of the winding-up petition) or the making of a winding-up order and the appointment of an official liquidator (see *Question 7*, *Compulsory Court Liquidation (Official Liquidation)*).

Informal Workouts

In addition to the above processes which involve the Grand Court in some capacity, companies can also attempt consensual debt restructurings negotiated with key creditors out of court, but these arrangements do not benefit from a statutory moratorium.

7. What are the main insolvency procedures in your jurisdiction?

Voluntary Liquidation

Objective. A voluntary liquidator (who may or may not be a qualified insolvency practitioner) is tasked with bringing an end to a company by realising its assets, paying off creditors, and distributing any remaining assets to the shareholders. On completion, the company can be dissolved and will cease to exist. If the company is insolvent, the process will shift to a formal process under the Grand Court's supervision, with an official liquidator appointed.

Initiation. A company can be wound up voluntarily:

- On a shareholders' special resolution (a majority of at least two-thirds in number, or any greater majority required for a special resolution by the company's articles. A special resolution may also be carried by way of unanimous written approval of the shareholders if the articles allow).
- An ordinary resolution (a simple majority) in a general meeting to wind up the company on the basis that the company is unable to pay its debts.
- If the time period fixed for the company's duration or a winding-up event provided for in its memorandum or articles expires or occurs.

(Section 116, Companies Act.)

There is no statutory duty to initiate a voluntary liquidation, but directors should bear in mind the creditor duty.

Substantive tests. After a company has been placed into voluntary liquidation, if the directors do not sign a declaration of solvency within 28 days (confirming there has been a full inquiry into the company's affairs and that the company can pay all of its debts within 12 months), the voluntary liquidator must apply for the liquidation to continue under the supervision of the Grand

Court (see below, *Compulsory Court Liquidation (Official Liquidation)*). Even if the directors sign a declaration of solvency, the voluntary liquidator or any contributory or creditor can apply for a supervision order from the Grand Court on grounds that:

- The company is or is likely to become insolvent.
- The supervision of the Grand Court will facilitate a more effective, economic, or expeditious liquidation of the company.

Consent and approvals. Unless the voluntary liquidation is mandated by the company's articles, a shareholders' special resolution or an ordinary resolution in a meeting to wind up the company on the basis that the company is unable to pay its debts is required to place the company into voluntary liquidation (see above, *Initiation*).

Supervision and control. On appointment of the voluntary liquidator, control of the company shifts to the voluntary liquidator. The directors' powers usually cease, although they may be allowed to retain some control of the day-to-day operations of the company where that will be beneficial to the winding up.

Protection from creditors. There is no automatic moratorium, unless and until the voluntary liquidation proceeds to official liquidation and official liquidators are appointed (see below, *Compulsory Court Liquidation (Official Liquidation)*). Trading partners are not restricted from terminating or rescinding contracts with the debtor, for example, on the basis of an event of default.

Length of procedure. A voluntary liquidation is likely to take far less time than an official liquidation or a voluntary liquidation which is brought under the Grand Court's supervision. A voluntary liquidation's duration will depend on its complexity. A relatively straightforward voluntary liquidation could take as little as three months.

Conclusion. Once the voluntary liquidator has fully wound up the company's affairs, they will prepare an account of the winding-up showing how the assets were distributed and call a general meeting of the shareholders. The voluntary liquidator must then file a return with the Registrar of Companies. The company will be deemed to be dissolved three months after filing (a short period to allow for any last-minute creditor claims or challenges to surface). A voluntary liquidation will conclude and continue into official liquidation if a declaration of solvency is not provided by the directors within 28 days of the company being placed into voluntary liquidation (or if the voluntary liquidator or any contributory or creditor has applied for and is successful in obtaining a supervision order).

Compulsory Court Liquidation (Official Liquidation)

Objective. The official liquidator's objective is to realise the company's assets and pay off creditors in accordance with the statutory order of priority (see *Question 2*). The process is court-supervised, and the liquidator is required to report periodically to creditors and the Grand Court.

Initiation. The Grand Court can wind up a company if:

- The company has passed a special resolution requiring the company to be wound up by the Grand Court.
- The company does not commence its business within a year from its incorporation or suspends its business for a whole year.

- The period fixed for the duration of the company by the articles expires, or a winding-up event provided in the articles occurs.
- The company is unable to pay its debts.
- The Grand Court is of the opinion that it is just and equitable that the company should be wound up.

(Section 92, Companies Act.)

The company, a creditor, or a contributory (or for regulated entities such as banks, the Cayman Islands Monetary Authority) can file a winding-up petition (section 94, Companies Act). While directors have no statutory duty to file a winding-up petition (there is no wrongful trading offence in the Cayman Islands), directors may face personal liability if they fail to act in the interests of creditors if a company becomes insolvent (that is, the creditor duty). The commencement of an official liquidation is deemed retroactive to the filing of the petition and any post-petition dispositions of company property are void unless sanctioned by the Grand Court.

Substantive tests. The principal test is whether the company is unable to pay its debts. This can be shown by a failure to pay a statutory demand or evidencing general cash-flow insolvency. The Grand Court's order to wind up the company because it is just and equitable to do so may be made, for example, because there has been a loss of trust and confidence in management.

Consent and approvals. If the company itself files the petition, shareholder approval will be necessary in accordance with the company's articles. Once the petition is filed, the Grand Court may hear stakeholders on the petition or on the proposed liquidator, but their consent is not required. The Grand Court appoints the official liquidator.

Supervision and control. Official liquidation is court-supervised. The official liquidator (a qualified insolvency practitioner) will assume full control of the company and the directors' powers will cease. Unless the Grand Court otherwise directs, a liquidation committee must be established in every winding up. The liquidation committee is usually made up of key creditors, overseeing progress and giving views on certain actions the liquidator proposes to take.

Protection from creditors. An automatic moratorium is triggered on the winding-up order being made (not on the filing of the petition, as is the case with a restructuring officer petition). Creditors instead make their claims in the liquidation by lodging a proof of debt with the official liquidator, who will adjudicate on the claim acting in a quasi-judicial capacity. Trading partners are not restricted from terminating or rescinding contracts with the debtor, for example, on the basis of an event of default.

Length of procedure. The length of official liquidations varies significantly. Where there are limited assets and liabilities, the process can conclude in under a year. Where there are assets in multiple jurisdictions or they can only be realised through litigation, the process can take years. There is no statutory time limit for an official liquidation.

Conclusion. Once all efforts have been made to realise assets and all monies have been distributed, the official liquidator will make an application to the Grand Court for an order dissolving the company. The Grand Court's order for dissolution will signal the end of the liquidation and the company will cease to exist.

Receivership

Outside the collective winding-up processes, secured creditors in the Cayman Islands can enforce their security by appointing a receiver over specific charged assets to realise the secured assets for the secured creditor’s benefit. Receivership is governed by

contract and common law rather than the Companies Act, and it does not lead to the distribution of assets to unsecured creditors. The commencement of a liquidation procedure does not automatically stay a secured creditor’s right to enforce their security.

Stakeholders' Roles

8. Which stakeholders have the most significant role in the outcome of a restructuring or insolvency procedure? Can stakeholders or commercial/policy issues influence the outcome of the procedure?

Stakeholders

In the context of restructuring through a scheme of arrangement, the members of the scheme (whether these are creditors or shareholders will depend on the circumstances) will have the most significant role. While the Grand Court plays a supervising role, the scheme is ultimately approved through the votes of majority of its members and, once the Grand Court sanctions the scheme, it binds all members (including those who did not vote).

In the context of an official liquidation, a liquidation committee must be appointed unless the Grand Court orders otherwise and it is this committee that will have a significant role in the outcome of the insolvency. The Grand Court may also direct the establishment of a liquidation committee in a provisional liquidation.

The liquidation committee will act as a sounding board in respect of the proposed actions of the liquidators and plays a key role in approving or rejecting the liquidator's remuneration. The composition of the committee will mainly depend on the type of solvency/insolvency status determined by the liquidator:

- If the liquidator has determined that the company is insolvent, the committee will consist of three to five creditors.
- If the liquidator has determined that the company is solvent, the committee will consist of three to five shareholders.
- If the liquidator determines that the company is of doubtful solvency, the committee will consist of three to six members of whom a majority must be creditors and at least one of whom must be a shareholder.

(Order 9, Companies Winding Up Rules.)

Influence on Outcome of Procedure

In a restructuring scenario such as a scheme of arrangement, members will influence the outcome through their votes. In liquidations, unsecured creditors (where the company is insolvent) or the shareholders (where the company is solvent) will usually control the process.

A company's employees are given a high level of protection where that company becomes insolvent. Their influence on the process is principally through their status as creditors and their potential claims for preferential debts. While their employment contracts typically terminate on a winding-up order, they can pursue claims for accrued wages, vacation pay, and other benefits. These preferential debt claims are paid before other creditors, but an employee will be an unsecured creditor for any other amounts owed. Employees can pursue their claims and participate in the insolvency process but they typically do not have a significant role in directing the overall direction of the process, their preferential status primarily relates to their recovery of the amounts owed to them.

Liability

9. Can a director, partner, parent entity (domestic or foreign) or other party be held liable for an insolvent debtor's debts?

Director

Common law or equitable duties. Directors owe common law and fiduciary duties to a company. The common law duty is one of skill and care. The fiduciary duty is to act in good faith and to exercise their powers in the best interest of the company at all times. If found to have breached either of those duties, a director will be liable to the company for damages assessed by reference to the loss which the company suffers as a result of the director's breach of duty.

A director's duties will shift to the creditors of a company when the company is or is likely to become insolvent (creditor duty). Therefore, a director may be liable to the company's creditors if they do not act in accordance those duties.

Guarantee. A company director can be liable for the company's debts where it provides a guarantee to a creditor in regard to the company's debts, as that guarantee can be enforced against the director in person.

Malfeasance. A director may be criminally liable and subject to a fine or imprisonment or both if, in the 12 months preceding a company's liquidation, the director commits any of the following offences, with the intent to defraud the company's creditors or shareholders:

- Concealing any part of the company’s property to the value of KYD10,000 or more or concealing any debt due to or from the company.
- Removing any part of the company’s property to the value of KYD10,000 or more.
- Concealing, destroying, mutilating, or falsifying any documents affecting or relating to the company’s property or affairs.
- Making any false entry in any documents affecting or relating to the company’s property or affairs.

- Parting with, altering, or making any omission in any document affecting or relating to the company's property or affairs.
- Pawning, pledging, or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging, or disposal was in the ordinary way of the company's business).

(Section 134, Companies Act.)

Fraudulent trading. If it appears that the business of a company has been carried on with the intent to defraud its creditors or for any other fraudulent purpose, a liquidator can apply to the Grand Court for an order that any person who was knowingly a party to the carrying on of this business be liable to make contributions to the company's assets.

Partner

Unregistered partnerships. A partner is liable jointly with the other partners for all debts and obligations of the firm incurred while that person is a partner (section 10, *Partnership Act (2025 Revision)*). In the event of the partners' death, the partner's estate is also liable for the debts and obligations incurred while that person was partner, subject to the payment of the partner's separate debts.

Exempted limited partnerships. These types of partnership consist of one or more general partners and one or more limited partners. The general partner is liable for all debts and obligations of the exempted limited partnership, if the assets of the exempted limited partnership are inadequate. A limited partner is not liable for the debts and obligations of the exempted limited partnership, except where:

- They are made liable under the partnership agreement.
- The limited partner takes part in the conduct of the business of the exempted limited partnership in its dealings with persons who are not partners, providing that the persons had actual knowledge of the limited partner's participation and reasonably believed the limited partner to be a general partner.

Parent Entity (Domestic or Foreign)

The only circumstances where a parent entity can be liable for the debts of an insolvent subsidiary is where a creditor is able to pierce the corporate veil.

Other Party

If it appears to a liquidator that a third party was knowingly party to the carrying on of business of a company in liquidation with intent to defraud the company's creditors or creditors of any other person, the liquidator can make an application to the Grand Court for an order that the third party make contributions to the company's assets as the Grand Court thinks fit.

A third party can also be liable for an insolvent entity's debts if it provides a guarantee in relation to a company's debts.

Setting Aside Transactions

10. Can an insolvent debtor's pre-insolvency transactions be set aside? If so, who can challenge these transactions, when and in what circumstances? Are third parties' rights affected?

The following pre-insolvency transactions that were made when a company was unable to pay its debts may be set aside:

- Voidable preferences.
- Dispositions at an undervalue.

(Sections 145 and 146, Companies Act.)

Voidable Preferences

A transaction involving a payment or disposal of property to a creditor or related party will be considered a voidable preference where both:

- The transaction occurred within six months before the deemed commencement of the company's liquidation and at a time when the company was unable to pay its debts as they fell due.
- The transaction was made with a view to giving the relevant creditor a preference over other creditors.

Giving preference to one creditor over others means having the dominant intention of putting that creditor in a better position than it otherwise would have been. It must be shown that the payment was made "with a view" to giving preference to one creditor over another. It is not necessary to show dishonesty. If the effect of a transaction is that preference is given to one creditor over another, but the purpose of the transaction was different, this may not constitute a voidable preference. Cayman Islands law deems payments made to creditors who are related parties of the company (that is, parties who have the ability to control the company or exercise significant influence over it in making financial and operational decisions) to have been made with a view to giving that creditor a preference.

A preferential payment is voidable on the application of the company's liquidator. The company's liquidator may apply to the Grand Court to have the transaction in question set aside and order the creditor to return the asset and prove its claim in the liquidation.

Dispositions at an Undervalue

A transaction where a company disposes of property at an undervalue, with the intent of defrauding its creditors, is a voidable transaction on the application of the official liquidator. Intent to defraud means an intention to wilfully defeat an obligation owed to a creditor. Property being disposed of at an undervalue refers to no consideration being paid for the disposition, or consideration being paid which is significantly less than the value of the property which is the subject of the disposition.

The burden of proof is on the liquidator to establish an intent to defraud and the application must be brought within six years of the disposition.

The Grand Court may set aside a disposition requiring the recipient of the property (the transferee) to return the property that it has bought. Assuming the transferee has not acted in bad faith, the transferee will have a first and paramount charge over the property of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings. In addition, the disposition is set aside subject to the proper fees, costs, pre-existing rights, claims, and interests of the transferee.

Carrying on Business During Insolvency

11. In what circumstances can a debtor continue to carry on business during rescue or insolvency proceedings? In particular, who has the authority to supervise or carry on the debtor's business during the process and what restrictions apply?

Whether a corporate debtor can carry on business during rescue or insolvency proceedings depends on the nature of the rescue or insolvency proceeding.

Where the continuation of a debtor's business activities involves the disposition of its property or any transfer of shares or alteration in the status of its shareholders made after the commencement of the winding-up, the corporate debtor must apply to the Grand Court for a validation order, otherwise the disposition in question will be void (section 99, Companies Act).

Official Liquidation

Where a corporate debtor is in official liquidation, the court-appointed official liquidators can carry on the business of the debtor if it is beneficial for its winding up. However, to carry on the debtor's business activities, the official liquidators must have obtained the prior sanction of the Grand Court unless the power to carry on business activities was included in the Grand Court order by which the official liquidators were appointed (section 110(2) and Schedule 3, Part 1, Companies Act).

The board's control of the company ceases on the appointment of official liquidators. The Grand Court and the Companies Act (often with the pre-requisite sanction of the Grand Court) confer powers on the official liquidators. The official liquidators act according to these powers as officers of the Grand Court and are under the Grand Court's supervision and control.

Voluntary Liquidation

Where a corporate debtor has entered voluntary liquidation, it will cease to carry on business except to the extent that business is beneficial for its winding up (section 118(1), Companies Act).

Where a company is in voluntary liquidation, all the powers of the directors cease except so far as the company in a general meeting or the voluntary liquidator sanctions their continuance (section 119(5), Companies Act).

The winding-up must take place in accordance with the terms of the debtor's constitutional documents (its memorandum, articles and, if applicable, the shareholders' agreement). The Grand Court retains a supervisory jurisdiction in so far as a voluntary

liquidator may apply to the Grand Court to determine any issue that arise during the liquidation process (section 129, Companies Act).

Provisional Liquidation

Where a corporate debtor is in provisional liquidation which has been commenced, for example, for the purposes of a restructuring, the debtor will usually continue its ordinary business activities. The debtor's ability to carry on its ordinary business activities in these circumstances will be subject to:

- Its compliance with the terms of the Grand Court order by which the provisional liquidators have been appointed.
- It obtaining Grand Court sanction for dispositions of its property or assets.

(Section 104(4), Companies Act.)

The terms of the appointment order of the provisional liquidator and the powers granted to the provisional liquidators will determine the board's powers. Where the provisional liquidation is designed to preserve the company's assets in the context of the existing board's suspected fraud or mismanagement, directors' powers will typically be assumed by the provisional liquidators. In a light touch provisional liquidation deployed for restructuring purposes, the directors' powers of day-to-day management may be preserved with the provisional liquidators performing a supervisory function as officers of the Grand Court.

Restructuring Officers

The purpose of the restructuring officer regime is to allow for a corporate debtor to be rescued and avoid liquidation. Therefore, in making the appointment order, the Grand Court may permit the company to continue to carry on its ordinary business subject to modifications to the powers and functions of the debtor's board and granting the restructuring officer power to supervise the debtor's business. The Grand Court determines a restructuring officer's powers and functions in its supervisory jurisdiction and, given its purpose is to restructure the debtor company, the Grand Court may largely preserve the directors' powers.

Scheme of Arrangement

Where a corporate debtor enters into a scheme of arrangement, the scheme does not affect the directors' powers, unless the Grand Court appoints provisional liquidators in parallel.

Additional Finance

12. Can a debtor that is subject to insolvency proceedings obtain additional finance both as a legal and as a practical matter (for example, debtor-in-possession financing or equivalent)? Is special priority given to the repayment of this finance?

The liquidators of a company that is in compulsory liquidation can borrow money and grant security over the property of the company, with the Grand Court's consent. The Grand Court will order repayment of that funding in priority to the company's creditors.

Provided that it is permitted under its memorandum and articles, a company in voluntary liquidation can take on additional funding. If the funder requires repayment ahead of the company's other creditors, the company must apply to the Grand Court.

Multinational Cases where there are no Applicable EU or International Frameworks

13. What are the rules that govern a local court's recognition of concurrent foreign restructuring or insolvency procedures for a local debtor? Are there any international treaties or EU legislation governing this situation? What is the process for applying for local recognition where there are no applicable EU or international frameworks? What are the procedures for foreign creditors to submit claims in a local restructuring or insolvency process?

The Cayman Islands have a developed framework for handling concurrent foreign insolvency or restructuring proceedings. Co-operation is achieved not through international treaties but through domestic legislation and common law principles of comity. The key statutory provisions are in:

- Part XVII of the Companies Act.
- The *Foreign Bankruptcy Proceedings (International Co-Operation) Rules, 2018*.

Together they govern how the Grand Court may recognise and assist foreign insolvency proceedings. The Grand Court has also adopted the *Judicial Insolvency Network (JIN) Guidelines* to facilitate court-to-court communication and co-ordination in multinational cases.

Recognition and Ancillary Relief

The Grand Court can recognise a foreign bankruptcy, liquidation, or restructuring proceeding and grant a range of ancillary orders in aid of that foreign proceeding. On application by a foreign representative (such as a liquidator, administrator, or bankruptcy trustee from another jurisdiction), which is usually supported by a letter of request from the foreign court, the Grand Court can exercise its powers under Part XVII of the Companies Act.

The relief available to foreign representatives includes:

- Recognising the foreign representative’s authority to act on behalf of the debtor in the Cayman Islands.
- Preventing or staying proceedings against the debtor or in relation to its assets in the Cayman Islands.

- Requiring persons to give information or documents or to turn over the debtor's property to the foreign representative.

The Grand Court will not directly enforce a foreign insolvency order but will provide analogous relief under Cayman Islands law. Essentially, the Grand Court can domesticate the foreign proceeding's effects to the extent they are not inconsistent with local law. The Foreign Bankruptcy Proceedings (International Co-Operation) Rules set out the procedure and requirements for these applications, ensuring that due notice is given to interested parties where appropriate and that the Grand Court is provided with the necessary evidence of the foreign proceeding and the foreign representative's authority.

In deciding whether and how to assist a foreign insolvency or restructuring proceeding, the Grand Court will be guided by the principles in section 242 of the Companies Act which largely mirror the concept of modified universalism. The Companies Act directs the Grand Court to consider what will best ensure an economic and expeditious administration of the debtor's estate, including:

- The just treatment of all claimants whatever their domicile.
- The protection of local creditors against inconvenience in the foreign process.
- The prevention of fraudulent dispositions.
- The non-enforcement of foreign revenue or penal claims.

Comity is explicitly acknowledged. In practice, this means the Grand Court is likely to co-operate if the foreign proceeding upholds basic fairness and does not discriminate against local creditors or contravene public policy. Cayman Islands liquidators and foreign officeholders can enter and have entered into cross-border protocols (with Grand Court approval) to co-ordinate multi-jurisdictional cases.

Procedures for Foreign Creditors

The Cayman Islands' insolvency regime is creditor-neutral regarding domicile and nationality. Foreign creditors are entitled to prove their debts and participate in local proceedings on an equal footing with local creditors.

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