A&O SHEARMAN

Restructuring across borders
Cayman Islands

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | APRIL 2026

Contents

Introduction

When a corporate borrower faces financial difficulties in the Cayman Islands, there are a variety of restructuring and insolvency options available.

Insolvency and restructuring procedures in the Cayman Islands are primarily governed by the Companies Act (2026 Revision) (the Companies Act) and the Companies Winding Up Rules (2023 Consolidation) (the CWR). A number of other enactments may also be relevant, including, the Insolvency Practitioners' Regulations (2023 Consolidation) (as amended) and the Foreign Bankruptcy Proceedings (International Cooperation) Rules 2018.

The Financial Services Division of the Grand Court of the Cayman Islands (the Court) is responsible for handling corporate insolvency and restructuring proceedings in the Cayman Islands.

From a creditor's perspective, the choice of procedure will depend on whether the debtor has granted security.

If security has been granted, receivership may be the most appropriate choice. Receivership may be classified as a self-help remedy for secured creditors and, as a matter of Cayman Islands law, (with the exception of registered land) is governed exclusively by the terms of the security document(s) and the common law. Cayman Islands insolvency law is very creditor friendly and will not prevent a secured creditor from enforcing its security in accordance with its terms.

Overall, the choice of procedure will depend on whether there is a business to be rescued.

If so, an informal bank rescue or workout outside of any of the formal insolvency or restructuring procedures may be appropriate (i.e., the restructuring of the company on an informal, consensual basis by agreement between the company and its principal lenders and/or other creditors). Alternatively, a restructuring or rescue may be conducted via a formal scheme of arrangement (potentially in tandem with the appointment of restructuring officers or provisional liquidators).

If the company has no realistic chance of being rescued, it may be more appropriate to put the company into liquidation, and for a liquidator to realise the assets (which may include selling operating businesses or subsidiaries) and to distribute the proceeds to creditors and, if relevant, shareholders.

The four principal restructuring and insolvency regimes for companies under Cayman Islands law are:

- receivership;
- appointment of restructuring officers;
- scheme of arrangement; and
- liquidation (including provisional liquidation), also known as winding-up.

Enforcement *of security*

The main forms of security used in practice under Cayman Islands law are:

- legal and equitable mortgages;
- fixed and floating charges; and
- legal and equitable assignments.

For creditors who have taken security, it is possible to enforce certain security rights without a Court order (or, depending on the circumstances, the appointment of a receiver).
The appropriate method of enforcement will depend on the type of security granted and the particular case in question.

Cayman Islands law recognises the concepts of a trust and a security power of attorney and it is possible to utilise a trust or a security power of attorney as a form of security.

Receivership

Receivership is essentially a self-help remedy available to secured creditors. It is not a collective insolvency procedure but a method by which a secured creditor can enforce its security, realise the assets secured and obtain repayment of the debt outstanding. The receiver appointed acts principally in the interests of his appointor and not for the general body of creditors.

A receiver may be appointed by the secured creditor in accordance with the terms of the security document pursuant to which the appointment is to be made and without an order of the Court.

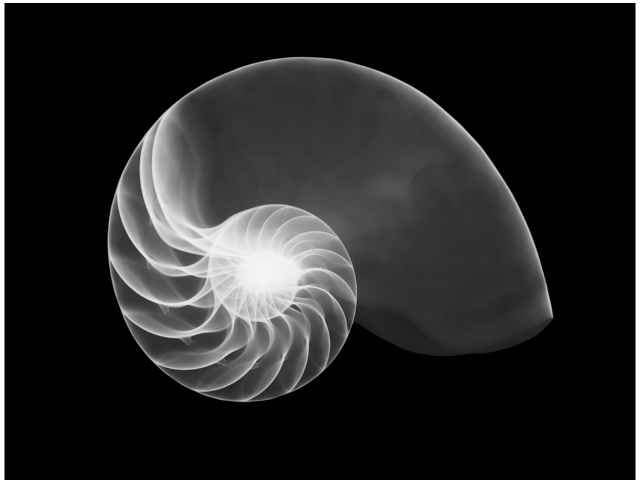
The powers granted to a receiver are derived from the security document(s) pursuant to which they are appointed. The powers are usually wide and should generally enable them to do all things necessary to realise the secured property for the benefit of the secured creditor.

Receiverships in the Cayman Islands are (with the exception of registered land) governed exclusively by the terms of the security document(s) and the common law. Other than the Registered Land Act (2018 Revision), which contains provisions in respect of the appointment of receivers in relation to registered land, there are no legislative provisions governing receiverships.

Schemes of *arrangement*

Schemes of arrangement involve a compromise or arrangement between a company and its creditors or members (or any class of them). In an insolvency or potential insolvency situation, schemes are principally used to: (i) restructure the company's debts when the company is in financial difficulties, with a view to the company continuing its operations (either on a standalone basis or in conjunction with the appointment of restructuring officers or provisional liquidators); or (ii) reach a compromise with creditors in a liquidation (the scheme being used as the mechanism for making distributions in the liquidation).

No protection from creditor action is afforded if a scheme of arrangement is used outside of liquidation (including provisional liquidation) or the restructuring officer regime. In the restructuring context, if a moratorium is likely to be beneficial, consideration should be given to a scheme of arrangement being used in conjunction with the appointment of a restructuring officer or provisional liquidator (see further below).



A scheme may be initiated, on application to the Court, by the company itself (acting through its restructuring officer, directors or a suitably authorised liquidator or provisional liquidator), or any creditor or member. Detailed scheme proposals will be put to the company's creditors and/or members. The terms of the scheme will vary from case to case; it is essentially a commercial deal between the company and its creditors and/or members. A scheme could, for example, vary the contractual rights of creditors including the amounts owed to them, the repayment dates or the methodology for determining their claims, and/or involve a complete write-off of debt and/or a debt for equity swap.

Where there are different classes of creditors or members involved, each class is required to hold separate meetings to vote on the scheme proposals. In the case of a compromise with creditors, the scheme will be approved by the company's creditors if a majority (i.e., over 50%) in number, representing 75% in value of each class of creditors, present and attending, either in person or by proxy, vote in favour of the scheme.

In the case of a compromise with members, the scheme will be approved by the company's members if 75% in value of each class of member, present and attending, either in person or by proxy, vote in favour of the scheme.

Once approved, the scheme will be required to be sanctioned by the Court and delivered to the Registrar of Companies to become binding on all affected parties, regardless of whether and how they voted at the class meetings. Essentially, the Court will sanction a scheme where the statutory provisions have been complied with and the arrangement is one that an intelligent and honest person, acting in respect of his interests, might reasonably approve.

There are currently no provisions to allow for cross-class cramdown (i.e., to allow for a restructuring to proceed where a class of creditors or members votes against the proposals). However, legislative reform to allow for cross-class cramdown in similar terms to English restructuring plans is in the pipeline.

Provisional liquidation

A provisional liquidator may be appointed to preserve a company's assets or prevent mismanagement (effectively to hold the ring and to maintain the status quo) pending the hearing of the winding-up petition and the appointment of liquidators.

Before a provisional liquidator can be appointed a winding up petition is required to be presented.

On the appointment of a provisional liquidator, a moratorium on unsecured creditor action arises as no action or other proceedings (other than criminal proceedings) can be commenced or continued against the company or its assets without leave of the Court. Note there is no stay on the enforcement of security by secured creditors.

Depending on the grounds for the appointment of provisional liquidators, provisional liquidation may be commenced by an application to the Court by: (i) a creditor (including a contingent or prospective creditor); (ii) a contributory (in essence, a shareholder); or (iii) the company through its directors either (a) in response to the winding up petition of a creditor or contributory or (b) on its own initiative (for companies incorporated on or before 31 August 2022, only where the company has obtained a resolution of its shareholders or a provision in the company's articles of association allows the directors to present a winding up petition on its behalf, but in the case of companies incorporated after 31 August 2022, the directors will be allowed to do so unless the articles provide otherwise).

Following recent legislative reform and the introduction of the restructuring officer regime (discussed below), there are no longer any specific statutory provisions to enable provisional liquidation to be used as a restructuring proceeding. However, there is a statutory provision which provides for the appointment of provisional liquidators if the Court considers it appropriate to do so. The Court has confirmed that the legislation is intentionally broad and it has wide discretion to appoint provisional liquidators to promote a restructuring (subject to the specific circumstances of the company and the powers granted to them by the Court). The following factors are likely to be of significance: (i) the wishes of creditors (without simple head counting); (ii) whether refinancing/restructuring is likely to be more beneficial than a winding up; (iii) whether there is a real prospect of refinancing or a going concern sale for the general body of creditors; and (iv)the considered views of the board as to the best path forward.

Whether restructuring officers or provisional liquidators will be the appropriate officeholder to appoint will depend on the facts – but where an investigation or asset recovery is required as a preliminary step prior to a restructuring being promoted provisional liquidators are likely to be the most appropriate officeholder.

Restructuring *officer regime*

The restructuring officer regime came into effect on August 31, 2022, and among other changes to Cayman Islands restructuring law, it provides debtors with the ability to apply to the Court for the appointment of restructuring officers for the purposes of facilitating a restructuring.

The restructuring officer regime replaced the specific statutory provisions that previously allowed provisional liquidation to be used as a restructuring tool although, as set out above, provisional liquidators can still promote a restructuring in appropriate circumstances.

An application for the appointment of a restructuring officer can be made by a company acting by its directors, without a resolution of its members or an express power in its articles of association.

In order to appoint restructuring officers, the Court must be satisfied that: (i) the company is or is likely to become unable to pay its debts (there must be credible evidence (such as up to date, preferably audited, financial statements) from the debtor or some other independent source as to the debtor's financial position); (ii) the debtor intends to present a restructuring proposal to creditors or any class thereof (there must be credible evidence of a rational restructuring proposal, (even if only provided in outline), which has reasonable prospects of success); and (iii) that the proposal has attracted or will potentially attract the support of creditors.

The Court has held that case law which provides guidance on the use of provisional liquidation as a restructuring tool may, depending on the facts, be relevant to the restructuring officer regime. Such case law may be a useful guide, for example, as to when the Court may exercise its discretion to appoint restructuring officers.

The Court has broad powers in conducting restructuring officer proceedings (including in relation to the powers granted to restructuring officers) and may adopt a flexible approach, including allowing the company's existing management to remain in control of the company's affairs subject to the restructuring officers' supervision.

Importantly, the regime provides for a new stand-alone global restructuring stay on unsecured creditor action outside of the winding up procedure, thus removing the need to file a winding up petition in order to obtain a stay on unsecured creditor action.

The restructuring stay arises immediately upon filing of the application (similar to a U.S. Chapter 11 or English administration stay) as opposed to becoming effective upon the appointment of the restructuring officer.

As a matter of Cayman Islands law, the restructuring stay has extraterritorial effect, with the regime also including provisions that provide for the potential to compromise English law governed debt by way of a Cayman Islands scheme of arrangement.

The case law has confirmed that, while each case turns on its own facts, that the Court will ensure that the restructuring stay is not abused by companies that are hopelessly insolvent and do not have a genuine intention to present a credible restructuring to their creditors.

How the restructuring is implemented remains flexible and could involve a consensual deal with creditors, a Cayman Islands scheme of arrangement or a restructuring proceeding in another jurisdiction (for example, a U.S. Chapter 11 or an English or Hong Kong scheme of arrangement).

However, the new restructuring moratorium does not change the existing important creditor protections under Cayman Islands law, and there continues to be no stay in any Cayman Islands insolvency or restructuring proceeding on the enforcement of security by secured creditors.

Liquidation

Liquidation (or winding-up) is the dissolution procedure for companies under Cayman Islands law. Liquidation can take one of two forms:

- voluntary liquidation (with and without the supervision of the Court); or
- official liquidation (winding-up by the Court).

Voluntary liquidation

A voluntary liquidation is generally commenced by a members' special resolution at an extraordinary general meeting, during which one or more liquidators are required to be appointed for the purpose of winding up the company's affairs and distributing the company's assets. A voluntary liquidation may also commence automatically on a specified date or the happening of a specified event pursuant to any express terms to that effect in a company's articles of association.

A voluntary liquidator must apply to the Court for an order that the liquidation proceed under the supervision of the Court unless all of the directors of the company in question sign a declaration of solvency (in the prescribed form) within 28 days of the commencement of the liquidation.

The declaration of solvency must confirm that a full enquiry into the company's affairs has been made and that, to the best of the directors' knowledge and belief, the company will be able to pay its debts in full together with interest within a period not exceeding 12 months from the commencement of the liquidation. The voluntary liquidator, any creditor or contributory may also make an application for the liquidation to continue under the Court's supervision even where a declaration of solvency has been made by the directors.

Criminal and/or civil sanctions may be applied against any director who knowingly makes a declaration of solvency without having reasonable grounds for believing that the company is in fact able to pay its debts in full.

No specific qualifications are required to serve as a voluntary liquidator. There is no automatic moratorium from creditor action in a voluntary liquidation because a company in voluntary liquidation ought to be solvent.

When a voluntary liquidation is brought under the supervision of the Court, it will continue as if it were an official liquidation and the requirements of an official liquidation (including the requirements as to the qualifications and independence of the liquidator) will apply.

Official liquidation

Any creditor (including a contingent or prospective creditor) or any contributory may present a petition to the Court for the official liquidation of the company. Directors of companies incorporated on or before August 31, 2022 may present a winding-up petition on behalf of the company but only: (i) with a resolution of the company's shareholders; or (ii) if specifically permitted to do so by the company's articles of association. For companies incorporated after August 31, 2022 the directors may present a winding-up petition unless the company's articles of association provide otherwise.

The Court has the discretion to make a winding up order in a number of specified circumstances, including, among others, where: (i) it is proven that the company is unable to pay its debts (while the statutory language is not "unable to pay its debts as they fall due" the Cayman Islands Court of Appeal has held that the cash flow test includes an element of futurity which means that in practice the test is the same as in England and Wales "unable to pay its debts as they fall due"); or (ii) where the Court is of the opinion that it is just and equitable that the company should be wound up (balance sheet insolvency can be used as a ground to wind a company up on the just and equitable basis).

Where a winding-up order is made all transfers of shares or alteration in the status of the company's shareholders and all dispositions of the company's property made between the date of presentation of the petition and the order for winding-up (and following the order for winding-up) are void unless the Court otherwise directs.

Once the winding-up order has been made no suit, action or other proceedings, save for criminal proceedings, can be commenced or continued against the company or its assets without leave of the Court. However, there is no stay on the enforcement of security by secured creditors.

Regardless of whether the liquidation is a voluntary liquidation or an official liquidation, the liquidator's role is to wind up the affairs of the company, realise the assets of the company, agree creditors' claims and distribute the assets in the statutory order of priority. The appointment of a liquidator will displace the directors save to the extent (in the case of a voluntary liquidation) that the company, by resolution of the members or the liquidator, sanctions the continuance of the directors' powers.

In an official liquidation, the Court will need to be satisfied that the proposed liquidator is independent and has the qualifications to fulfil his functions.

Once the liquidation process is completed the company will be dissolved and, absent exceptional circumstances (which could include fraud or non-compliance with the statutory requirements underpinning the liquidation) it will not be possible to restore the company to the register.

Cross-border *issues*

The Cayman Islands have not adopted the UNCITRAL Model Law on Cross Border Insolvency.

The Court has jurisdiction to make a winding up order in respect of a company incorporated outside of the Cayman Islands which: (i) has property located in the Cayman Islands; (ii) is carrying on business in the Cayman Islands; (iii) is the general partner of a limited partnership; or (iv) is registered as a foreign company in the Cayman Islands. Depending on the factual circumstances, such proceedings may be ancillary to principal insolvency proceedings taking place in another jurisdiction. Where it is possible for a company incorporated outside of the Cayman Islands to be wound up by the Court, it should also be possible to appoint restructuring officers/provisional liquidators to the company and/or a scheme of arrangement of that company in the Cayman Islands.

The Court also has specific jurisdiction to wind up the business of a licensed foreign bank, trust or insurance company on the application of the Cayman Islands Monetary Authority pursuant to the Banks and Trust Companies Act (2025 Revision) and the Insurance Act 2010. Part 17 of the Companies Act (together with the Foreign Bankruptcy Proceedings (International Cooperation) Rules 2018 contain specific provisions allowing the Court to recognise and provide assistance to foreign insolvency and restructuring proceedings that have been commenced in the jurisdiction where the company is incorporated or established.

Where a company is subject to both insolvency or restructuring proceedings (including provisional liquidation proceedings) in the Cayman Islands and insolvency or restructuring proceedings in another jurisdiction (which is common given that the majority of the companies incorporated in the Cayman Islands conduct their business and hold assets outside of the Islands) the CWR make it the duty of the Cayman Islands liquidator (or restructuring officer/provisional liquidator) to consider whether it is appropriate to enter into a protocol with the foreign officeholder. Such a protocol will need to be approved by the Court and the relevant foreign court in order to become binding.

The Judicial Insolvency Network's Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency matters and the American Law Institute/ International Insolvency Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the Guidelines) were adopted by the Court on May 31, 2018 by way of Practice Direction No. 1 of 2018. Cayman Islands officeholders are therefore required to consider, at the earliest opportunity, whether to incorporate some or all of the Guidelines either: (i) into an international protocol to be approved by the Court; (ii) or an order of the Court adopting the Guidelines.

There is no difference in treatment between foreign and domestic creditors in insolvency proceedings commenced in the Cayman Islands. At present, the Cayman Islands are not a signatory to any treaties on international insolvency.

Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**. This factsheet has been prepared with the assistance of Maples and Calder. Any queries under Cayman law may be addressed to the key contacts listed below:

MAPLES AND CALDER

Aisling Dwyer
Partner

Tel +852 6391 1041
aisling.dwyer@maples.com

Nick Herrod
Partner

Tel +1 345 814 5654
nick.herrod@maples.com

Caroline Moran
Partner

Tel +1 345 814 5245
caroline.moran@maples.com

Christian La-Roda Thomas
Partner

Tel +1 345 814 5577
christian.la-rodathomas@maples.com

Nick Stern
Partner

Tel +852 6407 7898
nick.stern@maples.com

Luke Stockdale
Partner

Tel +44 20 7466 1724
luke.stockdale@maples.com

John Trehey
Partner

Tel +852 9023 2014
john.trehey@maples.com

A&O SHEARMAN RESTRUCTURING GLOBAL LEADERSHIP

Katrina Buckley
Global Co-Head of Restructuring

Tel +44 20 3088 2704
katrina.buckley@aoshearman.com

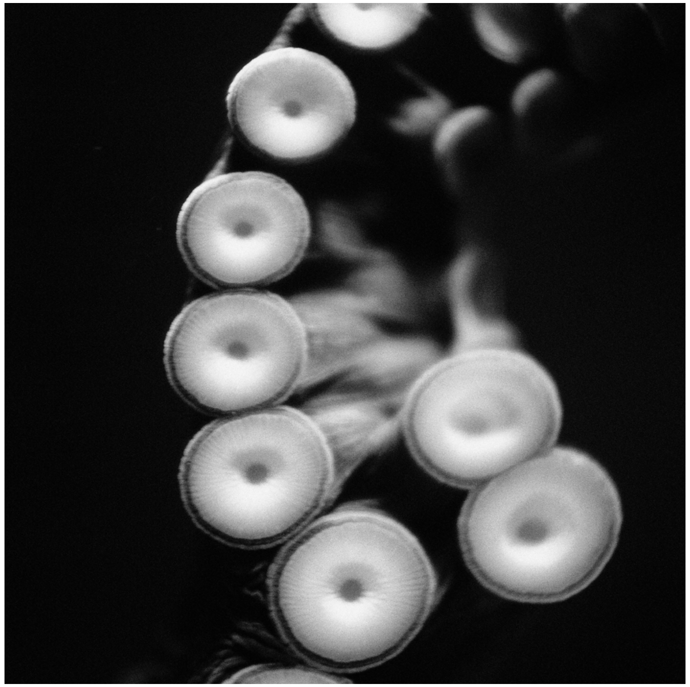
Fredric Sosnick
Global Co-Head of Restructuring

Tel +1 212 848 8571
FSosnick@aoshearman.com

Further information

Developed by A&O Shearman's market-leading Restructuring group, "Restructuring Across Borders" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, the Middle East, Asia and the U.S.

To access this resource, please click here.



For more information, please contact:

LONDON

Allen Overy Shearman Sterling LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

MAPLES AND CALDER

Ugland House
Grand Cayman
KY1-1104
Cayman Islands

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