

# Restructuring Officers in the Cayman Islands

## Developments in the Cayman Islands Restructuring Regime

**The Cayman Islands Government has approved the Companies (Amendment) Bill 2021 (the “Bill”) with the amendments in force effective 31 August 2022 (the “Amendments”).**

### Introduction

- The Amendments introduce a welcome new corporate restructuring process for the Cayman Islands which removes the requirement to file a winding up petition.
- Before the introduction of the Amendments, there was no formal restructuring regime in the Cayman Islands akin to the UK’s administration process or the US Chapter 11 proceedings.
- Prior to the Bill, under the Cayman Companies Act (2022 Revision), the only restructuring option available to a company in distress with the benefit of a moratorium was to appoint provisional liquidators (“PLs”) in a “light touch” provisional liquidation. The appointment of PLs triggered a moratorium and stay on the proceedings against the company to permit breathing space to enable it to propose a restructuring to its creditors.
- The appointment of PLs requires a winding up petition to be presented against the company for it to undergo any restructuring.
- The new provisions for the appointment of a “Restructuring Officer” (“RO”) will provide a flexible process and alleviate a number of stakeholder concerns which arise with the presentation of a winding up petition associated with a “light touch” provisional liquidation.

### The Amendments

- The Amendments include provisions for a company restructuring regime.
- The new provisions provide for a stand-alone global restructuring stay on unsecured creditor action, outside the formal winding up procedures. A company can now

apply to the Grand Court of the Cayman Islands (the “Court”) for the appointment of one or joint restructuring officers (“JROs”).

- The new Amendments state that:
  - i. A company’s directors are empowered under the regime to present a petition for the appointment of an RO without a shareholders’ resolution or any express power in the company’s articles.
  - ii. A company may present a petition to the Court for the appointment of an RO on the basis that the company is or is likely to become unable to pay its debts and intends to present a compromise or arrangement to its creditors (or classes thereof) either pursuant to the Amendments, the law of a foreign country, or by way of a consensual restructuring.
- A global stay will arise immediately upon filing a petition to appoint an RO with the Court similar to that afforded under a US Chapter 11 or UK Administration (the rights of secured creditors to their security without leave of the courts are unaffected).
- The company’s management will typically be left in control of the company and work alongside the RO to facilitate a restructuring.
- An RO will be an independent Court-appointed fiduciary who will supervise the restructuring process.
- The powers conferred on an RO are generally flexible and will be subject to the Court’s discretion.

- A foreign insolvency practitioner may be appointed as a JRO, but there must always be one Cayman Islands qualified insolvency practitioner appointed.
- The implementation of the restructuring is flexible and could involve a consensual deal with creditors, a Cayman Islands scheme of arrangement or a restructuring proceeding in another jurisdiction (for example, Chapter 11 in the United States).

Where the company proposes to pursue a scheme of arrangement as part of its restructuring plan, an application may be made within the restructuring proceedings, without the need for a separate sanction application potentially giving rise to significant time and costs savings.

#### Key Take Aways / Observations

- **No winding up petition:** Debtors seeking to restructure their debt in the Cayman Islands can now do so without needing to file a winding up petition.
- **Immediate stay:** Provisions which provide for a global stay to apply automatically on filing the Court application (i.e. before a hearing of that application is held).

- **Continuity of service:** Being a financial advisor will not preclude an individual being appointed as a JRO.
- **Breathing space:** A company has the opportunity to pursue a restructuring without the stigma of a winding up petition having been presented.

#### How Teneo Can Help

- Teneo has five qualified insolvency practitioners in the Cayman Islands.
- Our team has a wealth of experience in cross-border restructurings, schemes of arrangement and liquidations including provisional liquidations.
- Teneo's practitioners are experienced in advising companies on restructuring options and guiding early engagement with the Board of Directors and stakeholders.
- Teneo has a strong network of practitioners in multiple jurisdictions who can take appointments as JROs with our Cayman qualified insolvency practitioners to facilitate cross-border restructurings.

### For further information please contact us:



**Kris Beighton**  
**Co-Chair, International  
 Financial Centres**  
 Cayman Islands  
[kris.beighton@teneo.com](mailto:kris.beighton@teneo.com)

Kris has led many significant multi-jurisdictional engagements covering the full range of restructuring and winding up procedures. Kris has been highly successful in managing various stakeholders' interests or concerns to achieve optimal outcomes across varied investment vehicles and industries.

Kris has over 25 years' experience, including cross-border Cayman Islands proceedings with both Chapter 11 and 15 aspects and has also been appointed in the UK, BVI, Hong Kong and Ireland.



**Jeffrey Stower**  
**Senior Managing Director**  
 Cayman Islands  
[jeffrey.stower@teneo.com](mailto:jeffrey.stower@teneo.com)

Jeff has over 20 years' experience in Restructuring & Insolvency, the last 12 of which have been spent in the Cayman Islands with a focus primarily on the financial services industry.

Jeff has a wealth of experience in cross-border restructurings including appointments spanning across Asia, Latin America and the U.S.

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