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# Cayman Islands Restructuring: Getting *Oriente*-d With the New Regime

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**On 11 November 2022, Mr Justice Kawaley ordered the first appointment of restructuring officers *in Re Oriente Group Limited* (FSD 231 of 2022) under the new Cayman Islands restructuring regime, with reserved written reasons to follow. We provide a brief update on some of the key takeaways from the hearing below.**

A selection of our previous articles on the Cayman Islands restructuring regime, which came into effect on 31 August 2022, are at the following links: here, here and here.

## Background

On 27 September 2022, Liu Chak Kwan Kelvin and Tsangs Group Holdings Limited, two unsecured creditors (the "Petitioners"), filed a creditor's winding up petition in the Cayman Islands following the issuance and expiry of statutory demands in respect of debts of US$275,000 and US$1,100,000 approximately.

Subsequently, on 21 October 2022, the respondent company, Oriente Group Limited (the "Company") presented a restructuring petition seeking the appointment of restructuring officers in the Cayman Islands. On 11 November 2022, the Company's restructuring petition came on for a hearing. However, due to statutory advertising requirements, amongst other things, the hearing of the Petitioners' winding up petition was listed for early December 2022.

### Abuse of process?

The parties agreed that, as a preliminary threshold matter, the Cayman Court should address the Petitioners' contention that it was an abuse of process to present a petition for the appointment of restructuring officers (with an accompanying automatic stay) after a winding up petition had been filed.

The Company submitted that there was nothing in the statutory scheme which prohibited the Company from doing so and that the Company's restructuring plan was not an abuse, given that it had the support of at least 46% of creditors by value. The Company further submitted that the automatic stay under section 91G of the Act takes effect from the date of filing and effectively covers both domestic winding up proceedings, such as the Petitioners' extant winding up petition in the Cayman Islands, and also foreign winding up proceedings, including the creditor's winding up petition filed by the Petitioners in Hong Kong. The Company submitted that it would be possible for the Petitioners to seek leave of the Cayman Court to lift the stay and pursue the winding up petition, if appropriate.

The relevant text provides:

> ***"91G. Stay of proceedings***
>
> *(1) At any time —*
>
> *(a) after the presentation of a petition for the appointment of a restructuring officer under section 91B, but before an order for the appointment of a restructuring officer is made, and when the petition has not been withdrawn or dismissed; and*
>
> *(b) when an order for the appointment of a restructuring officer is made, until the order appointing the restructuring officer has been discharged,*
>
> *no suit, action **or other proceedings**, other than criminal proceedings, **shall be proceeded with or commenced against the company**, no resolution shall be passed for the company to be wound up and **no winding up petition may be presented against the company, except with the leave of the Court and subject to such terms as the Court may impose**.*
>
> *…*

*(3) In this section —*

*(a) references to a suit, action or other proceedings include a suit, action or other proceedings in a foreign country; and*

*(b) references to other proceedings include any court supervised insolvency or restructuring proceedings against the company."*

(emphasis added)

Having heard from the parties as to whether the statutory scheme permits a restructuring officer petition to be presented after a creditor's winding up petition is filed, Kawaley J found that the statutory scheme does in fact permit this to occur. The decisive point, in His Lordship's view, was that section 91G(1) of the Act precludes not only the commencement of fresh proceedings but that extant proceedings shall not "*be proceeded with*", which would include the Petitioners' winding up petition.

Mr Justice Kawaley indicated that there may be cases where such a filing by the Company is manifestly an abuse of process designed to undermine or circumvent the interests of creditors. However, Kawaley J indicated that, for reasons to be explored further in his reserved judgment, it did not prevent the appointment of restructuring officers in the instant case.

Kawaley J also indicated that the views of creditors are a key consideration as the board of the subject company may not be in a position to objectively evaluate the viability of a restructuring plan and the best barometer is the views of unsecured creditors who are likely to be most impacted by any prospective restructuring.

**Adjournment issue**

Mr Justice Kawaley subsequently considered whether, as a matter of case management, it would be appropriate to adjourn the hearing of the Company's petition to appoint restructuring officers so that it would be heard concurrently with the Petitioners' winding up petition. Mr Justice Kawaley was ultimately persuaded not to adjourn the matter and to deal with the restructuring petition without further delay in light of the overriding objective, the costs consequences of a further hearing and the likely benefit of the appointment of officeholders progressing matters in the interim.

Mr Justice Kawaley held that restructuring officers be appointed, with a reserved written judgment to follow. The Petitioners' winding up petition listed for a hearing in December has been stayed by virtue of the appointment of restructuring officers.

**Advertising**

In the restructuring context, in light of the automatic stay imposed by section 91G of the Act, Kawaley J indicated his preliminary view would be that it would be preferable to bring the petition to creditors' attention as a priority by advertising the petition prior to receipt of the court sealed documents and then to re-advertise upon receipt of the sealed document. This is different to the standard advertising procedure in the winding-up context, which typically requires debtors to wait to advertise until sealed copies of the papers are returned by the Cayman court.

**Comments**

Accordingly, although written reasons will follow in due course, it would appear that the following are the key takeaways:

- There is nothing wrong, in principle, with an insolvent company presenting a petition to appoint restructuring officers which have the effect of staying extant creditor's winding up proceedings under section 91G.
- The global stay on proceedings is a useful tool to give companies breathing space to restructure, but the Courts will be wary of the potential for abuse by last minute applications made by companies reacting to a creditor's winding up petition or other action by stakeholders.
- It is possible that, in future, it will be a common theme for restructuring petitions to be heard in a shorter timeframe than was the case previously for traditional winding up petitions. The question of whether to adjourn a restructuring petition so that it can be heard concurrently with a competing creditor's winding up petition is likely to be a recurring debate.
- As a matter of best practice, where practically possible, advertisements for restructuring officer appointments should be filed as soon as possible, before waiting for sealed versions of the petition papers to be returned from the Cayman Court, noting however that running multiple advertisements may prove costly and there may be limited opportunities to advertise in any given time period.

This decision represents a useful and interesting development in Cayman Islands jurisprudence under a new statutory regime. However, it will be important to monitor further developments, based on different fact patterns, as more cases are brought before the Cayman Court (and recognition is sought elsewhere) in the ensuring months and years.

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