

Cayman Islands Restructuring Officers – Fee and Discharge Applications

The Cayman Islands restructuring officer regime is now well into its third year. During this period the Cayman Islands Court (the "Court") has steadily been providing guidance on the regime, in particular, the circumstances in which restructuring officers ("JROs") will be appointed.

The Court has now for the first time issued guidance on end of appointment matters. In *In the matter of Holt Fund SPC*, in circumstances where, in the JROs' view, the restructuring proposal was not viable, the Court made orders approving: (i) the payment of restructuring officers' fees and expenses; and (ii) discharging the JROs appointment. While there was nothing in the Court's decision that did not accord with the expectations of the market, the Court has provided the following useful guidance.

- (a) The considerations applicable to liquidators' fee approvals will generally serve as a useful guide when assessing JROs' fees.
- (b) Where: (i) the restructuring has failed (here the JROs stress tested the viability of the proposals and found them wanting); and (ii) the application to approve the payment of the JROs' fees and expenses is not contested, the JROs will need to establish a clear prima facie case that the fees and expenses were reasonably incurred.
- (c) Where it is demonstrated that the fees and expenses were reasonably incurred, the Court is able to approve the payment of the JROs' fees in full on the basis that such

fees and expenses will be accorded priority (ahead of provisional and official liquidators) in a subsequent winding up, i.e. there is no issue with a financially distressed or insolvent entity making such payment. As the Court put it *"restructuring officers are entitled to be paid for attempting to avoid the need for recourse to winding-up proceedings even where a company is actually insolvent. Full stop."*

- (d) JROs can apply for their own discharge. A valid ground for discharge, as was the case here, is that a consensual restructuring is no longer viable. Objections from an indirect stakeholder that the JROs should not be discharged because there needed to be an investigation of management were rejected. This was on the basis that such matters were beyond the powers conferred by the Court on the JROs and more suitable for a liquidator to address. The JROs' discharge brings to end the statutory moratorium and permits any unhappy stakeholder to seek to appoint liquidators who could commence an independent investigation.

The Court also considered open justice principles in the context of decisions 'on the papers', i.e. where there is no oral hearing. It was held that the requirements of open justice, when actively engaged (as they were here with an indirect stakeholder writing to the Court setting out reasons why the JROs should not be discharged) would be met with the publication of

a judgment, explaining the application and the way it has been decided. This confirmed that open justice can, in certain circumstances, be met without a Court hearing.

Finally, this decision concerned a segregated portfolio company where the JROs had been appointed with powers to deal only with the specific segregated portfolios in distress (leaving management in control of the solvent portfolios). Accordingly, the specific distressed segregated portfolios were to meet the JROs fees and expenses, i.e. the payment of the JROs fees and expenses would not cut across the statutory segregation between portfolios.

Further Assistance

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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