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Contents

Campbells advises on Cayman Islands and British Virgin Islands Law, and has offices in Cayman (head office), the BVI and Hong Kong. The group acts for local and overseas insolvency professionals, creditors, investors, directors and other professional service providers in connection with all aspects of the restructuring and winding up of companies, investment funds, limited partnerships and structured finance entities. Lawyers have specific experience of coordinating cross-border appointments, obtaining injunctions, assisting with gathering evidence and obtaining recognition and assistance from overseas courts. The team is involved in many of the jurisdiction's most high-profile disputes, liquidations and restructurings.

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1. Market Trends and Developments

1.1 State of the Restructuring Market

Throughout 2019, the British Virgin Islands (BVI) have remained one of the most significant offshore jurisdictions. According to the BVI Financial Services Commission (FSC), as of 31 December 2018, there were 402,907 active companies in the BVI.

Despite the challenges posed by Hurricane Irma in August 2017 and, to a lesser extent, Hurricane Maria in September 2017, BVI has retained its status as one of the most significant jurisdictions in the international corporate service sector and, in particular, the insolvency and restructuring sector. Throughout this period, and during its recovery, the BVI has proved to be a resilient and agile jurisdiction.

In February 2019, the BVI court appointed, for the first time, "soft touch" provisional liquidators with a restructuring mandate. This approach provides for the appointment of court appointed provisional liquidators with a restructuring mandate whilst allowing the incumbent directors to remain in place thereby minimising any disruption to the day to day operations of the company and providing essential breathing room by invoking a statutory moratorium on claims. It is anticipated that this decision will result in an upturn in corporate restructurings in the BVI.

Prior to this recent decision, court supervised restructurings were not prevalent in the BVI with statistics showing a trend towards insolvencies. In 2018, there were a total of 37 applications to the BVI court to appoint a liquidator, of which 32 resulted in a liquidator being appointed and the companies commencing a winding-up process. In addition, there were 19 voluntary appointments of a liquidator in 2018 following a members' resolution.

1.2 Changes to the Restructuring and Insolvency Market

There have been no notable changes to the legislative framework over the last 12 months. As mentioned above, the appointment by the BVI court of soft touch provisional liquidators with a restructuring mandate in February 2019 is a welcome clarification of the court's jurisdiction under the existing statutory framework and strengthens the BVI's position as a restructuring friendly jurisdiction.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

The principal legislation for restructuring, reorganisation and insolvencies in the BVI is the Insolvency Act, 2003 (the IA) and the Business Companies Act, 2004 (the BCA). The IA sets out the procedures for insolvent liquidations and the appointment of administrative receivers. The BCA sets out the governing principles for company restructuring and reorganisation as well as the voluntary liquidation regime.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The key insolvency and restructuring procedures available in respect of corporate entities registered in the BVI are:

- voluntary liquidation;
- provisional liquidation;
- official liquidation; and
- schemes of arrangement.

It is also possible for receivers to be appointed over BVI companies (either by the BVI Court or by a creditor of the company with suitable security).

Plan of Arrangement

A Plan of Arrangement is initiated by the director(s) of a company or, if the company is in voluntary liquidation, by the voluntary liquidator. There is no requirement for a company to be insolvent before a Plan of Arrangement can be considered.

The Plan of Arrangement may permit a company to:

- amend its memorandum and articles of association;
- reorganise, merge or consolidate, or separate its businesses;
- dispose of any assets, business, shares, debt or other securities;
- approve the dissolution of the company; or
- put in place any combination of the above.

Once the director(s) have approved the Plan of Arrangement, they must apply to the BVI court to approve the plan.

The court will determine to whom notice of the proposed plan should be given and whether the approval of any individual is required. The court will also determine whether any holder of shares, debt obligations or securities in the company can disagree to the proposed plan. If so, any dissenting party may receive payment of fair value in respect of its shares, debt obligations or other securities (Section 179 of the BCA).

Once the plan is approved by those persons (if so ordered), the director(s) will execute (on behalf of the company) the articles of arrangement.

Scheme of Arrangement

A scheme is a statutory form of compromise or arrangement between a company and its creditors (or any class of them) or its shareholders (or any class of them). There is no statutory definition of the terms "compromise" or "arrangement". The BVI Court will construe them broadly but they must involve some element of accommodation or "give and take" between the company and the scheme creditors or shareholders.

The principal uses of BVI schemes are to reorganise the company's share capital, to enable a company to restructure its liabilities and avoid an insolvent liquidation, or to alter the distribution rights of creditors and/or shareholders in the company's liquidation.

Scheme proceedings can be commenced by the company, by any creditor or shareholder of the company or (where the company is being wound up) by a liquidator. Scheme proceedings commenced by a creditor or shareholder would, however, require the company's support.

If a moratorium is required during the scheme process, the company will present a winding-up petition and apply for an order appointing provisional liquidators prior to filing the scheme petition.

If the scheme is supported by more than 50% by number and 75% by value of those attending and voting in each scheme class, and is subsequently approved by the Court, it will bind all scheme creditors/shareholders (including those who did not vote or who voted against the scheme) in accordance with its terms.

The scheme process is not confidential. Detailed scheme documentation will be sent to all scheme participants and may also be advertised depending on the circumstances.

If the scheme is agreed by the requisite majority of creditors/shareholders of the company, the applicants must return to the court for the scheme to be approved. However, an order sanctioning the scheme will only take effect when filed with the BVI Registrar of Companies (the Registrar).

All scheme participants have the right to appear by counsel at the scheme sanction hearing. They may also appear at the convening hearing, although the convening application will typically be made on an ex parte basis unless there are contentious issues of class composition or jurisdiction.

If there is any uncertainty over creditors' claims then this will principally be relevant for the purposes of voting at the scheme meetings and distributions to be made under the scheme. As regards the former, the BVI Court might give directions at the convening hearing regarding the valuation of claims for voting purposes, or it may leave that issue to be addressed by the chairperson of the scheme meetings. As regards the latter, the scheme document will typically contain a mechanism for determining claims, post-sanction of the scheme, for distribution purposes.

There is no fixed duration for a Scheme of Arrangement, and its length will be determined by the directions given by the court.

Voluntary liquidation
The BCA contains provisions for the winding-up of a company provided it has no liabilities or is able to pay its debts as they fall due. See **7.1 Types of Voluntary/Involuntary Proceedings**.

Insolvent liquidation
This process involves the appointment of an independent insolvency practitioner. He or she is required to take possession of, protect and realise the company's assets for the benefit of the creditors of the company.

There are two mechanisms for placing a company into insolvent liquidation:

- passing of a shareholders' qualifying resolution – members of an insolvent company may, by a majority of at least 75%, pass a resolution appointing an eligible insolvency practitioner as liquidator of the company; or
- by order of the court – the application can be made by the company itself, a creditor of the company, a shareholder, the supervisor of the Company Creditors' Arrangement or in very limited circumstances, the Attorney General or the FSC.

The court will take into account any one of three substantive tests when considering whether to appoint a liquidator. The first is whether the company is insolvent. In practice, this is the most frequently relied upon, and may be established by showing:

- a failure to comply with a statutory demand for an undisputed debt exceeding USD2,000 within 21 days (the company can apply to set aside the demand within 14 days of the date of service);
- execution issued on a judgment being returned unsatisfied;
- balance sheet insolvency; or
- an inability to pay debts when they fall due (cash flow insolvency).

The second test is whether it is just and equitable for a liquidator to be appointed. By way of example, this can occur when a company is deadlocked or where the relationship between shareholders has broken down irretrievably.

In the third test, the court will consider appointing a liquidator if it deems it is in the public interest to do so.

Company Creditors' Arrangement (CCA)
A CCA is an arrangement between a company and its debtors that allows the parties to vary the rights of the creditors and cancel the liability of a debtor in whole or in part. The legislative framework for a CCA is set out in Part II of the IA but, to date, these arrangements have not proved popular in the BVI.

The process is usually initiated by the director(s) of the company proposing an arrangement and nominating an interim supervisor to act. They can take this step if they believe that the company is insolvent or is likely to become insolvent. A written proposal can then be approved. In circumstances where a company is already in liquidation, the liquidator can make the proposal.

The director(s) must pass a resolution stating that the company is insolvent or is likely to become insolvent – Section 20(1)(b) of the IA. Additionally, a written proposal must be approved that sets out how the creditors' rights will be varied or cancelled.

Unless otherwise agreed in writing by a secured creditor, a CCA does not affect the right of a secured creditor to enforce its security interest or vary the liability secured by the security interest. The position is the same when it comes to preferred creditors.

The proposal must be approved by a majority of the creditors representing 75% or more in value of the creditors (rule 83 of the Insolvency Rules, 2005 (the IR)). Provided the proposal is approved by a majority in number of the creditors representing 75% of the creditors by value, the supervisor will be appointed and the CCA will be binding on the company, each creditor and each shareholder.

The supervisor will immediately take possession of the assets of the company. However, the director(s) (or the liquidator) will remain in control of the company.

There is no statutory time period within which a CCA must be completed.

Receivership
A creditor may also seek to appoint a receiver, who may be appointed out of court by the holder of a debenture or by an order of the BVI court.

Although Part III of the IA includes provisions for the appointment of administrators, presently, the administration section of the Act has not been brought into force. Therefore, administration is not available to BVI-registered companies at this time.

2.3 Obligation to Commence Formal Insolvency Proceedings

In practice, it will usually be a creditor that commences formal insolvency proceedings. However, a company is obliged to commence proceedings when its director(s) becomes aware that the company is insolvent and there is no prospect of the company trading its way out of difficulties.

Steps should be taken to commence proceedings at the point that the director(s) becomes aware that the company is insol-

vent or there is no prospect of the company continuing as a viable going concern. Failure to do so may lead to liability under the insolvent trading provisions of the IA.

Once a company is placed into liquidation, the liquidator may seek an order from the court against a director of the company if (at any time before the commencement of the liquidation of the company) that person knew (or ought to have known) that there was no reasonable prospect that the company could avoid going into insolvent liquidation and continued to trade.

Therefore, directors who continue to trade beyond this point face serious liabilities. The liability of directors is only qualified when they can show that they took every reasonable step open to them to minimise the loss to the company's creditors – Section 256(3) of the IA. If a director cannot show that they acted in this manner then they will have to account, personally, to the creditors of the company for any losses that stem from their failure to place the company into liquidation at the relevant time.

2.4 Procedural Options

Directors must initiate the insolvent liquidation process, set out in **2.1 Overview of Laws and Statutory Regimes**, either by seeking the members' approval to place the company into liquidation or applying to the court for a liquidator to be appointed.

Members can place a company into insolvent liquidation if a qualifying resolution to this effect is passed by a majority of 75% of the votes of the members (although this can be altered in the memorandum and articles of a company). This option is not open to members if there is an application pending before the court for the appointment of a liquidator or if a liquidator has already been appointed by the court – Section 161(1) of the IA.

Creditors may take steps to place a company into liquidation by applying to the court to appoint a liquidator.

2.5 Commencing Involuntary Proceedings

There is no applicable information in this jurisdiction.

2.6 Requirement for Insolvency

Insolvency is not required to place a company into voluntary liquidation under the provisions of the BCA. Indeed, voluntary liquidation under the BCA is not available to insolvent companies.

A creditor or member of a company does not need to show that a company is insolvent to place it into involuntary liquidation. Insolvency is just one of the grounds for placing a company into insolvent liquidation. As set out in **2.2 Types of Voluntary and Involuntary Financial Restructuring, Reorganisation, Insolvency and Receivership** above, a creditor or member will be able to prove that a company is insolvent if it can show:

- a failure to comply with a statutory demand for an undisputed debt exceeding USD2,000 within 21 days (the company can apply to set aside the demand within 14 days of the date of service);
- execution issued on a judgment being returned unsatisfied;
- balance sheet insolvency; or
- an inability to pay debts when they fall due (cash flow insolvency).

2.7 Specific Statutory Restructuring and Insolvency Regimes

Although there are no statutory restructuring and insolvency regimes which are applicable to specific types of entity or business, Section 200 of the BCA does set out additional requirements for the appointment of a voluntary liquidator over a regulated company. This may extend to banks and commercial lenders as well as insurance companies and other entities operating in financial markets, such as trust companies, but only if they operate in the territory of the BVI.

Specifically, a regulated entity cannot be placed into voluntary liquidation unless and until the FSC has given prior written consent to the company being put into voluntary liquidation (Section 200(3)(a) BCA). Regularly, the FSC will require at least one of the voluntary liquidators to be a licensed insolvency practitioner (Section 200(3A) BCA) and therefore present in the BVI, which allows the FSC to have oversight of the liquidation.

As regards insolvent liquidations, members of a company who qualify as a regulated person may not appoint a liquidator (by way of resolution) unless at least five business days' written notice of the resolution (or such other period of notice that the FSC shall agree) has been given to the FSC.

3. Out-of-court Restructurings and Consensual Workouts

3.1 Restructuring Market Participants

The BVI regime does not require mandatory consensual restructuring negotiations before the commencement of a formal statutory process. Informal workouts are entered into on a practical basis and there is no standard approach.

Due to the nature of the BVI as an offshore jurisdiction, restructuring market participants, company management and lenders are almost invariably based onshore. As such, their views and preferences on consensual workouts and restructurings tend to reflect the prevailing market views and preferences in the onshore jurisdiction(s) where they are based. These vary from case to case, but the most common

jurisdictions (in no particular order) are London, New York, Moscow and Hong Kong.

BVI insolvency and creditors' rights laws do not interact to a significant extent with the viability, desirability or choice of informal/consensual out-of-court restructuring and workout strategies. In particular, BVI legislation is silent on consensual restructuring negotiations and, therefore, does not require that they take place before the commencement of a formal statutory process. That said, if a company requires a stay while it negotiates a scheme of arrangement or other form of compromise, it will need to apply for the appointment of provisional liquidators in order to invoke a statutory moratorium.

As explained in **2.3 Obligation to Commence Formal Insolvency Proceedings**, a director may be exposed to potential liability for fraudulent trading if a company is permitted to continue trading whilst insolvent. Therefore, once a director becomes aware that the company is insolvent or that insolvency is imminent, this adds time pressure to any informal or consensual restructuring. However, if discussions are likely to deliver a better return to the creditors then a director may be justified in delaying the formal process.

3.2 Consensual Restructuring and Workout Processes

There are no specific statutory regulations regarding intercreditor arrangements. It is largely for the creditors themselves to agree with the company what information and documentation will be provided and when. Equally, it is for the creditors and the company to determine timescales and the level of involvement that each type of creditor will have. Standstills may also be agreed.

3.3 New Money

There are no statutory restrictions on the injection of new money during a consensual restructuring. In the majority of cases, there are no statutory requirements governing the terms of the funding arrangements as most lenders operate outside of the Territory and are therefore not required to be licensed or approved to lend.

Creditors and companies therefore have wide scope when it comes to negotiating the terms of any funding arrangement to include prioritising any borrowing or granting liens.

3.4 Duties on Creditors

Consensual/out of court restructurings in the BVI require the agreement of 100% of creditors, so in most circumstances the provision of a creditor's consent would preclude it from subsequently challenging the restructuring. Remedies may, however, exist at common law and/or in equity if a creditor gave consent based on some form of misinformation. Without a separate contractual agreement between creditors, or one creditor voluntarily assuming a duty to another, there is no basis on which creditors would owe duties to each other in a consensual restructuring governed by BVI law.

3.5 Out-of-court Financial Restructuring or Workout

Creditors cannot be crammed down in a consensual, out-of-court restructuring under BVI law. This can only be done through the use of a scheme of arrangement, which involves a court process. Once a scheme of arrangement has been approved by the requisite majority of creditors or shareholders, the applicant must return to the BVI court for the scheme to be approved by the court. A creditor or member may attend the hearing of the approval application (although most are dealt with without a hearing) to oppose the application for approval, but we are not aware of any occasion where an objecting creditor or shareholder has successfully overturned the will of the majority and convinced the Court not to approve a scheme.

Shareholders' rights can be crammed down in certain circumstances without court proceedings, most commonly through a merger or consolidation under Part IX of the BCA. Under this procedure, a shareholder's shares can be acquired for "fair value" if the merger or consolidation is approved by a special resolution of the shareholders, requiring a two thirds majority unless the articles impose a higher threshold, see Section 179 BCA. However, although a dissenting minority shareholder does not have the ability to block the merger/consolidation, it is entitled to be paid fair value for its shares, and the question of what fair value is will have to be resolved by the court if the company and the shareholder are unable to agree a fair value price.

4. Secured Creditor Rights and Remedies

4.1 Liens/Security

In relation to immovable property, the most common forms of security are:

- mortgages – these can be legal or equitable;
- equitable fixed charges – this does not transfer legal or equitable title to the lender and does not provide a right of possession of the secured interest. Instead, the terms of the charge usually provide the lender with the ability to sell the asset and prevent the borrower from disposing of the asset subject to the charge, without the lender first releasing the charge; and
- floating charges – usually granted by a company over all its assets.

The most common forms of security over movable property are:

- floating charge;

- equitable mortgage or charge; and
- a pledge – this is a possessory security which allows a lender to take possession of an asset which provides the pledgee with a common law power of sale. A pledge cannot be granted over shares registered in the BVI as they are intangible assets.

4.2 Rights and Remedies

The document granting the security to the chargee/pledgee will usually set out what remedies are available to the chargee in the event of default. Typically, a creditor will enforce its security and take control of the asset. When the asset is sold, the secured creditor will be paid first up to the level of the company's indebtedness to the secured creditor. The debt will be determined by the security but will usually include principal, interest and realisation expenses. Any surplus will be returned to the company.

The rights of secured creditors are not affected by the appointment of a liquidator. On the sale of assets, subject to a security interest the secured creditor will be paid first, up to the level of the debt. If there are insufficient proceeds to discharge the debt from the disposal of the assets subject to the security, then the secured creditor will rank as an unsecured creditor for any shortfall.

A secured creditor whose debt is more than the value of their security may prove in the liquidation for the unsecured balance. When filing a proof of debt in the liquidation, the secured creditor is required to state particulars of the security held and the value which he puts on the security. If a secured creditor omits to disclose their security in their proof of debt, they shall surrender their security for the general benefit of creditors, unless the Court relieves them from the effect of this rule on the ground that their omission was inadvertent or the result of an honest mistake.

4.3 Typical Timelines

The enforcement of security falls outside the winding-up process. It is for the secured creditor to determine when to take control of the secured asset and when to sell it.

4.4 Foreign Secured Creditors

There are no special procedures or impediments that apply to foreign secured creditors.

4.5 Special Procedural Protections and Rights

As stated in **4.3 Typical Timelines**, the enforcement of security falls outside the winding-up process.

In relation to CCAs, unless the secured creditors agree in writing to the contrary, a CCA does not affect the right of a secured creditor to enforce its security interest or vary the liability secured by the security interest. The position is the same when it comes to preferred creditors.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Section 207(2) of the IA states that, within each class of claims, the creditors will rank pari passu. As stated, secured assets do not form part of the estate and secured creditors can only prove participation in the liquidation in respect of any shortfall. Whilst preferential creditors rank behind secured creditors (and will continue to rank behind secured creditors holding fixed charges) they will rank ahead of secured creditors' floating charges if the assets in the estate are insufficient to pay the preferential claims and the costs and expenses of the estate – see Sections 208(1)(a) and (b) of the IA.

The expenses of the liquidation rank in priority to preferred creditors. However, assets that are the subject of a floating charge are segregated from the general assets of the company and are available to the floating charge holder, subject to the satisfaction of the costs and expenses of the estate and the claims of the preferred creditors.

5.2 Unsecured Trade Creditors

All unsecured creditors rank equally in a restructuring process in the BVI.

5.3 Rights and Remedies for Unsecured Creditors

Plan of Arrangement

At the approval hearing of a Plan of Arrangement, the BVI court can determine what notice of the proposed arrangement is to be given to any person and can order that certain persons (to include creditors) give their consent. There is, therefore, a clear system whereby dissenters can be identified, but there is no guarantee that the objections of one creditor will take priority over the needs of another.

Scheme of Arrangement

A moratorium on unsecured creditors' claims in a restructuring will only arise if provisional liquidators are appointed. Without such a moratorium, unsecured creditors may be able to disrupt a restructuring by obtaining and enforcing judgment on their claims. The BVI Court does, however, have jurisdiction to stay an action brought by a creditor in the BVI, pending the outcome of the restructuring. Alternatively, unsecured creditors could disrupt a restructuring by filing a winding-up petition against the company. Although an unpaid creditor of an insolvent company is entitled to a winding-up order ex debito justitiae (as of right), the making of a winding-up order remains a matter for the BVI Court's discretion, which may adjourn or dismiss the creditor's petition if other creditors are opposed to the winding-up because of the proposed restructuring.

In addition to the above, a Scheme of Arrangement will only be approved by the court if approved by a majority in number representing 75% in value of the creditors.

5.4 Pre-judgment Attachments

Pre-judgment attachments are not available, as such, but a creditor may seek some form of security payment if certain criteria are met.

Also, in the BVI, Mareva (or freezing) injunctions are available as an interim remedy to a claimant who can show a good, arguable case and a real risk that, if the injunction is not granted, the defendant will remove the relevant assets from the jurisdiction or otherwise dissipate them.

These injunctions are available in the Commercial Court in respect of substantive proceedings brought in the BVI and in relation to proceedings which have been or are about to be commenced in a court outside the BVI and which could give rise to a judgment which may be enforced in the BVI under any BVI statute or at common law.

5.5 Timeline for Enforcing an Unsecured Claim

The time taken to obtain and enforce a judgment outside liquidation will depend on the extent to (and the manner in) which the proceedings are contested, but six to 12 months would be typical.

If a creditor seeks to enforce its rights by filing a winding-up petition, then the petition will normally be heard within six to eight weeks of the filing. An application to appoint a liquidator must be determined within six months of the date that the application notice is filed with the court. However, this time period can be extended by order of the court.

If a winding-up order is made, the timeline for payment of the creditors varies widely from liquidation to liquidation.

5.6 Bespoke Rights and Remedies for Landlords

Landlords are not included in the class of preferred creditors in the BVI and have no bespoke rights or remedies.

5.7 Foreign Creditors

No special procedures or impediments apply to foreign creditors.

5.8 Statutory Waterfall of Claims

The statutory priority of claims is set out in Section 207 of the IA and distributions are made in the following order:

- secured creditors (who are not strictly speaking participants in the insolvency process);
- expenses of the liquidation;
- preferred creditors;
- unsecured creditors;
- statutory interest on claims subsequent to the commencement of liquidation;
- creditors whose claims arise from their rights as a member or former member; and
- claims of members.

Rule 199 of the IR provides a prescribed priority for all costs and expenses paid and Schedule 2 of the IR sets out a list of preferred creditors.

5.9 Priority Claims in Restructuring and Insolvency Proceedings

As stated, secured creditors fall outside the liquidation regime. A secured creditor can simply enforce its security in the usual way. If there is a shortfall following the sale of the secured asset, any balance due will be considered an unsecured debt and the secured creditor will rank equally with other secured creditors.

6. Statutory Restructurings, Rehabilitations and Reorganisations

6.1 Statutory Process for a Financial Restructuring/ Reorganisation

As set out in **2.1 Overview of Laws and Statutory Regimes**, there are three primary methods of financial restructuring available in the BVI: scheme of arrangement, plan of arrangement and CCAs.

6.2 Position of the Company

The company can and will continue to operate its business during the restructuring process. If the company is not in provisional liquidation then incumbent management will continue to manage the company. If the company is in provisional liquidation then the appointment order will specify whether and to what extent incumbent management or the provisional liquidators will manage the business during the restructuring.

The company can borrow money during the process but this will require Commercial Court approval if the company is in provisional liquidation.

No moratorium is available if the scheme is initiated when the company is not in liquidation. If the scheme is initiated during a provisional liquidation, then an automatic stay prohibits the commencement or continuance of any suit, action or other proceeding against the company without the Court's leave.

6.3 Roles of Creditors

- Insolvent liquidation – the court-appointed liquidator controls the process. However, the IA gives the creditors powers to form a creditors' committee and to appoint another liquidator in place of the current liquidator

– Section 179 of the IA. Once appointed, a creditors' committee can approve the remuneration of a liquidator and will be kept informed by the liquidator regarding any claims or distributions. Creditors are also able to challenge any decision made by the liquidator by applying to the court – Section 273 of the IA. They may also apply to the court to remove a liquidator at any point during the liquidation – Section 187(2)(b).

- Plan of Arrangement – many plans of arrangement are agreed by all relevant parties prior to the court approving them. Therefore, the creditors are usually contacted before the plan has been implemented to agree to its terms. Their involvement is limited once the plan has been approved.
- Scheme of Arrangement – creditors must vote on the terms of the Scheme of Arrangement. Once approved, the Scheme is binding on all the creditors and they have little involvement after the implementation of the scheme.
- CCA – the creditors play a significant role before the CCA is implemented. It is the creditors that must approve the terms of the CCA and nominate a supervisor. At the point that the CCA has been approved it becomes binding on the creditors. It is the role of the supervisor to implement the CAA in accordance with its terms.

6.4 Claims of Dissenting Creditors

See **2.1 Overview of Laws and Statutory Regimes** and **3.5 Out-of-court Financial Restructuring or Workout**. In summary, dissenting creditors' rights will be crammed down in accordance with the terms of the scheme if the statutory majorities are obtained in each class and the scheme is sanctioned by the BVI Court.

6.5 Trading of Claims Against a Company

There is no statutory prohibition on the trading of creditor claims, but notice of the assignment would need to be given to the company.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

A restructuring procedure may be utilised to reorganise a corporate group on a combined basis. A separate scheme would be required for each scheme company, but the procedure can be co-ordinated and streamlined by the Court to minimise inefficiencies.

6.7 Restrictions on a Company's Use of or Sale of Its Assets

If a scheme is implemented when a company is not in provisional liquidation, no restrictions or conditions will be applied to the use or sale of the company's assets, other than any applicable contractual restrictions. If the company is in provisional liquidation, any disposition of assets would be subject to the approval of the BVI Court. Contractual consents would be enforceable unless the applicable right was itself compromised by the scheme.

6.8 Asset Disposition and Related Procedures

There is no applicable information in this jurisdiction.

6.9 Secured Creditor Liens and Security Arrangements

If a scheme is implemented when a company is not in provisional liquidation, the sale of assets will be executed by the duly authorised representatives of the company – that is, typically, its directors. If a scheme is implemented when a company is in provisional liquidation, the terms of the appointment order (or subsequent orders) will determine whether and to what extent the sale is executed by the directors or by the provisional liquidators. In either case, the company would only transfer such right, title and interest as it had in the assets. In particular, any security over the assets would remain in place unless it was compromised by the scheme.

Creditors may bid for assets and act as a stalking horse in a sale process. No specific rules apply to bids by creditors, but if the restructuring is happening in a provisional liquidation, the BVI Court will need to approve the sale, and in so doing, it will consider the sales process as part of its assessment of whether the creditor's bid represents the best deal available in the circumstances.

In appropriate circumstances a pre-packaged sale of assets could be arranged. BVI Court approval would be required if the company is in provisional liquidation.

6.10 Priority New Money

New money can be given priority by the company granting security to the lender or by subordinating the claims of scheme creditors through the scheme itself. Pre-existing security over an asset would take priority over any new security granted to the lender.

6.11 Determining the Value of Claims and Creditors

The process is not prescribed by statute, but if there are disputed, contingent or unliquidated claims, then the scheme document will include an adjudication mechanism.

6.12 Restructuring or Reorganisation Agreement

As noted above in **6.1 Statutory Process for a Financial Restructuring/Reorganisation**, the scheme, as embodied in the scheme document, must be approved by the requisite majorities in each scheme class and sanctioned by the BVI Court, which will not do so unless satisfied as to the fairness of the scheme terms.

6.13 Non-debtor Parties

In certain circumstances, a scheme can release non-debtor parties from liabilities provided that there is a sufficiently close connection between the subject matter of the scheme and the relationship between the company and its creditors/members.

6.14 Rights of Set-off
The question of whether creditors can exercise rights of set-off or netting in a proceeding would need to be addressed in the scheme documentation.

6.15 Failure to Observe the Terms of Agreements
The implications of a company/creditor failing to observe the terms of a scheme would depend on the particular circumstances in question.

6.16 Existing Equity Owners
Existing equity owners can receive/retain any ownership or other property on account of their ownership interests.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings
Voluntary Liquidations
The BCA includes provisions for the voluntary winding-up of a business company, provided it has no liabilities or is able to pay its debts when they fall due.

A voluntary liquidator may be appointed by the shareholders – Section 199(3) of the BCA – or by the director(s) of a company, where the purpose of the company no longer exists, or a specified event has occurred, in each case as specified in the memorandum and articles. However, a voluntary liquidator may only be appointed where the director(s) has made a declaration of solvency – Section 198(1) of the BCA. The director(s) must also provide a liquidation plan.

Where a voluntary liquidator is appointed, the liquidator must, within 14 days of the commencement of the liquidation, file a notice of their appointment in the approved form, the declaration of solvency made by the director(s) and a copy of the liquidation plan. Furthermore, a voluntary liquidator must advertise notice of their appointment within 30 days of the commencement of the liquidation (Section 204 of the BCA).

It is important to note that a voluntary liquidator may not be appointed by the director(s) or members if an administrator or liquidator of the company has been appointed under the IA. Additionally, a voluntary liquidator may not be appointed if an application has been made to the BVI court to appoint an administrator or a liquidator under the IA and the application has not been dismissed. The individual to be appointed voluntary liquidator must also consent, in writing, to their appointment.

The BCA grants voluntary liquidators all powers of the company that are not granted to the members under the BCA or the company's articles and memorandum of association.

Section 207(2) of the BCA states that a voluntary liquidator may not, without permission of the BVI court, continue for a period in excess of two years the business of a company that is being wound up and dissolved.

Upon completion of a voluntary liquidation, a liquidator must file a statement that the liquidation has been completed. The Registrar, upon receiving the statement, is required to strike the company from the Register of Companies and issue a certificate of dissolution. The voluntary liquidator must then arrange for the dissolution to be advertised in the Virgin Islands Official Gazette.

Insolvent Liquidations
A liquidator may be appointed over an insolvent company by the BVI court or by the members of an insolvent company. An application may be made by a creditor, the company, its directors, its shareholders or by the Attorney General or the FSC. The majority of applications are brought on the grounds of insolvency.

Where the members of an insolvent company wish to appoint a liquidator, a majority of at least 75% is required to pass this resolution. It is also required that any liquidator appointed over an insolvent company must be licensed to practice as an insolvency practitioner in the BVI. This requirement, however, does not apply to voluntary solvent liquidations.

Within 14 days of appointment, a liquidator must advertise the appointment, file notice of the appointment with the Registrar of Companies and serve notice of his or her appointment to the company.

On appointment, a liquidator takes custody and control of the company's assets and the directors' powers effectively cease. Unless the BVI court orders otherwise, there is a stay against creditor action and proceedings may not be commenced by or against the company and shares in the company may not be transferred. Secured creditors remain able to enforce their security rights.

The main duties of a liquidator are to collect and realise the assets of the company and to distribute the proceeds to the creditors.

A liquidator has the power to disclaim onerous property, including any unprofitable contract, as well as assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

A disclaimer is exercised by the liquidator by filing a notice of disclaimer with the court. The liquidator must then, within a period of 14 days, give notice to every person who is affected by the disclaimer – Section 217(2) and (3) of the IA.

Unsecured creditors prove in the estate by submitting a claim form. The liquidator must then either accept the claim or reject it with reasons. Section 210(1)(a) permits a creditor to apply to the Court if it is not satisfied with the liquidator's decision to expunge or reduce the claim.

It is important to note that the value of any claim is quantified by reference to the date that the liquidation commenced – Section 152(2) of the IA. A liquidator need not determine the value of each claim until there are sufficient assets available to make a distribution to creditors.

In relation to contingent claims, the liquidator will either agree an estimate of value or apply to the court to determine the claim. Section 152(6) of the IA states that any future/prospective debts will be discounted in accordance with the formula set out at rule 148 of the IR.

The IA also provides a set-off provision which may permit a liquidator to reduce any claim - Section 150(1) of the IA.

Provided there are assets available to the liquidator, a distribution will be made in accordance with the statutory order of priority (see **5.8 Statutory Waterfall of Claims**).

As with the voluntary liquidation regime, an insolvent liquidation terminates when the liquidator prepares the final report, together with a statement of realisations and distributions that is sent to creditors and members and filed with the Registrar (Sections 232 and 234 of the IA).

7.2 Distressed Disposals

The liquidator will usually negotiate and authorise the sale of assets of the business. The only exception to this is if an asset is the subject of some form of security. The BVI court may sometimes include in the order of appointment that the liquidator should seek sanction of the court before selling certain assets. Creditors may bid for company assets and it will be for the liquidator to decide whether any offer represents fair value or is in the best interests of the creditors as a whole.

7.3 Failure to Observe Terms of Agreed/Statutory Plan

The implications of failing to observe the terms of an agreed or statutory plan will depend on the circumstances in question.

7.4 Priority New Money During the Statutory Process

Priority new money can be invested or loaned during the statutory process, subject to Court approval in a provisional or official liquidation.

7.5 Insolvency Proceedings to Liquidate a Corporate Group

Concurrent liquidation proceedings in respect of several group companies can be co-ordinated by the BVI Court to avoid duplication and improve efficiency and cost effectiveness. In certain circumstances, the BVI Court may order the pooling of assets and liabilities of group companies, but this is rare in practice.

7.6 Organisation of Creditors or Committees

There is no requirement for a creditors' committee to be formed, but the creditors may establish a committee by a resolution passed at a meeting (Section 421 of the IA). This can occur any time after the appointment of a liquidator. The resolution may only be passed at a meeting requisitioned by the liquidator for the purpose of forming a committee. At least 1% in value of the creditors of the company must agree to the resolution.

The expenses of any creditors' committee appointed in the liquidation are paid out of the estate and in priority to unsecured creditors. They are classed as expenses of the liquidation under prescribed priority at rule 199 of the IA.

7.7 Use or Sale of Company Assets During Insolvency Proceedings

Upon the making of a winding up order, the custody and control of all the property and choses in action of the company are transferred to the liquidators who are charged with the statutory duty of dealing with the company's assets in accordance with the statutory scheme. All powers of dealing with the company's assets are exercisable by the liquidator alone. In a provisional or official liquidation, the power to sell the company's property may only be exercised by the liquidators with the sanction of the Court.

8. International/Cross-border Issues and Processes

8.1 Recognition or Relief in Connection with Overseas Proceedings

Part XIX of the IA provides a statutory framework that permits the BVI court to assist insolvency proceedings in another jurisdiction. The provisions apply only to certain types of insolvency proceedings (ie, collective judicial or administrative proceedings in which the property and affairs of the debtor are subject to control or supervision by a foreign court).

A small number of relevant foreign countries may apply to the BVI court for assistance. They are:

- Australia;
- Canada;
- Finland;

- Japan;
- Jersey;
- New Zealand; and
- The United Kingdom.

The orders that the BVI Court can make in aid of foreign insolvency proceedings are wide and include:

- an order to restrain proceedings;
- an order requiring an individual to deliver up property;
- an order requiring the examination of an individual who resides in the BVI.

Before making such orders, the BVI court must consider whether it is treating all persons claiming in the foreign proceedings justly, it is protecting persons in the BVI who may have claims against the company, and it is preventing preferential or fraudulent disposal of property.

Part XVIII of the IA contains provisions based on the UNCITRAL model law on Cross-Border Insolvency for giving and seeking assistance in insolvency proceedings. However, this part of the IA is not in force and is unlikely to be any time soon.

8.2 Co-ordination in Cross-border Cases

The BVI court is mindful of the jurisdiction's position in the international market and regularly seeks to co-ordinate proceedings in the BVI and in foreign jurisdictions if there is a crossover in subject matter. The onus is on the parties concerned to bring any related foreign proceedings to the attention of the BVI court.

In May 2019, the Judicial Committee of the Privy Council handed down judgment in the case of UBS AG New York and others v Fairfield Sentry Ltd (In Liquidation) and others [2019] UKPC 20. This appeal arose from the decision of the Eastern Caribbean Court of Appeal which dismissed the appellants' appeal from the refusal of the High Court to grant an application for an anti-suit injunction to restrain the liquidators from proceeding with their claims in the United States under Section 249 of the IA. Section 249 IA is a provision in Part VIII IA, which deals with voidable transactions within the insolvency regime. These include unfair preference payments, transactions at undervalue, voidable floating charges and extortionate credit transactions. Section 249 IA permits a liquidator to apply to the BVI Court to set aside such a transaction or to vary the terms of any agreement. In Fairfield, the Appeal Board dismissed the appeal reasoning that Section 249 does not preclude foreign courts from exercising the powers under this section in a BVI liquidation.

In a recent development, the BVI High Court granted an application appointing "soft touch" provisional liquidators over a group of companies to aid restructuring in both Brazil and the United States. This is a welcome development in BVI common law and serves to further illustrate the flexibility of the BVI courts when faced with complex cross-border restructurings (see In the Matters of Constellation Overseas Ltd & others BVIHC (Com) 2018/0206).

8.3 Rules, Standards and Guidelines

See **8.1 Recognition or Relief in Connection with Overseas Proceedings** and **8.2 Co-ordination in Cross-border Cases**.

8.4 Foreign Creditors

Creditors of each class are treated equally and no preference is given to a creditor on account of where they are situated.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

The Official Receiver can be appointed to act as liquidator in place of an insolvency practitioner. However, the majority of appointments are granted to insolvency practitioners. Receivers and administrative receivers may also be appointed under Part IV of the IA. Whilst the IA does include provisions for the appointment of administrators, these provisions are not currently in force.

9.2 Statutory Roles, Rights and Responsibilities of Officers

Voluntary liquidators are officers of the company over which they are appointed and owe statutory and fiduciary duties to the company and its stakeholders.

Provisional and official liquidators are officers of the BVI Court and act as agents of the company over which they are appointed. They stand in a fiduciary position towards the company and must act in the interests of the general body of the company's stakeholders. An official liquidator is required to make "himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the course of his investigation, which is material to ascertain the exact truth in every case before the Court" (see Gooch's Case 1872, 7 Ch App 207). Official liquidators have various statutory duties, including the duty to ensure that the assets of the company are secured, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

Receivers must exercise their duties in good faith and for a proper purpose, and in the best interests of the person who appointed them (Section 128 of the IA).

9.3 Selection of Officers

Voluntary liquidators are appointed by a resolution of the company's shareholders. Provisional and official liquidators are nominated by the petitioner and appointed by the BVI

Court (which may have regard to any alternative nominees put forward by other stakeholders).

See **7.1 Types of Voluntary/Involuntary Proceedings** for a description of how statutory officers interact with company management and directors and **9.1 Types of Statutory Officers** for a description as to who can and cannot serve as a statutory officer.

A receiver may be appointed by the court, but may also be appointed under the terms of a debenture or in accordance with another BVI statute. The BCA and the Conveyancing and Law of Property Act 1961 include provisions for the appointment of receivers. However, as most BVI-registered companies do not own property in the BVI, few receivers are appointed under the terms of the 1961 Act.

There are a number of individuals who cannot act as a receiver, as outlined in Section 116(1) of the IA.

An administrative receiver is usually appointed to enforce the terms of a floating charge and to secure the assets that are the subject of the charge. It is largely an out-of-court-appointment procedure, although the BVI court will exercise jurisdiction over both receivers and administrative receivers.

Restructuring professionals, attorneys, accountants or other professionals may serve as statutory officers, provided they are not excluded under Section 116(1) of the IA.

10. Advisers and Their Roles

10.1 Typical Advisers Employed

Attorneys will regularly advise directors regarding the process for, and consequences of, placing a company into voluntary liquidation. Financial advisors are commonly retained by provisional liquidators who have been appointed for the purpose of a restructuring. They are less commonly retained by official liquidators, although this is possible with BVI Court approval. Also, accountants will regularly be instructed to provide an assessment of the finances of a company to ensure that it is solvent and they will assist with the distribution of assets.

In insolvent liquidations, attorneys are involved at every stage and can represent a creditor, director, liquidator or the company itself. Attorneys will regularly advise creditors how best to recover any amount due and how to commence insolvency proceedings, if required.

10.2 Compensation of Advisers

Professionals are retained by the liquidators at the expense of the liquidation estate. BVI Court approval is required before professionals can be appointed by provisional or official liquidators. In many cases, the BVI Court will leave the terms of the professionals' remuneration to be negotiated by the liquidators, but a liquidator would be unlikely in practice to agree to any professional being remunerated on a basis other than time spent, without seeking the express approval of the alternative fee basis from the BVI Court.

The reasonableness of the fees charged by BVI and foreign counsel to the liquidators can be taxed (assessed) by the BVI Court.

10.3 Authorisation and Judicial Approval

It is common for the liquidator to be given, in the order that appointed them as liquidator, permission to instruct advisors, as they deem appropriate, to assist in the recovery/liquidation process. Ad hoc application for approval to appoint advisors can be made to the BVI Court during the course of the liquidation and, in certain circumstances, the creditors' committee can approve the appointment of an advisor by the liquidator.

10.4 Duties and Responsibilities

Professional advisors owe duties/responsibilities to the liquidation estate, on whose behalf they have been retained by the liquidators.

11. Mediations/Arbitrations

11.1 Utilisation of Mediation/Arbitration

Very few mediations or arbitrations take place in the BVI despite the passage of the BVI Arbitration Act, 2013 (the Arbitration Act), which intended to facilitate and encourage arbitration of disputes. The BVI has an international arbitration centre and initiatives have been put in place to encourage a greater number of arbitrations within the Territory but, to date, this is a little-used tool in the insolvency field.

11.2 Mandatory Arbitration or Mediation

Mandatory arbitration or mediation is not common in the BVI, however, the Arbitration Act provides that if applicable agreements contain arbitration provisions and if a party refers to such provisions on the first substantive application in litigation proceedings, the court must refer the matter to arbitration.

11.3 Pre-insolvency Agreements to Arbitrate

As mentioned in **11.2 Mandatory Arbitration and Mediation**, the BVI court recognises these agreements and may refuse to appoint a liquidator or a receiver if there is an agreement stating that all disputes arising out of the loan or security must be resolved by arbitration.

11.4 Statutes Governing Arbitration/Mediation

See **11.1 Utilisation of Arbitration/Mediation**. The Arbitration Act applies to any arbitration under an arbitration agreement which names the BVI as the place of arbitration.

11.5 Appointment of Arbitrators
The method of appointment of arbitrators is usually set out in the arbitration agreement itself.

There are no professional standards set out in the Arbitration Act that an individual must meet to be nominated as an arbitrator. However, an individual must consider their impartiality before taking up the role.

12. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

12.1 Duties of Directors
As a general principle of BVI law, directors' duties are owed to the company, rather than directly to shareholders or creditors. A number of duties might be engaged in circumstances of financial difficulty, but the fiduciary duty to act in the best interests of the company will always be prevalent.

When a company is insolvent or of doubtful solvency, the directors' duty to act in the best interests of the company requires them to have regard for the interests of its creditors. It is in the interest of the creditors to be paid, and it is in the interest of the company to be safeguarded against being put in a position where it is unable to pay. Although there is no definitive statute indicating at which point a company must enter a restructuring or insolvency process, directors can be made personally liable to the company for losses which they cause to the company if they act in breach of that duty; an example of this might be incurring additional liabilities when they knew, or should have known, that there was no reasonable prospect of the company avoiding insolvent liquidation.

12.2 Direct Fiduciary Breach Claims
A creditor could only bring a claim directly against the directors if the directors had voluntarily assumed a direct duty to the creditor. Once the company has entered into official liquidation, claims against a company's directors for breach of their fiduciary duty to the company would be pursued by the liquidator in the name of the company.

12.3 Chief Restructuring Officers
It is not typical to appoint a Chief Restructuring Officer in the BVI, although lawyers, accountants, insolvency practitioners and judges frequently deal with cases where there is a Chief Restructuring Officer. This is usually where the restructuring involves a United States element within Chapter 11 proceedings.

12.4 Shadow Directorship
Any individual may become a shadow director if it can be shown that they give instructions to the director(s) of a company or in some way influence/control the day-to-day running of the company.

Shadow directors owe the same duties as de jure or de facto directors. Furthermore, the insolvent trading provisions of the IA extend to any individual in accordance with whose directions or instructions a director or the board of a body corporate may be required or is accustomed to act. They go further to include a person who may, or is entitled to, exercise or control the powers which would usually be exercised by the board or a director.

12.5 Owner/Shareholder Liability
An owner or shareholder of a company will only be liable to the creditors if they have acted as a shadow or de facto director whilst the company was insolvent or on the verge of insolvency. It must be shown that their actions have caused a loss to the company.

A shareholder may also be liable if they received the benefit of an unfair preference (Section 401 IA) or an undervalue transaction (Section 402 IA). Under Section 405 IA the BVI Court has the power to order the recipient of any preference payment or the beneficiary of any under value transaction to compensate the company for any loss that stems from such an arrangement.

In addition, where a company is in liquidation, the liquidator may seek an order from the court if they believe that a person misapplied or retained, became accountable for any money or other assets of the company, or was guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company. The class of persons against whom an order may be sought extends to any person who has been involved in the promotion, formation, management, liquidation or dissolution of the company, which would include a shareholder or owner.

13. Transfers/Transactions That May Be Set Aside

13.1 Historical Transactions
Part VIII of the IA provides for various applications which may be made by a liquidator to set aside transactions that unfairly diminish the assets available to creditors:

- Unfair preferences – Section 245 of the IA provides that an unfair preference occurs when a company enters into a transaction during the statutory vulnerability period (see **13.2 Look-Back Period**) which has the effect of putting a creditor in a better position than other creditors in the company's liquidation. It must be shown that the company was insolvent at the time the preferential treatment was given, or became insolvent as a result of it.

- Undervalue transactions – Section 246 of the IA permits the court to undo any transaction that was made at undervalue. It must be shown that the company has disposed of an asset for either no consideration or consideration significantly less than the value of the asset. The transaction must also be an insolvency transaction (a transaction that was made when the company was insolvent or a transaction that caused it to become insolvent) and entered into within the statutory vulnerability period (see **13.2 Look-Back Period**).
- Voidable floating charges – a floating charge is voidable if it is an insolvency transaction that was entered into within the vulnerability period. A floating charge will not be voidable if it secures new value. There is a presumption that a floating charge will be voidable if granted in favour of a connected person.
- Extortionate credit transactions – a transaction may be voidable if it is deemed that the terms of the transaction required grossly exorbitant payment. Additionally, Section 248 of the IA states that a transaction will also be voidable if it is an extortionate credit transaction that grossly contravenes the ordinary principles of trading. The BVI courts have yet to rule on what does, or does not, constitute gross contravention of the ordinary principles of trading. However, the language contained in Section 248 suggests that something quite out of the ordinary would be required.

13.2 Look-Back Period

The IA provides a "vulnerability period" for claims to set aside transactions.

For preference payments and payments at an undervalue, the court can consider any payment made six months prior to the date that the company was placed into liquidation. This period is extended to two years if the payment was made to a connected person.

In relation to extortionate credit transactions, the relevant vulnerability period is five years.

13.3 Claims to Set Aside or Annul Transactions

Only a court appointed liquidator can bring a claim to set aside or annul a transaction under the IA.

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The claims set out above can only be brought once a liquidator has been appointed, but there may be scope to bring similar claims against directors or shadow directors outside of the insolvency regime if it can be shown that they have breached their fiduciary duties.

14. Importance of Valuations in the Restructuring and Insolvency Process

14.1 Role of Valuations

Valuations are often required in the restructuring and insolvency process in the BVI. Valuations may, for example, be relevant in relation to:

- valuing assets for the purpose of preparing a liquidation analysis as the relevant comparator in a restructuring;
- valuing claims of stakeholders with regards to a scheme of arrangement to ensure that the statutory majorities have been passed;
- valuing assets to be sold by a liquidator; or
- valuing offers to purchase a petitioner's shares in the context of winding-up proceedings (see O'Neill and Another v Phillips and Others (1999, 1 WLR 1092).

14.2 Initiating a Valuation

Valuations would typically be initiated by an office holder in relation to assets of the company over which they are appointed, but this would depend on the circumstances of the case.

14.3 Jurisprudence

There is relatively little BVI valuation jurisprudence in a restructuring and insolvency context, but the BVI Court would be likely to follow jurisprudence from, for example, the English courts.

There are various valuation experts in the BVI who are regularly retained to give expert evidence on the valuation of a variety of asset types, but onshore valuation experts are also frequently used.

The result obtained from a sales/marketing process would form a critical part of the valuation evidence in most insolvency cases and is typically considered to be a more reliable indication of market value than a desktop valuation. Liquidators will sometimes seek the BVI Court's approval of any proposed bidding process.

Office holders and experts would generally tend to rely on multiple valuation methods to determine the valuation range of a particular asset. In a restructuring context, the BVI Court will require expert evidence in connection with the relevant comparator to the scheme, which is typically the estimated outcome of an insolvent liquidation of the company.