



Insolvency & Restructuring

OVERVIEW

Appleby provides insolvency & restructuring services in all the offshore jurisdictions in which it operates, namely: Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius and the Seychelles.

The availability of expert professional advice, coupled with reputations for being respectable, well-regulated financial centres with business friendly governments, has contributed in recent years to the rapid growth of the corporate and trust sectors in all of the jurisdictions in which Appleby operates. However, in business growth is often accompanied by risk and risk can be followed by failure. As businesses increasingly operate across national borders, the number of insolvencies with cross-border elements continues inevitably to rise.

Insolvencies may be corporate or personal. They may be triggered by macro-economic factors or by factors specific to an industry, sector or individual business or person. They may also result from death, divorce or criminal activity. They may be commenced by a creditor or by the debtor itself, or indeed in certain cases by a third party such as a regulator.

Corporate entities may require restructuring whether or not they are insolvent. The need may arise from shareholder disputes and even profitable quasi-partnerships may be subject to winding up on 'just equitable' grounds if relations between stakeholders deteriorates. Restructuring may also be required as a result of a take-over, merger, revision of business strategy or change to regulatory requirements. In many cases, whether a company is solvent or insolvent similar considerations will apply when planning and executing a complex restructuring. In some cases a Court application will be required; in others, it will not.

In the offshore world, legal developments in one jurisdiction may have a significant impact on the options available in another. "Joined up thinking" is essential.

The complexity and breadth of this practice sector makes it essential that parties are properly advised by experienced lawyers who understand all of the options and can offer creative alternatives to difficult problems.

**“One clear advantage
is the firm’s
international reach”
Chambers &
Partners 2015**

OUR INSOLVENCY & RESTRUCTURING PRACTICE

Appleby's market-leading Insolvency & Restructuring team combines a wide range of sector specific expertise across each of the offshore jurisdictions in which we operate. This enables us to provide clear, sound and timely advice on the full spectrum of contentious and non-contentious insolvencies and restructurings.

Our Insolvency and Restructuring team, which is made up of more than 30 lawyers spread across our global offices, will often be found acting for creditors, debtors, directors, investors, or insolvency practitioners in many of the largest insolvencies that have offshore aspects.

We have advised on some of the largest and most complex Insolvency and Restructuring matters including:

- Bank of Credit and Commerce International
- Bear Stearns High Grade Structured Credit Fund
- Barings Bank
- Kaupthing Singer & Friedlander (Isle of Man) Limited
- Sphinx Funds
- Global Crossing Ltd
- Sea Containers Ltd
- New Stream Capital Fund Ltd

We advise companies, their directors and advisers on issues ranging from the winding up of a company to developing schemes of arrangement to enable the company to refinance. Our experience includes:

- Liquidation of all types of companies and partnerships, both on conventional insolvency grounds and as a consequence of governmental or regulatory action in the 'public interest'
- Acting for liquidators, provisional liquidators and other office-holders as well as regularly representing creditors, shareholders and directors in relation to the appointment and removal of such office-holders and claims brought by or against them
- Advising on creditors' rights and schemes of arrangement
- Advising on both solvent and insolvent restructuring
- Insolvency proceedings relating to mutual funds and hedge funds
- Cross-border issues, such as the co-ordination of proceedings with Chapter 11 proceedings in the US and the recognition of liquidators and receivers appointed in other jurisdictions
- Dissenting shareholder claims in the merger context

Regularly working closely with onshore law firms, we develop coherent strategies that can effectively address the difficult issues often raised by complex multijurisdictional insolvencies and restructurings.

“A pragmatic approach that brings a sense of calm to every situation” **Chambers & Partners 2015**

“Proactive and practical advice with plain English explanations” **Chambers & Partners 2015**

REPRESENTATIVE WORK

British Virgin Islands

| Performance Investment Products Corporation | Peak Hotels & Resorts Limited | Pioneer Iron & Steel Group Company Limited |
|--|--|--|
| <p>Acting for the liquidators of a group of similarly styled companies incorporated in the BVI, Hong Kong and the Philippines, a fraudulently run investment scheme. Obtained sanction to enter into cross-border protocols with the HK liquidators, and the BVI's first order sanctioning payment of the liquidators fees out of trust assets (applying Berkeley Applegate)</p> | <p>Acting for the Provisional Liquidators of Peak Hotels & Resorts Limited, a shareholder of Aman Resorts. Its litigation with Tarek Investments Limited and the Sherway Group features as one of the Lawyer's top 20 cases of 2015.</p> | <p>Acting for the liquidators of PISG, a liquidation in which total creditor claims exceeded \$500m. Obtained leave to enter into a funding agreement to pursue litigation in Hong Kong, and successfully opposed applications for the termination of the liquidation, and then for the liquidators removal.</p> |

Bermuda

| KPMG Advisory | Titan Petrochemicals Group Limited | South Of England Protection And Indemnity Association (Bermuda) Limited |
|--|--|--|
| <p>Represented receivers (KPMG Advisory) in complex receivership of segregated account investment fund company requiring first time consideration of matters connected with receivership of segregated accounts, insolvency of segregated account company and construction of the legislation.</p> | <p>Acting for the joint provisional liquidators in relation to the supervision of the restructuring of the group in the context of a scheme of arrangement involving the refinancing of shipyard operations in the PRC and resumption of the parent company's listing on the Hong Kong Stock Exchange.</p> | <p>Acting for the Bermuda Monetary Authority, in its capacity as regulator, in its application to wind up the P&I Club insurer for failing to comply with the regulatory regime and in the subsequent actions against the directors and managers of the company.</p> |

Cayman Islands

| Alibaba.com | BCCI | Cayman: Confidential Matter |
|---|---|--|
| <p>Advised Alibaba.com (a Cayman Islands company and a Hong Kong listed B2B e-commerce company) in relation to its privatisation through a court-sanctioned scheme of arrangement under section 86 of the Cayman Islands Companies Law.</p> | <p>Concluded the world's largest banking insolvency which ran for 20 years across 3 liquidation estates and saw creditor recoveries at over 90% of proven claims. The creation of an asset pooling arrangement between the 3 estates was at the vanguard of cross-border insolvency innovation, and was key to the orderly liquidation.</p> | <p>Acting for Cayman holding company providing advice that was integral to a high value restructuring of subsidiary, a high profile UK plc with employees throughout the world. Use of Cayman provisional liquidation process to facilitate and augment UK restructuring of plc.</p> |

REPRESENTATIVE WORK Cont'd

Guernsey

Mitco Germany

Advising the major shareholder of a company placed into administration with respect to the structuring of a re-finance package and thereafter the successful discharge of the administration order thus ensuring the survival of the company as a going concern.

Full Tilt Poker

Acting in a successful application to wind up the business on the grounds that it had lost its substratum and it was in the public interest. This was the first occasion on which the Alderney Court was required to consider the standing of applicants (other than the company, a member or creditor thereof) with a "legitimate and substantial interest" in winding up proceedings.

Real Estate Matters

Acting in the successful appointment of joint administrators to the Guernsey investment holding company level (as opposed to the direct property holding level) of a UK real estate structure. Proceeding in this manner enabled the structure to mitigate distress signals within the wider market that could otherwise have led to a rapid devaluation of underlying property assets.

Isle of Man

Frontier Global Real Estate Fund

Acting for an Isle of Man fund, in successfully creating by way of a scheme of arrangement a side pocket in to which illiquid assets were placed. Possibly for the first time, the Manx Court made an Order permitting nominee holders of shares to split their votes at the scheme meeting to reflect the interests of their underlying beneficiaries.

FSC v Louis Group

Acting for the Isle of Man Financial Supervision Commission in their application for the appointment of inspectors, and subsequently liquidators, to a collective investment scheme and other companies promoted by Louis Group.

Gulldale Limited

Acting for the Special Services of a secured lender in successfully making the first ever application to the Manx Court to obtain a Letter of Request to the English Court to place a Manx company that has its Centre of Main Interest in the Isle of Man, into administration in England.

Jersey

In the matter of a Jersey Company

Acting for a Bank in the making of an application to the Royal Court of Jersey to obtain a Letter of Request to the High Court of England and Wales to place a Jersey company that has its Centre of Main Interest in Jersey, into administration in England.

Foreign Office Holders

Acting for various foreign office holders (both UK and elsewhere) i.e. Trustees in Bankruptcy, Administrators, Liquidators and Receivers in respect of applications for recognition in Jersey.

Standard Chartered Bank

Acting on a Court sanctioned scheme of transfer under the Banking Business (Jersey) Law 1991. The scheme effected the transfer of the US\$5 billion deposit taking and investment business from the local subsidiary to the Bank's Jersey branch. This was the first time a Jersey scheme had been used to effect a transfer of investment business as well as deposit taking business under the law.

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ABOUT APPLEBY

Appleby is one of the world's leading offshore law firms. The Group has offices in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius, and Seychelles, as well as a presence in the international financial centres of Hong Kong and Shanghai.

Appleby has been ranked as one of the world's largest providers of offshore legal services in The Lawyer's 2016 Offshore Survey. With over 470 people, including lawyers and professional specialists, across the Group, Appleby delivers sophisticated, specialised services, primarily in the areas of Corporate, Dispute Resolution, Private Client and Trusts, Regulatory and Property. The Group advises public and private companies, financial institutions, and high net worth individuals, working with these clients and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.