Bermuda Restructuring & Insolvency 2026 (Lexology)

Briefing Summary: The aim of this chapter is to provide local insights in Bermuda including a general overview; types of liquidation and reorganisation processes; insolvency tests and filing requirements; directors' and officers' regime; stays of proceedings and moratoria; doing business during reorganisations; asset sales; creditor remedies, involvement and proving claims; security; clawback and related-party transactions; treatment of groups of companies; international cases; and recent trends.

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General

Legislation

What main legislation is applicable to insolvencies and reorganisations?

The Companies Act 1981, the Companies (Winding Up) Rules 1982 (the Companies Rules) and the Bankruptcy Act 1989 (as applied to corporate insolvency by sections 234 and 235 of the Companies Act) are the primary statutes regulating insolvencies and reorganisations of corporate entities in Bermuda. The insolvency and reorganisation regimes provided by the Companies Act and the Companies Rules are derived largely from the English Companies Act 1948 and corresponding rules.

Other statutes such as the Segregated Accounts Companies Act 2000, the Employment Act 2000, the Insurance Act 1978 and the Contributory Pensions Act 1970 may also be relevant to an insolvency or reorganisation process, depending on the nature of the company. The Banking (Special Resolution Regime) Act 2016, which remains only partially in force, applies to licensed banks.

Excluded entities and excluded assets

What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The Companies Act applies to all insolvency and reorganisations of entities incorporated in Bermuda, except where its provisions are amended by other legislation that governs certain classes of entities. For example, the Insurance Act 1978 sets specific provisions for certain insurance companies and the Segregated Accounts Companies Act 2000 provides for such entities.

Creditors are generally only able properly to claim for assets that form part of the entity's estate on the commencement of the entity's insolvency. Assets that do not form part of its estate will be excluded or exempted from a creditor's recovery. Excluded and exempted assets include those that are held on trust by the insolvent entity, those that have been validly assigned and those that are subject to valid charges.

Public enterprises

What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The Companies Act applies equally to the insolvencies of government-owned enterprises and privately owned enterprises. Creditors do not benefit from any additional remedies in such circumstances. We are yet to see a court-supervised insolvency of a government-owned entity in Bermuda.

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

Bermuda has not enacted legislation that guarantees the protection of distressed financial institutions via mandated action from the Bermuda government or any other body. Once fully in force, the Banking (Special Resolution Regime) Act 2016 will provide a mechanism for the orderly stabilisation of distressed, licensed banks and the protection of deposit holders' interests; however, it does not provide for government bailouts.

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

The Supreme Court of Bermuda's Commercial Division is the court of first instance for restructuring and insolvency-related matters. Litigants may appeal a Supreme Court judgment to the Court of Appeal for Bermuda where a ground of appeal is met, including but not limited to cases where a judge has erred in law, or where a judge has failed to take certain relevant matters into account in reaching a judgment. A further appeal may be made in certain circumstances to Bermuda's highest appellate court, the Judicial Committee of the Privy Council in London.

Appellants have an automatic right of appeal in certain circumstances and leave to appeal is required in others. Appellants must seek leave to appeal from the court in which the decision was made and, if refused, leave to appeal may be sought from the higher court.

On appeal, orders for security of costs are usually required, in accordance with directions given by the Registrar of the Court of Appeal, and are normally based on a percentage of the estimated costs. Security is usually provided by way of letters of credit from local banks, an undertaking that the appealing party's law firm will meet costs up to a pre-determined level, or a bond given by a third party that the respondent agrees to.

Types of liquidation and reorganisation processes

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Where a company remains solvent, a members' voluntary liquidation (MVL) can be actioned by way of a shareholder resolution via a simple majority vote (except where the company's by-laws specify otherwise), which normally comes after a recommendation by the board of directors. For an MVL to proceed, a majority of the company's directors must make a statutory declaration confirming their belief that the company is able to pay its debts in full within 12 months of the date of the liquidation being commenced. The shareholders collectively appoint a liquidator that will control the liquidation process. In MVLs, shareholders are permitted to appoint company directors as well as non-professional third parties as liquidators.

The effect of an MVL is that the liquidator is given wide powers over the company, including the power to sell the company's assets without the approval of the court or creditors. MVLs do not result in an automatic stay preventing actions being brought against the company, however the court may consider an application for a stay from the date of the shareholder's resolution.

An MVL is usually concluded within two to three months, however its duration depends on the complexity of the company's affairs and the nature of its assets and debts. Once the liquidator has realised the company's assets, repaid debts to creditors and distributed any surplus to shareholders, the liquidator will arrange for a final meeting of the shareholders. After this meeting the company is deemed dissolved and the Registrar of Companies must be informed of the same within seven days. Where there are valid grounds to do so, such as an intention to pursue outstanding sums owing to the company, creditors and shareholders can make an application to restore the company even after the Registrar of Companies has struck off the company.

Where shareholders pass a resolution for the liquidation of a Bermuda Company in the absence of a statutory declaration of solvency from the directors, the liquidation is classified as a creditors' voluntary liquidation. Additionally, the Bermuda Supreme Court can put companies into liquidation on the application of shareholders who meet certain criteria wherever it can be shown that it is just and equitable to do so.

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

A scheme of arrangement is the primary tool for implementing a voluntary reorganisation of a Bermuda incorporated company. A scheme is available to both solvent and insolvent companies.

The objective of a scheme is to allow distressed companies to restructure debt or equity by entering into a compromise or arrangement without securing unanimous consent from those affected by the scheme. Provided the company secures the requisite majorities of each class of members or creditors prescribed by statute, the scheme will be binding on any dissenting creditors or shareholders.

Schemes can be initiated by the company itself as well as by any member or creditor, or in the context of an insolvent company may be promoted by a liquidator or provisional liquidator. Proceedings are started by applying to the Supreme Court for directions to convene meetings, on notice, with the various classes of creditors or shareholders who will be affected by the proposed scheme.

Each class of creditors or shareholders must approve the scheme before an application can be made requesting that the Bermuda Supreme Court sanction the scheme. A majority in number and representing 75 per cent in value of those present (in person or by proxy) and voting at each class meeting must vote in favour of the scheme.

In order for the scheme to be sanctioned, the court must be satisfied that:

- all statutory requirements have been met;
- each class of creditors or members has been fairly represented; and
- the arrangement is one that a reasonable person of business would approve.

Where a solvent company commences a scheme, the company's ordinary management remains in place. Where an insolvent company pursues a scheme, a winding-up petition will be presented to the court and a provisional liquidator will be appointed. That provisional liquidator will then have the powers to facilitate and promote a scheme proposed by the company's management, including by overseeing the company's board or management activity, or both.

There is no automatic stay preventing creditor action while a scheme of arrangement is being actioned in Bermuda. To deal with this, during such time as the scheme is being implemented, it is commonplace for the relevant company to be placed into provisional liquidation (where such a stay is available under Bermuda law). Liquidation proceedings are then discontinued once the scheme has been implemented. The Bermuda Supreme Court recently granted leave to convene a members' scheme of arrangement meeting in ***Ocean Wilsons Holdings Limited*** [2025] SC (Bda) 87 civ (18 August 2025) (unreported).

Another helpful route to a voluntary reorganisation is pursuing a 'soft touch' provisional liquidation. In such cases, the court order appointing the provisional liquidator and all subsequent proceedings are typically headed: 'In provisional liquidation for restructuring purposes only.' The winding-up petition will explicitly seek that the court should only empower the provisional liquidator with soft powers to oversee the board and the company's management as the restructuring is implemented, while reporting to the court on a confidential basis. The board is therefore able to retain control of the company's affairs, while creditors are reassured that the restructuring process is being completed thoroughly and with a focus on protecting the creditors' interests. Although the statutory moratorium prevents creditors from bringing winding-up proceedings against the company, secured creditors will remain entitled to enforce their security provided they do not require recourse to proceedings to do so.

A recent English court judgment (***Re System Building Services Group Ltd (in liquidation) Hunt (as liquidator of System Building Services Group Ltd) v Michie*** [2020] All ER (D) 91 (Jan)) is likely to be persuasive in future cases involving Bermuda 'soft touch' provisional liquidations, given their underlying similarities. In that case, it was held that a director's general duties to the company survived the company's placement into administration and a creditor's voluntary liquidation. This case emphasises the importance of ensuring that each court order appointing the provisional liquidators clearly defines the scope of their duties.

The Companies Act 1981 also makes provision for restructuring through mergers and consolidations, but these are less common.

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

A majority in number and representing 75 per cent of the value of the creditors (in person or by proxy) must approve the scheme. Creditor classes are determined by a requirement that each class must be limited to those persons whose rights in relation to the scheme are not so dissimilar that they are unable to consult together to form a view as to their common interest. In certain cases, a scheme may release third parties from liability, however this will be determined by the relevant underlying obligation in question.

A scheme can cram down dissenting creditors (which amount to no more than 25 per cent in value and less than 50 per cent in number) of creditors voting in a class. Schemes are however unable to cram down whole classes of creditors or members and failure to reach the requisite majority in a class will result in the scheme being unapproved. Where a liquidator has overall control over a reorganisation plan, the liquidator remains obliged to determine which classes of creditors have a relevant interest in each proposed asset sale and are therefore entitled to have their views heard, and those that are not. This may effectively result in a cramdown of dissenting creditor views.

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

Creditors (including contingent and prospective creditors) may present petitions to the Bermuda Supreme Court for compulsory liquidation, seeking relief on the grounds that the company is unable to pay its debts or that it is just and equitable to wind up the company, or both. Involuntary winding-ups differ from voluntary in that liquidators must obtain court sanction (or approval from a committee of inspection) prior to taking substantive steps. Most notably, before making the final distribution to creditors or members, liquidators are obliged to obtain a court order for the release of their duties as liquidator and for the company's dissolution. Involuntary winding-ups also result in an automatic stay on creditor actions and are generally court-managed processes.

Involuntary liquidations may also be petitioned by contributories (ie, any person liable to contribute to the assets of the company if it is liquidated, including fully paid shareholders) as well as, in certain circumstances, the Registrar of Companies, Bermuda Monetary Authority and Supervisor of Insurance.

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Creditors may petition the court to appoint provisional liquidators, on a 'soft touch basis', who will oversee the board and the company's management as a restructuring plan is implemented, while reporting to the court on a confidential basis. Proceedings thereafter are generally not materially different from those for voluntary reorganisations.

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

The Companies Act 1981 does not allow for an expedited reorganisation via a 'prepackaged' agreement.

Prospective liquidators may however negotiate reorganisations in an informal manner prior to their appointment on the expectation that they will agree to a pre-negotiated agreement once they are appointed as the liquidator. Such agreements are often instrumental in expediting the later reorganisation procedures. Furthermore, they tend to be more bespoke and tailored to the company's needs, in comparison to prepackaged reorganisations. Under Bermuda law, the liquidator will not be bound to enter into the pre-negotiated agreement if, after being appointed, they no longer consider the agreement is in the best interests of the company's creditors.

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

Wherever a scheme of arrangement is unable to receive approval from the requisite majority of each class of members or shareholders, the scheme cannot be sanctioned by the courts. The failure to receive approval for a scheme will not affect the rights of creditors or members in relation to the company since the scheme will not be capable of implementation.

Where the debtor fails to perform a scheme (in the case of an insolvent debtor) or a 'soft touch' provisional liquidation fails, the winding-up petition can be restored and the company may then be taken into full liquidation (see, eg, *Re Z-Obee Holdings Limited* (2017) SC (Bda) 16 Com).

Corporate procedures

Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Members' voluntary winding-ups and creditors' voluntary winding-ups are the only voluntary corporate procedures for the dissolution of corporates in Bermuda.

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Schemes of arrangement are concluded by the formal delivery of a court order sanctioning the scheme to the Registrar of Companies.

Voluntary liquidations are concluded after a members' resolution is produced that approves the liquidator's final accounts. The liquidator must then notify the Registrar of Companies of the dissolution. The Registrar will strike the company off the Register of Companies.

In the case of involuntary liquidations, the liquidator must apply to the court for an order releasing themselves and dissolving the company, once the debtor's assets have been realised, all the company's debts have been paid and all necessary distributions have been made.

Insolvency tests and filing requirements

Conditions for insolvency

What is the test to determine if a debtor is insolvent?

The Companies Act 1981 does not define or use the term 'insolvency', but rather refers to a company being 'unable to pay its debts'. A company will be deemed to be unable to pay its debts if:

- the court is satisfied that the company is unable to pay its debts taking into account the contingent and prospective liabilities of the company (ie, cash flow and balance sheets will be considered);
- the company fails to discharge an undisputed statutory demand exceeding BD$500 within 21 days; or
- execution of a judgment or order against the company is returned unsatisfied.

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

A company is not under any statutory duty to commence a winding-up in circumstances where it is insolvent or likely to become insolvent. However, where such circumstances exist, the directors of the company must act in the best interests of the company's unsecured creditors.

Directors are not required to file liquidation proceedings where a company becomes insolvent. However, if they do not, depending on the circumstances, they may later incur personal liability for breach of their fiduciary duty, fraudulent trading or misfeasance. As such, where directors are outvoted on this issue they often consider resigning.

Directors and officers

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

The concept of 'wrongful trading', where a company continues to trade while insolvent, is not recognised by Bermuda law.

A director is not under a statutory duty to commence winding-up proceedings; however, a director may later be held personally liable for the company's obligations (in such amounts as the court considers just or appropriate) if it is shown that the director:

- was knowingly a party to the carrying on of the company with the intent to defraud creditors;
- misapplied, retained or became liable or accountable for any money or property of the company; or
- is guilty of any misfeasance or breach of trust in relation to the company.

In certain cases, a director may also be personally liable for certain categories of the company's obligations, such as unpaid taxes or pension contributions.

Once a liquidation is commenced, a director may be held civilly or criminally liable for certain offences including:

- failing to provide the liquidator with full and frank disclosure;
- fraudulently removing or concealing the assets of the company;
- failing to deliver up property as the liquidator;
- falsifying the accounts or affairs of the company;
- fraudulently inducing a person to provide credit to the company; or
- dealing with the assets of the company with the intent to defraud the creditors.

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

Under Bermuda law, corporate officers and directors owe certain duties to their companies under the Companies Act 1981 and common law, and potentially additional duties under each company's by-laws. Under common law, each director owes both fiduciary duties and duties of skill and care to the company at all times. Fiduciary duties require that directors act in good faith and in effect, a negative obligation is imposed that the director does nothing that may be deemed to conflict with the company's interests. Directors must exercise whatever skill they possess with reasonable care.

Depending on the facts of the case and the severity of the breach of duty, a director may become personally or criminally liable, or both (in such amounts as the court considers just or appropriate) for the company's obligations, including in relation to actions taken as part of a corporate pre-insolvency or pre-reorganisation. This may include being held jointly and severally liable with all the directors that participated in the breach of duty. In many cases, directors will only be liable where they are knowingly guilty of a default in their duties or wilfully authorise or permit the default.

Where a company commits a tort to a third party, directors may be at risk of being held personally liable for those actions in certain cases. The likelihood of personal liability for tortious acts by a company is increased where a director causes the company to commit the tort. Negligent misrepresentations by directors may also result in liability to third parties, through contract or tort, as well as criminal liability in certain cases, for example where directors knowingly participate in producing materially misleading or false accounts.

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

Directors are generally only liable in cases where they act fraudulently or dishonestly. Standard practice is for there to be an indemnity within a Bermudian company's by-laws for all acts and omissions by directors (as permitted by the Companies Act 1981). Cases brought against directors by liquidators are very rare due to these by-law indemnities, and no such action has ever succeeded at trial.

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Where a company has become insolvent (as determined by a Bermuda court) or is likely to become insolvent, in the sense that directors do not hold the belief that the company is able to pay its debts as they fall due, then the directors' duties are no longer owed to the shareholders of the company; rather, these duties are owed to the company's unsecured creditors. This shift can be difficult to pinpoint in time, however directors should be live to the fact that the more likely an insolvent winding-up of the company becomes, the more their director's duties are ultimately owed to the company's unsecured creditors.

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Usually in insolvent winding-ups, directors and officers will cease to have powers after the liquidator is appointed or the winding-up order is made.

Reorganisations differ from liquidations in that directors and officers may continue to have powers, for example where a 'soft touch' liquidator is appointed with limited powers to oversee the company's reorganisation and management retains powers subject only to limits placed by the court.

Matters arising in a liquidation or reorganisation

Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

Once a provisional liquidator has been appointed or a winding-up order has been made in relation to a company, no actions can be commenced or continued against the company except where leave of the court is granted. Self-help remedies for secured creditors are practically unaffected by this stay. Secured creditors may therefore either enforce their security over an asset or obtain leave from the court to bring or continue enforcement proceedings against the company.

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Ordinarily, provisional liquidators and liquidators will be entitled to consider whether it is reasonable for the company to continue to carry on business with the consent of the court (or a committee of inspection). In such circumstances, the court or the committee will sanction that any reasonable expenses incurred by the liquidator in carrying out business will be reimbursed from the company's assets. This recovery will be made with priority given to the interests of unsecured creditors. Creditors who continue to supply goods and services will not normally receive any special treatment.

The court order appointing 'soft touch' provisional liquidators will usually allow directors and officers to continue business as usual, to the extent it does not conflict with the reorganisation.

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

It is generally not permissible for debtors to obtain further liabilities after insolvency proceedings have commenced. In some circumstances, a court may be willing to approve a 'funding agreement' with a creditor for specified purposes, such as to cover the costs of the winding-up process, in exchange for prioritised repayment later for the amount loaned.

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

Liquidators have powers to sell any and all unsecured assets as well as the debtor's entire business, subject only to the court or committee of inspection's consent. Purchasers will acquire the assets 'free and clear' of claims, except where the asset is subject to a security.

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

Generally, stalking horse and credit bidding (ie, when the creditor is an original creditor or an assignee) are legal in Bermuda. Courts will take into account all relevant circumstances relating to credit bidding to assess its fairness. Bermuda courts may wish to rely on independent valuations made by expert assessors.

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

As a matter of Bermuda law there is no automatic right to termination of contracts on the commencement of a compulsory liquidation or a creditors' voluntary liquidation, except in relation to statutory provisions regarding employment contracts.

With the approval of the court, liquidators may disclaim any property (real or personal) that is owned by the company that in the liquidator's opinion is too onerous for the company to hold, is unsaleable or unprofitable. Before giving its approval, the court may require that interested parties be given notice of the disclaimer. The court may impose additional conditions on the disclaimer as it deems just. From the date of the disclaimer, the company will be released from its obligations in relation to said property, however this does not affect the rights or liabilities of other parties. Any party that is injured or left worse off by the disclaimer may still be deemed a creditor in the company's winding-up.

Under certain circumstances, debtors can reject fraudulent preferences and conveyances made by the company pre-insolvency. Floating charges can also be rejected where they are created within 12 months of the insolvency's commencement and if the company became insolvent immediately after its creation.

In relation to outstanding obligations owed by the debtor, counterparties are only able to claim for debts that exist at the date of the commencement of liquidation, and interest after that date will not be reclaimable. Once a compulsory liquidation is commenced, as a matter of fact, a company's contracts are cancelled or terminated unless the liquidator affirms the contract.

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

IP licensors will generally be unable to terminate a debtor's rights to use any validly licensed IP, except to the extent the IP licensing agreements explicitly allow the IP licensor to terminate under these circumstances.

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

The Personal Information Protection Act 2016 (PIPA) is now fully in force as of 1 January 2025. It establishes an overarching data protection framework that regulates the use and transfer of personal and customer data, including the data of overseas third parties. Bermuda's first Privacy Commissioner was appointed in December 2019. PIPA will in turn be supplemented by guidance and determinations made by the Office of the Privacy Commissioner. Per the PIPA Draft Model's Explanatory Notes, PIPA is intended to create a light regulatory environment while being sufficiently robust to enable Bermuda to make a successful application for EU adequacy under the relevant EU regulation. Like the EU General Data Protection Regulation, PIPA requires, among other things, that personal information should only be used for limited and specific purposes, handled in a lawful, fair manner and not collected excessively in relation to its purpose.

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Insolvency proceedings, such as winding-up petitions and disputes regarding a liquidator's conduct, are generally not arbitrable as they fall under the exclusive jurisdiction of the court in accordance with the Companies Act 1981. Where a company is party to a contract that sets arbitration as the forum for resolving disputes, the parties may commence or continue an arbitration with the court's leave. Given there is an implied term that Bermuda arbitrations will be conducted confidentially (see, for example, *ABC Insurance Company v XYZ Insurance Company* [2006] Bda LR 8), it is difficult to compile data on the frequency of arbitrations in liquidations and restructurings in Bermuda.

Creditor remedies

Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Bermuda has a creditor-friendly security enforcement regime that limits the practical barriers to enforcement. Secured assets will not form part of a corporate entity's estate during insolvency proceedings and creditors are free to avail themselves of any out-of-court enforcement mechanisms, notwithstanding that insolvency proceedings have commenced. Such assets are excluded and exempted from unsecured creditor claims. The relevant security documents will outline the out-of-court 'self-help' steps that a creditor can take to seize the assets.

Liens give creditors the right to retain possession of assets until a debt is satisfied; however, the creditor is not entitled to sell the asset should the debtor default. In contrast, pledges give creditors the right to take possession of a pledged asset out of court and sell it in the event of the debtor's default.

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

Outside of general insolvency proceedings that may result in distributions, unsecured creditors may enforce judgments by means of a writ of execution, a garnishee order or a writ of possession. Unsecured creditors are unable to obtain pre-judgment attachments; however, injunctive relief prohibiting the company from disposing of assets pending judgment may be available.

Creditor involvement and proving claims

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

During winding-up proceedings, each creditor is normally given written notice when:

- the winding-up petition is presented;
- provisional liquidators or liquidators are appointed;
- proofs of debt are filed;
- any liquidator reports are submitted to court;
- each creditor meeting is convened; and
- the liquidator applies for release and the dissolution of the company.

Creditor meetings will be convened with written notice to each creditor (or classes of affected creditors in schemes of arrangements):

- to approve the appointment of the liquidators and committee of inspection (where applicable) in the first instance;
- to consider extraordinary business, as required;
- to consider the liquidator's annual reports once per annum; and
- to approve the liquidator's final distribution account.

Creditors are generally entitled to receive information from the liquidator in relation to the company's total assets and liabilities, however they do not have a standalone right to access the company's books and records, except with leave from the court.

Liquidators must provide a copy of the final distributions, including statements of receipts and payments, to all contributories and creditors, along with their final report and notice of their intention to apply for release from office from the court.

For schemes of arrangement, liquidators must send creditors an explanatory memorandum that details the nature and extent of the proposed scheme as well as relevant financial information that enables creditors to make an informed decision as to whether to approve the scheme. Notice of the creditors' meeting will usually accompany the notice of the proposed scheme arrangement.

Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

A committee of inspection may be formed, subject to the court's sanction, by a resolution of the creditors or the contributories appointing members to the committee. This typically occurs at the first meeting of creditors or contributories. The committee of inspection has powers to unilaterally sanction (ie, without requiring court approval) certain acts of a liquidator, including:

- bringing or defending actions;
- carrying on the business of the company;
- appointing legal representation;
- paying any classes of creditors in full as well as the liquidator's remuneration;
- making compromises or arrangements with the company's creditors; and
- otherwise compromising calls and liabilities.

Members of a committee of inspection are not paid except for reimbursement of their reasonable expenses, which includes the reasonable costs of advisers.

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

Where a liquidator has no assets to pursue a claim, the claim may still be pursued through a specific creditor if that claim is assigned to that creditor for value. Alternatively, the liquidator may bring the claim after entering into a funding agreement. In both cases, sanction of the court or the committee of inspection is necessary.

Claims

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

Liquidators must notify the company's creditors of the requirement to submit proofs of their debts by publishing advertisements in the appointed newspaper in Bermuda and by writing directly to all creditors that appear in the company's books and records. Within the advert and correspondence, liquidators must specify the time period in which all proofs of debts must be submitted, a period that will be not less than 14 days from the date of the notice. If a liquidator rejects a proof of debt, they must state their grounds in writing to the creditor. If the claim is rejected, a creditor can appeal the liquidator's decision by applying to the court within 21 days of receiving the notice of rejection.

In circumstances where contingent and unliquidated claims have arisen out of enforceable obligations, creditors of such debts may submit proofs of their debts by way of a just estimate of their value. Claims in liquidation may be assigned by creditors and can then meet a proof of debt for the full amount owed. Courts will however weigh up public policy considerations that relate to the merits of allowing trading in discounted debts in insolvent companies. Interest accruing on contingent or unliquidated debts after the insolvency has commenced is only reclaimable after all unsecured creditors' debts are paid.

Set-off and netting

To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Section 235 of the Companies Act 1981 and section 37 of the Bankruptcy Act 1989 create an automatic set-off in liquidations. The Bankruptcy Act provides that, where there are mutual credits, mutual debts and other mutual dealings between the insolvent companies and creditors, the amount due from the one party to the other in respect of mutual dealings will be reconciled by way of the final sum due from the party being set off against any sum due from the other party. Statute prevents parties from contracting out of section 37 of the Bankruptcy Act.

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Bermuda courts do not have powers to change the rank (priority) of a creditor's claim. However, the court has the power at its discretion to order that any outstanding post-liquidation debts will be paid before any unsecured claims.

Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

In liquidations, taxes owed to the Bermuda government, as well as rates due to the municipality, must be paid in priority to all unsecured creditor claims. Secured creditors will be prioritised over taxes and municipality dues, subject only to the priority of other secured creditors. In contrast, reorganisations do not have any statutorily mandated priority claims.

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Section 33 of the Employment Act 2000 confirms that on the winding-up or insolvency of a business, an employee's contract of employment will be terminated one month (displacing ordinary notice periods) from the date of winding-up or appointment of the receiver, except in cases where the business continues to operate. Employees may be entitled to recovery of accrued entitlements plus severance pay equal to a maximum of 32 weeks of their annual salary and benefits (The Employee Amendment Act 2024). Termination may also lead to other claims for compensation or redundancy payments. The Bermuda Supreme Court in *Horizon Communications* [2025] SC (Bda) 21 civ. (25 Feb 2025) confirmed that the priority afforded to employees under Section 33 ranks behind the priority afforded to liquidation expenses under Section 236 of Companies Act 1981.

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

In relation to pension-related claims during insolvencies, wages, accrued holiday remuneration and unpaid contributions under the Contributory Pension Act 1970 and any compensation due under the Workers' Compensation Act will be prioritised over unsecured creditors. In contrast, reorganisations have no statutorily mandated priority for claims regarding deficiencies in a plan.

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Bermuda does not have any environment-specific provisions in its insolvency or reorganisation regimes.

Liabilities that survive insolvency or reorganisation proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

Normally, no liabilities will survive a winding-up process. In contrast, all liabilities survive reorganisations, except where they have been discharged or compromised pursuant to a scheme of arrangement.

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In liquidations, distributions are made to creditors by the liquidator on an ad hoc basis after receiving court sanction (or sanction from the committee of inspection). Alternatively, distributions may be made in accordance with the final distribution accounts.

For reorganisations, distributions are made to creditors in accordance with the scheme of arrangement's terms.

Security

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

The principal types of security taken over immovable property are mortgages (legal and equitable) and fixed charges.

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

The principal types of security taken over movable property are mortgages (legal and equitable), fixed charges, floating charges, liens, pledges and retention of title clauses in contracts.

Clawback and related-party transactions

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

Certain transactions entered into by a company that subsequently becomes insolvent can be set aside in order to claw back the proceeds and restore the company to the position that it was in before the transaction.

Any conveyance or other disposition of property (including any inter-group disposition) made within six months before the commencement of its winding-up will be void (ie, a fraudulent preference) if it was made:

- with the intention to fraudulently prefer one or more of the company's creditors; and
- at the time that the company was unable to pay its debts as they became due.

A creditor can set aside a transaction or disposition of property at an undervalue (ie, a fraudulent conveyance) where it can be shown, on the balance of probability, that the dominant purpose was to put the property beyond the creditor's reach. Such a transaction will not be set aside by reason only that it was completed at an undervalue. An eligible creditor is a person who:

- is owed a debt by the transferor on or within six years after the transfer;
- on the date of the transfer is owed a contingent liability by the transferor, where the contingency giving rise to the obligation has occurred; or
- on the date of the action to set aside the transfer, is owed an obligation arising from a cause of action that occurred before, or up to six years after, the date of the transfer.

Liquidators may disclaim any property belonging to the company (whether real or personal) that in their opinion is onerous for the company to hold, is otherwise unprofitable or unsaleable, where the court gives leave to do so.

Where it can be shown that a floating charge was created within 12 months of the commencement of insolvency proceedings and that immediately after the creation of the charge the company became insolvent, then a floating charge will be considered invalid and it can be set aside.

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

There are no restrictions on claims made by related and non-arm's length parties in Bermuda.

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

In the vast majority of cases, debtors are unable to hold lenders liable for their insolvencies.

Depending on the facts, lenders may, in very limited circumstances, be held liable for committing the tort of intimidation or subjecting a debtor to economic duress, where (among other things) they act in bad faith or threaten to carry out an unlawful act.

Groups of companies

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

As a general rule, courts will recognise and uphold the legal concept of separate legal personality for each entity. Under certain circumstances, a creditor may be able to pierce the corporate veil to recover from a parent or affiliated entities. In ordering the distribution of group company assets pro rata, courts will consider the assets and liabilities of each corporate entity.

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

In practice, proceedings regarding group companies may occur concurrently, however they will remain legally separate proceedings. Each subsidiary's assets will not be pooled for distribution, except in cases where the companies have a consensual arrangement between them or there is a scheme of arrangement.

International cases

Recognition of foreign judgments

Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

Bermuda's Judgments (Reciprocal Enforcement) Act 1958 provides that judgments of superior courts in the United Kingdom (as well as other designated common law jurisdictions) may be registered as judgments in the Bermuda courts to the extent that the foreign judgment is final, conclusive between the parties, for a fixed sum of money, and not for taxes, fines or penalties.

Under common law, there are certain cases where Bermuda courts may recognise and enforce foreign judgments that do not qualify for registration under the Judgments (Reciprocal Enforcement) Act.

UNCITRAL Model Laws

Have any of the UNCITRAL Model Laws in relation to insolvency been adopted or is adoption under consideration in your country?

Bermuda has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.

Foreign liquidators may apply for recognition pursuant to the principles of comity and under common law.

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

Bermuda law does not distinguish between foreign and local creditors in liquidations or reorganisations.

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

Yes, where such transfers are sanctioned by the courts of Bermuda.

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

Given that the UNCITRAL Model Law on Cross-Border Insolvency has not been adopted by Bermuda, centre of main interests (COMI) is not directly applicable. All companies that are incorporated in Bermuda will be governed by the Companies Act 1981, regardless of the extent to which they have business operations and assets in Bermuda.

The Bermuda court has, however, signalled a willingness to consider all the circumstances of a case, including the forum of closest connection to the issues and the company's COMI (see, eg, ***Re Celestial Nutrifoods Limited*** [2017] Bda LR 10 and ***Re C&J Energy Services Ltd*** [2017] Bda LR 22).

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

At common law, there is a large swathe of jurisprudence where the Bermuda court has exercised its powers to recognise foreign insolvency and restructuring proceedings, especially where:

- the company is incorporated in Bermuda;
- the company has assets located in Bermuda;
- liquidators are seeking assistance that would be available to them under the laws of Bermuda and the foreign jurisdiction; and
- cooperation and recognition do not conflict with Bermuda's public policy.

Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Cross-border insolvency and restructuring proceedings are a regular feature of the Bermuda courts. Such cases necessarily require efficient cooperation between courts and each set of liquidators. To enable and enhance cooperation, the Supreme Court has issued various practice directions that set out guidelines (See Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters, dated 9 March 2017, No.6 of 2017; and Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases, dated 1 October 2007, No.17 of 2007) for these communications. There are no formal statutory rules governing this process. The Bermuda Supreme Court has described its approach to cross-border insolvency as a form of 'modified universalism'.

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

Bermuda courts do not have jurisdiction to wind up foreign companies, except under certain statutory exceptions, such as mutual companies and non-resident insurance undertakings (see *PricewaterhouseCoopers v Saad Investments Company Limited* [2014] UKPC 35). As such, generally it is not possible to obtain ancillary winding-up orders from Bermuda courts in relation to foreign domiciled companies.

Bermuda courts are willing under common law to assist with foreign winding-up proceedings and to use their powers to grant relief, but only to the same extent that the court of the country where the liquidation is located could have granted relief – see *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36. In *Singularis*, the Bermuda court refused to make a disclosure order to a Cayman-appointed liquidator as the Cayman court could not have made an equivalent order.

Update and trends

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

The sections of Companies Act 1981, the Companies (Winding Up) Rules 1982 and the Bankruptcy Act 1989 that relate to insolvencies and restructurings had remained practically unchanged since they were enacted, until the Companies (Winding Up) Amendment Rules 2020 came into force. Many of the new rules codified the realities of current practice in Bermuda, while others made substantive changes to the law including (but not limited to):

- a new provision allowing creditors to inspect relevant court files (prior to their debts being formally proven);
- the requirement that at least one JPL must be a Bermuda resident, allowing committees of inspection to fix the remuneration of liquidators; and
- a provision preventing the advertisement of the winding-up petition without giving the company seven clear days in which it may take action against the petition (eg, by initiating an application to strike out the petition or restrain its advertisement).

The Bermuda Court has refined its court processes to adjudicate (and oversee, in the context of provisional liquidations) insolvencies and restructurings in an efficient manner, even where such proceedings involve complex and high-value corporate structures. A large swath of jurisprudence now exists clarifying the scope of liquidators' duties and powers under Bermuda law. In the last year, the Bermuda Supreme Court has seen three notable sanction applications in *US Holdings Limited* [2024] SC (Bda) 11 Civ. (2 April 2024), *Bittrex Global (Bermuda) Limited (In Liquidation)* [2025] SC (Bda) 78 civ (11 July 2025). and *Afiniti* [2024] SC (Bda) 65 civ. (19 November 2024), the latter of which remains the subject of appeal proceedings. The Bermuda Supreme Court has clarified the law on sanction applications in the context of liquidations however developments in this area continue in both Bermuda and England & Wales (such decisions will be persuasive in Bermuda).

Recently, we have seen the Bermuda Monetary Authority ("**BMA**") increasingly using restructuring/insolvency proceedings (and the possibility of bringing such proceedings after an initial Section 30 investigation is completed) as a method of compelling or persuading market participants to comply with relevant laws and regulations to the highest possible standards, including in ***White Rock*** [2023] SC (Bda) 261 Civ (20 August 2024). Further, the BMA appeared in its capacity as the prudential regulator of the digital-asset business sector in order to oppose a sanction application in ***Bittrex Global (Bermuda) Limited (In Liquidation)*** [2025] SC (Bda) 78 civ (11 July 2025). The intersection of insolvency law and segregated accounts laws was tested in two recent cases (***Credit Suisse Life (Bermuda) Ltd v Ivanishvili and Others*** [2023] CA (Bda) 13 Civ and ***Re Northstar Financial Services (Bermuda) Ltd and Omnia Ltd*** [2023] SC (Bda) 57). The Bermuda Supreme Court is expected to release a further judgment in the ***Northstar*** proceedings which will consider the interplay between the Investment Business (Client Money) Regulations 2004 and segregated accounts laws. The 2004 Regulations are yet to be considered substantively in any previous case.

Law stated date

Correct on: 10 September 2025

Quick reference

Summary of law and procedure

Applicable insolvency law, reorganisations and liquidations	The Companies Act 1981, the Companies (Winding Up) Rules 1982 and the Bankruptcy Act 1989 are the primary statutes. The Segregated Accounts Companies Act 2000, the Employment Act 2000, the Insurance Act 1978 and the Contributory Pensions Act 1970 may also be relevant.
Customary kinds of security devices on immovables	Mortgages (legal and equitable) as well as fixed charges.
Customary kinds of security devices on movables	Mortgages (legal and equitable), fixed charges, floating charges, liens, pledges and retention of title clauses.

Stays of proceedings in reorganisations/liquidations	Routinely granted once a provisional liquidator has been appointed or a winding-up order has been made.
Duties of the insolvency administrator	Once the company is insolvent, the directors' duties are owed to the company's unsecured creditors.
Set-off and post-filing credit	Section 235 of the Companies Act 1981 and section 37 of the Bankruptcy Act 1989 create an automatic set-off in liquidations. It is generally not permissible for debtors to obtain further liabilities after insolvency proceedings have commenced.
Creditor claims and appeals	Creditor claims can be brought in the Supreme Court and if necessary, appealed to the Court of Appeal for Bermuda and the Privy Council.
Priority claims	In liquidations, taxes owed to the Bermuda government and rates due to the municipality must be paid in priority to all unsecured creditor claims.
Major kinds of voidable transactions	Fraudulent conveyances, preferences and transactions at an undervalue.

Operating and financing during reorganisations	Directors may continue to operate the company subject to the terms of any court order appointing JPLs. Re-financings will similarly need to comply with the terms of all relevant court orders and may require court approval.
International cooperation and communication	Bermuda's Reciprocal Judgments Act 1958 provides that judgments from designated international jurisdictions may be registered in Bermuda.
Liabilities of directors and officers	The concept of 'wrongful trading' is not recognised by Bermuda law. In certain circumstances, wrongdoing can lead to personal, civil or criminal liability.
Pending legislation	Large parts of the Banking (Special Resolution Regime) Act 2016.