British Virgin Islands Restructuring & Insolvency 2026 (Lexology)

Briefing Summary: The aim of this chapter is to provide local insights in the British Virgin Islands 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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Content Authors: Alex Hall Taylor KC, Richard Brown, Tim Wright, Simon Hall, Sean Kinney

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General

Legislation

Key Contacts

Alex Hall Taylor KC

PARTNER,
BRITISH VIRGIN ISLANDS

+1 284 394 4033

EMAIL ALEX

Richard Brown

PARTNER,
BRITISH VIRGIN ISLANDS

+ 1 284 394 4034

EMAIL RICHARD

Tim Wright

PARTNER, LONDON

+44 (0)20 7614 5635

EMAIL TIM

Simon Hall

PARTNER,
BRITISH VIRGIN ISLANDS

+1 284 394 4028

EMAIL SIMON

What main legislation is applicable to insolvencies and reorganisations?

The relevant legislation is the Insolvency Act 2003 and the Insolvency Rules 2005, and the BVI Business Companies Act 2004 (the BCA). The Insolvency Act 2003 sets out the procedures for insolvent liquidations and the appointment of administrative receivers. The BCA sets out the statutory framework for company restructuring and reorganisation as well as the voluntary liquidation regime.

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?

All companies incorporated in the British Virgin Islands may be subject to insolvency or reorganisation proceedings. Furthermore, in certain circumstances, companies with a sufficient link to the British Virgin Islands may also be wound up, along with companies that were previously incorporated within the British Virgin Islands but subsequently continued out to another jurisdiction.

In a liquidation, secured creditors' assets are excluded from the insolvent estate, and a secured creditor's right to enforce their security is not affected. Assets subject to proprietary claims may be excluded (if the proprietary claim is made out) in the sense that they are, in fact, owned by others and do not form part of the estate and pool of assets available for distribution to creditors.

Public enterprises

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

There is no specific legislation in the British Virgin Islands to deal with the financial difficulties of such enterprises. All private companies can be placed into liquidation in the usual way irrespective of whether they are government-owned or not. However, governmental or statutory bodies may require statutory intervention to dissolve them, seeing as they are originally created by statute.

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'?

There is no specific legislation in the British Virgin Islands to deal with this, although a regulated company may not appoint a liquidator under the Insolvency Act 2003 without first notifying the BVI Financial Services Commission, such that there is a degree of regulatory oversight in the case of insolvent financial institutions. All institutions, big and small, are treated in the same way.

Key Contacts

Sean Kinney

ASSOCIATE,
BRITISH VIRGIN ISLANDS

+1 284 394 4052

EMAIL SEAN

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 Commercial Court, a division of the BVI High Court, has exclusive remit over corporate insolvency matters. The first appellate court from the Commercial Court is the Eastern Caribbean (EC) Court of Appeal, which is based in St Lucia but is itinerant, travelling between the various countries and territories of the Eastern Caribbean.

The Judicial Committee of the Privy Council is the final court of appeal for the British Virgin Islands, hearing appeals from the EC Court of Appeal. The Privy Council sits in London and consists of justices of the UK Supreme Court.

An appeal only exists as of right against any final decision which, on the 'application test', would have been determinative of the action, whichever way it was decided. Furthermore, an appeal as of right lies in relation to a limited number of categories; in particular, injunctions and the appointment of receivers or provisional liquidators. Permission for leave to appeal is required for other appeals. On granting leave to appeal in relevant cases the court may impose conditions including payment into court on account of any award made at first instance and security for costs.

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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?

Under section 199 of the BCA, a voluntary liquidator may be appointed by resolution of the directors pursuant to section 199(2) or by resolution of members pursuant to section 199(3). An appointment of a voluntary liquidator may only be appointed if the company is solvent. As such, this procedure is not available for distressed or insolvent companies. In a voluntary solvent liquidation, a liquidator may only be appointed where the directors have made a declaration of solvency in accordance with section 198(1) of the BCA, opining that the company is, and will continue to be able to pay its debts as they fall due, and that the value of the company's assets equals or exceeds its liabilities. The directors must also file a liquidation plan. The voluntary liquidator does not need to be a licensed insolvency practitioner.

Furthermore, the members of a company may, by way of a qualifying resolution (usually at least 75 per cent of the members entitled to vote), appoint a licensed insolvency practitioner as liquidator under the Insolvency Act 2003 for the purposes of facilitating an insolvent liquidation of the company.

Voluntary reorganisations

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

The Insolvency Act 2003 provides for companies to enter into a creditors' arrangement, at the instigation of the company itself (or a liquidator). A creditors' arrangement is creditor-approved and supervised by a licensed insolvency practitioner, which can give effect to a debt restructuring plan by making the arrangement binding on all unsecured creditors if approved by a majority of 75 per cent of the company's creditors.

In addition, the BCA provides for companies to enter into court-sanctioned schemes of arrangement and plans of arrangement, which can be used to effect voluntary reorganisations. Both schemes and plans of arrangement require the approval of creditors and members (or classes of creditor or members) and court sanction.

These arrangements provide mechanisms for BVI companies to deal with dissenting creditors or other stakeholders and result in an arrangement that binds the company and its members or creditors, or both (or a class of them). However, importantly, none of these procedures provide for an effective moratorium against claims brought by stakeholders who may not be bound by the relevant arrangement, scheme or plan.

All the above procedures can be used to ensure that a company is able to continue trading despite financial difficulties, and to give effect to other forms of restructuring or reorganisation.

An insolvent restructuring may also be facilitated using the provisional liquidation procedure in the Insolvency Act 2003, which can be initiated by the company or one or more of its creditors. In such cases, the provisional liquidators are given limited or 'light touch' powers, with the management remaining in place and the provisional liquidators overseeing and assisting in the restructuring process. An order may be sought from the court to stay or restrain any action or proceedings pending against the company in the BVI Commercial Court, the EC Court of Appeal or the Privy Council to assist the provisional liquidation process, although that falls short of the full statutory moratorium on claims that applies when a company enters liquidation. It is possible for a company in provisional liquidation to pursue a scheme or plan of arrangement, if appropriate.

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 creditors' arrangement requires the approval of 75 per cent by value of the company's creditors at a creditors' meeting convened by an interim supervisor appointed by the company. A creditors' arrangement applies only to unsecured creditors as a whole; secured creditors and preferential creditors cannot be bound unless they expressly consent in writing. Court approval is not required, but the court has certain supervisory powers once an arrangement has been put in place. Once approved, a creditors' arrangement is binding as between the company and its creditors (including dissenting creditors), but secured and preferential creditors will not be bound unless they consent in writing. Provision is made for prejudiced stakeholders to seek relief from the court.

Schemes and plans of arrangement can bind any class or classes of creditors or shareholders of a company. Schemes in particular expressly apply to compromises between the company and different classes of creditors.

In a plan of arrangement, the directors of the company must first approve it and then submit it for approval by the court. The court will consider the proposed plan and amend it if it sees fit, and will rule on the persons who should be required to approve the plan and the requisite thresholds for such approval. The court may also direct that another hearing be convened to hear from particular persons. Importantly, the court is required to rule on the extent to which stakeholders will be entitled to dissent from the arrangement. The company must then seek approval from stakeholders as directed by the court. Thereafter, the plan becomes effective once the 'articles of arrangement' are filed by the company with the company registrar.

In a scheme of arrangement, the proposing party (which can be the company, a creditor, a shareholder or a liquidator) must make a proposal for the scheme and apply to court for an order convening a meeting of the relevant class to approve the scheme. If the court grants that application, the company must then convene the meeting as directed. If a majority representing 75 per cent in value of the creditors or class of creditors or shareholders or class of shareholders (as applicable) present and voting at the meeting agrees to the scheme, the scheme then needs to be approved by the court at a further hearing, where it will then be binding as between the company and the relevant class, with no statutory right of dissent after approval. If a company is in liquidation, the arrangement will bind the liquidator and every person liable to contribute to the assets of the company on its liquidation. Only those classes of creditor who vote on and approve the scheme will be bound by its terms. This may include secured or preferential creditors.

Classes of creditors in a scheme or plan are classified as persons whose rights are not so dissimilar to make it impossible for them to consult together with a view to their common interest. In simple cases, the distinct classes of creditor are likely to be limited to secured, preferential and unsecured creditors, but in a complex restructuring it is conceivable that each of those classes may be divided into further distinct classes – for example senior and mezzanine lenders in a structured finance context.

The ability to release third-party liabilities in a scheme of arrangement is not expressly dealt with in the legislation, which refers to compromises between the company and its creditors. However, the equivalent legislation in England and the Cayman Islands has been interpreted as broad enough to encompass closely related third-party liabilities in appropriate cases, and whilst there is no BVI authority to confirm the point, the BVI court would follow English and Cayman jurisprudence on this point. As such, the scheme jurisdiction can in an appropriate case be used to deal with guarantors and other closely related third parties so as to ensure the efficacy of the scheme. Issues of foreign law and the possibility of parallel schemes or assistance from foreign courts (or both) will need to be considered in the context of third-party liabilities.

The BVI Commercial Court has recently held that any third-party objections to a scheme should be raised at an early stage. As such, any relevant third parties should be given notice and would ordinarily be entitled to be heard on the initial court application so that any objections can be raised at that stage.

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?

A liquidation of a debtor company can be commenced by court order, following an application to the court and a hearing.

An application to court can be made by:

- the company itself;
- creditor (including a judgment creditor);
- a shareholder;
- the supervisor of a company creditors' arrangement; and
- in limited circumstances, the Attorney General or the Financial Services Commission.

While there is no strict requirement for the prior service of a statutory demand, where an application is being made by a creditor, the creditor should first serve a statutory demand on the debtor company before issuing a liquidation application, unless there are good reasons for not doing so.

The court can appoint a liquidator when any of the following are applicable:

- the company is insolvent;
- in the court's opinion, it is just and equitable for a liquidator to be appointed; and
- in the court's opinion, it is in the public interest for a liquidator to be appointed.

Once appointed, the liquidator has control and custody over the assets of the company. The directors remain in office, but they cease to have any powers or duties, unless specifically authorised by the liquidator.

Once an insolvent liquidation is underway, there are no material differences to proceedings opened voluntarily or by court order. However, where a liquidator is appointed by a company's members under the Insolvency Act 2003, the liquidator's powers are limited until after the first creditors' meeting has been held, and at the first creditors' meeting unsecured creditors will have the opportunity to vote on the appointment of an alternative liquidator.

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?

A plan of arrangement and a creditors' arrangement can only be initiated by the company itself, and so these cannot be initiated by a creditor acting unilaterally. However, it is possible (but not common) for a scheme of arrangement to be initiated by certain other stakeholders, including a creditor, albeit this will be subject to approval by 75 per cent of the relevant class of creditors and, where applicable, shareholders after the court initially approves the scheme. Secured and preferential creditors will only be bound by a scheme if those classes of creditor approve the scheme.

If a decision is made by the company or a creditor to initiate a provisional liquidation in support of a restructuring (whether on a stand-alone basis or together with a plan, arrangement or scheme), that will require a court application and, in most cases, the support of any secured creditors if the procedure is to be effective.

Expedited reorganisations

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

There is no specific BVI legislation dealing with prepackaged reorganisations. However, it would in theory be possible for any of the above procedures to be expedited so that a restructuring (or any asset sale required as part of the restructuring, or both) could be effected relatively quickly, where time is of the essence.

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?

A scheme or plan of arrangement requires court approval, and at that stage the court may refuse to sanction the scheme or plan, for example, if stakeholders object and the court is persuaded that the scheme or plan is not in the best interests of the company or relevant stakeholders. Even after the scheme or plan receives initial court approval, it will be defeated if it is not approved by the required majorities of creditors or members, as the case may be. In the case of a creditors' arrangement, court approval is not required, but the arrangement proposed by the company must be approved by 75 per cent of creditors by reference to the value of the debt rather than on a poll vote basis.

Under a plan of arrangement, creditors may have rights to dissent if the court so directs when the plan is approved. Under a creditors' arrangement, creditors have a right to object on grounds of unfair prejudice, and, if upheld, the court may revoke the arrangement. Under a scheme of arrangement, after final court approval of the scheme, there are no statutory rights to dissent from it.

There is no automatic consequence if a scheme, plan or creditors' arrangement fails. However, if a debtor were to fail to perform a plan, it is likely that the company would become insolvent and face an application to appoint liquidators or other enforcement action by creditors.

Corporate procedures

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

Dissolution is achieved via the voluntary liquidation procedure under the BCA. The liquidator will file a statement with the Registrar of Corporate Affairs to confirm the liquidation is complete. Upon receiving the completion statement, the Registrar will strike the company off the Register and issue a certificate of dissolution. The date of dissolution is the date the certificate is issued. Immediately upon issue of the certificate by the Registrar, the liquidator will arrange for a notice of strike-off and dissolution in respect of the company to be published in the BVI Gazette.

The Registrar may strike a company off the Register if the company fails to pay its annual Registry fee (or any late payment penalties), if it does not have a registered agent or if it fails to file any return, notice or document required to be filed under the BCA. Following changes introduced to the BCA in 2023, a company that has been administratively struck from the Register will now be automatically dissolved on that date (previously, the company would not usually be dissolved until seven years after the date of strike off). Where a company has been struck off the Register and dissolved, creditors can still pursue claims against it and directors and officers remain liable. As such, the process of allowing a company to be administratively dissolved without a formal liquidation carries a higher degree of risk, and a voluntary liquidation is the recommended procedure for dissolving a company at the end of its life because the liquidator will be bound to deal with all of the company's liabilities prior to dissolution.

Any property owned by a company at the date of dissolution vests in the Crown (***bona vacantia***).

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Upon conclusion of an insolvent liquidation under the Insolvency Act 2003, the liquidator must prepare a final report and serve it on every creditor of the company whose claim has been admitted and all shareholders of the company. That report must also be filed with the BVI Registrar. The liquidator will then apply to court to be released from liability and their appointment will be discharged. The company is then dissolved and ceases to exist from that point.

In relation to schemes, plans or arrangements, the terms of the plan, scheme or arrangement will determine when the arrangement concludes and what is intended to happen to the company thereafter.

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Insolvency tests and filing requirements

Conditions for insolvency

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

A company is deemed to be insolvent under the Insolvency Act 2003 if:

- it fails to satisfy a valid statutory demand;
- execution or other process issued on a judgment, decree or order of the BVI court in favour of a creditor is returned wholly or partly unsatisfied; or
- either:
    - the value of the company's liabilities exceeds its assets (balance sheet insolvency); or
    - the company is unable to pay its debts as they fall due (cash flow insolvency).

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

There is no formal requirement for companies to commence insolvency proceedings. However, directors of BVI companies owe common law duties to act in the best interests of the company as a whole, which requires them to take account of the interests of the company's creditors ahead of those of the company's members when the company is insolvent or on the verge of insolvency. Directors may also be found statutorily liable for trading while the company is insolvent. It follows, therefore, that to act in the best interests of the company a director may be required to recommend that the members put the company into liquidation or cause the company to apply for the appointment of a liquidator, or both.

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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?

For claims under the Insolvency Act 2003, a director includes:

- de jure directors;
- de facto directors;
- shadow directors; and
- in certain instances, a person who exercises or is entitled to exercise or who controls or is entitled to control the exercise of powers that, apart from the memorandum or articles, would fall to be exercised by the board.

If a company goes into insolvent liquidation, a director can be personally liable if, at any time before the commencement of the liquidation of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company could avoid going into insolvent liquidation but continued to trade.

In these circumstances, the court can order a director to make such contribution to the assets of the company as it considers proper (subject to the availability of a defence that the director took every step reasonably open to the director to minimise the loss to the company's 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?

Part IX of the Insolvency Act 2003 deals with the principal ways in which a director may be ordered to provide compensation or otherwise contribute assets to an insolvent company.

If a director or officer of a company in liquidation has misapplied or retained or become accountable for any money of the company, or if the director is guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company, then the court can make orders that such director repays, restores or accounts for money or assets or any part of it to the company, as compensation for the misfeasance or breach of duty. A 'misfeasance' claim can be brought by the company 'pre-insolvency' or after the company has entered into liquidation, by a liquidator.

There are also a number of 'voidable transaction' claims that can be brought by a liquidator against directors in relation to their conduct and management of a company prior to the commencement of a liquidation. These include claims for unfair preferences, undervalue transactions, voidable floating charges and extortionate credit transactions.

Directors can also be liable if they cause a company to make distributions when the company is insolvent.

Directors' liability – defences

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

A director can rely on a variety of defences to the aforementioned claims. The available defences depend on the claim advanced but commonly include a denial that the conduct complained of satisfies the relevant legal tests. For instance, a director may argue that they acted with the skill and diligence expected of a reasonable director, or that the actions complained of did not cause or contribute to the company's insolvency. In the case of a claim for insolvent trading, a statutory defence is available where a director can establish that after they first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, they took every step reasonably open to them to minimise the loss to the company's creditors. In certain circumstances, a director may be able to defend a claim on the basis that they reasonably relied on information provided by the company's professional advisers.

Unlike in many other common law jurisdictions, the Business Companies Act 2004 permits a company to indemnify its directors for non-fraudulent breaches of duty. However, it is questionable whether such indemnities can be relied upon by a director if the company is insolvent.

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?

Directors of BVI companies owe common law duties to act in the best interests of the company as a whole, which requires them to take account of the interests of the company's creditors ahead of those of the company's members when the company is insolvent or on the verge of insolvency. English authority, which the BVI court is likely to follow, suggests that a creditors' interest duty arises when the directors know, or should have known, that the company was or was likely to become insolvent. In this context, 'likely' means probable.

Directors' powers after proceedings commence

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

During an insolvent liquidation, the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under the Insolvency Act 2003 or otherwise authorised by the liquidator. In practice, the directors would usually cease to exercise all of their powers in a liquidation, but directors and officers are obliged to assist the liquidators and may be compelled to provide information to them.

The powers a director may be able to exercise during a reorganisation will depend on the type of proceeding. In some considered above, the directors will retain the same powers, albeit the reorganisation proceedings are subject to court oversight. In a creditors' arrangement, the directors remain in control of the company but a licensed insolvency practitioner must be appointed as supervisor of the arrangement to oversee its implementation, and the supervisor is required to take custody of any assets to which the arrangement relates for that purpose.

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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?

Following the appointment of a liquidator, there is a statutory moratorium on the commencement or continuation of claims against the company or its assets without the leave of the court. Any claims against the company after it enters liquidation must be made by making a written claim in the liquidation. However, a secured creditor is still permitted to enforce its security against the company.

No statutory stay or moratorium is available in a scheme, plan or arrangement, but any person who is bound by the terms of the scheme, plan or arrangement would be prevented from initiating a process against the company in breach of the terms of the scheme, plan or arrangement.

In a light-touch provisional liquidation, the court may grant an order staying any court proceeding that is already pending against the company in the BVI High Court (including any pending appeal), but there is no general moratorium against claims, and nothing to prevent secured creditors from enforcing.

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?

If the debtor is subject to a reorganisation, the company can continue to trade when the relevant arrangement is in place subject to the terms of that arrangement. In those circumstances the directors will carry on the debtor's business. Generally speaking, once a scheme or plan of arrangement is finally approved, the court has no continuing oversight or role, although any dispute arising after approval may need to be determined in further court proceedings. In the case of a creditors' arrangement, the court has a range of supervisory powers that may or may not be invoked while the arrangement is implemented, including the power to determine unfair prejudice claims by aggrieved creditors.

A liquidator appointed to an insolvent company can continue to trade the company's business insofar as necessary for its beneficial liquidation (in other words, to effect a better realisation for the general body of creditors as a whole, but not with a view to trading out of insolvency). Any costs or expenses incurred by the liquidator in carrying on the business will rank as an expense in the liquidation, and so these will be paid out in priority to all other claims (other than secured claims).

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?

None of the voluntary reorganisation procedures specifically contemplate post-commencement financing; however, if a scheme, plan or arrangement that provides that the company may incur new borrowing is approved, there is no reason in principle why such funding cannot be obtained.

A liquidator of a company has powers under Schedule 2 of the Insolvency Act 2003 to borrow money on the security of the company or otherwise. In terms of priority, such a liability will enjoy priority if secured, or if unsecured would be deemed an expense of the liquidation and would therefore be payable in priority to other unsecured claims.

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?

Schemes and plans of arrangement can be used to effect the sale of company assets (or an entire business) on such terms as may be approved by the court and the relevant class or classes of creditor or shareholder, which can provide for any purchaser to receive title free and clear of claims. The ability to deal with prospective claims by third parties will turn on the nature of the assets or business, the application of any foreign law to the assets or business, and the ability to make the scheme or plan binding on persons with a prospective claim.

From the date of their appointment, the liquidator has custody and control of the company's assets and the power to sell the company's property, subject only to the supervision of the court or the creditors' committee, depending on the type of liquidation. The liquidator cannot sell property that is secured without the security-holder's consent, and must account to the security-holder in respect of the unsecured debt before distributing any surplus to preferred or unsecured creditors. The only other express qualification on the liquidator's power to sell company property is the requirement that the liquidator notify the creditors' committee (if one is appointed) of any sale to a person connected with the company.

The liquidator cannot give a purchaser better title to property than the company had. So, if the company has legal title, a bona fide purchaser for value without notice of an equitable claim affecting the property will take that legal title free of equities. Therefore, subject to any terms of the sale contract, and subject to any proprietary claims against the asset, a purchaser would acquire the assets from an insolvent company free and clear of all other claims such as the claims of unsecured creditors. In practice, however, liquidators are rarely prepared to offer warranties or indemnities in the context of a sale of company assets, and enhanced due diligence is encouraged for purchasers from insolvent estates.

Negotiating sale of assets

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

There is no specific prohibition in the British Virgin Islands on stalking horse bids in sale procedures. However, a liquidator is tasked with seeking to return the maximum return to creditors and has wide discretion in relation to negotiating the sale of assets (subject to court approval as appropriate).

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?

The commencement of liquidation does not prima facie affect existing contracts, though the liquidator has a power to disclaim an unprofitable contract into which the company has entered by filing a notice of disclaimer with the court under section 217 of the Insolvency Act 2003. In many cases, however, contracts will include express provisions in contemplation of either party's insolvency.

A contractual counterparty may apply to the court under section 229 of the Insolvency Act 2003 for an order rescinding the contract on such terms as to payment between the company and the counterparty of damages for non-performance as the court may think fit. If a counterparty is awarded damages, these may be claimed as an unsecured debt in the liquidation. No contractual counterparty may commence or proceed with any proceedings against the company without the permission of the court (although such claims can be pursued through the proof of debt procedure).

The legislative provisions relating to reorganisation procedures do not make express provision in relation to disclaiming existing contracts, but the terms of the scheme, plan or arrangement may well make provision for the amendment, variation or termination of certain contracts (in particular loan agreements and leases).

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?

The legislation does not make specific provision in respect of intellectual property (IP) rights; however, if such rights of termination exist within the contracts governing the debtor's right to use the IP, then the IP licensor will be entitled to terminate in accordance with the terms of the contract.

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 Data Protection Act 2021 applies to persons who 'possess' or who have 'control over, or authorise, the processing of any personal data in respect of commercial transactions'. This would apply to data collected by a company in liquidation or reorganisation. The Act limits the ability of a data controller (including a company in liquidation or reorganisation) from processing personal or sensitive data without the data subject's express consent.

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?

Whilst the BVI is a pro-arbitration jurisdiction, such that the courts will generally respect the parties' agreement to arbitrate their disputes, a liquidation application will not be automatically stayed simply because the underlying debt is subject to an arbitration agreement. Instead, the court must determine whether the debt is genuinely disputed on substantial grounds. If it is not, the liquidation application can proceed, as insolvency proceedings do not seek to resolve disputes but rather determine the company's solvency. If the court is satisfied that there is a substantive dispute, that dispute must be determined in arbitration before the court can exercise its winding-up jurisdiction.

The Privy Council's decision in ***Sian Participation Corp (In Liquidation) v Halimeda International Ltd*** [2024] UKPC 16 affirmed the BVI position that a liquidation application will not be automatically stayed simply because the underlying debt is subject to an arbitration agreement. That is, unless the debtor can show that the debt is genuinely and substantially disputed, the BVI courts will not stay a liquidation application just because the contract includes an arbitration clause.

A claim is an asset of a company and so a liquidator can in principle pursue a claim in arbitration, provided that it is in the best interests of creditors as a whole to do so and subject to court sanction. However, there is less scope for a counterparty to pursue arbitration proceedings against a company in liquidation due to the broad moratorium. The consent of the parties would not in itself be sufficient; an arbitration claim against a company in liquidation can only be pursued with the leave of the court, and the circumstances in which leave will be granted are exceptional.

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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?

Secured creditors can generally enforce against secured assets without taking enforcement proceedings in court. For instance, a secured creditor will usually have the power to appoint a receiver over secured assets to exercise a power of sale. A security-holder is usually granted a power of sale, which is exercisable out of court upon default, subject to the equity of redemption, but foreclosure is not permitted without leave of the court.

It is important to note that the assets of a BVI company are often physically situated outside the jurisdiction, as BVI companies are often holding companies for assets located elsewhere in the world. In those circumstances, any processes to take control of or sell assets in other jurisdictions will usually involve consideration of relevant foreign laws and procedures.

Unsecured credit

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

A creditor can issue a civil claim against a debtor for a due and outstanding debt. If the court finds in the creditor's favour, the creditor can obtain a judgment for the debt. If the debtor fails to file an acknowledgement of service or defence, the creditor may be able to obtain a default judgment. Alternatively, where (as is relatively common in debt enforcement claims) a debtor has no real prospect of successfully defending the claim, the court may give summary judgment in the creditor's favour, which can result in a judgment without a full trial. If the judgment cannot be achieved on a summary basis, then proceedings may take some time to reach judgment depending on how complex the matter is, although an expedited is occasionally possible in exceptional cases.

If the debtor fails to pay the judgment debt, the creditor can (in appropriate circumstances):

- apply to the court to appoint a liquidator to the debtor;
- obtain a charging order over the debtor's assets;
- apply to the court for the appointment of a receiver by way of enforcement; and
- obtain an attachment of debts order.

Pre-judgment attachments are not available in the British Virgin Islands, although a pre-judgment freezing order can be obtained in advance of issuing a claim to prevent the dissipation of assets pending the outcome of the claim.

In relation to undisputed debts, the creditor can serve a statutory demand on the debtor, and if the demand is not satisfied or set aside (which requires a court application) the debtor is deemed insolvent and will be able to apply to appoint a liquidator.

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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?

When an application is made to appoint liquidators, the application must be advertised in the Official Gazette, a newspaper in the British Virgin Islands, and usually in another jurisdiction to bring the application to the attention of creditors. Once the liquidator is appointed, they are obliged to advertise the appointment and notify any known creditors about the appointment.

The liquidator must convene a creditors' meeting within 21 days of their appointment, although this can be dispensed with if the liquidator considers it appropriate to do so and the creditors do not require them to convene a meeting.

The liquidator is required to file a report within 60 days of appointment and to send this to creditors. A final report must also be filed upon completion of the liquidation. While there are no strict requirements to do so, liquidators may well report periodically to creditors as the liquidation progresses, or to any creditors' committee that is established pursuant to a resolution of the creditors at the first meeting, or both. Typically, a report is also given to creditors or any creditors' committee, or both, when the liquidator seeks approval for their fees and expenses.

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 creditors' committee may be established at the first meeting of creditors or, at any time, by a creditors' resolution.

The creditors' committee must comprise between three and five creditors or their authorised representatives. A person is not eligible to be a member of the creditors' committee if their claim has been rejected.

The functions of the creditors' committee are prescribed by the Insolvency Act 2003 as follows:

- to consult with the office holder about matters relating to the insolvency proceeding;
- to receive and consider reports of the insolvency holder;
- to assist the office holder in discharging their functions; and
- to discharge any other functions assigned to it under an Act or set of rules (which include the power to approve the liquidator's remuneration and expenses, and the power to call a creditors' meeting).

The creditors' committee can require the liquidator to provide information and reports, and can summon the liquidator to appear before it, but usually it cannot give directions to the liquidator.

As such, the creditors' committee acts primarily as a consultative body, with limited powers to control the course of the liquidation.

Aside from limited provisions for the expenses of attending meetings, the creditors' committee's costs are not generally recoverable from the liquidation estate. Given the powers afforded to a creditors' committee, it is a useful tool should a creditor wish to take a more active role in the liquidation process.

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?

If the liquidator does not have assets to pursue a claim, it is possible to seek funding from the creditors and third parties, or assign or sell the claim to third parties (which might include one or more creditors). Where a claim is assigned, that may be on terms that a proportion of recoveries is returned to the estate, or on the basis of a one-off payment to the estate. There are no rules governing such assignments but court sanction would usually be required and the court will wish to ensure that creditors' interests are protected in any such assignment.

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?

The liquidator will give notice of the appointment to any known creditors and advertise such an appointment. Any creditor wishing to participate in the initial meeting of creditors, and to be considered for a seat on any creditors' committee, will be required to submit a written claim in the liquidation. The claim is made using a prescribed form explaining the nature and amount of the claim. Claims are typically admitted on a provisional basis initially, for voting purposes, with the formal process of final adjudication taking place only once the liquidator has determined that a distribution can be made. A liquidator may require a creditor to verify their claim by affidavit, provide further particulars of their claim and provide the liquidator with documentary or other evidence to substantiate their claim.

Upon adjudication, the liquidator can admit the claim in part or in whole, or reject it. The liquidator has broad discretion when carrying out this adjudication of claims. If a creditor is dissatisfied with the decision of a liquidator, then they may make an application to court under section 273 of the Insolvency Act 2003 to challenge that decision.

It is possible and relatively common to trade claims in a liquidation, but no specific rules apply. This is generally done by contractual assignment on notice to the liquidator.

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?

Insolvency set-off is governed by section 150 of the Insolvency Act 2003. In short, prior mutual dealings between a debtor and a creditor claiming or intending to claim in the liquidation will be taken into account, but rights of set-off will not apply where dealings with the debtor occurred when the creditor had actual notice that the debtor was insolvent.

Netting agreements (which are broadly defined and include collateral arrangements and other forms of netting agreements commonly seen in complex financial trading instruments) entered into between a creditor and a debtor are also enforceable under section 435 of the Insolvency Act 2003. Whilst prima facie enforceable, the Act provides that netting agreements may be unenforceable or void on grounds of fraud or misrepresentation or on any similar ground.

There are no specific provisions applicable to set-off or netting in a voluntary reorganisation such as a scheme or a plan. Ordinary contractual principles will apply, and counterparties' rights or obligations under such arrangements may be compromised by the scheme or plan, depending on its terms, subject to the relevant court sanction and class approval.

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?

There are no specific provisions of BVI law allowing the court to change the rank of a creditor's claim. Whilst subordination agreements will be upheld, they will only be enforceable in liquidation to the extent that they were put in place prior to the company's insolvency.

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 a liquidation, secured claims are generally payable in priority to all other claims, including expenses. The only exception to that principle is that where the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay the costs and expenses of the liquidation in accordance with the prescribed priority and the preferential creditors, those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

The expenses of the liquidation are paid in priority to all unsecured claims.

The following qualify as preferential debts and are paid in priority to all other unsecured debts:

- employees' wages, salaries and holiday pay;
- amounts due by the debtor to the BVI Social Security Board;
- amounts due by the debtor in respect of pension contributions and medical insurance;
- sums due to the government of the British Virgin Islands regarding any tax, duty, including stamp duty, licence fee or permit; and
- sums due to the Financial Services Commission in respect of any fee or penalty.

Claims in each category rank equally among themselves, pari passu, and must be paid in full or equally in the case of shortfall of assets.

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?)

Wages and salaries (including accrued holiday pay) due in the period of six months preceding the commencement of the liquidation qualify as preferential claims in the liquidation.

If there are several claims for wages, it is possible for one person to submit a claim on behalf of all the creditors in the class.

Any wages payable to employees continuing to be employed after the commencement of a liquidation would qualify as liquidation expenses and would be paid as such. In reality, it is rare for BVI companies to have employees, as most are used as holding companies.

Pension claims

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

Pension contributions payable during the 12 months preceding the commencement of the liquidation by the debtor in its capacity as an employer are regarded as preferential claims.

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?

There are no specific provisions under BVI law dealing with this category of liability.

Liabilities that survive insolvency or reorganisation proceedings

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

According to British Virgin Islands law, creditors' rights survive a reorganisation (subject to the binding terms of the restructuring) and any secured debts will remain enforceable. In the event of default, the secured creditor can usually enforce unless it has expressly waived its right to do so. Only those debts discharged pursuant to the terms of the arrangement will be compromised, other liabilities will survive the reorganisation.

Normally, liabilities of a company will not survive a liquidation, because the liquidation procedure concludes with the dissolution of the company.

Distributions

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

The liquidator pays distributions from available assets among unsecured creditors whose claims are admitted on a pari passu basis. Before making a distribution, the liquidator issues a notice stating the intention to distribute. If a creditor does not submit a claim by the specified date in the notice, the liquidator will exclude the creditor from the distribution. Claims will be subject to final adjudication (eg, admittance in part or in whole, or rejection) by the liquidator only when there are available funds to distribute.

After the allowance for the costs of the liquidation is made, liquidators may make interim distributions as the liquidation progresses, with a final distribution prior to the completion of the liquidation.

In a creditors' arrangement, the scheme supervisor takes custody of relevant assets and will be responsible for making payments to creditors in accordance with the terms of the arrangement.

In a scheme or plan or arrangement, distributions (if any) will be made in accordance with the approved terms of the scheme or plan.

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Security

Secured lending and credit (immovables)

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

The principal types of security taken on immovable property in the British Virgin Islands are:

- a mortgage (either legal or equitable);
- an equitable fixed charge; and
- a floating charge.

The governing law of a charge created by a BVI company may be the law of such jurisdiction as agreed by the parties to the charge.

A BVI company must maintain a private register of charges at its registered office. A public register of charges may also be kept by a company at the Registry of Corporate Affairs.

Secured lending and credit (movables)

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

The principal types of security taken on movable property in the British Virgin Islands are:

- a floating charge;
- an equitable mortgage or charge; and
- a pledge (which is a possessory form of security in which a lender takes possession of an asset that provides the pledgee with a common law power of sale).

The formal requirements as to governing law and registration as set out for immovable property, mentioned earlier, apply to charges taken on movable property.

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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?

The main 'voidable' transactions in the British Virgin Islands that can be annulled or set aside are:

- unfair preferences;
- transactions at undervalue;
- voidable floating charges under section 247 of the Insolvency Act 2003; and
- extortionate credit transactions.

These transactions can be clawed back upon a successful application by the liquidator only.

The relevant transaction must have been entered into in the 'vulnerability period' (ie, six months before the onset of insolvency if the person is unconnected to the company or two years if the transaction is with a connected person).

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?

In practice, it is common for shareholders to advance funds to companies by way of loan, and where a shareholder loan meets the criteria of a regular debt (as opposed to an equity contribution), these would be typically provable as debts in a liquidation in the ordinary way, and there are no particular rules as to the treatment of shareholder or related-party loans in a reorganisation.

However, transactions with related parties, including shareholders, are more prone to be considered voidable transactions – for example, they are generally subject to a longer vulnerability period (two years prior to liquidation rather than six months), and transactions with related parties during the vulnerability period will be assumed to be 'insolvency transactions', unless the contrary is proved.

A shareholder may not apply to appoint a liquidator of a company on grounds of insolvency without first seeking the leave of the court. A shareholder can, however, apply for the appointment of liquidators on just and equitable grounds without the leave of the court.

Lender liability

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

In certain circumstances a lender could be caught by the provisions relating to voidable transactions. For example, if it takes a voidable floating charge over the company's assets or receives a repayment in preference to other creditors, the court has a wide discretion to make such orders as it considers fit for restoring the position to what it would have been if the company had not entered into that transaction. That can include orders against the relevant lender restoring property to the company, or to pay compensation, etc.

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Groups of companies

Groups of companies

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

Companies are distinct legal entities and have a separate legal personality from their shareholders. A shareholder of a limited company has no liability for the debts of its subsidiary, unless it has validly guaranteed such debts. A shareholder's liability to the company on a winding-up is statutorily limited to the amount unpaid on the shares of the company held by that shareholder. However, there may be limited circumstances in which the court would be prepared to 'pierce the corporate veil' if a company's separate legal personality is abused (ie, as a vehicle for fraud). There is a developing body of English case law that has considered the potential for parent companies to be held liable for the actions of subsidiaries in limited circumstances, but these principles are yet to be considered by the BVI courts.

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?

A liquidator may seek sanction for the estates of two or more companies to be pooled for the purposes of reporting, distributions and the payment of fees and expenses.

An order for pooling may be appropriate in circumstances where it is in the best interests of the creditors to pool them, in particular, where:

- there is an overlap and intertwined ownership and control of the companies;
- funds have moved between them and there are likely to be intermingled funds or claims between the companies; and
- there is a commonality of creditors across each of the estates.

See, for example, ***In the Matters of Durant International Corp (in Liquidation), Kildare Finance Ltd (in Liquidation), MacDoel Investment Limited (in Liquidation)*** BVIHC (COM) 2017/134, 2017/135, 2019/0020.

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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?

The British Virgin Islands is not a party to any international conventions or agreements in relation to the enforcement of domestic or foreign court judgments.

Recognition of foreign judgments is principally governed by the Reciprocal Enforcement of Judgments Act 1922 and the common law. The Reciprocal Enforcement Act provides a process for the recognition of judgments given in the High Court of England and Wales, the Court of Northern Ireland, the Court of Session in Scotland and the courts of The Bahamas, Barbados, Belize, Guyana, Grenada, Jamaica, New South Wales (Australia), St Lucia and Trinidad and Tobago, as well as certain courts in Nigeria. Judgments from other jurisdictions may be recognised and enforced at common law, which requires a judgment creditor to commence a claim based upon the judgment debt.

In either process, only money judgments that are 'final and conclusive' can be enforced. Foreign judgments for penal or tax matters are generally not enforceable, nor will the court enforce foreign judgments where to do so would constitute a breach of BVI public policy.

Unlike foreign money judgments, which may be enforced if they meet traditional criteria such as finality and jurisdiction over the defendant, insolvency judgments are treated differently. In ***Rubin v Eurofinance*** [2012] UKSC 46, the UK Supreme Court held that such judgments are not eligible for recognition under common law rules unless the foreign court had personal jurisdiction over the defendant in accordance with BVI standards. This distinction reflects the BVI's cautious approach to cross-border insolvency, prioritising procedural fairness and territorial sovereignty over universalism.

Once foreign judgments have been recognised as enforceable in the British Virgin Islands, the same enforcement remedies are available as for domestic judgments. Thereafter, a judgment creditor may seek, for instance, a charging order, garnishee order, judgment summons, order for the seizure and sale of goods or the appointment of a receiver.

In the case of a foreign judgment for a money sum against a BVI company, it is generally permissible to apply to appoint liquidators without first seeking recognition, but the same principles of enforceability apply.

UNCITRAL Model Laws

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

No. Part XVIII of the Insolvency Act 2003 contains provisions that would give effect to the UNCITRAL Model Law on Cross-Border Insolvency, but that Part has not been brought into force and there is currently no intention on the part of the legislature to do so.

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

With the exception of preferential creditors (the majority of whom are likely to be resident in the British Virgin Islands), foreign creditors are not treated any differently from domestic creditors, and there are no special procedures that foreign creditors must comply with when submitting claims in BVI insolvency proceedings.

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?

Part III (Administration) of the Insolvency Act 2003 has not been brought into force.

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?

The concept of centre of main interests of a debtor company or group of companies does not directly apply in the British Virgin Islands.

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?

Part XIX of the Insolvency Act 2003 does provide a statutory framework for judicial assistance to be granted to foreign insolvency office-holders in certain designated jurisdictions, but this is not equivalent to Model Law recognition and only provides the ability to apply for assistance from the BVI court on an application-by-application basis. Accordingly, the most effective way to ensure full control across jurisdictions in a cross-border insolvency is for the foreign office holder to seek to be appointed, where possible, in the British Virgin Islands, on a joint basis with a BVI insolvency practitioner.

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?

In 2017, the British Virgin Islands adopted the Judicial Insolvency Network's (JIN) cross-border cooperation guidelines that are designed to increase communication and cooperation between courts, insolvency practitioners and other parties in international insolvencies and restructurings.

Joint court hearings are possible in theory pursuant to the JIN guidelines.

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?

The BVI court has a power to wind up foreign companies, but the court will only exercise this power if the company has a sufficient connection with the British Virgin Islands.

A company will be deemed to be sufficiently connected to the BVI if:

- it has or appears to have assets in the jurisdiction;
- it is carrying on, or has carried on, business in the jurisdiction; or
- there is a reasonable prospect that the appointment of a liquidator of the company under this part will benefit the creditors of the company.

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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 Insolvency Act 2003

The Insolvency (Amendment) Act, 2024, which came into force on 2 January 2025, introduced amendments to sections 162 and 163 of the Insolvency Act. These sections relate to the rights and obligations of liquidators and the treatment of claims in insolvency proceedings. Specifically, section 162 of the Insolvency Act 2003 expanded the grounds for the Financial Services Commission to appoint a liquidator over a BVI company (i.e., if the company was involved in or convicted of money laundering, terrorist financing, or proliferation financing, or has breached sanctions or embargo laws). Similarly, section 163 amended the grounds on which the BVI court may appoint a liquidator to mirror the grounds set out in section 162.

There has also been an expansion of cross-border insolvency assistance. The BVI Financial Services Commission significantly expanded the list of "relevant foreign countries" under Part XIX of the Insolvency Act 2003, which governs assistance to foreign representatives in cross-border insolvency cases.

Prior to the expansion of the list, assistance was only available to foreign office-holders from the following countries: Australia; Canada; Finland; Hong Kong; Japan; Jersey; New Zealand; United Kingdom; and the United States of America.

The revised list now includes 24 additional countries, including Bahamas, Barbados, Bermuda, Belize, Cayman Islands, Guernsey, Guyana, Ireland, Isle of Man, Jamaica, Nigeria, Singapore, members of the Organisation of Eastern Caribbean States ("OECS") (e.g., Saint Lucia, Grenada), Trinidad and Tobago, Turks and Caicos Islands.

This expansion allows foreign representatives from these additional jurisdictions to apply for assistance under Part XIX of the Insolvency Act 2003, thus significantly enhancing the scope for international cooperation in cross border insolvencies.

Directors' Duties and Creditor Protection

In *Byers & Richardson v Chen Ningning* (BVIHCMAP2024/0009), the EC Court of Appeal delivered a landmark ruling on the scope of directors' duties to creditors under BVI law. The decision clarifies that directors may be held personally liable for losses suffered by the general body of creditors when a company is insolvent or nearing insolvency even if the effect on the company itself is balance sheet neutral and the director did not personally benefit.

The decision marks a pivotal development in BVI company and insolvency law in that it strengthens creditor protection and imposes heightened responsibilities on directors during financial distress. Further, liquidators are now better positioned to pursue claims against directors for asset depletion, even in cases where traditional accounting losses are not evident.

Appointing liquidators on the basis of a foreign judgment debt

In a recent decision of the English Court of Appeal (in ***Servis-Terminal LLC v Drelle*** [2025] EWCA Civ 62) it was held that an unrecognized foreign judgment cannot form the basis of a bankruptcy petition against an individual as a matter of English law. That decision has cast some doubt on the general principle, applied in the BVI, that a foreign judgment debt can form the basis of a liquidation application even where the foreign judgment has not been recognized or domesticated. The English Supreme Court will consider a further appeal in that case in due course, but for the time being the Court of Appeal's decision stands and is binding as a matter of English insolvency law. Despite this development in English law, the general view is that the BVI Courts will continue to be willing, in appropriate cases, to grant a liquidation order against a company on the basis of a foreign judgment debt that has not previously been recognized or domesticated in the BVI.

Law stated date

Correct on: 10 September 2025

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Quick reference

Summary of law and procedure

Applicable insolvency law, reorganisations and liquidations	The Insolvency Act 2003, the Insolvency Rules 2005 and the BVI Business Companies Act 2004.
Customary kinds of security devices on immovables	Mortgage (either legal or equitable), equitable fixed charge and floating charge.
Customary kinds of security devices on movables	Floating charge, equitable mortgage or charge and pledge.
Stays of proceedings in reorganisations/liquidations	Moratorium of claims in liquidations, except through proof of debt process. Secured creditors permitted to enforce security. No moratorium available outside liquidation.
Duties of the insolvency administrator	Liquidators owe duties under the above legislation to the court, company and creditors.
Set-off and post-filing credit	Set-off agreements and pre-insolvency mutual dealings are generally binding on the company in liquidation. None of the restructuring procedures specifically contemplate post-commencement financing; however, a court could approve a scheme of arrangement that provides for new borrowing. Liquidator has powers under the Insolvency Act 2003 to borrow, whether on the security of the company or otherwise.
Creditor claims and appeals	Creditors required to prove claims in the usual way through the courts if not admitted by the liquidator. If a creditor is dissatisfied with the decision of a liquidator, they may apply to court under the Insolvency Act 2003 to challenge the decision.
Priority claims	• secured debts; • costs and expenses of the winding-up process; • employees' wages, salaries and holiday pay; • amounts due by the debtor to the BVI Social Security Board; • amounts due by the debtor in respect of pension contributions and medical insurance; • sums due to the government of the BVI

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