

Liquidation of Cayman Islands Segregated Portfolio Companies

The thorny issue of how the liquidation regime applies to segregated portfolio companies ("SPC") has come back before the Cayman Islands Court (the "Court") in *In the matter of Oakwise Value Fund SPC*.

An SPC is an exempted company which has the statutory power to segregate its assets and liabilities through the use of segregated portfolios. While the individual segregated portfolios operate as distinct economic units in respect of their segregated assets and liabilities, they are not separate legal entities. Rather it is the SPC that is the legal entity which contracts on behalf of each segregated portfolio. The Companies Act provides that where a segregated portfolio is balance sheet insolvent, receivers can be appointed to that segregated portfolio. However, in *Oakwise* the Court had to grapple with the question of how to deal with a segregated portfolio that was cash flow insolvent in circumstances where a liquidator (or in that case restructuring provisional liquidators) can only be appointed to a legal entity, i.e. the SPC as a whole.

Significantly, the Court found that, on the face of it, it had jurisdiction to make a winding up order against an SPC where one or more segregated portfolios are unable to pay its debts (even where other segregated portfolios are solvent). While this gives rise to the risk that solvent segregated portfolios could be dragged into liquidation proceedings as a result of financial

distress in what are separate economic units, it is important to note that: (a) the Court did not in any way question the statutory segregation of portfolios and (b) the Court fashioned the order appointing the restructuring provisional liquidators to ensure that the solvent segregated portfolios could continue under existing management.

Whether the Court would actually proceed to liquidate an SPC (rather than just appointing restructuring provisional liquidators) on the basis of a single insolvent portfolio is still an open question. In any event, we would expect the Court to strive to fashion any winding up order to minimise prejudice to investors in solvent portfolios so far as possible.

Further Assistance

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

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