



INSOL
INTERNATIONAL



Cross-Border Insolvency in the Cayman Islands

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Cayman Islands context

- 100,000 exempted companies
- 35,000 ELPs
- Assets under management of funds is approximately US\$6 trillion
- Most preferred jurisdiction for crypto funds
- Creditor-friendly jurisdiction that favours legal certainty



Universalism vs Territorialism



Universalism: insolvency proceedings commenced in one jurisdiction regarded as having a universal effect across other jurisdictions



Assistance: courts in one country should actively assist insolvency proceedings commenced in another court.



Limits: a Cayman Islands court will not give a foreign liquidator greater powers than that which the foreign liquidator would enjoy before his home Court.

Legal framework

- The Cayman Islands has not implemented the UNCITRAL Model Law on Cross-Border Insolvency
- Orders in support of foreign insolvency proceedings are provided for in Part XVII of the Companies Act
- Modified Universalism (the “golden thread”):
 - the court in the country where the company is based (the "home country") will take the lead in managing the case, but it will also work with the courts in other countries where the company has assets or creditors (the "host countries").
 - The courts in the host countries will recognize the authority of the court in the home country, and will cooperate with it to resolve the case.

Tensions between courts: What if winding up proceedings are filed against a Cayman Islands company in the Cayman Islands and in a foreign country?

Starting point: the main proceeding should be in Cayman

Priority of claims

Co-ordination and efficiency

Recognition

Co-operation with foreign liquidators

Comity

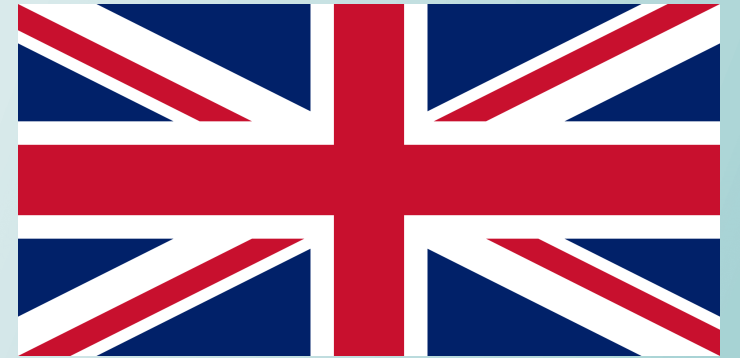
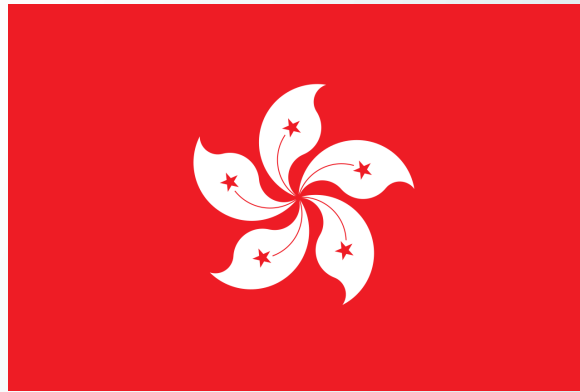
Liquidation of foreign companies in the Cayman Islands

- Under section 91(d) of the Companies Act, the Cayman Islands Court has jurisdiction to wind up a foreign company that —
 - has property located in the Cayman Islands;
 - is carrying on business in the Cayman Islands;
 - is the general partner of an ordinary limited partnership or an ELP; or
 - is registered under Part IX of the Companies Act.
- Part XI of the Companies Act requires a foreign company to register in the Cayman Islands where it establishes a place of business, or commences carrying on business within the Cayman Islands.

Cross-border Protocols

- Cayman Islands official liquidators are permitted to enter into international protocols with foreign officeholders
- The Cayman Islands court can also enter into “court-to-court” protocols with foreign courts
- Example: *Re LATAM Finance Limited*

Cayman Islands liquidators in overseas courts



Case studies

- We will discuss the case studies set out in the Course Notes