

UPDATE

BVI Financial Services Commission clamps down on regulatory breaches

Update prepared by Eleanor Morgan (Partner, BVI)

The BVI Financial Services Commission (the **FSC**) has shown that it will not shy away from taking serious action in cases of persistent regulatory breaches by successfully petitioning the BVI Court to appoint Russell Crumpler and Kris Beighton of KPMG as liquidators of Victory Life and Pension Assurance Services Limited (**Victory Life**).

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The BVI Financial Services Commission (the **FSC**) has shown that it will not shy away from taking serious action in cases of persistent regulatory breaches by successfully petitioning the BVI Court to appoint Russell Crumpler and Kris Beighton of KPMG as liquidators of Victory Life and Pension Assurance Services Limited (**Victory Life**).

Victory Life offered a product colloquially known as 'insurance wrappers', whereby client (or policyholder) investments are wrapped in life assurance policies. Victory Life was incorporated in the BVI, but has policyholders in and holds assets throughout Europe. A large proportion of its 5,500 policyholders (approximately 70 per cent) are based in Scandinavia and Victory Life was also being closely monitored by the relevant financial services regulators in Sweden and Norway. The Swedish regulator had previously taken limited enforcement action in relation to regulatory issues in Sweden, but had taken no steps to start any insolvency regime in Sweden.

The FSC became concerned by persistent regulatory breaches, including Victory Life's failure to appoint an independent auditor or actuary, its failure to replace its insurance manager and registered agent. The FSC's evidence also cited concerns about the fitness of the Company's principals, who have been convicted and given custodial sentences in relation to tax issues in Sweden (which convictions are subject to appeal). Having sought to deal with the regulatory issues through correspondence with Victory Life, the FSC was not satisfied that its concerns had been adequately dealt with and petitioned the Court to appoint liquidators.

By order dated 24 November 2014, Russell Crumpler and Kris Beighton (also of KPMG) were appointed joint liquidators of Victory Life (the **Liquidators**). In appointing the Liquidators, the BVI Court commented that 'If there is a regulated entity whose management is in the hands of people who are not fit and proper, and people suffer as a result, this reflects not only on the Commission but in this jurisdiction as a financial centre ...' before going on to confirm that 'it is just and equitable as well as in the public interest that a company of this type, with these sorts of responsibilities, should be wound up so that the management can be taken out of the current hand so that the affairs can be thoroughly investigated using the powers of this country (or of a foreign court after the appropriate applications for recognition and assistance), so that the affairs of the investors can be protected.'

Victory Life is a Long Term Insurance Company, as defined in the BVI Insolvency Act, 2003 (the **Insolvency Act**). Although the Insolvency Act contains specific sections dealing with the liquidation of Long Term Insolvency Companies, in practice such liquidations are rare. When appointing the Liquidators, the Court commented that 'There are a number of hurdles or problems ahead, but I accept that this is not a reason not to make the appointment. I accept the submission that this Court should not flinch from making an appointment even if it has fear that it will lead to practical problems.'

The Liquidators are advised by Eleanor Morgan of Mourant Ozannes and are working closely with the FSC and other regulators to manage this complex multi-jurisdictional liquidation.

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