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■ **INDEPTH FEATURE** Reprint April 2023

# BANKRUPTCY & RESTRUCTURING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in bankruptcy & restructuring.





# BRITISH VIRGIN ISLANDS

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### *Respondents*



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Shane Donovan is a partner in Mourant's dispute resolution and insolvency practice based in the British Virgin Islands. Having previously practised in Australia and England & Wales, he has now been in practice in the BVI for over 10 years. He has extensive insolvency experience and regularly acts on behalf of liquidators, creditors and other stakeholders in BVI insolvencies and restructurings which are invariably of a cross-border and multijurisdictional nature. He also has specialist experience in complex international litigation, including fraud and asset recovery and corporate and shareholder disputes.



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Ian Montgomery is a partner in Mourant's BVI office and the local practice leader of the BVI finance, corporate and funds team. He has particular experience advising on corporate and finance transactions in the real estate, financial services, energy and technology sectors, including M&A, joint ventures, debt and equity fundraising, public listings, security arrangements, corporate restructurings and corporate and commercial aspects of shareholder and contractual disputes. His clients include leading international law firms and accountancy firms, financial institutions, multinational businesses, funds and their managers, and high-net worth individuals.

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**Q. How would you describe corporate bankruptcies and insolvencies in the BVI over the last 12-18 months? Are you seeing more or fewer business failures in general?**

**A.** Although we have not seen any marked increase in insolvencies in the last 12-18 months, we are continuing to see an increased use of restructuring procedures as an alternative to liquidation – in particular, the use of schemes or plans of arrangement to restructure debt or equity interests. If a scheme is approved by 75 percent in value of the creditors or shareholders, as the case may be, and sanctioned by the court, it will be binding on all the creditors or shareholders. While a plan of arrangement does not have any specific threshold requirements, the court will typically only approve it if it is fair and reasonable, and it may also require that dissenters have a right to have their interests acquired for fair value. In addition, the appointment of ‘light touch’ provisional liquidators continues to be used as a protective measure to ward off predatory creditors where a restructuring or reorganisation is taking place in another jurisdiction.

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**Q. In your experience, which sectors seem to be demonstrating structural weaknesses leading to more restructuring efforts?**

**A.** As a tax-neutral jurisdiction with modern, flexible and efficient company legislation, the British Virgin Islands (BVI) is one of the world’s largest centres for the incorporation of companies. In particular, BVI companies have traditionally been popular vehicles for raising finance for cross-border trade and investment, often involving the issuance of tradeable notes on the world’s major stock exchanges. Therefore, it is unsurprising that we are continuing to see an increase in restructuring efforts arising out of the default on notes, particularly those issued in respect of the property sector in the People’s Republic of China (PRC) where the Chinese government’s deleveraging campaign has resulted in a sharp slowdown in the property sector.

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**Q. To what extent are troubled companies able to refinance and renegotiate existing debt structures in the current market?**

**A.** In a number of cases, the prospect of a negligible distribution from liquidation

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proceedings has resulted in troubled companies being able to refinance and renegotiate existing debt structures. In cases of companies defaulting on notes, we have seen instances of swapping current debt for new debt with longer-term maturity, often coupled with receipt of some money in cash by the creditors. In the case of creditors that are willing to accept some principal losses, there has been some appetite for a mix of shorter-term notes and equity-linked notes, particularly where creditors are banking on some recovery in the property sector.

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**Q. Have there been any recent legislative or regulatory developments, including high-profile cases, in the BVI that will have a significant effect on bankruptcy and restructuring?**

**A.** Until recently, there has been very little reported judicial consideration of the approach to be taken by the BVI court in deciding whether to sanction a scheme of arrangement. However, in 2022 in the matter of *Rongxingda (BVI) Limited*, the court confirmed that the approval of a scheme involves a two-stage process. The first stage is for the court to order that

there be a meeting of creditors. Secondly, if the meeting reaches the necessary 75 percent by value of creditors, it then must consider the question of sanctioning the proposal. The court confirmed that it would follow the English approach where the scheme regime is very similar to that in the BVI. Accordingly, in deciding whether to make an order convening a meeting, the court will consider such matters as whether the scheme has sufficient general support to have a prospect of success, and whether the proposed division of the creditors into one or more voting classes appears to be correct. At the second hearing, the court will consider such matters as whether the statutory provisions have been complied with, that the creditors were fairly represented by those attending the meeting, that the majority acted bona fide, and whether the approval of the scheme is reasonable in all the circumstances.

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**Q. What trends are you seeing in the market's appetite to purchase troubled assets? How would you describe recent distressed M&A activity?**



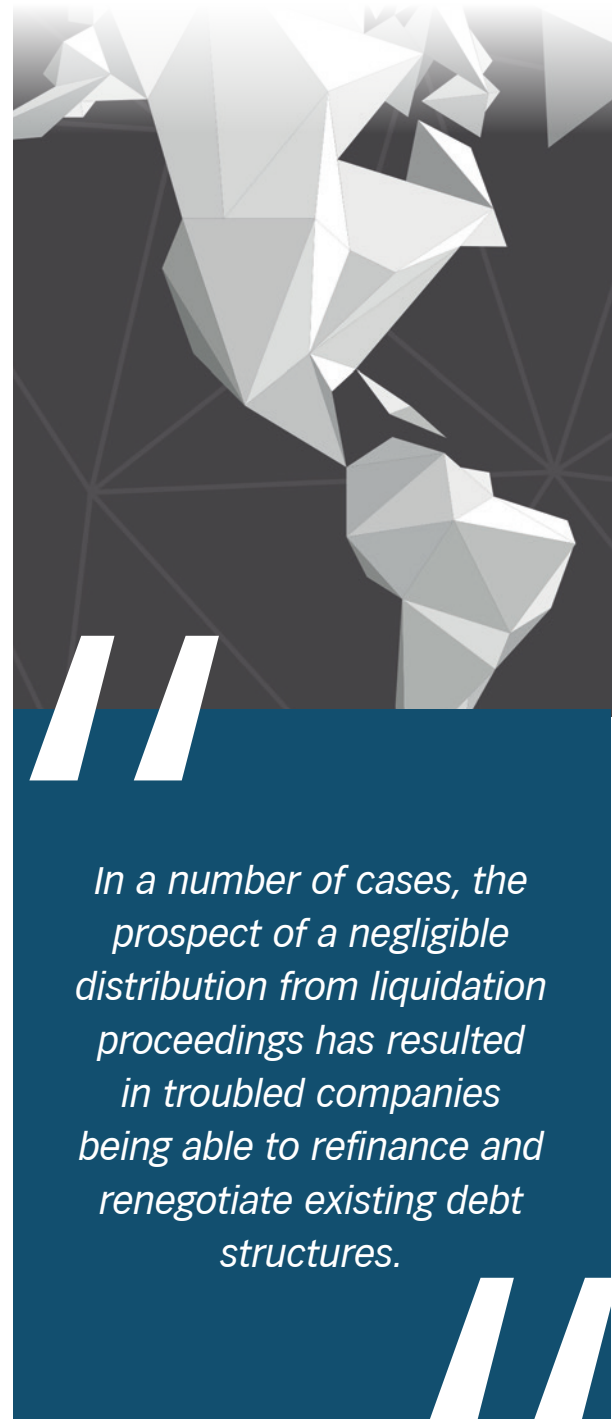
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**A.** We are continuing to see BVI companies being used to acquire assets in distressed M&A transactions across various industries. We are also seeing an increasing interest in distressed M&A transactions and the purchase of assets from liquidators. We expect this trend to continue, particularly given the interest rate changes globally and the fluctuations in the financial markets, most recently in the banking sector.

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**Q. What trends are you seeing in cross-border or multijurisdictional insolvencies? What additional challenges do such engagements present?**

**A.** BVI insolvencies are invariably of a cross-border or multijurisdictional nature. While the company will be incorporated in the BVI, its debt will usually be governed by the laws of another jurisdiction, and its underlying assets may be found in one or more other jurisdictions. As a scheme or plan of arrangement approved by the BVI court is unlikely to be effective to discharge foreign law governed debt, it may also be necessary to seek the approval of the proposed scheme in the jurisdiction in which the debt has been issued. It may



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also be necessary to obtain some form of stay of execution against the company's assets in the jurisdictions where those assets are located, to prevent predatory creditors from frustrating the scheme. Ensuring coordinated steps are taken in the BVI and other relevant jurisdictions is therefore key.

creditors. To date, there have been a few instances of cryptocurrency-related insolvencies in the BVI, including the well-publicised liquidation of Three Arrows Capital, but this may well increase as a result of the current so-called 'crypto winter'. □

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**Q. Looking ahead, what developments do you expect to see in restructuring and bankruptcy processes in the coming months?**

**A.** We expect to see a continuation of insolvencies and restructuring efforts in relation to companies that have issued notes to finance property development in the PRC, as those notes reach maturity. In particular, we are continuing to monitor with interest the position of the China Evergrande Group as it attempts to reach agreement with its bondholders in relation to more than \$19bn of debt. Latest reports suggest that a restructuring has been agreed to by an ad hoc bondholder group that holds more than 20 percent of Evergrande's international bonds. However, it remains to be seen whether the proposal has broader support among



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**MOURANT** is a law firm-led, professional services business with over 60 years' experience in the financial services sector. The firm advises on the laws of the British Virgin Islands, the Cayman Islands, Guernsey and Jersey and provides specialist entity management, governance, regulatory and consulting services. It bridges the gap between legal advice and its implementation, taking an integrated approach to deliver the best results for its clients.

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