



■ **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.





# CAYMAN ISLANDS

## *Kroll (Cayman) Ltd*

### *Respondents*



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Mitchell Mansfield is a managing director with Kroll's restructuring advisory practice and the head of the Cayman Islands operations. He has over 15 years of experience delivering bespoke solutions in respect of complex cross-border restructurings, liquidations, shareholder disputes and valuations, investigations and litigation across Australia, Asia, North America, the Middle East and the Caribbean. He has acted on behalf of public and private companies, shareholders, funds and secured and unsecured creditors on assignments across the financial services, shipping, retail, agriculture, pharmaceutical, property, mining, resources, construction and manufacturing industries.



**SAM COLE**  
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Sam Cole is a director based in Kroll's Cayman office. He has 12 years of experience in complex and contentious restructuring, solvent fund wind-down, advisory and transaction engagements, advising key stakeholders across a number of industries and with cross-border exposures. He is an acting liquidator across a range of liquidations with investments and litigious assets throughout the US, sub-Saharan, Asia and Europe. Mr Cole has significant experience across trade finance, with a focus on emerging markets, mining and mining services, energy generation, transport and logistics and large-scale infrastructure.

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

**A.** The economic environment over the last 12 to 18 months has been impacted by the ongoing coronavirus (COVID-19) pandemic and the resultant supply chain disruptions, the Ukraine war and resultant Russian sanctions, cryptocurrency failures and the recent US banking collapses. These matters have placed significant financial pressures across a wide range of industries in the Cayman Islands. It is important to note that Cayman Islands domiciled entities, typically, form part of an offshore holding structure form operating business with assets and liabilities in other jurisdictions, often part of complex operating structures. We have seen businesses facing financial challenges in the construction, travel, tourism and aviation sectors, and early-stage technology companies, as revenue has reduced, supply chains have been disrupted and consumer demand has decreased. All of these factors have also been coupled with the ending of COVID-19-related government stimulus

programmes across many jurisdictions. The Cayman Islands saw a general uptick in insolvencies over 2022, which has continued to increase in 2023. In 2022, 51 winding-up petitions were presented, comprised of 22 creditors' petitions, one of which was subject to the new restructuring officer regime for the appointment of a Restructuring Officer in lieu of the appointment of Official Liquidators, one petition presented by the company itself, eight petitioners presented by shareholders or limited partners seeking a winding-up order on just and equitable grounds, three petitions presented by companies for the primary purpose of appointing provisional liquidators to facilitate a debt restructuring and 17 petition presented by companies in voluntary liquidation seeking an order to bring the liquidation under the supervision of the Grand Court. We expect more business failures given the increases to cost of capital in a global economy of tightening monetary policy and interest rate hikes.

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

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**A.** Recent financial difficulties are widespread across industries and jurisdictions. In general, we have seen sectors experience structural weakness in real estate and construction, retail, tourism and travel, manufacturing, shipping and logistics as the fallout of COVID-19, the Ukraine war and tightening monetary policies has been widespread. These sectors have experienced significant revenue declines due to lockdowns, travel restrictions and reduced consumer spending, leading to financial difficulties and the need for restructuring efforts. These issues have also been exacerbated by the global shift in monetary policy to combat inflation, including increasing interest rates. The construction sector has been one of the worst hit industries, and we have seen an increased number of insolvencies and restructurings in Asia related to the collapse of several property groups, including Evergrande. We expect these challenges to continue for the sector in the near term.

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



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**A.** It is becoming increasingly difficult to refinance and renegotiate debt structures as economic uncertainty continues to worsen and interest rates continue to rise. These difficulties are expected to continue and worsen throughout 2023, with companies needing to explore alternative sources of capital at a higher cost and on less favourable terms.

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

**A.** There have been a number of significant legislative developments in the Cayman Islands, of which the most notable is the introduction of a restructuring officer regime. The restructuring officer regime was introduced on 31 August 2022, and provides a streamlined and more efficient debtor-led restructuring process. Since its inception, we have seen three restructuring petitions made in the Grand Court, one of which since received Grand Court approval of its restructuring plan. The regime provides an automatic moratorium on unsecured creditor claims

at the presentation of a petition, has extraterritorial effect and is internationally recognised. As seen with a recent case, Oriente Group Limited, an entity may make an application for a restructuring officer in circumstances where a winding-up petition has already been filed against the entity. In order to effect any proposed restructuring, a majority is required in number representing at least 75 percent in value of the creditors or classes and 75 percent in value of the members or classes present and voting to agree any compromise or arrangement. The introduction of the regime continues to make the Cayman Islands a more attractive jurisdiction for companies that are seeking to restructure their debts, and we expect to see continued utilisation of the regime in the future.

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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?**

**A.** The recent increases in interest rates and the resultant reduction in available credit has seen a reduction in the top line value of M&A activity, while deal activity

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has remained relatively strong. M&A activity is now at pre-pandemic levels. The current economic environment presents an opening for opportunistic acquisitions, as companies continue to experience financial distress and sustainability has become a key focus and reason to acquire or divest businesses. We expect to see ongoing and increased M&A activity by strategic buyers looking to acquire distressed assets at a discount, while in other cases, distressed assets have been sold to private equity firms or distressed debt investors.

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

**A.** Cross-border or multijurisdictional insolvencies are becoming increasingly common, as businesses operate in multiple countries and hold assets and liabilities across multiple jurisdictions. Recently, we have seen an increase in genuine restructuring opportunities in the Cayman Islands, particularly for entities with main operations in Asia and the Middle East, across a variety of industries. We have also seen an increase in contentious

insolvency and litigation across these jurisdictions. Although not as prevalent as other offshore jurisdictions, the Cayman Islands has also seen an increase in cryptocurrency-related business failures. Recognition and cooperation remains the biggest challenge to the success of any cross-border or multijurisdictional insolvency process, and the approach and willingness of the courts to work together continues to vary greatly depending on the jurisdiction.

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

**A.** As the economy continues to battle headwinds, we expect to see the following focuses for insolvencies in the Cayman Islands. First, an increase in company-led restructurings utilising the new restructuring officer regime, particularly in the construction and aviation sectors. Second, an increase in investor-led restructuring, as majority investors seek additional information and control over their investments. Third, continued government support to struggling



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companies through measures such as loan guarantees and grants, to help them navigate the ongoing economic uncertainty. Fourth, potential changes to regulations as governments respond to the wave of cryptocurrency insolvencies and the recent US banking issues, which may impact the restructuring of these companies. Fifth, a continued rise in distressed M&A activity as ongoing economic uncertainty remains and as investors seek opportunities to acquire distressed assets at a discount to capitalise on potential opportunities for outsized returns. Overall, 2023 is expected to bring continued uncertainty, volatility and increased activity in the restructuring and bankruptcy landscape, as economic turmoil continues. □

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**KROLL** provides clients a way to build, protect and maximise value through its differentiated financial and risk advisory and intelligence. The firm's transaction experience and expertise earns it global recognition as a leader in valuation, corporate finance and restructuring. Kroll is also known for its world-class experts and solutions in corporate risk.

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