3 November 2026

John Rehagen, Chair
Monica Macaluso, Vice Chair
Mutual Recognition of Jurisdictions (E) Working Group
National Association of Insurance Commissioners

By email:
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Dear Chair Rehagen and Vice Chair Macaluso,

Cayman Islands Qualified Jurisdiction review: statement of Cayman Islands law

Publication: this letter may be made public.

We provide this statement to assist the Mutual Recognition of Jurisdictions (E) Working Group (the "Working Group") of the National Association of Insurance Commissioners ("NAIC") in reviewing the Cayman Islands' application for Qualified Jurisdiction ("QJ") status under the NAIC's Process for Evaluating Qualified and Reciprocal Jurisdictions, approved 17 August 2021 (the "Process").

This letter is submitted by the Cayman Islands Legal Practitioners Association with input from the following Cayman Islands law firms whose attorneys are admitted to practise as attorneys-at-law in the Cayman Islands: Appleby (Cayman) Ltd, Campbells LLP, Conyers, Dill and Pearman LLP, Maples & Calder (Cayman) LLP and Walkers (Cayman) LLP. This statement is given by persons qualified in Cayman Islands law, consistent with Part III.2(d) of the Process. In this letter, we express no opinion as to any laws other than the laws of the Cayman Islands in force and as interpreted as at the date of this letter.

In summary, and subject to the qualifications set out in the body of this letter:

(a) *Legal system and judiciary*: the Cayman Islands is a British Overseas Territory with an established common-law legal system, a specialist Financial Services Division of the Grand Court experienced in complex commercial, insurance and insolvency matters, a right of appeal to the Cayman Islands Court of Appeal and final appeal to the Privy Council, and constitutionally protected judicial independence (section 1).

(b) *U.S. judgments*: a final and conclusive U.S. *in personam* money judgment for a definite sum (other than for taxes, fines or penalties), given by a court having jurisdiction under Cayman Islands conflict of laws rules, may be enforced at common law without retrial of the merits, often by summary judgment. The defences to enforcement are limited and narrowly applied, and a foreign judgment cannot be impeached for error of fact or law. Non-money judgments may be enforced in the Grand Court's discretion, and a full range of domestic enforcement and interim remedies is available (section 2).

(c) *U.S. arbitral awards*: the New York Convention extends to the Cayman Islands, and U.S. arbitral awards may be recognised and enforced by the Grand Court, which may refuse enforcement only on the limited Convention grounds, with the public policy ground construed narrowly. The Grand Court may also grant interim measures in support of foreign-seated arbitrations (section 3).

(d) *Contractual undertakings and security*: a Cayman Islands reinsurer may in principle submit to U.S. jurisdiction and provide security in the circumstances contemplated by the NAIC credit for reinsurance framework. Validly granted security survives the reinsurer's liquidation and may be enforced without leave, subject to the statutory avoidance provisions applicable to transactions entered into in periods of financial distress (section 4).

(e) *Insolvency and creditor protection*: in the liquidation of a Cayman Islands reinsurer, secured creditors' rights, contractual set-off and netting, and subordination arrangements are respected, and the ranking of a claim depends on its nature rather than the creditor's domicile, so that the ordinary unsecured claims of U.S. cedants rank equally with comparable claims of domestic cedants. Statutory segregation regimes for segregated portfolio companies, separate accounts and trust funds, and statutory and common-law mechanisms for assisting foreign insolvency representatives, are also available (section 5).

(f) *Schemes of arrangement*: creditor schemes require approval by the statutory dual majority of each properly constituted class and the sanction of the Grand Court, which exercises a genuine discretion, and dissenting creditors may be heard at each stage. Insurance business transfers remain subject to separate CIMA approval requirements, and the record of any solvent schemes is a matter for CIMA (section 6).

(g) *Cayman purchases of U.S. reinsurance*: a U.S. reinsurer is not treated as carrying on insurance business in the Cayman Islands solely because it reinsures a Cayman Islands insurer (section 7).

(h) *Supervision and cooperation*: the Insurance Act and the Capital and Solvency Regulations provide CIMA with a statutory supervisory, reporting, capital and intervention framework, and the Monetary Authority Act empowers CIMA to cooperate and share information with overseas regulators, including under the IAIS MMoU and its memoranda of understanding with the NAIC and U.S. state insurance regulators (section 8).

1 Scope and legal system

1.1 This statement addresses principally Sections F and G and Appendix A item 11 of the Process, with relevant legal points under Sections A, C and D and Appendix A items 1–4, 6, 10 and 12, and Appendix B items 3, 4 and 5(c) (legal powers only). References to Sections A–G and Appendices A and B are to the Process unless otherwise stated. It responds to the 4 September 2026 notice and describes the general Cayman Islands legal framework as at the date of this letter. It does not express a transaction-specific opinion or an opinion on the enforceability of any particular judgment, order, award, agreement or security arrangement. The annex maps the paragraphs to the relevant Process items.

1.2 This letter provides the Cayman Islands law component of the matters identified in the annex. It is not a complete response to Appendices A and B. The Cayman Islands Monetary Authority ("CIMA") is expected to provide the regulatory and industry-wide record, with relevant companies, professional firms and other institutions providing evidence of supervision in practice within their direct experience. The decisions discussed below demonstrate the application of Cayman enforcement and creditor-protection principles.

1.3 The Cayman Islands is a British Overseas Territory and its laws are principally derived from: (a) original local statutes enacted by the Cayman Islands legislature; (b) binding decisions of the Cayman Islands' courts; (c) English common law and the rules of equity brought to the Cayman Islands by early settlers, as adapted to local circumstances and subsequently developed and applied by the courts of the Cayman Islands; (d) statutes of England and Wales in existence at the time of settlement, as subsequently applied, amended, repealed and replaced by statutes and subsidiary legislation enacted in and applicable to the Cayman Islands; (e) Orders in Council made under the Royal Prerogative and made specifically applicable to the Cayman Islands; and (f) statutes of the United Kingdom Parliament that have been expressly extended to apply to the Cayman Islands.

1.4 Where no specific local statutory provision applies, the Grand Court of the Cayman Islands (the "Grand Court") will generally apply principles of English common law and the rules of equity as adapted to the circumstances of the Cayman Islands. On questions governed by common law, the doctrine of judicial precedent applies. The court of first instance is the Grand Court which will, as a matter of judicial comity, follow its own previous decisions unless they *obiter* or are shown to be wrong.[1] There is a right of appeal from the Grand Court to the Cayman Islands Court of Appeal. The final appellate court for the Cayman Islands is the Judicial Committee of the Privy Council (the "Privy Council") which sits in London and comprises senior judges, principally Justices of the Supreme Court of the United Kingdom. The Grand Court is bound by decisions of the Cayman Islands Court of Appeal and by decisions of the Privy Council on appeals originating from the Cayman Islands.

1.5 There is an increasing body of jurisprudence in the Cayman Islands which has developed mainly over the last 40 years. Key decisions are reported in the Cayman Islands Law Reports. Where there is no Cayman Islands authority on a particular issue, the Cayman Islands courts will often look to, and apply, principles extracted from decisions of the English courts, which are highly persuasive, albeit not binding. In addition, although less frequently, the Cayman Islands courts will consider decisions of the courts of other Commonwealth jurisdictions, which may also be persuasive whilst not binding. In particular, decisions of the Privy Council on appeals originating from other Overseas Territories and Commonwealth jurisdictions and decisions of the highest courts of the other common-law jurisdictions, including Australia, New Zealand, Canada, and Hong Kong, are highly persuasive and often followed in so far as applicable to the Cayman Islands by analogy.

1.6 The Cayman Islands has a highly developed court system, which is capable and frequently deals with high value and complex cases and issues of law, arising out of the Cayman Islands' status as a leading international offshore banking and financial centre. The Cayman Islands court system includes a specialised Financial Services Division of the Grand Court, with a panel of specialist commercial judges highly experienced in corporate and insolvency law (including proceedings relating to an exempted insurer, including any action by or against its directors, insurance manager or auditor)[2].

1.7 Judicial independence is expressly protected by section 107 of Schedule 2 to the Cayman Islands Constitution Order 2009, as amended, together with other statutory protections, and the judiciary's own conduct standards and institutional practice. The independence of the judiciary is further protected in several ways. For example, the Grand Court Act (2026 Revision) (the "Grand Court Act") provides that the Chief Justice of the Cayman Islands shall have "r*esponsibility for and management of all matters arising in judicature*"[3] and the Public Management and Finance Act (2026

[1] *Re Bank of Credit & Commerce International (Overseas) Limited* [1994-95] CILR 56, at page 59.
[2] See definition of "financial services proceeding" at Order 71, rule 1(2) of the Grand Court Rules (2023 Revision) (the "GCR").
[3] See Section 4 of the Grand Court Act (2026 Revision).

Revision) provides that nothing in that Act "*shall affect the constitutional functions or constitutional independence of … the Chief Justice or any Judge of the Grand Court*", nor shall it require the judiciary to be treated as a government ministry or portfolio.[4]

2 Recognition and enforcement of U.S. judgments

In personam money judgments[5]

2.1 In the Cayman Islands, an *in personam* U.S. money judgment may be enforced, without any retrial of the merits at common law, by an originating action, filed in the Financial Services Division of the Grand Court, on the debt established by that judgment[6]. This common law route operates independently of the registration procedure under the Foreign Judgments Reciprocal Enforcement Act (1996 Revision) (the "Foreign Judgments Reciprocal Enforcement Act"), which currently applies (only) to Australia and its States and Territories, whereby any such registered judgments may be enforced directly as if they were local Cayman Islands judgments. A foreign judgment *in rem* is capable of recognition or enforcement at common law only if the subject-matter of the proceedings in which it was given was immovable or movable property situated in the foreign country at the time of those proceedings; in practice, such judgments are generally recognised rather than enforced.[7]

2.2 For an ordinary U.S. money judgment imposing a personal payment obligation, the principal requirements for recognition in the Cayman Islands at common law are that:

(a) the judgment is final and conclusive as between the parties (see paragraph 2.5(a)–(b) below);

(b) the U.S. court had jurisdiction over the subject matter and defendant(s) on a basis recognised by Cayman Islands conflict of laws rules (see paragraph 2.5(c)–(g) below);

(c) the judgment is for a definite liquidated sum (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty);

(d) the judgment was not obtained by fraud or in breach of natural justice (basic procedural fairness, including a fair opportunity to be heard);

(e) the judgment is not inconsistent with a Cayman Islands judgment in respect of the same matter; and

(f) enforcement would not be contrary to Cayman public policy.

2.3 Moreover, any enforcement action must be brought within 6 years from the date on which the judgment became enforceable (see section 30 of the Limitation Act (1996 Revision) (the "Limitation Act"), which also limits recovery of interest arrears in respect of a judgment debt to six years, subject to applicable statutory exceptions).[8]

2.4 Where the above requirements are met, no defence with a real prospect of success is raised, and there is no other compelling reason why the matter should be disposed of at a trial, the creditor may seek to obtain summary judgment: that is, a determination of the enforcement claim without a trial.

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[4] See Section 80 of the Public Management and Finance Act (2026 Revision).
[5] In this context, an *in personam* judgment is a judgment which determines personal rights and liabilities as between specific counterparties, in contrast to a judgment *in rem* which typically determines proprietary rights as against the world as a whole.
[6] See GCR Order 72, rules 1(2)(l) and 2(1).
[7] See 14R-108 (Rule 50) of Dicey and paragraphs 14-109 – 14-113 of Dicey (16th ed).
[8] If an action on a foreign judgment were instead treated as founded on a simple contract, section 7 of the Limitation Act also prescribes a six-year limitation period from the date of the breach of the contract in question.

Default judgment may also be available if the debtor does not respond to properly served proceedings (i.e. by failure to file and serve a Defence, in accordance with GCR Order 19).

2.5 Relevantly:

"Final and conclusive"

(a) A judgment is "*final and conclusive*" if it conclusively, finally and forever establishes the existence of the debt in respect of which such judgment was sought before the relevant court making the judgment; that is, the judgment is final and unalterable in the court which pronounced it.

(b) The possibility of appeal does not alter the finality of the judgment.[9] However, an available or pending appeal may nevertheless justify a stay of enforcement.[10]

Jurisdiction of the U.S. court

(c) It is necessary for the U.S. court to have jurisdiction over the defendant(s) against whom the judgment is made, as a matter of Cayman Islands conflicts of law rules.

(d) In *Adams v Cape Industries plc* [1990] Ch. 433, 517–518 (CA), the leading modern authority under English law, it was held that "*in determining the jurisdiction of the foreign court … our court [the English court] is directing its mind to the competence or otherwise of the foreign court to summon the defendant before it and to decide such matters as it has decided.*"

(e) In *Banco Mercantil del Norte SA v Cabal Peniche* [2003] CILR 343, Levers J. of the Grand Court identified four ways in which a foreign court may establish personal jurisdiction over a judgment debtor, as follows:

(i) if the judgment debtor was, at the time the proceedings were instituted, present in the foreign country;

(ii) if the judgment debtor was the plaintiff or counter-plaintiff in the proceedings in the foreign court;

(iii) if the judgment debtor was the defendant and submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings and contesting them on the merits; or

(iv) if the judgment debtor was the defendant and, before the commencement of the proceedings, agreed in respect of the subject-matter of the proceedings to submit to the jurisdiction of the foreign court.[11]

(f) An express agreement to submit exclusively to the jurisdiction of a foreign court in respect of the subject matter of the proceedings, including an appropriate service-of-suit clause in a reinsurance agreement, may establish submission to the jurisdiction of the relevant foreign

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[9] See paragraphs 14-027 – 14-033 of Dicey, Morris & Collins on the Conflicts of Laws (16th Ed) ("**Dicey**") and see also *TMSF v Merrill Lynch Bank and Trust Co (Cayman) Ltd* [2008] CILR 267, paragraphs 29–34. In that case, the Grand Court recognised and enforced (by way of summary judgment) a Turkish judgment in respect of a misappropriated sum; this was notwithstanding that there was the prospect of a later application to set aside the Turkish judgment.

[10] See *Nouvion v Freeman* (1889) 15 App Cas 1, as applied by the Grand Court in *Peterdy v Dennis* [1998] CILR 9, 1998 CILR Note 9 and by the Court of Appeal in *Gol Linhas Aereas SA (formerly VRG Linhas Aereas SA) v MatlinPatterson Global Opportunities Partners (Cayman) II LP* 2020 (2) CILR 704 (reversing *VRG Linhas Aereas S.A. v Matlin Patterson Global et al* [2019] 1 CILR 192; affirmed [2022] UKPC 21). See also *Scott v Pilkington* (1862) 2 B & S 11.

[11] See also paragraph 14-062 of Dicey and *Emanuel v Symons* [1908] 1 KB 302.

court under paragraph 2.5(e)(iv).[12] However, a clause choosing a foreign governing law (e.g. New York law) may not, by itself, amount to an agreement to submit to the jurisdiction of that foreign court; it is a question of construction of the contract.[13] An agreement to submit to the jurisdiction of a foreign court may be implied, but there must be an actual agreement or consent: see *Vizcaya Partners Ltd v Picard* [2016] UKPC 5, paragraphs 56–58 and 69–71; that was a Privy Council appeal from Gibraltar, persuasive in the Cayman Islands, concerning whether a default judgment entered against Vizcaya by the US Bankruptcy Court for the Southern District of New York could be enforced in Gibraltar.

(g) Submission may also arise from conduct in the foreign proceedings (i.e. "voluntarily appearing" in the proceeding). In *IGCF SPV 21 Ltd v Al Jomaih Power Ltd* [2025] UKPC 54, on appeal from the Cayman Islands Court of Appeal, the Privy Council held that *Henry v Geoprosco International Ltd* [1976] QB 726 forms no part of Cayman Islands law, and that Cayman Islands law on submission is as stated in *Rubin v Eurofinance SA* [2012] UKSC 46: a defendant submits to the jurisdiction of a foreign court if it takes a step in the foreign proceedings that is necessary or useful only if any jurisdictional objection has been waived. Merely contesting jurisdiction or seeking a stay in favour of arbitration does not constitute submission.[14]

Definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty)

(h) For a claim to be brought to enforce a foreign judgment, the judgment must be for a definite sum of money; if mere arithmetical calculation is required for ascertainment of the sum, it will be treated as being ascertained.[15]

(i) The courts of the Cayman Islands will not recognise and/or enforce, directly or indirectly, a judgment in respect of any fine, penalty or the tax of another jurisdiction.[16] In this context, a "penalty" typically refers to a sum payable to a state (and not a private person) and so an award of punitive or exemplary damages may not be "penal". However, if the purpose of the damages is to punish the defendant (e.g. an award of multiple damages) it may nevertheless be regarded as "penal" at common law and unenforceable as a matter of Cayman Islands public policy.[17]

Defences to enforcement of in personam money judgments

2.6 Enforcement of a foreign judgment in the Cayman Islands may be resisted on, amongst other things, the following grounds:

(a) the foreign court lacked jurisdiction under Cayman Islands conflict of law rules and/or the defendant did not submit to the jurisdiction of the foreign court. In *Kalley v Manus* 1999 CILR 566 ("*Kalley*"), the defendants had participated in Florida proceedings and in effect consented to judgment. Murphy J described their jurisdictional challenge to enforcement of the Florida

[12] See paragraphs 14-081 and 14-082 of Dicey.
[13] See paragraph 14-081 of Dicey and see also paragraph 14-084 of Dicey and in particular, footnote 342 citing *Sfeir & Co v National Insurance Co of New Zealand* [1964] 1 Lloyd's Rep. 330, 340.
[14] See paragraphs 54-58. See also *IGCF SPV 21 Ltd v Al Jomaih Power Limited and Denham Investment Ltd* CICA (Civil) Appeal No. 25 of 2023, 2 July 2024.
[15] See *Sadler v Robins* (1808) 1 Camp. 253 and see also paragraph 14-026 of Dicey.
[16] See paragraph 14-026 of Dicey. See also *Huntington v Attrill* [1893] A.C. 150 (PC); *United States v Inkley* [1989] QB 22 (CA); *Government of India v Taylor* [1955] AC 491 and *United States Securities and Exchange Commission v Manterfield* [2009] EWCA Civ 27, [2010] 1 WLR 172.
[17] See, for example, *Rio Tinto Zinc v Westinghouse Electric Corporation* [1978] AC 547 and *Schnabel v Lui* [2002] NSWSC 15.

judgment as "*an afterthought for purposes of the Cayman action … without any merit whatsoever*";

(b) enforcement of the foreign judgment would be a breach of Cayman Islands public policy: this is rarely engaged and only applies in clear cases. In *Bandone v Sol Properties Incorporated*, Henderson J held that "*any facile conclusion that the governmental, or judicial, structure in a foreign jurisdiction is such that a judgment of its courts must be ignored on the ground of domestic public policy, would itself be an egregious violation of the principle of comity*"[18]. In *Kalley*, the defendants said they had been forced to consent to judgment for fear of criminal prosecution. Murphy J held that if no such threat existed the defence was "*bogus, a sham*", and if it did exist, it would be contrary to public policy to let them resist enforcement "*by virtue of their own criminality*";

(c) the foreign proceedings involve breach of natural justice (e.g. inability to obtain fair trial). Relevantly, a debtor who has already failed to show, in a competent forum, that it could not obtain a fair trial may be estopped from raising the point again (see in *Bandone v Sol Properties Incorporated*). In *Kalley,* the natural justice defence rested on supposed procedural disadvantages in the US proceedings. Murphy J held that the defendants, having submitted to judgment, were "*clearly now estopped from taking any objection to the US proceedings"*; and

(d) fraud: we have not been able to identify any Cayman Islands case law authority in the context of enforcement of a foreign judgment which successfully engaged this defence.[19] In *Kalley,* Murphy J held *obiter* that a judgment debtor who knew the facts said to show fraud at all material times, and could have raised them in the foreign proceedings, "*ought not subsequently to be allowed to defend against the domestic enforcement action on that basis*". In other words, a foreign judgment allegedly tainted by the creditor's fraud is impeachable in the Grand Court "o*nly on the basis of newly discovered material facts which were not before the foreign court*".

2.7 Critically, the impeachment grounds are a closed list, and a judgment debtor cannot resist enforcement of a judgment of a foreign court in the Cayman Islands on the basis that the foreign court erred as a matter of fact or law. This was confirmed by the Privy Council, on appeal from the Cayman Islands, in *Gol Linhas Aéreas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21. The Board held, *obiter*, that "*[a] foreign judgment which satisfies the requirements for recognition at common law cannot be impeached for any error either of fact or law*" and further, that it was "*irrelevant whether the domestic court would regard the reasoning of the foreign judgment as open to criticism or even as 'manifestly wrong*'".[20] Albeit that this judgment was delivered in the context of enforcement of an arbitral award, this passage reflects the common law position on the conclusiveness of foreign money judgments.

2.8 In summary, in the context of recognition of foreign money judgments and as a matter of Cayman Islands law:

(a) a debtor cannot use the Cayman Islands enforcement action to reopen issues the foreign court decided, however strongly it disputes that foreign court's reasoning;

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[18] See paragraphs 39 – 40.

[19] See *Miller v Gianne* [2007] CILR 18, paragraph 59 per Smellie CJ: a defendant who submitted on the merits is bound by the resulting final and conclusive judgment, "*subject only to certain defences such as fraud, failure to comply with natural justice, public policy and inconsistency*".

[20] See paragraph 37. See also 14R-115 (Rule 51) of Dicey.

(b) an objection that a debtor has already litigated before a competent foreign court, or chose not to raise there, may be barred by issue estoppel or treated as an abuse of process;

(c) fraud provides no route back to the merits unless the debtor relies on newly discovered material facts that were not before the foreign court; and

(d) the Grand Court will deal with hopeless defences summarily, including by way of strike out and/or summary judgment.

In personam non-money judgments

2.9 While a developing area of law and the position is not free from doubt, the Grand Court may, in appropriate circumstances, recognise and enforce a final and conclusive in personam non-money judgment of a court of competent jurisdiction under Cayman Islands common law. The remedy is discretionary, dependent on the facts of the relevant case and, in particular, the Grand Court will have regard to the nature and terms of the foreign judgment. Relevant considerations include whether:[21]

(a) the foreign court had jurisdiction on a basis recognised by Cayman Islands law;

(b) the judgment is final and conclusive; and

(c) enforcement is appropriate as a matter of comity and consistent with Cayman Islands public policy.[22]

2.10 We are not aware of a case which specifically states that the defences listed above in respect of monetary judgments all apply to non-monetary judgments but we would expect similar types of defences could be raised.

Recognition and enforcement of U.S. court judgments in the insurance context

2.11 An ordinary U.S. judgment requiring payment under an insurance or reinsurance contract is generally an *in personam* money judgment capable of recognition and enforcement if the requirements in paragraph 2.2 are met. Enforcement of private contractual rights by a receiver or insurance liquidator is not, merely because of that office, enforcement of a foreign penal or revenue law. The nature of the right and relief sought remain material: see *Marada Global Corp v Marada Corp* [1994–95] CILR 546, 551–552.

2.12 Any punitive or multiple-damages component requires separate consideration under the penal-law and public-policy principles described in paragraph 2.5(i) and paragraph 2.6(b) and (c) above. It should not be assumed that every such award is unenforceable merely because it is described as punitive.

2.13 A U.S. cedant does not need a Cayman Islands insurance licence merely to bring proceedings to recognise and enforce a judgment against a Cayman Islands reinsurer.

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[21] See *Trezevant v Trezevant* (Cause No. FSD 314 of 2021, Doyle J, 10 November 2021).

[22] See *Miller v Gianne* [2007] CILR 18; *Bandone v Sol Properties Incorporated* [2008] CILR 301 and *Masri v Consolidated Contractors* [2010] (1) CILR 265.

Enforcement remedies in the Cayman Islands

2.14 A U.S. judgment cannot be registered under the Foreign Judgments Reciprocal Enforcement Act. The following paragraphs describe enforcement of a U.S. judgment in the Cayman Islands at common law.

2.15 At common law, the U.S. court judgment is not directly enforceable; instead, the Grand Court will give judgment for the debt due under the U.S. court judgment, which is then directly enforceable in the Cayman Islands. The judgment creditor may seek the following domestic enforcement remedies:

(a) garnishee order: that is, an order that a third party who owes money to the judgment debtor re-direct payment of that debt to the judgment creditor;

(b) charging order: an order charging specified property of the judgment debtor, with any subsequent sale subject to the applicable procedure and possible further order;

(c) the appointment of a receiver to collect and realise property over which the receiver is appointed for the benefit of the judgment creditor;

(d) writ of execution: that is, an order for the seizure of the judgment debtor's assets to the value and in satisfaction of the judgment debt; and

(e) committal for contempt: where a person bound by an enforceable court order disobeys it, the Grand Court may impose sanctions for contempt, subject to applicable procedural safeguards (GCR Order 52). This is not an independent remedy for non-payment of an ordinary judgment debt.[23]

2.16 In addition, the Grand Court can grant interim relief, including a freezing injunction, and/or the appointment of a receiver in support of proceedings commenced outside the Cayman Islands (i.e. in the U.S. courts) which are capable of giving rise to a judgment which may be enforced in the Cayman Islands.[24]

2.17 A creditor may also petition to wind up a debtor liable to be wound up by the Grand Court on the basis of an unpaid judgment debt.[25] The Grand Court has held that a foreign judgment may form the basis of a winding-up petition without first being formally enforced in the Cayman Islands: see *In the matter of Guoan International Limited* 2021 (2) CILR 625. The decision in *Drelle v Servis-Terminal LLC (in liquidation in the Russian Federation)* [2026] UKSC 29 strongly supports this approach. See paragraphs 78 and 82–89: the English Supreme Court held that an unrecognised and unregistrable foreign money judgment could constitute a debt supporting a bankruptcy petition without prior recognition in England. Its common law reasoning is likely to be persuasive in Cayman Islands winding-up proceedings, subject to the applicable statutory requirements and any genuine dispute concerning the debt.

[23] See GCR Order 45, rule 1 and Orders 49 – 51.
[24] See Section 11A of the Grand Court Act.
[25] The Grand Court has jurisdiction to make winding up orders in respect of: (a) an existing company; (b) a company incorporated and registered under the Companies Act; (c) a body incorporated under any other law; and (d) a foreign company which (i) has property located in the Cayman Islands, (ii) is carrying on business in the Cayman Islands, (iii) is the general partner of a limited partnership, or (iv) is registered as a foreign company under Part 9 of the Companies Act; see Section 91 of the Companies Act. See also Sections 92(d), 93 and 94 of the Companies Act.

3 Recognition and enforcement of U.S. arbitral awards

3.1 The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the “New York Convention”), was extended to the Cayman Islands by the United Kingdom by notification of 26 November 1980, with effect from 24 February 1981, subject to a declaration that it applies only to awards made in the territory of another Contracting State. The United States is a Contracting State, so an award made in the United States satisfies that territorial requirement. The Convention facilitates recognition and enforcement of qualifying foreign arbitral awards.

3.2 The enforcement of foreign arbitral awards is governed by the Arbitration Act, 2012 (the "Arbitration Act") and the Foreign Arbitral Awards Enforcement Act (1997 Revision) (the "Enforcement Act"). The Enforcement Act gives effect to the New York Convention in the Cayman Islands.

3.3 Pursuant to section 5 of the Enforcement Act and section 72(5) of the Arbitration Act, a U.S. arbitral award falling within the definition of an award in section 2 of the Arbitration Act may be recognised as binding and enforced in the Grand Court, subject to the documentary requirements and limited refusal grounds in the Enforcement Act. An award for payment of money may then be enforced in the same manner as a domestic award.[26] An action to enforce an award, where the submission is not by an instrument under seal, must be brought within six years from the date on which the cause of action accrued (section 9 of the Limitation Act).

3.4 The Grand Court may only refuse to recognise and enforce a U.S. arbitral award in limited circumstances. Section 7(1) of the Enforcement Act provides that enforcement shall not be refused except in the cases set out in section 7(2) and (3). Under section 7(2), enforcement may be refused only if the person against whom the award is invoked proves that:

(a) a party to the arbitration agreement was (under the law applicable to him) under some incapacity;

(b) the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;

(c) a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present their case;

(d) the award deals with a difference not falling within the terms of the arbitration agreement or contains decisions on matters that are beyond its scope;

(e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or

(f) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made; and

under section 7(3),

(g) the award is in respect of a matter which is not capable of settlement by arbitration; or

[26] See also Section 72 of the Arbitration Act.

(h) enforcing the award would be contrary to public policy in the Cayman Islands (being the jurisdiction where enforcement is sought). The public policy ground is construed narrowly in light of the Convention's purpose of facilitating enforcement.[27]

3.5 It is important to note that a U.S. arbitral award entitled to recognition at common law cannot be impeached for error of fact or law, following: *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21, paragraph 37 (Privy Council, on appeal from the Cayman Islands).

3.6 Where an application to set aside or suspend the award has been made to a competent authority, section 7(5) of the Enforcement Act permits the Grand Court to adjourn enforcement and, on the enforcing party's application, to order the other party to give suitable security.

3.7 Section 54 of the Arbitration Act provides the Grand Court with the same power to issue interim measures in support of arbitration proceedings (irrespective of whether the arbitration is seated in the Cayman Islands) as it has in relation to proceedings before the Grand Court (see paragraph 2.16 above). The Cayman Islands Court of Appeal upheld the exercise of the Grand Court's power under this section in *Minsheng Vocational Education Company Ltd v Leed Education Holding Ltd* 2024 1 CILR 308[28]: in that case, the Grand Court made an injunction restraining the enforcement of Cayman Islands law governed share charges pending determination of the arbitration proceedings seated in Mainland China.

3.8 The Grand Court has granted leave to enforce U.S. arbitral awards in a number of cases, including:

(a) *GlobeOp Financial Services LLC v Titan Capital Group III LP* 2014 (1) CILR 412, in which leave to enforce a New York award confirmed by a U.S. court was granted without notice, subject to the defendants' right to apply to set it aside, and mere allegations that a refusal ground existed were held insufficient to justify refusal of enforcement, and, further, the New York court had rejected the defendants' objections in this regard; and

(b) *ArcelorMittal USA LLC v Essar Steel Ltd*, FSD 2 and 74 of 2019 (IKJ), judgment of 2 July 2019, in which the Grand Court gave leave to enforce a final International Chamber of Commerce award of approximately US$1.38 billion made by a tribunal sitting in Minnesota.

3.9 Cayman Islands courts generally give effect to a valid express choice of foreign law in a commercial contract, subject to Cayman Islands conflict of laws rules, mandatory rules and public policy. A valid arbitration agreement may require a stay of court proceedings under section 9 of the Arbitration Act or section 4 of the Enforcement Act, as applicable. Choice of governing law, an agreement to arbitrate and submission to the relevant tribunal's jurisdiction are distinct questions.

3.10 A creditor may also petition to wind up a debtor liable to be wound up by the Grand Court on the basis of an unpaid arbitral award: see in *Re China Hospitals Incorporated* [2018 2 CILR 335].

4 Contractual undertakings and credit for reinsurance

4.1 Consent to jurisdiction, service-of-process provisions and collateral undertakings should be considered separately. By way of U.S. regulatory context only, the NAIC Credit for Reinsurance Model Law (#785) (the "Model Law"), section 2E(1)(d), and Credit for Reinsurance Model Regulation

[27] See *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21 (Privy Council), which also held that the due-process ground is engaged only by a serious violation of fundamental and generally accepted requirements of due process; and the Court of Appeal decision in Gol Linhas 2020 (2) CILR 704, paragraph 111.

[28] See paragraphs 51–52 and 136–138.

(#786) (the "Model Regulation"), section 8B(6) and Form CR-1, contain the certified-reinsurer jurisdiction and security undertaking. The reciprocal-jurisdiction provisions in Model Law section 2F(1)(d)(iii)–(v) and Model Regulation section 9C(4)(c)–(e) address consent to pay final judgments, resistance to enforcement and participation in solvent schemes. These are distinct regimes, and their enactment and application in each state are matters of U.S. law.

4.2 A Cayman Islands incorporated reinsurer may in principle agree to submit to U.S. jurisdiction and to provide 100% security in specified circumstances. The Cayman Islands law effect of a properly authorised and validly constituted undertaking is subject to its governing law, applicable regulatory requirements, ordinary contractual defences and insolvency law. No opinion is expressed on its enforceability under U.S. law. Any security provided must separately satisfy the applicable requirements for creation, perfection and priority.

4.3 As a matter of Cayman Islands law, security is not invalidated and/or void merely because the Cayman Islands incorporated reinsurer enters liquidation; a secured creditor may enforce its security notwithstanding a winding up order has been made, without leave of the Grand Court or reference to the liquidator(s).[29]

4.4 However, the creation or replenishment of security by the Cayman Islands incorporated reinsurer during a period of financial distress remains subject to the avoidance provisions of the Companies Act. Relevantly:

(a) Section 99 of the Companies Act provides that: "*[w]hen a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void*";

(b) Section 145 of the Companies Act provides that: "*[e]very conveyance or transfer of property, or charge thereon, and every payment, obligation and judicial proceeding, made, incurred, taken or suffered by any company in favour of any creditor at a time when the company is unable to pay its debts within the meaning of section 93 with a view to giving such creditor a preference over the other creditors shall be voidable upon the application of the company's liquidator if made, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation*." The liquidator must establish that the company's dominant intention was to prefer the creditor; the mere fact that one creditor is paid or secured ahead of others is not sufficient. However, a creditor shall be treated as a "related party" if it has the ability to control the company or exercise significant influence over the company in making financial and operating decisions. A payment made to a related party shall be deemed to have been made with a view to giving such creditor a preference; and

(c) Section 146 of the Companies Act provides that: "*[e]very disposition of property made at an undervalue by or on behalf of a company with intent to defraud its creditors shall be voidable at the instance of its official liquidator*".[30]

4.5 Accordingly, whether new or additional security is validly and properly granted and not capable of being set aside will be determined by reference to the circumstances in which it was granted (i.e. by reference to the constitutional documents and the solvency of the Cayman Islands reinsurer at and immediately following the grant of such security, and the terms/format of such security). No such

[29] See Section 142(1) of the Companies Act.

[30] See also Section 4 of the Fraudulent Dispositions Act also provides that "*[s]ubject to this [Act], every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced*", and applies outside of an insolvency context.

action may be commenced more than six years after the date of the relevant disposition (section 146(4) of the Companies Act).

5 Insolvency and creditor protection

Liquidation

5.1 The winding up and liquidation of companies in the Cayman Islands is governed by Part 5 of the Companies Act. Part 5 provides that a company liable to be wound up in the Cayman Islands[31] may:

(a) be wound up compulsorily by order of the Grand Court; or

(b) be wound up voluntarily in the following circumstances:

(i) when the period, if any, fixed for the duration of the company by its articles of association expires;

(ii) if the event, if any, occurs, on the occurrence of which the articles of association provide that the company is to be wound up;

(i) if the company resolves by special resolution that it be wound up voluntarily; or

(ii) if the company in general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts.

5.2 As regards a compulsory winding up by the Grand Court, a company may be compulsorily wound up by the Grand Court as set out in Part 5 of the Companies Act and the Companies Winding Up Rules. Relevantly, a company may be wound up if the company is unable to pay its debts[32] or the Grand Court is of the opinion that it is just and equitable that the company should be wound up.[33]

5.3 The Companies Act provides that an application for the winding up of a Cayman Islands exempted company may be made by, *inter alios*:

(a) the exempted company (acting by its directors, where they have the requisite authority under section 94 of the Companies Act and the company's articles of association where necessary));[34]

(b) any creditor of the exempted company; or

(c) any contributory of the exempted company (for practical purposes, any member).

5.4 Where a petition is presented for the winding up of an company holding a licence under section 4 of the Insurance Act, 2010, as amended (the "Insurance Act"), including an exempted company, section

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[31] The Grand Court has jurisdiction to make winding up orders in respect of: (a) an existing company; (b) a company incorporated and registered under the Companies Act; (c) a body incorporated under any other law; and (d) a foreign company which (i) has property located in the Cayman Islands, (ii) is carrying on business in the Cayman Islands, (iii) is the general partner of a limited partnership, or (iv) is registered as a foreign company under Part 9 of the Companies Act; see Section 91 of the Companies Act.

[32] See Section 93 of the Companies Act: "*[a] company shall be deemed to be unable to pay its debts if: (a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding one hundred dollars then due, has served on the company by leaving at its registered office a demand under that person's hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; (b) execution of other process issued on a judgment, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.*"

[33] See Section 92(d) and (e) of the Companies Act.

[34] The power of directors to petition for the winding up of a Cayman Islands company can be excluded or limited in the company's articles.

27 of the Insurance Act provides that CIMA shall be served with a copy of the petition and may appear at the hearing thereof. Additionally, pursuant to section 24(5)(e) of the Insurance Act and section 94(1)(d) of the Companies Act, CIMA may itself seek to present a petition for the winding up of a company holding a licence under the Insurance Act.

5.5 In the event that a winding up order is made:

(a) the Companies Act does not confer a general statutory power to disclaim onerous contracts and liquidation does not, by itself, extinguish a company's contractual liabilities. Accordingly, claims under a reinsurance contract may be provable in the official liquidation of an eligible company. In particular, section 139(1) of the Companies Act provides that: "*[a]ll debts payable on a contingency and all claims against the company whether present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company and the official liquidator shall make a just estimate so far as is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages or which for some other reason do not bear a certain value";* and

(b) an automatic moratorium applies with extraterritorial effect (as a matter of Cayman Islands law).[35] This prevents creditors and other parties from commencing or continuing any suit, action or other proceeding (other than criminal proceedings) against the company without the leave of the Grand Court and subject to such conditions as the Grand Court may impose. However, the moratorium does not apply to secured creditors, who remain entitled to enforce their secured claims against the company (see paragraph 4.3).[36]

5.6 In the liquidation of an eligible company, pursuant to section 140(1) of the Companies Act, the property of the company shall, subject to section 140(2), be applied in satisfaction of its liabilities *pari passu* and, subject thereto, distributed amongst the members according to their rights and interests in the company. Section 140(2) of the Companies Act further provides that the collection in and application of the property is without prejudice to and after taking into account and giving effect to, the rights of preferred and secured creditors, and to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors. Further, section 140(2) of the Companies Act preserves contractual rights of set-off and netting (including bilateral and multilateral arrangements), subject to any agreement to waive or limit them. Pre-liquidation contractual set-off, non-set-off and netting arrangements are binding on the company in liquidation and shall be enforced by the official liquidator under the Companies Winding Up Rules, Order 16, rule 9(2). In the absence of a contractual right of set-off or non-set-off, section 140(3) and Order 16, rule 10 provide for an account of mutual dealings and set-off of the resulting sums. Under section 140(4), sums due from the company are excluded from that account if the other party had notice, when they became due, that a winding up petition was pending. Under section 140(5), only the resulting balance is provable in the liquidation or payable to the liquidator. These provisions operate alongside the rights and priorities described in paragraphs 5.7–5.8.

5.7 On a company's liquidation, parties should generally be paid in the following order of priority:

(a) claims by employees working in the Cayman Islands in respect of severance pay[37];

[35] The extraterritorial effect of such moratorium will be subject to enforcement and/or recognition as a matter of relevant local law.
[36] See Section 97 of the Companies Act.
[37] See section 40(2) of the Labour Act (As Revised).

(b) fixed charge holders[38];

(c) the costs and expenses of the liquidation (including the liquidator's remuneration)[39];

(d) preferential debts (which include certain debts due to employees and certain taxes and fees due to the Cayman Islands Government)[40];

(e) floating charge holders[41];

(f) unsecured, unsubordinated provable debts (i.e. ordinary unsecured creditors);

(g) subordinated creditors[42];

(h) where the liquidation lasts for more than six months, post-liquidation interest[43];

(i) non-provable liabilities;

(j) shareholder claims pursuant to non-paid redemptions[44];

(k) preference shareholders; and

(l) shareholders.

5.8 The ranking of a claim in the liquidation of a Cayman Islands reinsurer depends on the nature of the claim, available security, subordination, netting or set-off, applicable preferences and any statutory segregation, rather than the creditor's domicile. An ordinary unsecured reinsurance claim has no special priority merely because it arises under reinsurance. A U.S. cedant's ordinary unsecured claim ranks equally with comparable ordinary unsecured claims, including those of domestic cedants. Neither the Companies Act nor the Insurance Act confers a general preference on policyholders or ceding insurers as such in the liquidation of a Cayman Islands insurer, noting that the statutory asset pools described in paragraphs 5.22 and 5.23 and the segregation of portfolio assets, ring-fence specified assets for specified liabilities; they do not rank any class of creditor ahead of others. Within each relevant asset pool, distribution follows the statutory and contractual rights applicable to that pool.

5.9 Ownership and the legal character of collateral determine whether it forms part of the assets available for distribution. In *Cleaver v Delta American Reinsurance Co* [2001] UKPC 6, paragraphs 31–32 and

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[38] The costs and expenses of any receiver appointed to realise the charged property may be paid by the appointing party or recovered out of the secured assets. Where the Court orders the sale of secured property, outstanding contributions to the company's pension fund are deducted before the secured creditor is paid (section 65(3) of the National Pensions Act (As Revised)).

[39] See section 109 of the Companies Act (As Revised) and Order 20 of the Companies Winding Up Rules 2018 ("Winding Up Rules"). Order 20 of the Winding Up Rules sets out the payment waterfall for the different categories of liquidation expenses.

[40] Preferential debts are governed by section 141 and Schedule 2 of the Companies Act. In addition, where the company holds an A class banking licence, subject to certain exceptions, depositors with deposits of CI$20,000 or less are preferred up to the value of their deposit. Taxes and fees due to the Cayman Islands Government will include fees due under the Companies Act and licence fees payable under regulatory laws (this includes fees payable to the Cayman Islands Monetary Authority by regulated entities).

[41] Where the Court orders the sale of secured property, outstanding contributions to the company's pension fund are deducted before the secured creditor is paid (section 65(3) of the National Pensions Act (As Revised)).

[42] This represents the likely position of creditors who have agreed that their claims will be subordinated.

[43] See section 149 of the Companies Act and Order 16, Rule 12 of the Winding Up Rules.

[44] This category relates to shareholders who redeemed all or part of their investment but have not been paid prior to the commencement of the liquidation.

40–41 (a Cayman Islands appeal), the Privy Council held that letter-of-credit proceeds received by a U.S. insurance liquidator were not assets of the Cayman retrocessionaire's estate and did not have to be brought into account before the creditor could receive a dividend on its remaining debt. The decision illustrates the protection provided by appropriately constituted collateral; the outcome for any arrangement depends on its particular ownership, contractual and security rights.

International Co-operation

5.10 Sections 240–242 of the Companies Act provide a mechanism for a foreign representative to seek the assistance of the Grand Court in aid of a foreign insolvency proceeding. For this purpose, a "debtor" is a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established.[45] Relevantly, upon the application of a foreign representative (being a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding), the Grand Court may make orders ancillary to that proceeding for the purposes of:

(a) recognising the right of a foreign representative to act in the Islands on behalf of or in the name of a debtor;

(b) enjoining the commencement or staying the continuation of legal proceedings against a debtor;

(c) staying the enforcement of any judgment against a debtor;

(d) requiring a person in possession of information relating to the business or affairs of a debtor to be examined by and produce documents to its foreign representative; and

(e) ordering the turnover to a foreign representative of any property belonging to a debtor.

5.11 An order under paragraph (d) may only be made against the debtor itself or a person who was or is a "relevant person" as defined in section 103(1) (for example, a director, officer or professional service provider of the debtor).[46]

5.12 In determining whether to make any such order, the Grand Court will be guided by matters which will "*best assure an economic and expeditious administration of the debtor's estate*" consistent with:

(a) the just treatment of all holders of claims against or interests in a debtor's estate wherever they may be domiciled;

(b) the protection of claim holders in the Cayman Islands against prejudice and inconvenience in the processing of claims in the foreign bankruptcy proceeding;

(c) the prevention of preferential or fraudulent dispositions of property comprised in the debtor's estate;

(d) the distribution of the debtor's estate amongst creditors substantially in accordance with the order prescribed by Part 5 (see paragraphs 5.6–5.8 above);

(e) the recognition and enforcement of security interests created by the debtor;

(f) the non-enforcement of foreign taxes, fines and penalties; and

(g) comity.

[45] See section 240 of the Companies Act.
[46] See section 241(2) of the Companies Act.

5.13 The Grand Court has recognised a U.S. trustee appointed under the U.S. Securities Investor Protection Act of 1970 under section 241(1)(a) of the Companies Act in the Cayman Islands as the sole person entitled to act on behalf of the debtor in Cayman: see *In re Bernard L Madoff Investment Securities LLC* 2010 (1) CILR 231.

5.14 Section 240 of the Companies Act defines "foreign bankruptcy proceeding" to include "proceedings for the purpose of reorganising or rehabilitating an insolvent debtor". Accordingly, a U.S. ceding insurer that is subject to a receivership or rehabilitation proceeding in its state of domicile, and that is insolvent, is capable of falling within these provisions, so that its receiver may apply for that assistance under section 241. Statutory assistance is, however, available only where the foreign representative was appointed in the debtor's place of incorporation; where that is not the case, the common law route described in paragraph 5.15 would need to be considered.[47]

5.15 In this regard, Practice Direction No. 1 of 2018 (Court-to-court Communications and Co-Operation in cross-border insolvency and restructuring cases) and Practice Direction No. 2 of 2019 (Adoption of Judicial Insolvency Network Modalities for Court to Court Communications) provide that officeholders appointed in the Cayman Islands should consider "*at the earliest opportunity*" whether to incorporate "*some or all*" of the Guidelines[48] (with suitable modification) either into an international protocol to be approved by the Grand Court or an order of the Grand Court adopting the Guidelines[49]; with mechanics for the form and process for such co-ordination / cooperation. Relevantly, official liquidators in the Cayman Islands are under a duty to (and other officeholders should) consider whether or not it is appropriate to enter into an international protocol with any foreign officeholder and/or Court to promote the orderly administration of the liquidation estate and to avoid duplication or work and conflict between the officeholders (including in respect of allocation of responsibilities, exchange of information and reporting to creditors and/or contributories or coordinating applications to the Grand Court and any foreign court).

5.16 Where statutory assistance is unavailable, the Grand Court has a common-law power to recognise and assist foreign court-appointed liquidators in appropriate circumstances, including some appointed outside the company's place of incorporation: see *In re China Agrotech Holdings Ltd* 2017 (2) CILR 526. That power is only available in certain limited circumstances, is subject to the limits of Cayman Islands law and is not a general power to import foreign insolvency law or bypass the ordinary requirements for enforcement of foreign judgments.

Segregated Portfolio Companies

5.17 Segregated portfolio companies ("**SPCs**") are governed by Part 14 of the Companies Act together with the general principles under Part 5 applicable to all Cayman Islands companies unless otherwise modified. They are commonly used in the Cayman Islands insurance and reinsurance industry as flexible, multi-cell corporate structures.

5.18 An SPC is a single legal entity (section 216(2) of the Companies Act); its segregated portfolios are not separate legal persons. The SPC may issue shares attributable to a particular portfolio under section 217. The statutory regime separates the assets and liabilities of each portfolio from those of other portfolios and from the company's general assets (sections 216(1), 219–221).

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[47] See also Foreign Bankruptcy Proceedings (International Co-operation) Rules, 2018.

[48] Being, the American Law Institute / International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases and the Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters.

[49] See Order 21, rule 2(1) of the CWR.

5.19 Section 220 of the Companies Act provides that segregated portfolio assets shall only be available to meet liabilities to creditors and shareholders in respect of that segregated portfolio and shall be absolutely protected from creditors and shareholders who are not creditors or shareholders in respect of that segregated portfolio.

5.20 A liability attributable to a particular portfolio is recoverable first from that portfolio's assets and, unless the articles prohibit it, secondarily from the company's general assets only to the extent that the portfolio's assets are insufficient and the general assets exceed any minimum capital amounts lawfully required by a Cayman Islands regulatory body. There is no recourse to another portfolio's assets (sections 221 and 222 of the Companies Act). A liability not attributable to any particular portfolio is recoverable only from the company's general assets (sections 221(2) and 222(1)).

5.21 Section 223(1) of the Companies Act also provides that, notwithstanding any statutory provision or rule of law to the contrary, a liquidator of a segregated portfolio company must deal with the company's assets only in accordance with the segregation procedures required by section 219(6) and, in discharging the claims of creditors and holders of segregated portfolio shares, must apply the company's assets to those entitled to have recourse to them under Part 14.

5.22 Section 223 further provides that section 140 of the Companies Act (which governs the general distribution of a company's property in a winding-up) is modified in respect of segregated portfolio companies such that, in the event of any conflict between Part 14 (governing segregated portfolio companies) and section 140, Part 14 shall prevail. Accordingly, the general insolvency waterfall set out above at paragraphs 5.6–5.8 applies subject to the statutory ring-fencing of each portfolio's assets and liabilities.

5.23 Sections 224 and 225 of the Companies Act provide the mechanics for the appointment of receiver(s) in respect of a segregated portfolio. Section 224 provides that, in relation to an SPC, if the Grand Court is satisfied: (a) that the segregated portfolio assets attributable to that portfolio are or are likely to be insufficient to discharge the claims of creditors in respect of that portfolio; and (b) the making of a receivership order would achieve the following purposes: (i) the orderly closing down of the business of or attributable to the portfolio; and (ii) the distribution of the assets attributable to the portfolio to the persons entitled to have recourse thereto, the Grand Court may make a receivership order in respect of that segregated portfolio. Section 225 of the Companies Act provides, amongst other things, the persons who may make an application for the appointment of receiver(s) and the powers of the Grand Court to make: an order for the appointment of receivers or for leave to resolve to wind up the SPC voluntarily, or an interim order and/or to an order to adjourn the hearing conditionally or unconditionally.

5.24 Section 226 of the Companies Act provides, amongst other things, the powers of a receiver(s), including to apply to the Grand Court for directions. Section 226(5) of the Companies Act also provides that "*[w]hen an application has been made for, and during the period of operation of, a receivership order, no suit, action, or other proceedings shall be instituted against the [SPC] in relation to the segregated portfolio in respect of which the receivership order was made except by leave of the [Grand] Court, which may be conditional or unconditional*." However, notably, Section 224(4) of the Companies Act provides that a receivership order may not be made and/or shall cease to be of effect upon the commencement of the winding up of the SPC.

Portfolio Insurance Companies

5.25 A portfolio insurance company ("PIC") is a separately incorporated exempted company registered with CIMA under Part 4A of the Insurance Act.[50] All its voting shares are held by a licensed insurer established as an SPC, other than a Class A insurer, for a particular segregated portfolio. Unlike the segregated portfolio itself, the PIC is a separate legal person: contracts entered into by the PIC give rise to its own rights and liabilities. Its separate corporate identity must therefore be distinguished from the statutory segregation within its shareholder SPC.

Separation of Accounts

5.26 The Insurance Act also protects identified insurance asset pools. For a Class D insurer carrying on both long-term and general business, section 16(1)–(2) requires a separate long-term business account and restricts payments from it to the relevant long-term business, except for surplus certified by a CIMA-approved actuary as distributable otherwise than to policyholders. Sections 16(3)–(4) require separate accounts, identifying records and segregated funds for linked policies issued by any insurer licensed under the Insurance Act. Under section 17, as amended by the Insurance Amendment Act 2022, Class A, B and D insurers carrying on long-term business may establish separate accounts for qualifying life, annuity and capital redemption contracts. Assets in such an account may meet only liabilities arising from the contract for which it was established or liabilities specifically relating to the account's operation. Section 17(c) extends that protection to reinsurance: the insurer's claim under reinsurance of a separate-account contract is deemed an asset of that account to the extent the insurer fails to meet its obligations under the contract, and any reinsurance payment must be credited immediately to that account, including where the insurer is insolvent. Those recoveries therefore do not form part of the insurer's general estate available to its other creditors.

Trust Funds

5.27 A separate statutory trust regime applies to external insurers (Class A insurers whose principal or registered office is outside the Cayman Islands) carrying on domestic business (insurance of Cayman-resident persons or Cayman-situated risks). Except as otherwise approved by CIMA, section 15 of the Insurance Act requires CIMA-approved funds to be maintained on trust with a CIMA-approved trustee, under a CIMA-approved trust deed, in a segregated account at a Cayman Islands bank holding an "A" licence. The funds are to be used exclusively to discharge the insurer's obligations to policyholders and are not to be made the subject of any charge, security interest, assignment, lien or other dealing with those funds. These protections apply within their specified statutory scope.

6 Schemes of Arrangement

6.1 A scheme of arrangement is a court sanctioned compromise, arrangement, reconstruction or amalgamation made between a company and its creditors and/or members (or any class of them) pursuant to section 86 or section 87 of the Companies Act.[51]

6.2 A creditor scheme under section 86 is available to both solvent and insolvent companies, including a reinsurer. It is not itself a formal insolvency process, and directors generally remain in control of the company (outside the restructuring officer regime).

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[50] Insurance (Amendment) Act, 2013 inserted into the Insurance Act, 2010.

[51] For completeness, a scheme of arrangement may also be effected within a "restructuring officer regime" proceeding pursuant to Section 91I of the Companies Act. Within this process, the scheme of arrangement will benefit from a statutory moratorium (applicable from the date of the presentation of the petition for the appointment of restructuring officer(s)).

6.3 For an insurance scheme, the proposed treatment and valuation of contingent claims, including incurred but not reported claims, and any proposed commutation of future cover require particular attention in the explanatory material, class analysis and sanction assessment. English authority, which is persuasive in the Cayman Islands, shows that, on the particular facts of a solvent insurance scheme, sanction may be refused where creditors with incurred but not reported claims are not properly classed: *Re British Aviation Insurance Co Ltd* [2005] EWHC 1621 (Ch), paragraphs 92, 97 and 142–143.

6.4 A creditor scheme of arrangement must be approved by a majority in number representing 75% in value of each class of creditor present and voting, in person or by proxy, at meeting(s) convened at the direction of the Grand Court (that is, a dual majority test applies) (section 86(1) – (2) of the Companies Act). Whereas a member scheme of arrangement requires the approval of 75% in value of each class of member present and voting, in person or by proxy, at meeting(s) convened at the direction of the Grand Court (i.e. no headcount test applies in respect of a member scheme of arrangement) (section 86(2A)).[52] The same thresholds apply to a scheme proposed within a restructuring officer proceeding (section 91I(2) – (3)).

6.5 The test for class composition was set out in *Re Euro Bank Corporation (in Liquidation)* [2003] CILR 205 and provides that each class is required to be formed of those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest; it is the similarity or dissimilarity of rights against the company and not private interests or commercial differences which will be relevant to classing.[53]

6.6 If the requisite statutory majority of each class of creditors and/or members votes to approve the scheme of arrangement at the relevant scheme meeting(s), the Grand Court may then exercise its discretion to sanction the scheme of arrangement. The Grand Court will not act as a "rubber stamp", but will consider, amongst other things:

(a) whether the affected stakeholders were given sufficient information about the scheme of arrangement (and in sufficient time) to enable them to make an informed decision on whether or not to support it;

(b) whether the scheme of arrangement was fair and one which an intelligent and honest man acting in accordance with his interests as a member of the class within which he voted might reasonably approve (although the Grand Court is not concerned to decide whether the scheme of arrangement is the only fair scheme or even the best scheme);

(c) whether there has been fair and adequate representation of the class(es) at the scheme meetings, and/or whether the majority were coercing the minority in order to promote interests adverse to the class whom they purport to represent; and

(d) whether there is any blot or defect in the scheme of arrangement that would, for example, make it unlawful or inoperable.[54]

6.7 If the required statutory majorities approve the scheme and the Grand Court sanctions it, the scheme will become effective in accordance with its terms upon delivery of the sanction order to the Registrar of Companies for registration (section 86(3)) and will thereupon be binding on all affected classes of

[52] The statutory majority is calculated by reference to those members of the requisite class present and voting at the scheme meeting (not of the entire class).
[53] See also *In re SPhinX Group of Companies* 2014 (2) CILR 131.
[54] See *In the matter of Logan Group Company Limited* [2026] CIGC (FSD) 65 at 17(6) and 36.

creditors and/or members, including dissenting or non-voting creditors or members. There is currently no general cross-class cram-down under section 86.

6.8 The scheme of arrangement process involves substantive engagement of the Grand Court. Objecting and/or dissenting creditors and/or members (as applicable) have the opportunity to:

(a) attend and be heard at the first hearing before the Grand Court at which, amongst other things, the composition of the class(es) of creditor(s) and/or member(s) is considered;

(b) attend and vote against the scheme of arrangement at the scheme meetings convened by the Grand Court in respect of each class of creditor and/or member and to raise any comments and/or questions to the scheme company (which opportunity may be used to persuade other affected creditor(s) and/or member(s) in the class to vote against the scheme);[55] and

(c) attend and be heard at the second hearing before the Grand Court at which the Grand Court will determine whether or not to exercise its discretion to sanction the scheme.

6.9 Similar to winding up proceedings, a scheme of arrangement may be effected in respect of any company liable to be wound up under the Companies Act, and may therefore, include a foreign company. A notable example of a Cayman Islands scheme of arrangement being used to effect the restructuring of financial indebtedness of a foreign incorporated company is *In re Ocean Rig UDW Inc* 2017 (2) CILR 495.

Restructuring Officer Regime

6.10 Under section 91B(1) of the Companies Act, a company (which, by section 91A, includes any company liable to be wound up under section 91, and therefore certain foreign companies) may itself petition for the appointment of restructuring officers, acting by its directors and without a resolution of its members or an express power in its articles (section 91B(2)), where it:

(a) is or is likely to become unable to pay its debts within the meaning of section 93 of the Companies Act; and

(b) intends to present a compromise or arrangement to its creditors (or classes thereof) either pursuant to the Companies Act, the law of a foreign country, or by way of a consensual restructuring.

6.11 While each case turns on its own facts, in general terms, in order to access the restructuring officer regime, the Grand Court will usually require "credible" evidence of actual or likely insolvency, a rational restructuring proposal with reasonable prospects of success, and actual or potential majority-creditor support for it as a more favourable commercial alternative to winding up (see *In re Oriente Group Ltd* 2022 (2) CILR 391, paragraph 11 and *In re Aubit International* (Unreported, 4 October 2023, paragraph 126(6)).

6.12 The restructuring officers' powers and the extent of the directors' continuing powers are determined by the appointment order. For a company carrying on a regulated business, section 91B(6) requires the petition to be served on CIMA immediately after presentation.

6.13 Section 91G of the Companies Act provides a moratorium from presentation of a restructuring officer petition and during an appointment, subject to its statutory terms. Proceedings (other than criminal proceedings) against or commenced by the company and winding-up steps require the Grand Court's leave while the moratorium applies. Section 91H preserves the right of a secured creditor to enforce its security without leave or reference to the restructuring officer(s). Section 91I permits a scheme

[55] Creditors and or members as relevant are permitted to attend the scheme meeting virtually.

within that regime. A scheme of arrangement proposed to be effected under section 86 or 87 of the Companies Act will not engage this moratorium (i.e. without the appointment of restructuring officer(s)).

6.14 Insurance business transfers are subject to separate regulatory protections. For general business, section 8(1)(b)(ii) of the Insurance Act requires an insurer other than an external insurer to obtain CIMA's prior written approval to amalgamate with another insurer or, outside the normal course of business, transfer its insurance operations or any part of them, or accept such operations from another insurer. Section 31 of the Insurance Act requires CIMA approval for transfers or amalgamations of long-term business. The application must be supported by independent evidence, including a professional report on the terms and notice to every affected policyholder, and CIMA may approve the transfer subject to such terms and conditions as it sees fit, having regard to the rights and interests of all affected policyholders. A transfer effected without approval is void. A scheme does not dispense with any applicable approval requirement.

6.15 Recognition of a Cayman Islands scheme in the United States, and the treatment of U.S.-held collateral, are matters of applicable U.S. law on which we express no opinion. They require separate advice from U.S. counsel. A Cayman Islands sanction order should not, by itself, be assumed to alter rights in U.S.-held collateral. Any U.S. regulatory undertakings concerning solvent schemes (paragraph 4.1) operate in addition to the safeguards described above.

6.16 The regulatory submission should separately provide the complete record of any solvent schemes or similar procedures proposed by or involving Cayman Islands reinsurers and their outcomes, including a verified nil return where appropriate. That record is for CIMA and the relevant companies to confirm.

7 Cayman purchases of U.S. reinsurance

7.1 Section C concerns the treatment of U.S.-licensed and domiciled reinsurers accepting business from Cayman Islands insurers or providing retrocession from a Cayman Islands reinsurer. Section 3(3) of the Insurance Act provides that a person is not considered to carry on insurance business solely because it effects or carries out a reinsurance contract with an insurer in the Cayman Islands, unless its principal place of business is in the Cayman Islands. Section 5 of the Insurance Act provides that a contract is not void or unenforceable merely because it was made in connection with the insurance business carried on in breach of the licensing requirement. This facilitates cross-border reinsurance without imposing Cayman Islands licensing solely by reason of that contract; other applicable Cayman Islands requirements continue to apply.

7.2 The applicable regulatory regime, licence conditions and transaction arrangements determine the Cayman Islands cedant's credit-for-reinsurance treatment and any collateral requirements. CIMA, Cayman Islands buyers, U.S. assuming reinsurers and placing brokers can provide corresponding evidence of their operation in practice.

8 Supervisory powers and cooperation

8.1 The Insurance Act, provides a statutory supervisory framework. Section 8 requires, amongst other things, compliance with the approved business plan, prescribed solvency and capital requirements, adequate risk-management arrangements and an effective system of governance with certain matters requiring prior CIMA approval. Section 9 requires audited financial statements and other returns, subject to its exceptions and CIMA's written approvals; the general filing period is six months after the licensee's financial year-end. Section 9(4) requires Class D reinsurers to publish their financial statements at the same time they are provided to CIMA. Section 12 requires CIMA approval

for share issues and transfers above the specified 10% thresholds, subject to its exceptions. Sections 20 and 21, respectively, requires the auditor or the insurance manager to give CIMA immediate notice of specific concerns, including the licensee's suspected inability to meet their obligations. Section 22 requires CIMA to maintain a general review of the insurance business and to examine licensees' affairs through annual returns, on-site inspections and auditor's reports, and entitles CIMA to access the licensees' books and records.

8.2 Section 23 permits CIMA to direct a licensee to cease unsafe or unsound practices and take remedial action. Where CIMA is of the opinion that a licensee: (i) is committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the licensee; or (ii) is pursuing or about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the licensee, CIMA has the power to direct the licensee, in relation to a policy, a line of business or the entire business of the licensee, to cease or refrain from committing the act or pursuing the course of conduct and to perform such acts as in the opinion of CIMA are necessary to remedy or ameliorate the situation.

8.3 Additionally CIMA has broad supervisory or intervention powers under section 24 of the Insurance Act to take decisive action where CIMA is of the opinion that: (i) a licensee is or appears likely to become unable to meet its obligations as they fall due; (ii) a licensee is carrying on business in a manner detrimental to the public interest or to the interest of its creditors or policyholders; (iii) the activities of any member of the licensee's insurance group are detrimental to the interest of the licensee's creditors or policyholders; (iv) a licensee has contravened the Insurance Act or the Anti-Money Laundering Regulations (as revised); (v) a licensee has failed to comply with a condition of its license; (vi) the direction and management of a licensee's business has not been conducted in a fit and proper manner; (vii) a person holding a position as a director, manager or officer of a licensee's business is not a fit and proper person to hold the respective position; or (viii) a person holding or acquiring control or ownership of a licensee is not a fit and proper person to have such control or ownership.

8.4 If the above opinion is held by CIMA, the regulator may (i) require the licensee immediately to take steps to rectify the matter; (ii) suspend the license of the licensee pending a full inquiry into the licensee's affairs; (iii) revoke the license; (iv) impose conditions with respect to decisions made by the licensee including the suspension of voting rights or nullification of votes cast; (v) impose conditions, or further conditions, upon the license and amend or revoke any such condition; (vi) require the substitution or removal of any director, manager or officer of the licensee; (vii) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs; (viii) at the expense of the licensee, appoint a receiver or person to assume control of the licensee's affairs who shall have all the powers necessary to administer the affairs of the licensee including power to terminate the insurance business of the licensee; and (ix) require such action to be taken by the licensee as CIMA considers necessary.

8.5 Under the Insurance (Capital and Solvency) (Classes B, C and D Insurers) Regulations (2018 Revision) (the "Capital and Solvency Regulations"), regulation 5(2) permits approved internal capital models for Class B(iii) and D insurers. Regulation 8 permits CIMA to prescribe a higher level of capital based on risk factors specific to the insurer and may exclude from the calculation assets that CIMA deems inappropriate. Where capital falls below the prescribed capital requirement but remains above the minimum capital requirement, regulation 9(2) requires the licensee to meet CIMA and present a remedial action plan. Regulation 9(3) permits CIMA to consider regulatory action below the minimum capital requirement. CIMA and contributors with direct experience can supplement this framework with evidence of its application and individual model calibration.8.3 CIMA's cooperation function appears in the Monetary Authority Act (2020 Revision), as amended, at section 6(1)(c). Sections

50(3) and 50(8) provide for assistance and information sharing with overseas regulators, subject to statutory safeguards, and section 51 authorises memoranda of understanding. Section 50 must be read with subsequent amendments, including the 2023 amendment. CIMA has been a signatory to the International Association of Insurance Supervisors ("IAIS") Multilateral Memorandum of Understanding ("MMoU") since 17 June 2011, and its published international agreements include memoranda of understanding with the NAIC and with the Florida, Illinois, North Carolina, Texas, Utah and Washington insurance regulators, and a Statement of Cooperation with the Federal Insurance Office. CIMA and the relevant regulators or practitioners can provide examples of those arrangements operating in practice. More broadly, Cayman Islands law does not contain financial secrecy provisions that inhibit cooperation with overseas authorities. In addition to CIMA's statutory cooperative function under the Monetary Authority Act, the Confidential Information Disclosure Act permits disclosure of confidential information in specified circumstances, including in compliance with orders made under the Criminal Justice (International Cooperation) Act and the Mutual Legal Assistance (United States of America) Act, and the Grand Court may assist foreign courts in obtaining evidence in civil proceedings.

9 Conclusion

9.1 The Cayman Islands has an established common-law and statutory framework for enforcing qualifying U.S. judgments and foreign arbitral awards without re-examining their merits. The framework respects valid security and applicable set-off rights, treats comparable ordinary unsecured claims of U.S. and domestic cedants equally, and subjects creditor schemes to voting and judicial safeguards. The qualifications described in this letter form part of that framework. This statement is offered to assist the Working Group alongside CIMA's regulatory record and contributors' first-hand evidence.

9.2 We would be pleased to provide further information to the Working Group or to NAIC staff.

Yours sincerely,

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Annex Process items addressed in this letter

Process item	**Paragraphs of this letter**
Part II, paragraph 8: adequate and prompt enforcement of final U.S. judgments and arbitration awards	2.1–2.13; 3.1–3.8
Section C: requirements applicable to U.S.-domiciled reinsurers	7.1–7.2
Section D: regulatory cooperation and information sharing	8.3
Section F: enforcement of final U.S. judgments, including treaties, conventions, arbitration and choice of law	2.1–2.13; 3.1–3.8; 4.1–4.5
Section G: solvent schemes of arrangement (legal framework; the record of schemes is for CIMA)	6.1–6.15
Appendix A, item 1(d) and (f): access to books and records; sharing confidential information with U.S. state regulators	8.1; 8.3
Appendix A, item 2 (in part): capital and surplus, including levels of regulatory intervention	8.2
Appendix A, items 3 and 12 (in part): financial statements and filings, including public availability (item 12(d))	8.1
Appendix A, item 4: corrective action	8.1; 8.2
Appendix A, item 6(e)(i): change in control	8.1
Appendix A, item 10 (in part): audited financial statements and auditor reporting to the supervisor	8.1
Appendix A, item 11: receivership, including the priority of policyholders and of domestic and non-domestic ceding insurers	5.1–5.23
Appendix B, item 3: information sharing (legal powers only)	8.3
Appendix B, item 4: troubled reinsurers (legal powers only)	5.1; 5.4; 8.1; 8.2
Appendix B, item 5(c): change in control (legal powers only)	8.1
Section A: legal framework, judicial independence and business-transfer approvals	1.3–1.7; 6.13; 8.1

The table identifies the legal components addressed in this letter. CIMA's response and specialist contributions are expected to address the remaining framework and implementation evidence, including holding-company supervision, investments, risk management, reserves, reinsurance ceded and intermediaries. Section E calls for the complete performance record, and Appendix B addresses supervisory practices and procedures.