

Recognition of foreign representatives in the Cayman Islands

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As one of the world's leading offshore financial centres, the Cayman Islands is the place of incorporation for thousands of investment funds, special purpose vehicles and holding companies, and these entities routinely hold or channel assets of substantial value across multiple jurisdictions.

When such an entity becomes subject to external administration proceedings in another jurisdiction, the officeholder may need to:

- gather information from Cayman service providers;
- preserve or recover assets held by Cayman entities; or
- simply be recognised as the person authorised to deal with the debtor's Cayman affairs.

The first practical question for the foreign insolvency officeholder is how to establish authority in the Cayman Islands and obtain court assistance.

The Cayman Islands has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. It has, instead, its own statutory framework under Part XVII of the Companies Act (2026 Revision) (**Act**),^[1] which came into effect in 2009.^[2]

The statutory framework for recognition of foreign representatives in the Cayman Islands

Part XVII of the Act empowers the Grand Court of the Cayman Islands (the **Court**) to assist foreign insolvency proceedings by recognising foreign representatives and granting ancillary relief. Its reach turns on three jurisdictional definitions:

- A 'debtor' is a foreign corporation or legal entity subject to a foreign bankruptcy proceeding in its country of incorporation or establishment.
- A 'foreign bankruptcy proceeding' includes proceedings to reorganise or rehabilitate an insolvent debtor.
- A 'foreign representative' is a trustee, liquidator, or similar official appointed for such a proceeding.

An officeholder appointed by a court in a jurisdiction other than the debtor's jurisdiction of incorporation or establishment cannot invoke Part XVII, and proceedings not involving reorganisation or rehabilitation of an insolvent debtor fall outside the statutory gateway – a point of particular significance for US federal equity receivers and other officeholders who fall outside the statutory definitions, as discussed below.

Section 241(1) of the Act empowers the Court to make orders ancillary to a foreign bankruptcy proceeding for five purposes:

1. recognising the foreign representative's right to act in the Islands on behalf of the debtor;
2. enjoining or staying proceedings against the debtor;
3. staying enforcement of judgments;
4. requiring examination and document production to the foreign representative; and
5. ordering turnover of the debtor's property.

Orders under paragraph (4) may only be made against the foreign corporation or entity itself or a 'relevant person' as defined in section 103(1) of the Act, which broadly includes current and former directors, officers, professional service providers, advisers, controllers and others involved in the company's management.^[3]

Section 242 of the Act lists certain factors guiding the Court's discretion in making an ancillary order under section 241:

- economic and expeditious administration;
- just treatment of claimants;
- protection of Cayman creditors;
- prevention of preferential or fraudulent dispositions;
- distribution consistent with Cayman insolvency principles, recognition of security interests; and
- non-enforcement of foreign taxes and comity.^[4]

In practice, comity carries significant weight, and the Court will be attentive to whether Cayman creditors are adequately protected in the foreign proceeding. Where the debtor is registered under Part IX of the Act as an overseas company, the Court must also consider whether to make a Cayman winding-up order.^[5]

A deliberate feature of Part XVII is what it omits. Former section 304(b)(3) of the US Bankruptcy Code, on which Part XVII was modelled, conferred a general power to grant 'other appropriate relief'. The Cayman legislature did not adopt that provision, and the Court of Appeal of the Cayman Islands has confirmed that there is no residual discretion to make orders beyond the five purposes prescribed in section 241(1) of the Act referred to above.^[6]

The recognition process for foreign representatives in the Cayman Islands

An application for recognition is made under the *Foreign Bankruptcy Proceedings (International Co-operation) Rules 2018 (2018 Rules)*.^[7] The petition must set out the debtor's particulars of incorporation, the nature and place of its business, the appointing court, the foreign representative's powers and duties under the law of the place of appointment, and the reasons for seeking recognition.^[8] It must be verified by affidavit of the foreign representative, exhibit a certified copy of the appointment order, and be supported by an affidavit of foreign law.

Once recognition is obtained, ancillary relief under section 241(1)(b)-(e) of the Act is sought by summons, served on each respondent, with an affidavit identifying the respondent as a 'relevant person' within the meaning of the Act and setting out

the grounds for seeking the order.^[9] Notably, no order for security for costs may be made against a foreign representative making the application, which removes a potential cost barrier or risk factor for officeholders of smaller estates.^[10]

Examination and document production orders are often the most immediately useful relief, particularly where Cayman-based administrators, directors or service providers hold information about the debtor's affairs.

Applications for recognition of foreign representatives in the Cayman Islands in practice

Recognition under section 241(1)(a) of the Act is a convenient and expeditious way for foreign representatives to establish their credentials and authority in Cayman.^[11] Recognition establishes standing and enables further applications for assistance; it does not import foreign remedies or alter the conflict-of-laws framework.

Section 241(1)(a)-(e) is an exhaustive list of purposes for which the court can make an order ancillary to a foreign bankruptcy proceeding: section 242 guides the court's discretion but cannot create additional powers.^[12] Section 241(1)(e) can support transaction avoidance claims insofar as avoidance restores property to the debtor and enables a turnover order, but such claims are governed by Cayman law – not foreign law.

In *Straumur-Burdaras*,^[13] the Court granted recognition and an injunction restraining the commencement of Cayman proceedings against an Icelandic bank which was subject to bankruptcy proceedings in Iceland, even though no proceedings had yet been filed and no Cayman creditors were known, because it had significant assets in the Cayman Islands and relief was needed to protect the global integrity of the composition. The Court also approached procedural requirements pragmatically, relaxing strict compliance with the rules where service upon, or identification of, respondents as relevant persons would be impractical or undermine the application's purpose.

In *Re Lancelot Investors Fund Ltd*,^[14] a pre-Part XVII decision, the Court made a winding-up order in respect of a Cayman fund notwithstanding that it was already the subject of US Chapter 7 proceedings, and appointed an official liquidator, even though it accepted that the United States was the place of principal liquidation.

Quin J appointed a single liquidator, noting that the Chapter 7 trustee might yet seek recognition in Cayman, encouraged recognition in both directions, and temporarily stayed the winding up so that the Cayman liquidator and the Chapter 7 trustee could agree a protocol for the efficient administration of the insolvency in both jurisdictions.

Foreign officeholders outside the statutory framework for recognition in the Cayman Islands

Certain foreign officeholders will fall outside the scope of Part XVII of the Act, primarily because the nature of their appointment does not meet the statutory definition of 'foreign bankruptcy proceeding'.

An example is a US federal equity receiver, who is typically appointed by a US District Court at the request of the Securities and Exchange Commission (**SEC**), Federal Trade Commission or Commodity Futures Trading Commission in an enforcement action.

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The receiver derives authority from the court's equitable powers and the appointing order, not from the US Bankruptcy Code. As a federal equity receivership is a governmental regulatory enforcement action, rather than a proceeding for the purpose of reorganising or rehabilitating an insolvent debtor within the meaning of section 240 of the Act, it falls outside Part XVII. The receivership is not a 'foreign bankruptcy proceeding', so the receiver is not a 'foreign representative' with standing to make an application for assistance under section 241(1). Similar issues may arise for other officeholders whose appointments derive from enforcement or regulatory proceedings rather than collective insolvency processes.

However, independently of Part XVII, the Court has an inherent common law jurisdiction to recognise a receiver appointed by a foreign court where there is a sufficient connection between the company and the appointing jurisdiction (for example, where the company is incorporated, carries on business or has its central management there, or has submitted to the jurisdiction of the foreign court).^[15] Once that connection is shown, recognition should be refused only for strong and compelling reasons.

For receivers appointed at the instance of the SEC, however, the common law route has proved difficult.

In *Stutts v Premier Benefit Capital Trust*,^[16] the Grand Court accepted that a sufficient connection existed but refused to recognise a US Receiver, holding that the SEC disgorgement proceedings under which he was appointed were, as a matter of Cayman law, a suit in favour of the state and therefore part of the public (penal) law of the United States. That was so notwithstanding:

1. the compensatory aspects of disgorgement;
2. US authority characterising the proceedings as civil and remedial; and
3. the receiver's offer of an undertaking not to apply Cayman recoveries to any fine or penalty.

Officeholders who fall outside Part XVII, and who cannot obtain recognition at common law, may instead consider commencing fresh Cayman proceedings, such as a winding up and/or provisional liquidation of the relevant Cayman entity, or an application to be appointed as receiver over specific Cayman assets.

That alternative will not be available in every case and should be approached carefully, for two key reasons.

First, the officeholder needs a procedural route and standing to commence Cayman proceedings. A US Receiver will not ordinarily be entitled to petition to wind up a Cayman entity in its own right, and whether a route exists will depend on the facts, and in particular the relationship between the Cayman entity and the entity (or entities) to which the US Receiver is appointed.

In practice, the more common scenario is that the receiver is appointed over an entity within a fund structure, such as the investment manager, and can exercise the voting rights attached to that entity's management shares in the Cayman fund to obtain control through the structure. That control may, for example, enable a resolution to be passed appointing voluntary liquidators of the Cayman fund, and the voluntary liquidation may then be converted into an official liquidation by way of an application for supervision even if a declaration of solvency is made (if, for example, it would facilitate a more effective, economic or expeditious liquidation in the interests of the stakeholders).^[17]

Second, where official liquidators are appointed, foreign officeholders seeking appointment must seek joint appointment with a Cayman-qualified and Cayman-resident insolvency practitioner.^[18] This joint appointment mechanism enables foreign officeholders to obtain Cayman authority while working alongside a locally-qualified practitioner who can discharge the functions reserved to qualified insolvency practitioners under Cayman law.

However, this joint appointment does not remove the tension between the two regimes. A US Receiver appointed as joint official liquidator is subject to the supervision of the Grand Court and must apply Cayman law in that capacity, while still remaining bound by the orders of the appointing US court and the broad equitable discretion of a federal receivership. Those competing obligations need to be identified and managed from the outset, such as through a conflict management protocol for which sanction could be sought from both the US and Cayman courts.

Key takeaways for foreign representatives seeking recognition in the Cayman Islands

Part XVII is deliberately limited; there are five specified forms of relief, with no residual judicial discretion to go beyond that. However within those limits, the Grand Court works pragmatically and with a genuine willingness to assist.

The statutory framework has intentional limits. For officeholders who fall outside Part XVII's scope, common law recognition may be available, although US Receivers appointed in SEC enforcement proceedings face real obstacles.

Commencing fresh Cayman proceedings and seeking joint appointment with a Cayman-qualified practitioner may be a workable alternative, but only where there is a procedural route to do so, and subject to careful management of the conflict between the two regimes, ideally through a protocol approved by both courts.

Practitioners who prepare properly will find that the Grand Court is well-equipped and willing to assist.

How Collas Crill can help

Collas Crill's Cayman Islands Litigation and Dispute Resolution team regularly advises foreign officeholders, creditors and stakeholders on recognition applications, ancillary relief and alternative routes to obtaining Cayman authority, including joint appointments with locally qualified practitioners.

If you are a foreign representative dealing with a Cayman entity or asset, please get in touch with a member of our team to discuss how we can help.

^[1] *Companies Act (2026 Revision)*, ss.240–243.

^[2] Introduced by the *Companies (Amendment) Law 2007*, effective 1 March 2009. The Law Reform Commission's Review of the Corporate Insolvency Law (April 2006) recommended codification of the common law of cross-border cooperation.

^[3] Act s.241(2) and s.103(1).

[4] Act s.242(1)(a)–(g).

[5] Act s.242(2).

[6] *Picard v Primeo Fund* [2014 (1) CILR 379] at [42]–[48].

[7] 2018 Rules, r.2.

[8] 2018 Rules, r.2(3)–(6).

[9] 2018 Rules, r.3.

[10] 2018 Rules, r.1A(3).

[11] See *Picard v Bernard L. Madoff Investment Securities LLC* [2010 (1) CILR 231] (Grand Court, Jones J).

[12] *Picard v Primeo Fund* [2014 (1) CILR 379] (Court of Appeal).

[13] *In the Matter of Straumur-Burdaras Investment Bank hf* [2010 (2) CILR 146] (Grand Court, Smellie CJ).

[14] *In the Matter of Lancelot Investors Fund Ltd* [2009 CILR 7] (Grand Court, Quin J).

[15] *Kilderkin Investments Ltd v Player* [1984–85 CILR 63] (Court of Appeal).

[16] [1992–93 CILR 605].

[17] Act s.124 and s.131.

[18] *Companies Winding Up Rules (2023 Consolidation)*, Order 5, Rule 1(3).

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