



INSOLVENCY YEAR IN REVIEW - 2021

FEBRUARY 2022

Welcome to Collas Crill's insolvency year in review of 2021, where we reflect on insolvency developments from last year, both within our firm and across the industry in the jurisdictions in which we operate.

2021 was another year defined by the ongoing pandemic, characterised by continued vaccine rollout and an emphasis on learning to live with the reality of COVID-19.

Some of our jurisdictions have seen a significant uptick in insolvency-related instructions as a consequence of the pressure the pandemic has put on businesses.

As a firm, Collas Crill has once again been recognised in the [Global Restructuring Review 100](#) (GRR), a guide to the leading law firms across the world for cross-border insolvency and restructuring. Various team members were mentioned from across our jurisdictions, and some of our key cases from 2021.

Our Cayman and BVI teams also had an article published by [Global Restructuring Review](#) about the treatment of cryptocurrencies in those jurisdictions.

Guernsey

In our insolvency year in review article for 2020 we were discussing the approval of radical changes to Guernsey's companies law. [Our article from January 2020](#) explained what changes were included with the amendments. Unfortunately, there have been no publicised updates since the Insolvency Rules Committee was formed in the summer of 2020, and it is not clear when we will see a draft of the Insolvency Rules or when the long-awaited amendments will come into force.

[James Tee](#) and [Michael Adkins](#) of our Guernsey team, were pleased to have an article published last year in the International Bar Association publication: *Insolvency & Restructuring International*. [The article](#) discussed the result of their key case of *Re Canargo Limited* [2020] GRC064: a judgment which provides useful guidance and support to liquidators who find their view on the merits of a particular step is contrary to the view of the majority of creditors.

This year, our Guernsey insolvency and restructuring team has been working to produce a set of guides to demystify some key areas of Guernsey insolvency law, including:

- [How the Guernsey court recognises foreign insolvency proceedings;](#)
- [Administration orders for Guernsey companies;](#)
- [Compulsory winding up of Guernsey companies;](#) and

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- [The local process for enforcing debts against real property, known as saisie.](#)

Lastly, our team was proud to attend the Royal Court to see [Quentin Bregg](#) called to the Guernsey bar as our latest qualified advocate. Quentin is a key member of our insolvency team and has already been putting his rights of audience to good use.

BVI

Our fast growing BVI insolvency team is headed by [David Harby](#), who welcomed [Nia Statham](#) and [Fay O'Halloran](#) as Associates in 2021. The team also celebrated the promotion of [Dave Marshall](#) to Senior Associate, and bid farewell to Senior Associate [Daisy Bovingdon](#), who returned to our Jersey office after several years practising in the BVI.

2021 ushered in new developments in the crypto space, which was canvassed by David who hosted an '[On the Sofa](#)' podcast to explore crypto developments in the context of fraud and insolvency.

In the podcast, David discusses a BVI decision ([Philip Smith v Torque Group Holdings Limited et al](#) BVIHC (COM) 0031 of 2021) which confirmed that crypto amounted to an asset under the Insolvency Act 2003 (Act) and was capable of ownership.

Earlier in the year, the Privy Council found in [Byers and others v Chen Ningning](#) (British Virgin Islands) [2021] UKPC 4 Privy Council Appeal No 0082 of 2019, that a sole director who resigned from her position and sought to appoint a replacement shortly before her company went into liquidation continued to owe fiduciary duties to her company.

Meanwhile, the Court of Appeal confirmed in [Net International Property Limited v Erez](#) BVIHCMAP2020/0010 that, whilst the BVI Courts will recognise the appointment of representatives by a foreign Court (including liquidators and trustees in bankruptcy) as having status in the BVI, the BVI Court may only provide assistance to representatives from certain countries as designated in Part XIX of the Act.

In other news, the Privy Council also published its decision this year in [Broad Idea International Ltd v Convoy Collateral Ltd and Convoy Collateral Ltd v Cho Kwai Chee](#) which re-affirmed the Black Swan jurisdiction (which has since been placed on a statutory footing, see [our article on the subject](#) for more details).

The BVI Government also published a revised suite of BVI insolvency and company legislation, which is available on the BVI FSC website: [Insolvency Act \(Revised 2020\)](#), [Insolvency Practitioners Regulations \(Revised 2020\)](#), [Insolvency Code of Practice \(Revised 2020\)](#), [Insolvency Rules \(Revised 2020\)](#).

Jersey

Our Jersey office's insolvency and restructuring practice continues to go from strength to strength, with the team being actively engaged in a number of high profile matters acting for officeholders, directors and stakeholders, such as assisting FRP's UK Restructuring Advisory team as part of the sale of the [Debenhams brand](#) and acting as lead counsel for the court-appointed receivers tasked with recovering the sums due under a promissory note, with a face value in excess of €52,000,000 as part of the well-publicised [Crociani saga](#).

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It has also been actively involved in preparing and delivering submissions to the Privy Council (Jersey's highest court) in the [Z Trusts litigation](#). [Simon Hurry](#) appeared on behalf of the appellant alongside [Shân Warnock-Smith QC](#) and [Clare Stanley QC](#). The decision, which could have industry-changing consequences, is expected to be released early this year.

The Jersey team has recently been bolstered by Senior Associate [Daisy Bovingdon's](#) return from our BVI office. Daisy is an experienced and very well regarded lawyer who specialises in high value, multi-jurisdictional commercial litigation and insolvency, servicing global clients. Daisy has particularly strong connections in the UK, China, the Middle East and Russia.

There continues to be a noticeable uptick in instructions from boards under pressure from the adverse economic impact of the pandemic. [Simon Hurry](#), a member of the Legal & Regulatory Committee of the Association of Restructuring and Insolvency Experts, will speak on this subject at the [Thought Leaders 4 FIRE Global Summit](#) in Dublin this month as well as at the [School of International Financial Services](#) seminar series.

The Jersey office continues to produce great content, including [practical guides](#) relating to the winding up of companies in Jersey and cross-border issues.

Recently, the team wrote about the English case of [Al Jaber v Mitchell \[2021\] EWCA Civ 1190](#), considering the scope of liquidator investigations and witness immunity from an English and Jersey perspective.

Cayman

2021 saw the Cayman Dispute Resolution team achieve significant growth, firmly establishing itself as a major presence in the Cayman legal market. This was reflected in the addition of five new joiners to the DR team, from Associate through to Counsel level, as well as the admission of [Dawn Major](#) as an Attorney of the Cayman Islands following her successful completion of articles with the firm.

A fantastic achievement for the team, under the leadership of Cayman office Managing Partner [Stephen Leontsinis](#), was the elevation of the Dispute Resolution team to Tier 2 in the Legal 500 Caribbean 2022 rankings. The team was referred to as "*one of the leading teams in the market*" and described as being "*seriously hard-working, intelligent and highly commercial. Very user friendly and easy to work with.*" Stephen was again ranked as a Leading Individual and Partner [Matthew Dors](#) was described as "*an excellent advocate with a sharp mind in court*". As a further sign of the team's increasing market presence and industry impact, Partners [Rocco Cecere](#), who has over twelve years of offshore insolvency and restructuring experience, and [Jennifer Colegate](#), a commercial litigator and cross-border insolvency specialist with over fifteen years' experience, were both named Next Generation Partners in the Legal 500 Caribbean 2022.

If you would like to know more about how we can support you or your client's business in 2022 and beyond, please contact a member of our insolvency team.

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