

Mourant advises in relation to the Tailored Brands Group Chapter 11 restructuring

UPDATE

Update prepared by Peter Hayden (Partner, Cayman Islands), Jessica Vickers (Senior Associate, Cayman Islands)

Mourant acted for Tailored Brands Worldwide Purchasing Co in relation to its application for the appointment of joint provisional liquidators in the Cayman Islands in support of the successful restructuring of the Tailored Brands Group through Chapter 11 proceedings in the United States.

Background

Tailored Brands Worldwide Purchasing Co (**WPC**), a Cayman Islands exempt company, was part of the Tailored Brands group of companies (the **Group**), a leading multi-national specialty retailer of men's tailored clothing and the largest men's formalwear provider in the United States and Canada. WPC's role within the Group was to manage suppliers and to source inventory and other goods for sale in the Group's retail stores, including Men's Wearhouse, Jos. A Bank and Moores Clothing.

The Group experienced financial pressures, in part due to the global COVID-19 pandemic. On August 2, 2020, the Group filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Ancillary proceedings were also commenced in Canada and the Cayman Islands to support the restructuring under the Chapter 11.

Chapter 11 Bankruptcy Code and the Cayman Islands

The Group wished to have a stay on the enforcement of claims to allow it to restructure its operations through Chapter 11. Although Chapter 11 provides for a global stay on the enforcement of claims against debtor entities, that stay is not automatically recognised in the Cayman Islands. Without taking action in the Cayman Islands, WPC would have been at risk of enforcement action being taken by creditors based outside the United States, who were not subject to the jurisdiction of the US Bankruptcy Court. Enforcement action against WPC could have prejudiced and potentially frustrated the Chapter 11 restructuring process.

The Appointment of Provisional Liquidators in the Cayman Islands

WPC therefore commenced proceedings in the Cayman Islands and obtained a stay on the enforcement of claims against it. The proceedings in the Cayman Islands involved the filing of a winding up petition and the appointment of provisional liquidators, who assumed a supervisory role over WPC's management. This allowed the restructuring process to proceed on a debtor in possession basis.

The Grand Court of the Cayman Islands is able to appoint provisional liquidators where (a) the company is, or is likely to become unable to pay its debts; and (b) the company intends to present a compromise or arrangement to its creditors. The Grand Court has considerable experience dealing with large cross-border

debt restructurings through the appointment of provisional liquidators and has facilitated a large number in recent years.¹

At least one of the provisional liquidators must be a Cayman Islands resident. It is common, in large Chapter 11 debt restructurings, for the other provisional liquidator to be the Chief Restructuring Officer appointed in the United States or another of the debtors' restructuring advisors. In relation to WPC, Gordon MacRae of Kalo Advisors in the Cayman Islands was jointly appointed with Holly Etlin of Alix Partners in the United States.

The Chapter 11 Plan and Discharge of the Provisional Liquidators

Once the Chapter 11 plan for the Group had been negotiated and confirmed by the United States Bankruptcy Court of Houston (the **Plan**), WPC obtained an order from the Grand Court of the Cayman Islands authorising the directors of WPC to implement the Plan and for the provisional liquidators to be discharged on the effective date of the Plan.

WPC's creditors obtained a benefit under the Plan, which provided for a greater return to them than they were likely to receive in a standalone liquidation of WPC in the Cayman Islands. The Plan had received the support of over 75% of WPC's creditors and had been reviewed, and was supported, by the provisional liquidators.

Comment

The restructuring is a good example of the close cooperation that is possible between the United States Bankruptcy Court and the Grand Court of the Cayman Islands. The Group filed on August 2, 2020 and the Plan became effective four months later on December 2, 2020. The proceedings in the Cayman Islands sheltered WPC from the enforcement of claims against it and helped to facilitate the debtor in possession restructuring through Chapter 11.

Mourant acted for WPC in the Cayman Islands, working with Kirkland & Ellis and Alix Partners in the United States.

If you are interested in understanding more about the cross-border restructuring involving Cayman entities please do not hesitate to contact us.

Contacts



Peter Hayden
Partner, Mourant Ozannes
Cayman Islands
+1 345 814 9108
peter.hayden@mourant.com



Harry Rasmussen
Senior Associate
Cayman Islands
+1 345 814 9214
harry.rasmussen@mourant.com



Jessica Vickers
Senior Associate
Cayman Islands
+1 345 814 9132
jessica.vickers@mourant.com

¹ For example, see *Trident Microsystems (Far East) Ltd* (unreported, 28 May 2012), *Re Fruit of the Loom Ltd* (unreported, 30 October 2000), *Suntech Power Holdings Co., Ltd, LDK Solar Co. Ltd, Arcapita Investment Holdings Limited, Re CW Group Holdings Limited* (unreported, 3 August 2018). Mourant also acted for Arcapita Investment Holdings Limited in relation to its restructuring through a Chapter 11 Plan and the appointment of provisional liquidators.