



Ian Lambert
Partner, Broadhurst LLC

+1 345 949 7237
ian@broadhurstllc.com
broadhurstllc.com/people/ian-lambert
www.broadhurstllc.com

Ian Lambert is a partner at Broadhurst LLC in the Cayman Islands with more than 18 years of experience in complex contentious matters. Ian has a wide range of expertise and experience in the financial services and offshore environment, with a significant concentration in the areas of multi-jurisdictional commercial litigation, insolvency, restructuring, asset recovery, contract disputes, fraud litigation and trust litigation.

Ian advises and appears in all levels of the Courts in the Cayman Islands on behalf of provisional and official liquidators, receivers, creditors, shareholders, directors and other professionals in relation to a wide variety of disputes. Ian is rated as a "Global Leader" in restructuring and insolvency by Who's Who Legal.

Ian obtained his LL.B from the University of Windsor Law School (Ontario, Canada) and in 2003 was called to the Bar of Ontario as a solicitor and barrister. From 2003 to 2009 he practised in the dispute resolution teams of two prestigious law firms in London, Ontario and Toronto, Ontario. In 2009 Ian moved to the Cayman Islands and was called to the Cayman Islands Bar.

Kyle Broadhurst
Managing Partner, Broadhurst LLC

+1 345 949 7237
kyle@broadhurstllc.com
irglobal.com/advisor/kyle-broadhurst
www.broadhurstllc.com

Kyle is the Managing Partner of Broadhurst LLC. He possesses considerable experience in resolving complex commercial disputes in the Cayman Islands having practiced law in Cayman for more than 20 years. His areas of expertise include insolvency, bankruptcy, fraud, commercial disputes, shareholder rights and judgment enforcement.

Kyle is regularly instructed in high value matters with multi-jurisdictional elements. A highly experienced litigator, Kyle has appeared in nearly 50 reported decisions.

Kyle received his Bachelor of Arts from Queen's University in Canada and his Bachelor of Laws from the University of Liverpool in the United Kingdom. He has been called to the Bar of England and Wales (non-practicing) and the Cayman Islands. He is an accredited mediator and Notary Public. He is a qualified trust practitioner having obtained his STEP Diploma in International Trust Management and TEP qualification.

Broadhurst LLC is a Cayman Islands offshore specialist litigation and corporate boutique law firm advising both local and international clients. Our areas of expertise include: litigation & dispute resolution; corporate & commercial; insolvency & restructuring; trusts; compliance & regulatory; private client; personal injury; family & children; insurance; and conveyancing.

As a client focused law firm, we work closely with our clients to identify and resolve their legal issues with practical and creative solutions. We are frequently engaged in local and international disputes and transactions by multinational institutions, high-net-worth individuals, creditors, debtors,

directors, officers, shareholders, liquidators, receivers and other professionals. We frequently handle Cayman litigation and transactions on behalf of non-Cayman law firms and in-house counsel.

As a client first law firm, we apply our extensive knowledge and experience to vigorously represent the interests of our clients while at the same time providing them with the highest standard of professionalism through our exceptional responsiveness, service, and approachability. As we are one of the largest Cayman only law firms, we maintain independence as lawyers and very rarely encounter conflicts of interest.

QUESTION ONE

What should every business know about insolvency laws in your jurisdiction before exploring market entry?

The Cayman Islands are a trusted, professional and tax neutral jurisdiction that supports efficient free flow of trade, investing, capital, financing, and services globally. Cayman is continuously evolving in the face of increased global regulatory changes to maintain the highest international standards. To address the needs of Cayman as a top-ranked international financial centre, it has developed a modern and comprehensive insolvency and restructuring regime.

The insolvency regime allows insolvent Cayman companies to be wound up in an orderly, transparent and cost-effective manner to the benefit of its creditors. Unsecured creditors in insolvency proceedings are treated equally sharing in the available assets of the company in proportion to the debts due to each creditor regardless of their domicile or nationality subject to limited exceptions. Valid security interests are recognised and generally secured creditors remain entitled to enforce their security outside of the liquidation.

Insolvent companies will be wound up by Official Liquidators who are appointed by the Court and act under its supervision. The Official Liquidators, are provided specific powers to enable them to locate and collect the assets of the company and to investigate its affairs. The Official Liquidators have a duty to act in the best interest of the creditors and can take several actions for the benefit of creditors including the ability to challenge pre-insolvency transactions if they are found to be a voidable preference, a disposition at an under value, or fraudulent dispositions or trading.

Anyone claiming to be a creditor of a company and wishing to recover the debt must submit their claim to the liquidator. A foreign creditor has the same rights as a domestic creditor. Generally, foreign debts will be recognised provided they do not relate to foreign taxes, fines or penalties, or any other debts whose enforcement might offend Cayman Islands public policy.

QUESTION TWO

Covid has prompted both short-term and long-term changes to both local and cross-border insolvency practices – what are the key changes in your jurisdiction and how are they likely to influence businesses considering market entry?

Insolvency practices and legislation have not significantly changed in Cayman in response to Covid-19, however, the Cayman Islands remains a popular restructuring jurisdiction with the Cayman Courts having demonstrated an ability to efficiently manage large debt restructurings. Commonly this is done through a scheme of arrangement supported by a 'soft touch' provisional liquidation. This provides for the company to remain under the day-to-day control of its directors but for it to be protected against actions by individual creditors. The purpose being to allow the company to restructure its debts, or otherwise achieve a better outcome for creditors than what would be achieved by a liquidation. Typically, such restructurings involve cross-border issues, and recognition through Chapter 15 proceedings in the United States is common.

TOP TIPS

Protecting yourself against personal liability in your new market

- ✔ Utilise a corporate structure. Cayman has modern laws which allow for most well-known structures including limited companies, limited partnerships, trusts and foundations.
- ✔ Any director, manager or individual involved in the operation of the business should stay informed and ensure that they remain cognizant of important matters such as the entities solvency and compliance with its regulatory obligations.
- ✔ Maintain good corporate records. All transactions should be appropriately documented, and proper financial records maintained. Do not mingle your personal assets with those of the business.
- ✔ Take advantage of the ability to obtain indemnifications. Obtain director and officers insurance.
- ✔ In the event it appears the entity may become insolvent or may be in breach of any regulatory requirement seek professional advice promptly.

QUESTION THREE

What are the biggest risks to entrepreneurs and business owners in your jurisdictions' insolvency regulations, and how can they protect themselves against them at point of market entry?

Business owners need to be aware that in the event of an insolvency, while shareholders are protected from liability for the company's debts, the insolvency process provides that creditors are paid in priority to shareholders. In the event of a shortfall, any equity held by the shareholders will likely be extinguished.

In a business owner's capacity as a director, it is important to understand that Cayman law impose duties on directors of Cayman companies, and business owners should become well versed in them. A director of a Cayman company owes both fiduciary and non-fiduciary duties to the company. Fiduciary duties include: acting in good faith in the best interest of the company, not making a secret profit, exercising independent judgment and avoiding conflicts of interest. Directors also have a duty of skill and care. In determining the scope of that duty,

the Court will consider the director's knowledge and experience. While a director's duties are generally owed to the company, when a company becomes insolvent those duties extend to the interests of the creditors: a director has specific obligations to assist the liquidators in providing information. In addition to potentially facing liability for breach of any of the above duties, directors may find themselves liable to third party creditors in certain specific instances. Liability can also arise for failure to adhere to regulatory requirements.

It is important for anyone entering the Cayman market to get professional advice so that they are aware of their obligations.