The Restructuring Review of the Americas 2019

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A Global Restructuring Review Special Report

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Global Restructuring Review is a leading source of news and insight on cross-border restructuring and insolvency law and practice, read by international lawyers, insolvency practitioners and accountants, judges, corporate counsel, investors and academics.

We deliver on-point daily news, surveys and features that give our subscribers the most readable updates and analysis of all the cross-border developments that matter, allowing them to stay on top of their game even more so than they already are.

In the past couple of years, we have published exclusive interviews with bankruptcy judges around the world, unearthed nuggets from court hearings that other news services missed, released several original surveys – including on the experiences of female professionals working in restructuring – and features such as a comparative study looking at current restructuring strategies in the retail sector. Our newly introduced Worked Out series, profiling key jurisdictions around the world, has so far published profiles on Singapore, Ukraine and Delaware, with the Cayman Islands, Hong Kong and China still to come. Our book-length *Art of the Ad Hoc* guide gathers the wisdom and perspectives of some of the leading practitioners in the area of ad hoc committees in restructurings.

Complementing our news and magazine coverage, *The Restructuring Review of the Americas* provides exclusive thought leadership, direct from pre-eminent practitioners. The *Review* gathers the expertise of 19 leading figures from 12 different firms in eight jurisdictions. Contributors are vetted for international standing and knowledge of complex issues before being approached.

In this volume we have expanded our coverage in the United States. In addition to an overview of Chapter 11 of the US Bankruptcy Code, our expert panel also reviews hedge fund and private equity fund participation and some of the investment strategies that funds continue to adopt to maximise their returns. Chapter 15 is discussed in two chapters: first, a full review of Chapter 15 as a tool providing effective mechanisms for dealing with cross-border insolvency cases and looking at whether it remains a welcoming destination for foreign debtors; second, a look at the limits of Chapter 15 with specific consideration to the high burden parties must overcome to invoke section 1506 of the Bankruptcy Code, which allows courts to refuse to take action on public policy grounds.

Furthermore, our panel provides an overview of the bankruptcy law in Argentina and considers criticisms made against Brazil's restructuring legislation and the proposed amendments suggested in May 2018 to revamp corporate restructuring in the country. We also review the broad and flexible restructuring options available in Canada; offshore restructuring in the Bahamas; and the Concurso Law in Mexico, explaining why it has not provided a feasible and efficient restructuring procedure for companies in financial distress. Additionally, our experts in Chile consider the flaws of the local regime, while our panel in Venezuela assesses the current regime, which lacks a statutory concept of insolvency, in the face of widespread economic instability.

The *Review* is annual and will expand with each edition. If you have a suggestion for a topic to cover or would just like to find out how to contribute please contact mahnaz.arta@globalrestructuringreview.com.

GRR would like to thank all our contributors for their time and effort.

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Bahamas

Sophia Rolle-Kapousouzoglou and Olivia Moss
Lennox Paton

The Bahamas has long been established as an international financial centre in which foreign companies, complex commercial funds and special purpose vehicles invoke the jurisdiction of the Bahamian court for the purpose of incorporating offshore entities and carrying on business. When one of these companies experiences financial difficulties or enters into restructuring processes that involve assets, subsidiaries or structures located in the Bahamas, stakeholders are able to engage the Bahamian court to utilise not only the insolvency regime in the Bahamas but also its cross-border insolvency procedures.

The Commercial Division of the Supreme Court of the Bahamas (the Supreme Court) is dedicated to handling complex commercial cases including assisting financially distressed companies in the execution of cross-border restructuring. Appeals from the Supreme Court are to the Court of Appeal, and Her Majesty's Privy Council sits at the apex of the Bahamian court system as the final court. The competence of the Bahamian court system is evidenced by the fact that Justice Telford Georges, a former chief justice of the Bahamas, and Justice Edward Zacca, a former president of the Court of Appeal, who are eminent Caribbean judges, have both been members of Her Majesty's Privy Council.

Just and equitable winding-up petitions available to shareholders and anti-suit injunctions to restrain foreign proceedings

The Bahamas has enacted into its insolvency legislation express provisions whereby a shareholder may petition the Supreme Court to wind up a company in order to seek relief where it is just and equitable to do so. Pursuant to section 190 of the Companies Winding Up Amendment Act 2011 (CWUAA):

> *(1) An application to the court for the winding up of a company shall be by petition presented either by . . . (c) any contributory or contributories; . . .*

However, a contributory[1] is not entitled to present a winding-up petition unless either:

- the shares in respect of which he or she is a contributory, or some of them, are partly paid; or
- the shares in respect of which he or she is a contributory, or some of them, either were:
  - originally allotted to him or her, or have been held by him or her, and registered in his or her name for a period of at least six months immediately preceding the presentation of the winding-up petition; or
  - have devolved on him or her through the death of a former holder.

According to section 191(3), if the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely:

- an order regulating the conduct of the company's affairs in the future;
- an order requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act that the petitioner has complained it has omitted to do;
- an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the court may direct; or
- an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.

As it relates to the procedure for a just and equitable winding-up petition, Order 3, Rule 11 of the Companies Liquidation Rules (CLR) states: upon the presentation of a petition by a contributory seeking a winding-up order or an order for alternative relief under section 191(3) of the CWUAA on the ground contained in section 186(e),[2] the petitioner must at the same time issue a summons for directions in respect of the matters contained in this rule.

Upon hearing the summons for directions, the court shall give such directions as it thinks appropriate in respect of the following matters:

- whether or not the company is properly able to participate in the proceeding or should be treated merely as the subject matter of the proceeding;
- whether the proceeding should be treated as a proceeding against the company or as an *inter partes* proceeding between one or more members of the company as petitioners and the other member or members of the company as respondents;
- service of the petition;
- whether, and if so by what means, the petition is to be advertised;
- whether the petitioner should serve any further particulars of his or her claim;
- service of a defence by the company or the respondents (as may be appropriate in light of the directions given under paragraphs (a) and (b) of this rule);
- the manner in which evidence is to be given;
- if evidence is directed to be given by affidavit, directions relating to cross-examination of the deponents;
- discovery and inspection of documents;
- oral discovery; and
- such other procedural matters as the court thinks fit.

A summons for directions under Rule 11 shall be served upon the company and upon every member whom the petitioner has named or intends to name as a respondent to the petition.

In the cases of *In the Matter of Pharmainvest Fund Ltd, Emerging Income Fund Ltd, and Emerging Value Opportunities (Bahamas) Ltd*, and *In the Matter of the International Business Act*[3] (pending), three winding-up petitions were filed by a shareholder seeking to wind up three mutual funds incorporated under the Investment Funds Act on the basis of loss of substratum.

The application involved a master-feeder fund structure in which Bahamian companies were coupled with Delaware partnerships, which held similar names to the Bahamian feeder-fund companies. All of the assets of the Delaware Partnerships were invested in a master account, which was also a Bahamian company. The structure included three Bahamian international business companies (the Bahamian feeder funds); three Delaware-based limited partnerships (the US feeder funds); and three Bahamas-based exempted limited partnerships, which act as master accounts and that purportedly conducted all principal investment trading. The two feeder funds were used to receive the investments of underlying participant investors and those investments were then fed into the master accounts. Together, each of the three entities make up a 'fund' that collectively the offering memoranda said would be invested in securities in emerging markets for pharmaceuticals believed to be undervalued but that possessed above-average yield potential.

A contributory petitioned on 20 March 2018 to wind up the three Bahamian companies that had been suspended for over nine years, essentially converting what was represented as being an open-end fund into a closed-end fund. The petition was for a just and equitable winding up; it was the petitioner's position that the funds no longer had a purpose given that the purpose of an investment fund was no longer met as required in accordance with section 1 of the Investment Funds Act 2003.

Loss of substratum

According to the Investment Funds Act, an 'investment fund' or 'fund' means:

- a company (including a limited duration company) that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits and gains arising from the acquisition, holding, management or disposal of investments, (i) which is incorporated or registered in the Bahamas; (ii) of which the administrator, the investment adviser or the investment manager is either a company or companies incorporated or registered in the Bahamas or one or more companies or individuals any one of whom has a place of business in the Bahamas or which uses an address in the Bahamas; or (iii) the administration or management of which (including the control of substantially all of its assets) is carried on in or from the Bahamas; or
- a partnership that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits and gains arising from the acquisition, holding, management or disposal of investments, (i) of which one or more of the general partners is incorporated or registered in the Bahamas or is a person residing in the Bahamas or uses an address in the Bahamas; (ii) whose partnership articles are governed by the laws of the Bahamas; or (iii) of which the administrator, the investment adviser or the investment manager is either a company incorporated or registered in the Bahamas or a person who has a place of business in the Bahamas or uses an address in the Bahamas.

The petitioner sought directions that the matters be dealt with jointly and for further relief, including:

- an order that leave also be granted to petition to wind up the master accounts;
- that the liquidator, if so appointed, on behalf of the company, as creditor of the master accounts, be authorised to appoint an interim receiver or that he or she be appointed receiver to take control of the master accounts pending the hearing of the application to wind up the master accounts;
- an order directing that in the event that leave is given to wind up the general partners of the master accounts that those proceedings be joined to the present proceedings;
- that the directors of the companies and the investment manager, the general partner, do appear to be examined as to the management and affairs of the company; and
- that the chief investment officer of the investment manager, delivers up to the interim receiver all documents in his or her possession and furnishes all information concerning the use of the company's liquid assets, and any securities held on its behalf to the appointed interim receiver, together with books, records, documents, and financial statements and accounts relating to the company.

The core of the petitioner's complaint was that the liquid funds of the companies were pooled and wrongly used for the exclusive benefit of the investment manager and its principal, and therefore sought an order that the company be treated as the subject matter of the proceedings on the ground that it is itself a victim of wrongdoing whether by way of breaches of fiduciary duty or breaches of contract. Further, it was contemplated that subject to the appointment of a liquidator or an interim receiver of the master accounts, leave would be sought for the liquidator or interim receiver to pursue claims against the directors, the investment manager and any other person or entity into which the companies' assets can be traced in order to recover them.

The anti-suit injunction

Following the commencement of the winding-up proceedings and prior to the hearing of the summons for directions and winding-up petitions, the Delaware partnerships and two of the Bahamian companies commenced proceedings in Delaware, which gave rise to the petitioner and others seeking an anti-suit injunction to restrain the foreign proceedings.

A further action was therefore filed on behalf of the petitioner and others that the defendants and their servants or agents be restrained from continuing or prosecuting, or assisting in the prosecution of, certain legal proceedings commenced in the Delaware Court of Chancery, insofar as such proceedings relate to and concerned the Bahamian companies currently subject to winding-up proceedings before the Supreme Court. The relief filed was also for an order that the defendants be restrained from commencing any further or other proceedings against the plaintiffs in relation to the relevant Bahamian companies in any jurisdiction other than the Bahamas: on the basis that contractual documents relevant to the US and Bahamian proceedings contain an exclusive jurisdiction clause in favour of the Bahamas; and for breach of the governing law clause by seeking to refer one of the contractual documents in dispute to the American Arbitration Association in accordance with the American Commercial Arbitration Rules and Mediation Procedure. Leave was also sought to issue and serve a concurrent writ of summons and notice thereof outside the jurisdiction on the Delaware partnerships.

The Supreme Court has the discretion to grant an anti-suit injunction in the context of insolvency proceedings, particularly where the ends of justice would require it, as noted in *Stichting Shell Pensioenfonds v Krys & Anor* [2014] UKPC. Further, section 192 of the CWUAA confers the power on the court to stay or restrain proceedings. A stay can be sought under that section at any time after the presentation of a winding-up petition and before a winding-up order has been made. The company or any creditor or contributory may:

- where any action or proceeding against the company, including a criminal proceeding, is pending in a summary court, the court, the Court of Appeal or the Privy Council, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

- where any action or proceeding is pending against the company in a foreign court, apply to the court for an injunction to restrain further proceedings therein, and the court to which the application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

New investment funds legislation

A draft Investment Funds Bill 2017 has been circulated by the Securities Commission of the Bahamas in its capacity as regulator of the investment funds market for public consultation, which is expected to be enacted into law shortly. It aligns administrative and fiduciary duties appropriately between parties to an investment fund, provides an appropriate regulatory regime for closed-end funds and master-feeder fund structures, and is compliant with the Alternative Investment Fund Managers Directive. The legislation will establish a regulatory regime for fund managers and a regulatory framework for custodian and segregation of assets. The Bill overhauls the current licensing and registration regimes for investment funds and investment fund administrators.

Recognition and assistance

In addition to its compulsory winding-up jurisdiction, the Bahamian court is able to offer assistance to distressed companies by giving recognition and effect within the Bahamas and pursuant to Bahamian law of foreign orders and restructuring arrangements through its cross-border insolvency regime. As explained above, a company is not permitted to forum shop in an effort to disadvantage its creditors; however, a company is entitled to request the assistance of the Bahamian court to give effect to a rehabilitative process aimed at keeping the company as a going concern, which would be beneficial to both stakeholders and creditors. In the Bahamas foreign insolvency proceedings may be recognised if a foreign company has assets here and the foreign representative applies to the Bahamian court to be recognised. The Bahamian court is able to aid foreign companies seeking the recognition of an order appointing a receiver over assets outside of insolvency proceedings as well as assistance in the recognition of a foreign court-appointed officer.

Foreign court-appointed receiver

The procedure for recognition of a foreign representative is prescribed by Rule 4 of the Foreign Proceedings (International Cooperation Rules) 2012:[4]

> *4 (1) "An application by a foreign representative made under section 254(1) (a) of the Act for a declaratory order recognizing his right to act on behalf of a debtor shall be made by petition in accordance with RSC Order 9."*

A foreign representative is defined by section 253 of Part VIIA of the CWUAA as a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign proceeding.

Where the order appointing a foreign receiver is made outside a formal insolvency process, so that it does not fall within the terms of the Act, the appointment of a receiver by a foreign court in relation to a Bahamian company or a foreign company whose assets are located within the jurisdiction would be recognised on principles of common law.

At common law, a receiver appointed by a foreign court as an officer of that court in respect of property located in a foreign jurisdiction would only be able to exercise his or her powers in the foreign country to the extent that the foreign country recognises the validity and effect of the charge and the power of the receiver to act.

The Supreme Court in recognising the order appointing the receiver would not be enforcing the order; rather the Court would be recognising the receiver's authority in relation to the assets. The case of *KPMG Inc v Pogachar* and others[5] affirms the principle that there is a difference between the court recognising a judgment and giving effect to it. As a general principle, where a foreign court is regarded as having competent jurisdiction to have made an order appointing a receiver, comity would require recognition be afforded. But certain conditions must be satisfied before the Supreme Court would recognise an order appointing a foreign receiver as having competent jurisdiction.

On the hearing of an application for recognition, the parties would need to satisfy the Court that there was a sufficient connection that enabled the foreign jurisdiction to make the order. The Supreme Court will consider a foreign court as having competent jurisdiction if there is a 'sufficient connection' between the company in respect of which the receiver is appointed (the defendant) and the jurisdiction in which the foreign receiver was appointed to justify recognition of the foreign court's order. An example of a sufficient connection would be an appointment made by a court in the country in which the company is incorporated; however, there may be several circumstances where such a finding may be made.

The Supreme Court will require it to be established (i) that any relevant charge given by the debtor is enforceable within the Bahamas where the property is situated; (ii) that the foreign court was competent to make the appointment; and (iii) there is a sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed to justify recognition of the foreign court's order as having effect outside the foreign jurisdiction.

Recognition in this sense is not based on the Reciprocal Enforcement of Judgments Act 1924 as it is arguable whether an order appointing a receiver is an enforceable judgment. Rather, in such cases the power of the Bahamian court to recognise a foreign receiver is part of the court's inherent jurisdiction and is based on well-recognised conflict of laws principles. The receiver would still, in seeking to take possession of assets, need to make the requisite applications within the jurisdiction and in accordance with Bahamian law. The order would recognise the receiver's authority to take steps towards obtaining possession, whether by agreement or otherwise, and title to the property.

An order recognising the appointment of a receiver would not be granted where to do so would be to give effect to a law that is contrary to Bahamian public policy and where there was no sufficient connection between the company and the jurisdiction of the district court. Thorne J, in *Chamberlain v Miss Boots (The)*[6] in considering recognition of a foreign receiver stated that 'while a court must recognise every judgment it enforces, it need not enforce every judgment it recognises.' This is because in certain circumstances, the court may refuse recognition where it amounts to enforcement of a negative obligation or an interlocutory order. Recognition is generally only granted in relation to final orders.

Therefore, if on the facts the appointment of the foreign receiver by the foreign court cannot surpass the 'sufficient connection' test, recognition will not be given.

As it relates to the procedure, such an application is made pursuant to section 21 of the Supreme Court Act or the inherent jurisdiction of the court by originating summons, and is supported by affidavit evidence including an affidavit of foreign law, which would serve to inform the court that the appointing court had the competent jurisdiction to appoint the receiver as well as to advise what the receiver's powers are pursuant to that order.

Recognition and provisional liquidations

The recognition of an order of a foreign court appointing a receiver does not protect the company from insolvency proceedings initiated within the Bahamas. The only way to protect a distressed company from insolvency proceedings and other claims while the company is being restructured is through the appointment of a provisional

liquidator. The court may, at any time after the presentation of a winding-up petition but before the making of a winding-up order, appoint a liquidator provisionally. An application for the appointment of a provisional liquidator is made pursuant to section 199 of the CWUAA and may be made by a creditor or contributory of the company or any relevant regulator on the grounds that (i) there is a prima facie case for making a winding-up order; and (ii) the appointment of a provisional liquidator is necessary to prevent the dissipation or misuse of the company's assets, to prevent the oppression of minority shareholders, to prevent mismanagement or misconduct on the part of the company's directors, or it is in the public interest.[7]

An application for the appointment of a provisional liquidator may also be made by the company ex parte on the grounds that the company is or is likely to become unable to pay its debts within the meaning of section 188, and the company intends to present a compromise or arrangement to its creditors.[8] A provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which he or she was appointed and the court may limit the powers of a provisional liquidator in such manner and at such times as it considers fit.

The provisional liquidator would also have the power (with sanction of the court) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable. The liquidator also has the power to compromise, on such terms as may be agreed, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory, or alleged contributory or other debtor, or person apprehending liability to the company. Finally, the liquidator would have the power to promote a scheme of arrangement pursuant to section 158 without sanction of the court.

In eight cases,[9] the Bahamian court appointed provisional liquidators over a group of companies that had sought recognition of Chapter 15 proceedings in Delaware within the Bahamas, which ultimately failed. In appointing the provisional liquidators, the court held that the appointment was necessary to preserve the assets of the companies and protect the assets from further dissipation by the directors of the companies for creditors. The court granted the provisional liquidators the power to promote schemes of arrangements and enter into protocols with creditors and stakeholders.

The appointment of a provisional liquidator in circumstances where there are concurrent bankruptcy proceedings under way in another jurisdiction, would require an international protocol to be entered into with the approval of the Bahamian court and of the foreign court or authority. The purpose of an international protocol is to promote the orderly administration of the estate of a company in liquidation and the scope of such an arrangement includes the following: formulation and promotion of restructuring protocols, including schemes of arrangements; preservation of assets located outside of the Bahamas; and procedures for exchange of information between the official liquidator and the foreign officeholder

An application for the appointment of a provisional liquidator will protect the assets of a company from creditors and also permit applications to be made to other courts for assistance. It provides a means for restructuring procedures to be engaged while preserving assets located within the jurisdiction. The appointment of a provisional liquidator also triggers a moratorium on all claims, including claims for attachment and distress and execution, and protects the company from both existing and new legal proceedings.[10] Section 192 of the CWUAA provides that the court may, at any time after the presentation of a winding-up petition before an order, stay or restrain proceedings whether pending in a Bahamian court or a foreign court against the company. Once such an order is made, all proceedings against the company are stayed, which provides the distressed company with the time it needs to restructure and rehabilitate the company.

The appointment of a provisional liquidator by the Supreme Court in this manner is capable of recognition by a foreign court. The Supreme Court will also recognise the appointment of a provisional liquidator by a relevant foreign country in a foreign proceeding.[11]

Conclusion

The Bahamian legislature continues to examine its existing legislation for ways in which it can seek to promote judicial efficiency by amending and implementing new procedures in its insolvency regime. As the global economy continues to grow and foreign companies and investors increasingly face obstacles arising from the use of offshore structures, the need for cross-border insolvency proceedings and the use of protection afforded to investors will likely continue to increase. The Bahamas, through its dynamic legislation, has demonstrated that it is well equipped to handle complex commercial disputes when these cases arise.

Notes

1 According to section 183 of the CWUAA 'contributory' means (i) every person liable by virtue of this Act to contribute to the assets of a company in the event that it is wound up under this Act; and (ii) every holder of fully paid-up shares of a company.

2 Section 186 of the CWUAA provides the circumstances in which a company may be wound up by the court:

> *A company may be wound up by the court if (a) the company has passed a resolution requiring the company to be wound up by the court; (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (c) the company is insolvent; (d) the members are reduced in number to less than two; (e) the court is of the opinion that it just and equitable that the company should be wound up;or (f) a regulator petitions for the winding up of a company over which it has regulatory authority and whose licence or registration has been suspended or revoked.*

3 2000 Action No. COM/com 14, 15 and 16 of 2018.

4 '... (3) A petition under this rule shall state (a) particulars of the debtor's incorporation; (b) the nature and place of the debtor's business; (c) the court or other authority by which the foreign representative was appointed; (d) the powers and duties of the foreign representative under the law of the place of his appointment; and (e) the reasons for seeking a declaratory order.'

5 [2011] 3 BHS J. No. 109.

6 [1992] BHS J. No. 8.

7 Section 199(2) of the CWUAA.

8 Section 199(3) of the CWUAA.

9 *Attorney-General of the Commonwealth of the Bahamas (In a representative capacity for and on behalf of the Government of the Commonwealth of The Bahamas, the Treasurer of the Commonwealth of The Bahamas, Bahamas Electricity Corporation, The National Insurance Board, The Water and Sewerage Corporation and the Gaming Board) v Baha Mar Ltd and others*; *The National Insurance Board of the Commonwealth of the Bahamas v Baha Mar Ltd*; *The Treasurer of the Commonwealth of the Bahamas v Baha Mar Land Holdings Ltd*; *The Treasurer of the Commonwealth of the Bahamas v Cable Beach Resorts Ltd*; *The Treasurer of the Commonwealth of the Bahamas v Baha Mar Properties Ltd*; *The Water & Sewerage Corporation v BMP Golf Ltd*; *The Treasurer of the Commonwealth of the Bahamas v BMP Three Ltd*; *The*

Gaming Board v Baha Mar Enterprises Ltd [2015] 2 BHS J. No. 97.

10 Section 193 of the CWUAA.

11 http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2016/2016-0014/ForeignProceedingsInternationalCo-operationRelevantForeignCountriesLiquidationRules2016_1.pdf.

Sophia Rolle-Kapousouzoglou
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Sophia, a litigation partner, appears both as lead counsel and junior counsel in the full gambit of commercial matters. She has developed a very strong reputation for handling complex insolvency issues and is well known as a successful and tenacious trial lawyer. Sophia has been described as a 'skilful' and 'thoughtful' advocate and has been commended by judges for the 'industry and scholarship of her written submissions'. Sophia has been described by *Chambers and Partners* as a 'Rising Star', has been named in *Global Restructuring Review*'s '40 Under 40' and is the 2017 contributor for Lexology's Insolvency and Restructuring chapter on the Bahamas.

Sophia has recently spoken at insolvency conferences for the American Bankruptcy Institute (International Insolvency Symposium 2018, Milan, Italy; and Cross-Border Insolvency Program 2016, New York); INSOL International (Offshore Day – Sydney Quadrennial Congress 2017); ABA Section of International Law (November 2017, Miami); and Transcontinental Trusts Bermuda (June 2018, Bermuda). Sophia has written articles published in *Insolvency Intelligence* (Sweet & Maxwell); *International Insolvency Law Review* (Verlag C H Beck); INSOL World 4th Quarter 2016 Africa and Offshore; and, recently, the Bahamas chapter of the INSOL e-book publication on Insolvency and Trusts, 2018.

Olivia Moss
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Olivia is a litigation associate. She has worked as a junior on numerous cases, one of the most notable being the liquidation and receivership of a multibillion-dollar resort located in the Bahamas. Her diverse practice includes insolvency, corporate and commercial litigation, complex commercial arbitrations, and trust and estate litigation. She prides herself on meeting critical deadlines, being highly efficient and reliable, and on her ability to handle complex research requests.

Olivia has regularly appeared at both the Supreme Court and Court of Appeal level and is involved in numerous high-profile and high-net-worth cases. Notably, she appeared as counsel and attorney-at law on one of the first applications for recognition by a foreign liquidator in the Bahamas under the new winding-up regime. She also appeared in one of the first applications for the remittal of assets in an ancillary liquidation in the Bahamas.

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Lennox Paton is a leading offshore, full-service commercial law firm providing services to clients in relation to Bahamian and British Virgin Islands law. As one of the Bahamas' largest law firms it provides a comprehensive range of legal services including: litigation; insolvency and restructuring; investment funds; trusts and foundations; banking and finance; real estate; resort development; corporate and commercial; private client; wealth management and shipping.

A succession of long-term client relationships and landmark cases has earned the firm recognition as one of the top firms in the Bahamas. Its well-known expert attorneys are ranked among the best in the region, frequently in demand across the international conference circuit, in addition to fulfilling their duties in government and industry-appointed task forces, steering committees and statutory bodies.

The firm's insolvency and restructuring team represents a range of clients in relation to complex insolvency matters and they are widely acknowledged as a market leader in the region. The team are often involved in complex cross-border proceedings and are skilled in advising clients in relation to local insolvency laws or in relation to ancillary proceedings with a Bahamian component. They act on behalf of receivers, creditors, administrative receivers, directors, trustees in bankruptcy, fiduciary claimants, liquidators and companies in connection with insolvency issues, including securing assets in the Bahamas and the British Virgin Islands.

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