

Bahamas designates list of relevant foreign countries

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The Liquidation Rules Committee has published the Foreign Proceedings (International Cooperation) (Relevant Foreign Countries) Liquidation Rules 2016.

The most recent statutory enactment in relation to corporate insolvency in the Bahamas is the designation of a list of relevant foreign countries to which the Bahamian court will extend international cooperation in insolvency proceedings.

The list comprises 142 countries. The subsidiary legislation now makes provision in relation to the recognition of judicial or administration proceedings pursuant to a law relating to liquidation or insolvency in those relevant foreign countries where the debtor's(1) property and affairs are subject to control or supervision by a foreign court, for the purpose of reorganisation, rehabilitation, liquidation or bankruptcy of an insolvent debtor.

The 142 countries included in the list include Australia, Bermuda, the British Virgin Islands, Canada, the Cayman Islands, China, France, Germany, Hong Kong, the United Kingdom and the United States.

The recent statutory enactment should remedy the lacuna in the legislation which recently made it insurmountable for foreign representatives (including trustees, liquidators or other officials appointed in respect of a debtor in foreign proceeding) to obtain recognition in insolvency proceedings in the Bahamas.

On that basis, the Bahamian court recently declined to grant recognition to the foreign proceedings themselves – including Chapter 11 proceedings in the *Baha Mar* case and full-blown liquidation proceedings which were ongoing in respect of Caledonian Bank in liquidation. The court declined to grant any form of recognition, assistance or relief to the foreign court and foreign office holders in the absence of a designated list of relevant foreign countries.

The Supreme Court also took the view that common law assistance is not available where a country has not been designated. In this respect, it will be interesting to see how an application by foreign office holders in insolvency proceedings in countries that have not been designated as a relevant foreign country will be treated in the future.

Now that relevant foreign countries have been designated, this should provide for greater flexibility and assistance by permitting foreign office holders to:

- enter into protocols in order to define and allocate responsibilities between the official liquidator and foreign office holder in respect of the formulation and promotion of restructuring proposals;
- agree to procedures relating to the remission of funds between the official liquidator and foreign office holder; and
- provide for the exchange of information between the official liquidator and foreign office holders.

Finally, procedures relating to the payment of claims regarding the remission of funds between the official liquidator and foreign office holder may also be entered into.

AUTHOR

[Sophia Rolle-Kapousouzoglou](#)



For further information on this topic please contact [Sophia Rolle-Kapousouzoglou](#) at Lennox Paton by telephone (+1 242 502 5000) or email (srolle@lennoxpaton.com). The Lennox Paton website can be accessed at www.lennoxpaton.com.

Endnotes

(1) A 'debtor' is defined as a foreign corporation or other foreign legal entity that is subject to a foreign proceeding in the country in which it is incorporated or established.

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