

# Supreme Court exercises statutory jurisdiction to wind up foreign company

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In another recent decision in the cross-border insolvency proceedings concerning Cayman-based Caledonian Bank, the Supreme Court of the Commonwealth of the Bahamas acceded to the petition for Caledonian Bank Limited (In Liquidation Under Supervision of the Grand Court of the Cayman Islands) to be wound up as a foreign company pursuant to Section 185(d)(ii) of the Companies Winding-up Amendment Act 2011, thereby exercising its jurisdiction for ancillary winding-up proceedings to be entered into.

Following the refusal of an application for recognition by the foreign representatives, a petition was filed to wind up the insolvent company in the Bahamas so that the company's liquidators could access property in this jurisdiction.

The statutory jurisdiction to wind up a foreign company has been enacted into legislation pursuant to Section 185(d)(ii), although the jurisdiction has been exercised in only one other reported case to date.<sup>(1)</sup> As a result of the statutory enactment, the Bahamian court has jurisdiction to make winding-up orders in respect of:

- an existing company;
- a company incorporated under the act;
- a body incorporated under any other law; and
- a foreign company which:
  - has property located in the Bahamas;
  - conducts business in the Bahamas; or
  - is registered under Part VI.

Under the act, a 'foreign company' is "any body corporate incorporated outside The Bahamas".

The court considered the common law jurisdiction of the court to wind up a foreign company and decisions such as *Picard v Primeo Fund (In liquidation)* [2013] 1 CILR 164, *Re Matheson Brother* [1884] 27 Ch D 225, *Re Bank of Credit and International SA*, (No10) [1997] Ch 213 and *Re Commercial Bank of South Australia* [1886] 33 Ch D 174, and determined that the common law has long since recognised the existence of parallel winding-up proceedings in multiple jurisdictions where a company holds assets or carries on business.

The ancillary winding-up jurisdiction has developed over the years through judicial practice based on the principle of universalism. The court held that:

*"notwithstanding the law governing the ancillary winding up is Bahamian law, for an ancillary winding up to be effective it calls for a level of judicial comity and co-operation between the Courts of the respective countries in which winding up proceedings are pending."*

The court therefore acceded to the petition and held that the court will have jurisdiction over the conduct of the ancillary winding up, and that any directions as to the winding up must be directed to the Bahamian court, which will determine all issues according to Bahamian law. The court will have regard to the wishes of creditors whose interests must be considered as a whole, regarding each



other and all assets of the company.

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## **Endnotes**

(1) *In the Matter of BC Capital Group International SA (In Voluntary Liquidation)*, 2012/COM/COM/0087.

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