

# Billionaire adjudicated bankrupt under 1869 statute

January 21 2016 | Contributed by [Lennox Paton](#)

[Facts](#)  
[Decision](#)  
[Comment](#)

On November 20 2015 the Bahamian Supreme Court declined to register a composition with creditors sought by Irish billionaire Sir Anthony O'Reilly. The court took the alternative route of adjudicating him bankrupt instead.

## Facts

The court declined to register what is said to be the first composition with creditors sought to be entered into under Bahamian law, on the basis of legal difficulties with the proposed composition under Section 97 of the Bankruptcy Act of 1869 (the equivalent to Section 126 of the archaic English Bankruptcy Act of 1869).

Dissenting creditor Allied Irish Bank (AIB) argued that the court did not have jurisdiction to register resolutions resulting from a procedure adopted in non-compliance with the relevant bankruptcy statutes and passed in non-conformity with Section 97 of the Bankruptcy Act and the First and Second Schedule to the English Bankruptcy Act of 1914 (which has been adopted into Bahamian law). The majority of O'Reilly's creditors had voted in favour of the composition following a creditors' meeting held in England in 2015, before invoking the jurisdiction of the Bahamian court in which the resolutions passed were to be registered.

The Bahamian court also questioned the applicability of the General Rules made pursuant to the Bankruptcy Act of 1870, which were claimed to govern the general procedure of bankruptcy proceedings.

## Decision

After hearing full arguments contesting the jurisdiction of the proceedings, the Bahamian Supreme Court held that Section 97 gave rise to significant legal difficulties of interpretation when applied to the available rules, and instead gave effect to a subsection which provides that:

*"if it appears to the court, on satisfactory evidence, that a composition under the section cannot in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors of the debtor, the court may adjudge the debtor a bankrupt and proceedings may be had accordingly".*

O'Reilly therefore sought alternative relief that he be adjudicated bankrupt.

The Bahamian Court had to interpret legislation which, in other jurisdictions, has evolved significantly since 1869 towards individual voluntary arrangements (IVAs) and in relation to which it is often expressly provided that IVAs have extraterritorial effect.

In contrast, Bahamian bankruptcy law arguably does not permit the extraterritorial collection of a debtor's assets by a trustee in bankruptcy, no matter where the assets are situated, as this would not have been contemplated in 1869.

AUTHOR

[Sophia Rolle-Kapousouzoglou](#)



While a bankruptcy filing would theoretically allow all creditors to be paid *pari passu*, AIB challenged whether a trustee in bankruptcy appointed in the Bahamas would be recognised by foreign courts in the places where a debtor's assets were situated, since the bankruptcy legislation – which is almost 150 years old – contains no provisions on extraterritorial effect. The bankruptcy petition sought relief pursuant to Section 122 of the English Bankruptcy Act of 1914 and/or the inherent jurisdiction of the court for assistance from foreign courts to assist the appointed receiver with the ancillary orders in aid. It was submitted that the statute was not intended to have such extensive scope and the ability to rely on the English statute was not permissible since it was beyond the relief available under the Bahamian bankruptcy statute. The Privy Council previously considered the application of Section 122 of the English Bankruptcy Act of 1914 in Commonwealth countries in *Al Sabah v Grupo Toras* ([2005] 1 All ER 871). However, the Bahamian Supreme Court made no determination on this argument when O'Reilly was adjudicated bankrupt.

## **Comment**

Bahamian bankruptcy legislation is undoubtedly in need of reform to accommodate the changing landscape of insolvency proceedings in the 21st century. Declaring O'Reilly bankrupt as requested by his counsel has granted him protection against creditors seeking to attach his unencumbered assets against provable debts.

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

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).