

Cross-border restructuring & insolvency

Dealing with financial distress is often complex and time critical. As a result of the pandemic, many businesses will be facing challenging times due to disruption of their business activities. More than ever organisations will need to be flexible and make tough decisions to remain resilient in the years to come.

Having access to an experienced and specialist legal team, which is responsive, commercially minded and quick thinking, can make a real difference to the outcome of your situation. This includes keeping you abreast of the latest developments in restructuring law in the jurisdictions that affect your business. We have the expertise to offer specialist advice on how those developments might affect you and suggest tailored solutions to the complex issues you are facing.

We act for a wide range of restructuring professionals, lenders, financial institutions, foreign governments and regulators, companies, directors, and other stakeholders on the full range of contentious and non-contentious restructuring and insolvency work.

Whether you are a debtor, creditor or a regulator, you will have a consistent team, committed to building lasting relationships and achieving long-term objectives with you. We use our understanding of the varied options available to offer pragmatic and commercially driven solutions to the legal

issues you face in cross-border restructuring and insolvency cases to make a real difference to your outcome.

Our international capability in cross-border matters is enhanced by our team of lawyers based in the UK, Europe, the Middle East and Hong Kong, some of whom are dual qualified (including a number who are admitted and practise in the BVI and Cayman Islands) and are able to advise under both common and civil laws.

In other jurisdictions, including the US, the Caribbean and Africa, we work with restructuring and insolvency specialists with whom we have established long-standing relationships and regularly partner in cross-border cases. [Ray Ng](#) retains BVI and Cayman Islands connections acquired over 10 years of offshore practice, while [Roger Elford](#) is a Fellow of INSOL International. Having access to an established global network of restructuring professionals recognised for their cross-border expertise, ensures that we can provide a coordinated one-stop solution for multi-jurisdictional matters, wherever they may arise.

As part of a full service law firm, the team is complemented by our pre-eminent fraud, investigations and dispute resolution practices, comprising litigators and international arbitration specialists across all of our international offices.

'The team is exceptional, both in terms of their technical knowledge and client interaction. The lawyers offer sound, practical advice and are willing go the extra mile to maximise their clients' chances of success.'

LEGAL 500 2021



How we can assist you



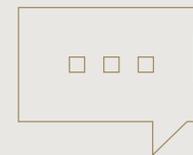
Restructuring & insolvency

- Cross-border restructuring and insolvency matters
- Financial institution insolvency
- Formal insolvency/bankruptcy procedures and creditor committee representation
- Debtor representation
- Creditor composition and assignment agreements, schemes of arrangement, restructuring plans and voluntary arrangements
- Representation of governmental and quasi-governmental organisations
- Non-contentious and consensual restructuring/re-organisation of businesses and group company structures
- Disposals, including pre-packaged solutions, distressed M&A and real estate workout
- Insolvency administrators, liquidators, monitors, receivers, trustees and other office holders



Creditors

- Security enhancement and enforcement
- Loan portfolio and distressed debt transactions
- Contentious claims and validation / insolvency litigation, fraud and enforcement
- Creditor and equity committee representation
- Supplier and customer representation in restructurings
- Asset tracing and recovery
- Strategies for distressed investors to obtain control of troubled companies



Advisory

- Independent advice to directors of distressed companies
- Extra Territorial Recognition
- International arbitration (with specialist teams in London, Bahrain, Dubai, Geneva, Hong Kong and Paris)
- Mediation

Case studies

Awal Bank

(Bahrain, KSA, Kuwait, the US, Cayman Islands, UK and Switzerland)

Instructed by the Central Bank of Bahrain to act as the External Administrator of Awal Bank B.S.C., the Bahraini banking arm of the Saudi-based Saad group, operated by Mr Maan Al Sanea.

At the time it entered administration, Awal had balance sheet assets in excess of USD 5 billion and creditors in excess of USD 2 billion. Mr Al Sanea and his companies (including Awal Bank's subsidiaries) have been subject to the longest-running trial in Cayman Islands' history, centred on an alleged Ponzi scheme and including claims of fraud, forgery, deceit, conspiracy and unjust enrichment.

Other highlights of the case include:

- Successful applications for recognition of the administration process in the UK and Cayman Islands, as well as opening parallel Chapter 15 and Chapter 11 bankruptcy proceedings in New York.
- Acting for the liquidators of Awal's Cayman Islands subsidiaries in the successful defence of a USD 9.2 billion plus fraud claim.

- Successful applications to Swiss banking regulator, the FINMA for recognition of the Bahrain administration process in Switzerland, leading to the repatriation of substantial funds to Bahrain.
- Litigation and enforcement proceedings across the Middle East, and in the UK (including High Court proceedings and LCIA arbitral proceedings), Switzerland, Cayman Islands and the US.

Baha Mar

(The Bahamas, the US, PRC and UK)

Over several decades, Charles Russell Speechlys has established a leading reputation in the Caribbean, having successfully represented a large number of Caribbean governments for decades, as well as many local businesses, institutions and individuals. Therefore, when the Government of The Bahamas faced substantial challenges in respect of the construction of the USD 3 billion Baha Mar "mega resort" in Nassau, it approached us to plan and implement a lasting solution. The project threatened to collapse when the developer of the "mega resort" filed for Chapter 11 bankruptcy in the US in 2015.

Thousands of jobs had been lost, local creditors had not been paid and the developer, contractor and lender were at an impasse. The Government challenged the recognition of the US Chapter 11 process in the Bahamian Court and petitioned for the appointment of provisional liquidators to take control of the resort. In the meantime, other key stakeholders sought the dismissal of the Chapter 11 process in the US. The Charles Russell Speechlys team advised the government on strategy throughout the case.

After a course of lengthy and complex negotiations with key stakeholders, as well as numerous applications to the Court, construction at the site resumed.

The completed construction of the resort includes a number of hotels, a golf course, convention centre and a casino resort in Nassau. Bahamian creditors have shared in a fund of USD 100 million, which provided for the settlement of all claims of Bahamian creditors owed less than USD 500,000 in full, as well as significant provision for those owed more. The resort now employs more than 5,000 Bahamians.

Our relevant experience

LEHMAN BROTHERS

Complex financing program for Lehman Brothers

Advising the Joint Liquidators of LB GP No.1 Ltd in relation to its role as general partner of a series of limited partnerships which were established as part of a complex financing program for the Lehman Brothers group. We are advising on the insolvency and financial law aspects of winding up the general partner and limited partnerships, which are collective investment schemes and regulated by the FCA. We are also advising in relation to (i) proceedings in the Southern District of New York bankruptcy court which concern the status of hybrid securities issued by the limited partnerships; (ii) proceedings in the High Court in London on the priority of subordinated notes issued by other Lehman Group entities to the limited partnerships; and (iii) various other issues arising from the Chapter 11 filing in relation to Lehman Brothers Holdings inc.



ALL SAINTS

Implications of All Saints USA Limited's company voluntary arrangement

Advising several US shopping mall operators on the implications of clothing retailer, All Saints' English company voluntary arrangement ("CVA") on its ongoing store lease commitments across the US. The case raised several novel issues on the interplay between CVA's and the protections afforded to debtors under Chapter 15 of the US Code on the recognition of foreign insolvency proceedings.



Costs and expenses application for former Caribbean bank

Acting for the former joint liquidators of Stanford Bank International, in relation to an application for the approval of their costs and expenses as liquidators. The bank had been placed into liquidation by order of the court due to the collapse of a billion dollar empire amid allegations of fraud. The losses to creditors are estimated to be in the region of £4.2 billion and over 27,000 investors have been located worldwide.



Recovery of funds following MTIC fraud

Acting to recover funds into the insolvent estate of a UK company through recognition in the DIFC Courts of a USD 35 million English Court judgment of conspiracy to defraud for onward enforcement in the local Dubai Courts against a UAE resident under the Enforcement Protocol. The judgment arises from the individual's participation in a Missing Trading Intra Currency ("MTIC") fraudulent scheme perpetrated by various individuals across the UAE, the UK and Curacao.



Debt recovery strategy

Advised a large UAE commercial bank in relation to the strategy for the recovery of a debt arising from a loan default including the commencement of insolvency proceedings under the new UAE Bankruptcy Law or litigation (in either the DIFC or the ADGM) including options available for enforcement.



Payroll fraud

Acting for the liquidators of a company used as a vehicle to defraud HMRC. We successfully obtained a freezing order against several individuals involved in the fraud and went on to obtain summary judgment against two individuals who had directly benefited from the fraud (one of whom has been convicted for breach of trust by the criminal courts in Dubai).



Segregation of a bankrupt estates assets

Advised the UK-based liquidators of a bank in the UAE as one of the largest creditors of a Swiss bank insolvency in Switzerland, obtaining through negotiation with Swiss liquidators the segregation of assets out of the bankrupt estate worth over USD 1 billion.

Our relevant experience



BVI voidable transactions defrauding creditors

Acted for the BVI liquidators of a PRC-owned shipping company with profitable shipping operations but overwhelmingly greater FFA liabilities. Shipping operations, ships and cash had been hived off to new Singapore entities via conduit BVI companies and then dissolved. As part of the asset recovery process which ultimately resulted in an acceptable settlement, we obtained interim discovery and restraining orders against New York branches of PRC banks, pursued BVI clawback claims which involved restoration of each dissolved conduit company and appointments of liquidators over them, and tracked and arrested a ship when it docked in New Orleans.



Freezone insolvency regime advice to multiple UAE entities

Advising logistics companies, a dredging and marine expert entity and a significant commodities trading company in respect of substantial debt issues and insolvency procedures available under newly introduced federal and freezone insolvency regimes in the UAE, including the DMCC, JAFZA and Dubai South freezones. The most recent of these involves deficiencies to creditors in excess of USD 1 billion.



Europe-wide insolvency proceedings

Advised Adveo Group, a leading European distributor of office supplies and services with subsidiaries in Spain, Italy, Benelux and France in relation to a cross-border insolvency across all European entities. Specifically, we advised on the proceedings in France and assisted Adveo France and Adveo Group with a request filed by a local public prosecutor to open a secondary proceeding against French jurisdictions. We also supervised the M&A operation following the sale of the French entity to an investment fund.



USD 1 billion BVI administrative receivership

Advised the Security Trustee, Main Lender and their appointed BVI Administrative Receivers in relation to a defaulted USD 1 billion syndicated loan, to take control of and realise UK commercial real estate held by a multi-layered offshore structure spanning several jurisdictions. This case involved issues of English and BVI law and conflicts between them.



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