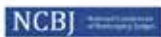


insolvency2020



Oct. 14, 2020, 3:30-4:45 p.m.

International Women's Insolvency & Restructuring Confederation: When in Rome: A Comparative Look at Fiduciaries Around the Globe

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Educational Materials



IWIRC - When in Rome

INSOLVENCY 2020 | 14 OCTOBER 2020



Appointment of Trustee/Liquidator



	Cayman	UK	Brazil
Provisional Liquidations	Part V of the Companies Law (sections 90 – 115) Winding Up Rules, Order 4	- Section 135 of the Insolvency Act 1986 - Part 7 Chapter 5 of The Insolvency (England and Wales) Rules 2016	There is no provisional liquidation in BR
Official Liquidations	Part V of the Companies Law (sections 90 – 115) Winding Up Rules, Order 3	- Part IV of the Insolvency Act 1986 - Parts 5 to 7 of The Insolvency (England and Wales) Rules 2016	Section 1 – Chapter 05 – Law No. 11.101 (Reorganization and Bankruptcy Act)
Receiverships	No specific statutory provisions under Cayman Islands Law	- Court Appointed Receiverships CPR 69 - Fixed Charge/LPA Receivers	There is no receivership in BR
Personal Bankruptcy	Part IV of the bankruptcy code	- Part IX of the Insolvency Act 1986 - Part 10 of The Insolvency (England and Wales) Rules 2016	There is no personal bankruptcy in BR



Powers of the Trustee/ Liquidator



Cayman

- Power to take control and possession of books and records of the Company
- Examination of relevant persons and delivery of documents.

UK

- Gather books and records
- Interviews of directors, bankrupts and other persons
- Application to Court for examinations and compelling information to be provided
- Challenging antecedent transactions
- Bringing claims and legal actions, for example:
 - Transactions at undervalue
 - Preferences
 - Claims against directors, including misfeasance
 - Fraudulent and wrongful trading
 - Transactions defrauding creditors

Brazil

- See next slide



Powers of the Trustee/ Liquidator



Brazil

Trustee powers in reorganization:

- To decide the first challenge by creditors against the debtor and prepare the consolidated list of creditors;
- To call the creditor's meeting to vote on the plan;
- To request the conversion of the reorganization into liquidation in the event of default on the reorganization plan.

Trustee powers in liquidation:

- The trustee is the legal representative of the bankruptcy estate. After the bankruptcy judge approval, she can hire experts to assist on the defense of the estate's interests and file lawsuits against company owners or managers if they had committed wrongdoings during their management;
- The trustee also controls and collects all the Company documents and assets;
- The trustee sells the assets to pay the creditors, with the judge's approval.

Biggest challenges with serving as a fiduciary



Cayman

- Identifying and tracing assets
- Costs

UK

- Time
- Focus on the 'end game'

Brazil

- Liability for losses and agreements and selling of assets of the estate
- Spending several years without final judgment

Selecting counsel



Cayman

- Size and complexity of the matter
- Level of experience, depth and capability of the firm

UK

- Network
- Specialisms

Brazil

- Network
- Specialisms
- Judge's approval

An interesting/
challenging case
or aspect



Cayman

- Personal Bankruptcy
- NPO's

UK

- Litigation funding

Brazil

- MMX

Multi-
jurisdictional/
Cross border –
recovering
assets offshore



Cayman

- Recognition proceedings and enforcement of Foreign Judgements

UK

- Recognition
- Overseas insolvency proceedings
- Other proceedings in different jurisdictions

Brazil

- Brazil still has not adopted the Model Law. There is a bill pending in Congress, but it is not in force yet.
- Oi Case
- Trustee hire advisors and law offices specialized in cross borders matters

Your Superpower



Cayman

- Mareva Injunction/Freezing Orders and other pre-judgment relief
- Subpoenas or equivalent issued under Chapter 15 recognition / other jurisdictions
- Selection 1782 Discovery

UK

- The UK Courts
- Freezing injunctions and Norwich Pharmacal orders
- Gathering information and records
- Court Appointed Receiverships

Brazil

- Piercing the corporate veil
- Extending effects of bankruptcy to management and other organizations in case of wrongdoings

Our details



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Faculty

Leyza F. Blanco is a shareholder with Sequor Law in Miami, where she focuses her practice on a wide range of litigation and insolvency matters, including debt restructuring and the representation of creditors, with a special emphasis on complex business bankruptcy and commercial litigation matters. Prior to joining Sequor Law, Ms. Blanco was a shareholder at an Am Law 200 firm. She also has been appointed receiver, custodian, trustee and special master in cases in both federal and state courts throughout the state of Florida, and she has served as a neutral arbiter in an arbitration proceeding. She is also a Florida Supreme Court Certified Civil Mediator. Ms. Blanco's case experience includes acting as lead U.S. counsel to various court-appointed fiduciaries named in multiple jurisdictions throughout the Caribbean for British American Insurance Co., Ltd., and in chapter 15 proceedings, district court proceedings, and pending state court proceedings throughout the state of Florida. She currently serves as the secretary of The Florida Bar's Business Law Section, and as the finance director of the International Women's Insolvency & Restructuring Confederation. In addition, she is past chair of the Bankruptcy/UCC and Diversity Committees of The Florida Bar's Business Law Section and a past president of the Bankruptcy Bar of the Southern District of Florida. Ms. Blanco launched a bankruptcy clinical program at Florida International University College of Law, where she served as lead adjunct professor. She is a published author and sought-after leader who is regularly invited to present on topics related to her practice. Ms. Blanco has been recognized by *Florida Super Lawyers* (2010-18), in *Florida Trend's* "Legal Elite" (2008-16, 2018) and as a *South Florida Legal Guide* "Top Lawyer" (2009-18). She is admitted to all Florida state courts, the Eleventh Circuit Court of Appeals, and the U.S. District Courts for the Southern, Middle and Northern Districts of Florida. Ms. Blanco received her B.A. from Miami College of Arts & Sciences and her J.D. *magna cum laude* from the University of Miami Law School, where she was articles and comments editor for the *Inter-American Law Review* and a member of the Order of the Coif.

Kristina Kicks is director of Contentious Insolvency and Asset Recovery with KPMG LLP (UK) in London and has almost 20 years' experience in asset-tracing, insolvency and recovery in the U.K. and overseas. She specializes in contentious and complex corporate and personal recovery and insolvency assignments, and has experience in enforcement, investigations, and identifying and securing assets in the U.K. and overseas. Ms. Kicks has investigated significant shortfalls on many fraud-related cases, using the powers of the Insolvency Act 1986 and bringing actions to maximize recoveries for the victims of fraud and creditors. She has successfully pursued a wide range of recovery actions against directors and third parties, and led investigations and recoveries in many complex personal insolvency matters. She is also experienced in court-appointed receiverships and Proceeds of Crime Act matters. Ms. Kicks has expertise in private client and family disputes, which includes insolvent deceased estates, with a focus on resolving disputes and recovering assets. She received her B.A. with honors in accounting.

Margot MacInnis, CFA is managing director of Grant Thornton Specialist Services in the Cayman Islands and leader of insolvency and corporate recovery assignments in the Cayman Islands and Offshore. Her expertise covers business consulting, forensic services and risk and restructuring. Ms. MacInnis is responsible for practice development and leading the team across global engagements. She has more than 20 years of experience as a forensic accountant, and is an anti-money launder-

ing specialist. Ms. MacInnis received her undergraduate degree in accounting and economics from Mount Allison University in 1994.

Flávia Helena Millard is an attorney with Paoli Balbino & Barros Advogados in Belo Horizonte, Brazil. She is a specialist in Judicial Recovery of Companies by INSPER/SP and was a member of the Bankruptcy and Judicial Reorganization Commission of OAB/MG from 2016-18. Ms. Millard is institutional director of the International Women's Insolvency & Restructuring Confederation - IWIRC Brasil, and also taught several subjects in civil law as an undergraduate professor at the Center for Higher Education of Minas Gerais - CESMIG/FAMIG from 2016-18), Minas - FAMINAS from 2015-17 and the Belo Horizonte Institute of Higher Education - IBHES FACEMG from 2013-15). She holds a Bachelor's degree and Master's in private law from the Minas Gerais Faculty of Law of the Pontifical Catholic University of Minas Gerais, and received her specialization in Civil Law from the Milton Campos Law School.