ABI WEBINAR – FEB 14 2024

Judge Daniel Costa (Retired)
Ivan Romo (Mexico)
Allan Nackan (Canada)
Margot Macinnis (Caribbean)

1. General Consideration in the Cayman Islands – Introduction to the restructuring regime in the Cayman Islands

General Features:

- Internationally recognised financial center with significant fund presence.
- Established legal and political system, with ultimate appellate court being the UK Privy Council.
- Established jurisprudence is therefore heavily influenced (albeit not bound) by English common law.
- Duties and liabilities of directors of companies in the Cayman Islands are determined by legislation:
- The companies Law (Revised) and by common law precedents which have evolved in cases in the Grand Court, Court of Appeal and Privy Council

Statutory Duties of Company directors:

- Maintain a register of members
- Maintain a register of directors
- Maintain a register of Mortgages
- Special resolutions adopted must be notified to the Registrar of Companies within 15 days
- Responsible for filing annual returns and payment of annual fees
- Hold one AGM annually
- Ensuring the company keeps proper books and records and complies with accounting requirements
- Change of directors must be notified to ROC within 30 days.
- Section 34 (2) – no distribution to members out of share premium unless company can meets its debt obligations
- Section 37(6) – A payment out of capital for redemption of its own shares not lawful unless company can meet its debts

Shadow Directors

- An individual who has a role in instructing the directors of the company in their capacity as directors. They are potentially criminally liable under Companies Law.

Common Law Duties (examples)

- Promote the success of the company for benefit of its members
- Have regard to the likely consequences of any decision in the long term
- Have regard to the interest of company employees

- Need to foster good relationships with suppliers
- Impact of the company's operations on the community and environment
- Desirability of the company to maintain a reputation for high standards of business conduct
- Need to act fairly between members of the company

Liability of Company Directors

- *Generally directors are not personally liable for company debts except where those arise out of negligence, fraud or breach of fiduciary duty.*
- *Directors duties come from notion that directors are not only agents but trustees for the company and its shareholders – entrusted with the property of the company and conferred powers of management.*
- *Weavering Macro Fixed Income fund is a judgment that provides useful guidance on directors duties as a Cayman fund director and follows English case law precedent*
- *Speaks to a director exercising judgment independently, and where those powers are delegated (in Cayman it is common for a fund to have delegated the investment management and administration functions) the non exec director is expected to exercise a high level of supervisory role.*
- *Directors have a duty to collectively and individually acquire and maintain a sufficient knowledge and understanding of the business to discharge their duties*
- *The exercise of power of delegation does not absolve a director from the duty to supervise*
- *Extent of the duty depends on the facts.*
- *Expected to 'apply their minds and exercise independent judgment in the ordinary course of business'*
    - Restructuring Regime:
        - Provisional Liquidation/'Soft Touch' Liquidation:
            - Allows independent officeholders to be appointed, usually on a debtor in possession basis, while granting the company breathing space (in the form of a moratorium on unsecured creditor action in the Cayman Islands) within which to pursue a restructuring.
            - How the restructuring is implemented is flexible and could, for example, involve a consensual deal with creditors, a Cayman Islands scheme of arrangement or a restructuring proceeding in another jurisdiction.
            - In order to access the restructuring provisional liquidation regime, stakeholders must demonstrate upon a winding up petition to the court that the company is: (a) unable or likely to become unable to pay its debts; and (b) intends to present a compromise or arrangement to its creditors.
        - Scheme of Arrangement:
            - A court-approved compromise or arrangement between a company and its creditors or shareholders (or classes thereof).

        - Frequently used to implement a financial restructuring by varying the rights of the relevant creditors and/or shareholders of a company.
        - Statutory procedure under the Cayman Islands Companies Law and the provisions are similar to those set out for an English scheme under the English Companies Act.
    - Restructuring Officers:
        - Introduced in 31 August 2022 as an update/alternative to provisional liquidation or normal scheme of arrangement.
        - Allows a debtor or a company's directors to seek the appointment of a restructuring officer, supported by a worldwide moratorium (viz unsecured creditors), with a view to restructuring its debts through a "refined" scheme of arrangement.
        - Can be accessed without the need to present a winding up petition to the court. Instead, directors can present a petition to the court seeking the appointment of ROs without shareholder approval and/or the express power to do so being available in the company's articles.
        - Cayman schemes potentially able to compromise English law governed debt which expands the scope of applicability of Cayman Islands restructuring regime
        - Secured creditors with security over whole or part of the assets will remain entitled to enforce their security without leave of the Cayman Court or with reference to any restructuring officer.
        - Removal of the head count test – it is the majority in value test that must be satisfied to approve a proposed shareholder scheme of arrangement.

2. Does the board remain in control (like in Ch. 11) or must an insolvency professional (whatever they are called in your jurisdiction) displace management or some combination of the two?

    - **Provisional Liquidation**: Given their role can often prioritize protection of the Companies assets and thus it is often the case that the provisional liquidators will replace/seek to replace the company's board of directors.
    - **Restructuring Officer**: The RO may be appointed, alongside the management, in support of a company intending to present a compromise or arrangement pursuant to the law of the Cayman Islands and/or a foreign country.

3. In the "zone of insolvency" under US law, the directors' need to take into account not only the interests of shareholders, but also the interests of creditors? In other countries the directors' duties remain as fiduciaries to the corporation as a whole. What is the situation in your jurisdiction?

- General director duty is to operate in the best interests of the company as a whole. This does not necessarily mean that the shareholders are the only stakeholder whose interests must be considered.
- Long established fiduciary duty to act in good faith in the interests of the company. In the zone of insolvency this is extended to encompass interests of general body of creditors
- Short of bankruptcy – interests of shareholders are not displaced – must consider what it means as the company approaches the 'vicinity of insolvency'. Some stakeholders may prefer the director pursue high risk alternatives with high payoff, others may prefer a safer course to maximise value.
- Directors fiduciary duty does not change in the nebulous part of the legal universe – it is attempted to convey the space in time where the company's financial circumstances are deteriorating.
- The zone of insolvency requires a 'reorientation' of the director on the duties to encompass creditors. When considering advancing the interests of the company it is understood to include the interest of its creditors.
- The Trigger Point – that is whether insolvency is actual, imminent, inevitable, probable or the subject of a real risk.
- This is not a free-standing duty prescribed under UK law (or Cayman) but the case law will be instructive as to the mindset directors must take when entering into the insolvency zone. Sequana [UKSC case]:
- Where the company is insolvent, or bordering on insolvency, but is not faced with an inevitable insolvent liquidation or administration, the directors should consider the interests of creditors, balancing them against the interests of shareholders where they may conflict. The greater the company's financial difficulties, the more the directors should prioritise the interests of creditors.
- where an insolvent liquidation or administration is inevitable, the creditors' interests become paramount as the shareholders cease to retain any valuable interest in the company.
- the creditor duty is engaged when the directors know, or ought to know, that the company is insolvent or bordering on insolvency, or that an insolvent liquidation or administration is probable.
- In summary – the Court didn't find there is a 'creditor duty' distinct from the directors' fiduciary duty to act in the interests of the company which would include creditors as a whole. The duty remains for directors to act in good faith in the interests of the company and to consider the interests of creditors along with those of members. The weight to be given to those interests increasingly important/serious where there are financial problems
- The rationale for treating the company's interests as involving creditors is not based on insolvency but on the recognition and assessment of the shift in economic interest of the Company and risk of loss to a group of creditors as a result of the director's exercise of power. The focus is on the 'imminence' of the insolvency. *Michaelmas Term [2022] UKSC 25 on appeal*

from [2019] WECA Civ 112 Judgment BTI 2014 LLC (Appellant) v Sequana SA and others (Respondents)

- When insolvency occurs the creditors interests may not necessarily be paramount – as the duty is expressed as requiring creditors interests to be considered and taken into account but no overriding. When a company is in an insolvency context, the directors could not properly commit their company to a transaction in circumstances that 'the only reasonable conclusion to draw, once the interests of creditors have been taken into account, is that the contemplated transaction will be so prejudicial to creditors that it could not be in the interests of the company as a whole *Westpac Banking Corp v Bell Group Ltd (in liquidation) (no 3) [2012] WASCA 157; (2012) 270 FLR 1.*
- Put another way, what may be reasonable for directors to do when they find a company is weak financially and where there will be conflict as between the creditors interest and shareholder interests, and where the company is not yet 'insolvent' and remains under the control of management of the directors, their duty is to decide what is in the extended best interests of the company.

4. Assume the company in distress in your jurisdiction is a direct or indirect wholly owned subsidiary of a US company. Must the directors in your country comply with the directions of the US shareholder?

- See above; directors have a general duty to creditors in the circumstances that their company is in distress.
- Whilst they may therefore consider the interests/views of US shareholders, these will not be compulsory.

5. Do directors in your jurisdiction risk personal exposure (civil or criminal) for any creditor claims. If yes, are there areas of particular concern.

- There are transaction avoidance provisions enshrined in statute that are designed to preserve, so far as possible, an insolvent debtor's available assets, in order that they may be distributed to creditors fairly on an equal footing.
- **Fraudulent trading:** If the company's business was carried on with the intent to defraud its creditors or for any fraudulent purpose, the liquidator may apply to court for a declaration that any persons who were knowingly parties to the fraudulent trading shall contribute to the company's assets in the amount that the court thinks proper.
- This sets a high bar for liability as fraud needs to be proven (not just 'wrongful trading' or 'insolvent trading' which is common in other commonwealth jurisdictions).
- As can be seen, this carries a civil liability to potentially contribute to the company's assets but there are also associated criminal liabilities under s.135-136 which include fines of up to US$20k and imprisonment for a term of 5 years.

6. In the US one of the “hot button” issues now going to the Supreme Court is the concept of whether third party (i.e. non-debtor) releases are properly the subject of a Ch. 11 plan and often the release is in favor of the officers and directors. What is the situation in your jurisdiction? If third party releases are permitted are there any important restrictions on when they can be invoked?

   1 minute each (5 minutes total)

   - Third-party releases are especially common in chapter 11 cases involving mass tort litigation where co-defendants and other third parties may share liability.
   - Cayman is somewhat insulated from the class-action mass tort litigation claims/proceedings.

   In the context of a restructuring or scheme the subject of releases will come up where there is a transfer of assets or distribution and release of claims. In those circumstances liquidators, or directors may be looking for a release which would be negotiated as part of the scheme.

AMERICAN BANKRUPTCY INSTITUTE (ABI) SEMINAR

Prof. Daniel Carnio Costa (Brazil)

- General Rule of Liability for Company Managers in Brazil:

In Brazil, company managers, including directors, officers, and executives, have legal duties and responsibilities towards the company and its stakeholders. These duties are primarily governed by the Brazilian Civil Code and the Brazilian Corporation Law.

Company managers are required to act with diligence, loyalty, and in the best interests of the company. They must exercise their powers and perform their duties in accordance with the law, the company's bylaws, and its internal policies.

If a company manager breaches their duties or acts negligently, recklessly, or in violation of the law, they may be held personally liable for damages caused to the company, its shareholders, employees, creditors, or third parties.

Under Brazilian law, actions for civil liability against company managers can be brought by the company itself, its shareholders, or other affected parties. In cases of misconduct or breach of duty, managers may be required to compensate the company or affected parties for financial losses, damages, or harm caused by their actions.

Additionally, in Brazil, there is a legal concept known as "disregard of legal entity" (desconsideração da personalidade jurídica), which allows courts to disregard the separate legal personality of a company in certain circumstances. This concept is applied when there is abuse of the corporate form, such as when the company is used to commit fraud, evade legal obligations, or harm creditors or third parties.

Under the doctrine of disregard of legal entity, courts may pierce the corporate veil and hold company managers personally liable for the company's obligations if they are found to have abused the corporate structure for improper purposes. This means that even if a manager has acted within the scope of their authority, they may still be held personally liable if they have engaged in wrongful conduct.

The legal bases for the aplication of the ”disregard of the legal Entity doctrine” is art. 50 of the Civil Code:

> Art. 50. In case of abuse of legal personality, characterized by the misuse of purpose or by the commingling of assets, the judge may, upon request of the party or of the Public Prosecutor's Office when it intervenes in the process, disregard it so that the effects of certain and determined obligations relationships are extended to the private property of administrators or partners of the legal entity who directly or indirectly benefited from the abuse. (Text given by Law No. 13,874, of 2019)
>
> § 1º For the purposes of this article, misuse of purpose is the use of the legal entity with the purpose of harming creditors and for the commission of illicit acts of any nature. (Included by Law No. 13,874, of 2019)
>
> § 2º Commingling of assets is understood as the lack of factual separation between assets, characterized by: (Included by Law No. 13,874, of 2019)
>
> I - repetitive compliance by the company with obligations of the partner or administrator or vice versa; (Included by Law No. 13,874, of 2019)
>
> II - transfer of assets or liabilities without effective consideration, except for those of proportionally insignificant value; and (Included by Law No. 13,874, of 2019)
>
> III - other acts of non-compliance with asset autonomy. (Included by Law No. 13,874, of 2019)
>
> § 3º The provisions of the main section and §§ 1 and 2 of this article also apply to the extension of obligations of partners or administrators to the legal entity. (Included by Law No. 13,874, of 2019)
>
> § 4º The mere existence of an economic group without the presence of the requirements referred to in the main section of this article does not authorize the disregard of the legal entity's personality. (Included by Law No. 13,874, of 2019)

§ 5º Mere expansion or alteration of the original purpose of the specific economic activity of the legal entity does not constitute misuse of purpose. (Included by Law No. 13,874, of 2019)

- Application of Liability Rules in Bankruptcy Cases:

The Article 82 of the Brazilian Bankruptcy Law establishes that the personal liability of limited liability partners, controllers, and administrators of the bankrupt company shall be determined in the bankruptcy court itself.

This provision reinforces the general rule of liability for company managers, extending it to bankruptcy proceedings.

Additionally, Article 82-A prohibits the extension of bankruptcy effects to certain individuals but allows for the disregard of legal entity, ensuring that liability rules apply effectively in bankruptcy cases.

- Key Points:

Brazil's legal framework imposes responsibilities on company managers to ensure proper governance and accountability.

In bankruptcy cases, these responsibilities are reinforced, and managers may be held personally liable for damages caused to the company or its creditors.

The combination of Civil Code provisions, Bankruptcy Law regulations, and specific articles such as 82 and 82-A ensures that liability rules are effectively applied in both regular business operations and bankruptcy proceedings.

- The deepening insolvency theory:

The deepening insolvency theory suggests that company directors or officers may be held liable for exacerbating a company's insolvency or financial distress by taking actions that deepen the company's financial problems. This theory asserts that if directors engage in wrongful conduct or make decisions that worsen the company's financial situation, they can be held accountable for the increased losses suffered by creditors or shareholders.

In the Brazilian system, if a director engages in unlawful acts or with the intent to harm creditors, they may be held liable regardless of whether the company is insolvent or not.

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Master on Comparative Law at Samford University/USA

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Directors' Duties Across Borders in the Insolvency Zone: Canada

abiLIVE Webinar Series

Presentation by Allan Nackan

February 14 2024

Member of BTG Global Advisory

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Canadian Restructuring Regime

CCAA (Companies Creditors Arrangement Act)

- Primary tool for restructuring large corporations with debts >$5M (similar to Chapter 11)
- CCAA skinny statue – judicial discretion – flexible & effective
- Initial Order (stay & limited 1st day relief); 10-day comeback hearing (broader relief incl. DIP financing on a super priority basis)
- Debtor remains in posession & control
- Role of Monitor (Court Officer) – supervises key aspects of the process
- Plan approval 66 2/3% in $ value & 50% in # of creditors voting in each class; followed by Court Approval
- Going concern sales are prevalent method of restructuring (similar to S.363, including Stalking Horse)

Cross-Border Proceedings

- Canada adopted UNCITRAL Model Law – Part IV recognition of foreign proceedings under CCAA (our version of Chp 15). Similar provisions for inbound recognition under BIA
- Lots of economic ties to USA, As a result we have a well-developed cross border playbook with USA
- Excellent coordination & cooperation between Courts when multiple plenary proceedings

BIA Proposals (Bankruptcy & Insolvency Act)

- More streamlined and better suited for smaller companies
- Launched by way of administrative filing (no initial court application)
- Tighter timeframes (6 months maximum)
- Automatic deemed bankruptcy if Proposal is not successful

Bankruptcy & Receiverships

- Secured creditor may appoint a receiver to realize on collateral
- Bankruptcy (like Chapter 7) – usually for liquidation
- Court can also appoint a Receiver for specific purpose e.g. in context of shareholder dispute, investigative functions

Canada has a robust & effective insolvency system with experienced & creative practitioners, experienced commercial judges & specialized courts, delivering cost-effective solutions

Directors' Role & Potential Liabity in Insolvency

Does Board Stay in Place?

- **CCAA/BIA Proposals** - debtor stays in posession and control (like Chp 11)
- **CCAA Monitor/Proposal Trustee** – uniquely Canadian role (Court Officer) – supervises key aspects of restructuring (assists with development of Plan, voting, claims process, sale process, and balancing interests of all stakeholders) – Typically no Unsecured Creditor Committee but Rep Counsel for employees & vulnerable stakeholders
- There are occasions where Court removes the board of directors – IP take on role as **"Super Monitor"** – essentially assuming the powers/role of the board to ensure effective governance through process
- **D&O charge** to protect directors for their actions during restructuring (where D&O coverage is not adequate)
- **Bankruptcy/Receivership** – control ceded to insolvency practitioner (Receiver/Trustee)– directors typically resign at filing/ appointment date.

Director's Duties in "Zone of Insolvency"

- Directors owe **fiduciary duty to Corporation**
- This does not change in the zone of insolvency
- Directors do not owe a fiduciary duty to creditors but do owe a **duty of care to all stakeholders**
  - Directors should "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances" [*Peoples Department Stores Inc. v. Wise*]
- Obviously in **Zone of Insolvency** – interests of **creditors become prominent**

Potential Liabilities for Directors

- Shareholders and creditors might bring **derivative or oppression claims** against directors for breach of their duties to the corporation
- **Statutory Liabities for directors** – employees claims for wages (3 months prior) & vacation pay (12 months prior); failure to make certain tax remittances for employee source deductions and HST; environmental liabilities; and pensions related claim
- Further, certain **transactions entered into by the corporation during the "twilight period"**, while insolvent, are vulnerable to attack. Can be set aside by Trustee/ Monitor and can also attract director liability, including:
  - Preferences – 3 months arm's length; 12 months non arm's length
  - Transfers Under Value (TUV) – transactions at conspicuously less than FMV – may be set aside if within 1 yr for arm's length parties; potentially extend to 5 yrs for non-arm's length parties and where can demonstrate that was insolvent and intent to defraud, defeat, delay
  - Dividends declared, share redemption in 1 yr prior to filing while insolvent or if payment rendered them insolvent - civil liability to directors on a jointly and several basis for amount of the dividend or redemption
- **Bankruptcy Offences** defined in statues which attract potential criminal liability: fines and/or imprisonment [BUT Directors rarely prosecuted criminally in Canada]

Current Developments & Practical Points

3rd Party Releases for Directors & Other Non-Debtors

- In Canada, Releases for directors are typical in many CCAA/BIA cases
- Releases can also be granted to non-debtors who contribute value to the restructuring
- There is a well-worn path to recognition of these releases in USA via Chapter 15 and elsewhere – e.g. Muscletech; Metcalfe & Mansfield
- US Supreme Court's pending decision in Purdue Pharma – if Supreme Court strikes down 3rd party releases in US, this potentially gives Canada a "competitive advantage" …
- There is a potential path to achieve by Chapter 15 what cannot be achieved directly in a plenary proceeding under Chapter 11
- Company/corporate group could file in Canada under CCAA where there is a long history of granting 3rd party releases and having these recognized under Chapter 15…as long as not "manifestly contrary to public policy" under 1506 of the Bankruptcy Code

Practical Points for Directors of Distressed Companies

- Get excellent & timely professional advice (legal and financial) to make informed decisions
- Be careful about what representations or statements you make to creditors when approaching insolvency
- Avoid improper corporate actions – such as payment of dividend or repurchasing shares when unable to meet obligations
- Resign as director upon bankruptcy – Director's liabilities will survive for 2 years from the date on which the claim was discovered
- Ensure adequate D&O coverage in place
- Obtain Court ordered D&O Charge in CCAA/BIA proceedings for protection if you continue to act during a restructuring
- Public company filing – typically only pass directors' resolution to file insolvency proceeding after close of trading and before market opening the next day

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ABI Webinar
Ivan Romo (Mexico)

1. **General Consideration of Mexican Jurisdiction**

   Mexico incorporated the Insolvency Model Law to its Insolvency regime in 2000 being one of the first countries in the world to do so. The Mexican Procedure is divided in two phases: i) conciliation (reorganization) and ii) Liquidation. The first one seeks for an operative reorganization of the debtor looking for the continuance of the business through an agreement with the creditors. The second one seeks for the maximization of the value of the assets to pay the most the overdue debts.

2. **Does the board remain in control (like in Ch. 11) or must an insolvency professional (whatever they are called in your jurisdiction) displace management or some combination of the two?**

   In the reorganization the insolvency administrator does not have administrative powers over the bankrupted company, he only has supervision faculties.

   In the liquidation phase the insolvency administrator take control of the bankrupted company and is entitled to take any decision over the assets.

3. **In the "zone of insolvency" under US law, the directors' need to take into account not only the interests of shareholders, but also the interests of creditors? In other countries the directors' duties remain as fiduciaries to the corporation as a whole. What is the situation in your jurisdiction?**

   There is no special provision for directors to consider the creditors interests during an insolvency procedure. Nevertheless, there are special duties regarding the administrative decisions taken during the Insolvency procedure.

4. **Assume the company in distress in your jurisdiction is a direct or indirect wholly owned subsidiary of a US company. Must the directors in your country comply with the directions of the US shareholder?**

   No. Mexican companies are independent from its owners or stake holders there is no legal obligation to comply US regulatory for Mexican Companies, notwithstanding the origin of its equity.

5. **Do directors in your jurisdiction risk personal exposure (civil or criminal) for any creditor claims. If yes, are there areas of particular concern.**

   Yes. Mexican law has a special criminal regulation for directors and administrative employees who were directly responsible of the Insolvency situation. These provisions can be extended into some fiduciary duties in favor of the creditors, but it is very important to bear in mind that this responsibility and liability is reduced to situations that increased the insolvency situation, not for direct liability within specific actions related with creditors.

6. **In the US one of the "hot button" issues now going to the Supreme Court is the concept of whether third party (i.e. non-debtor) releases are properly the subject of a Ch. 11 plan and**

often the release is in favor of the officers and directors. What is the situation in your jurisdiction? If third party releases are permitted are there any important restrictions on when they can be invoked?

Third parties' releases are not regulated by Mexican law. As stated before, Mexican companies are different from their owners and/or shareholders, therefore to prevent a third party release it is necessary to have a formal agreement with the third party.

abiLIVE Faculty: Directors' Duties Across Borders in the Insolvency Zone, Episode

Hon. Daniel Carnio Costa is a permanent judge sitting at the First Bankruptcy Court of São Paulo, Brazil. He is currently acting as member of the National Council of Justice (2018-20). Judge Costa has been a guest professor at Califórnia Western School of Law and a permanent professor of business law at PUC/SP in São Paulo. He received his Master's on comparative law from Samford University and his Ph.D. in law in Brazil. He also is a post-doctoral Fellow at the University of Paris 1 - Panthéon/Sorbonne.

Debra I. Grassgreen is a senior partner in Pachulski Stang Ziehl & Jones LLP's San Francisco office and chairs the firm's international insolvency practice. She is the immediate past president of the International Insolvency Institute (the first woman to be elected to that position), and she is widely regarded as a leading expert on cross-border restructuring matters, frequently speaking and writing on cross-border matters and others. Ms. Grassgreen has experience representing debtors, trustees and creditors' committees in large and complex chapter 11 cases nationwide and internationally in the technology, media, telecommunications and life sciences industries, both in and out of court. Some of her more notable engagements include representing solar power manufacturer Solyndra, American Suzuki Motor Corp., Mesa Airlines and the creditors (including abuse survivors) in the Weinstein Co. chapter 11 case. In addition, she has represented high-profile individuals, including boxer Mike Tyson and singer Toni Braxton, among others. Ms. Grassgreen is a Fellow in the American College of Bankruptcy Fellow and has held a variety of leadership positions in prestigious insolvency organizations, including the International Women's Insolvency & Restructuring Confederation (IWIRC) and the American College of Bankruptcy, having chaired its Insolvency Committee and currently serving as its Ninth Circuit Regent. For the past 10 years, she has participated in the United Nations Commission on International Trade Law's Working Group V and its expert group meetings as an NGO delegate. Ms. Grassgreen has been listed in the Los Angeles and San Francisco Daily Journal as one of the "Top Bankruptcy Lawyers" in

California and, for several years, as one of its “Top Women Lawyers.” In 2021, IWIRC selected her as its “Woman of the Year in Restructuring.” She also holds Chambers USA’s highest rank (Band 1) in Bankruptcy/Restructuring, and she is rated AV-Preeminent by Martindale-Hubbell. In addition, she is listed in Who’s Who Legal: Thought Leaders—Global Elite and in Lawdragon as one of its 2022 and 2023 “500 Leading U.S. Bankruptcy & Restructuring Lawyers” and one of its 2020 “500 Leading Global Restructuring & Insolvency Lawyers,” and she has been listed in The Best Lawyers in America every year since 2001 for her work in both Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law and Litigation - Bankruptcy. Ms. Grassgreen received her B.S.B.A. in 1988 from the University of Florida, where she also received her J.D. with honors, and she is admitted to practice in Florida and California.

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 25 years of experience in asset-tracing and recovery, and she is a forensic accountant, certified fraud examiner and anti-money laundering specialist. Ms. MacInnis received her undergraduate degree in accounting and economics from Mount Allison University in 1994.

Allan Nackan, CPA, CA, CIRP, LIT is a senior managing director at B. Riley Farber in Toronto and co-leads the firm’s Restructuring practice. His practice focuses on corporate insolvency and restructuring, financial advisory services, cross-border restructuring, fraud investigations and forensic accounting. Mr. Nackan has experience acting in various court-appointed and financial advisory roles for clients, including acting as court-appointed receiver and interim receiver, acting as monitor or financial advisor in Companies’ Creditor Arrangement Act (CCAA) and U.S. chapter 11 proceedings, acting as a Licensed Insolvency Trustee under the Bankruptcy & Insolvency Act (BIA) proposals and bankruptcies for a wide variety of corporations and their creditors, representing foreign parties in Canadian insolvency proceedings, and providing financial advisory services outside of formal insolvency proceedings. In addition, he serves as director and

current chair of BTG Global Advisory, one of the world's largest specialist independent insolvency and restructuring alliances with member firms around the globe, including offices across the U.S., U.K., Europe, Australia, South Africa, India, Brazil, Hong Kong and various offshore jurisdictions. In this role, he leads Farber's international and cross-border initiatives. Mr. Nackan is a member of Insolvency Institute of Canada, a Fellow of INSOL International and a past-president of the Ontario Association of Insolvency & Restructuring Professionals (2012-14). He received his Bachelor of Commerce in 1983 and his Bachelor of Accounting in 1985 from the University of Witwatersrand, South Africa.

Dr. Iván J. Romo is a managing partner with SOELI Consulting in Mexico City. He has international experience in commercial, labor, litigation, arbitration and insolvency consulting, and in 2018, he actively participated in the democratic electoral process at the federal level. Dr. Romo has participated as counsel representing parties, external advisor or expert witness in several of the most prominent insolvency cases in Mexico, including REFA Mexicana, Vitro, Mexicana de Aviación, Oceanografía, Altos Hornos de México, ICA and Abengoa. He also has been involved in such high-profile arbitration and litigation cases as the million-dollar disputes that COMMISA and CONPROCA had against PEMEX. He also participated in the Grupo Modelo acquisition process carried out by Anheuser-Busch InBev. Dr. Romo has given lectures, spoken at conferences and participated in interviews on television, radio and online in various countries, including Canada, France, Germany, Italy, Japan, Mexico, Spain, U.K. and U.S. He has taught at bachelor's, graduate, diploma and master's degree levels at the Escuela Libre de Derecho (where he currently is joint professor of its bankruptcy course), Instituto Tecnológico Autónomo de México (ITAM), Instituto Nacional de Desarrollo Jurídico, the Superior Court of Justice of the State of Hidalgo and the Supreme Court of Justice of the Nation. Dr. Romo is a member of the Mexican Bar Association, the Ibero-American Institute of Bankruptcy Law, the International Insolvency Institute, INSOL International and ABI, and he is a member of ABI's 2019 class of 40 under 40. His experience in the energy sector includes projects for Solar Parks, Renewable Energy, the production, transport, and refining of gas, crude oil and electric energy. Over the course of more than four years, he was the CEO of Sonpetrol México, a company dedicated to the drilling and workover of gas and crude wells with more than 50 years of experience in technical assistance,

drilling and workover services for onshore and offshore wells, geothermal energy and mining. He currently is the chairman of the board of directors of the abovementioned company. Dr. Romo received his law degree with an honorable mention from Escuela Libre de Derecho, his M.B.A. from the Instituto Tecnológico Autónomo de México (ITAM), his Master's in global management from Tulane University and his Ph.D. in law from the Instituto de Investigaciones Jurídicas of Universidad Nacional Autónoma de México (IIJ-UNAM).