

## BERMUDA SUPREME COURT

### ***In the Matter of Energy XXI Ltd [2016] SC (Bda) 79 Com (15 August 2016)***

PARALLEL RESTRUCTURING PROCEEDINGS FOR BERMUDA COMPANY - BERMUDA PROVISIONAL LIQUIDATION AND CHAPTER 11 PROCEEDINGS IN US - US COMI-APPLICATION BY PROVISIONAL LIQUIDATOR FOR PROSPECTIVE RECOGNITION ORDER IN RELATION TO US PLAN CONFIRMATION ORDER-OPPOSITION TO RECOGNITION ORDER BY EQUITY COMMITTEE APPOINTED BY US COURT - JURISDICTION TO RECOGNISE RESTRUCTURING ORDERS MADE BY FOREIGN COURTS IN RELATION TO LOCAL COMPANIES - CONFLICT OF LAW RULES APPLICABLE TO RECOGNITION OF FOREIGN JUDGMENTS - JURISDICTION TO GRANT STAY IN SUPPORT OF RECOGNITION ORDER

In conjunction with the filing of a Chapter 11 proceeding in Texas in respect of a group of companies, which included a Bermuda company, Energy XXI Ltd, a petition was filed in Bermuda seeking the winding up of the company and the immediate appointment of a provisional liquidator. The purpose of the Bermuda filing was to obtain the statutory stay of proceedings in Bermuda which automatically arises upon the appointment of a provisional liquidator by the Court. The provisional liquidator's powers under the order were limited; essentially he had an oversight role while the restructuring plan in the US Bankruptcy Court (the "USBC") was proposed and confirmed. Prior to the confirmation of the US plan of reorganization, the provisional liquidator made an application seeking a conditional order granting recognition to the US plan once it was confirmed by the USBC. The Equity Committee, which had been appointed by the USBC, objected to the making of the order on a number of grounds, including that the Bermuda Court had no jurisdiction to grant the relief sought, and that the appointment of provisional liquidator for the purpose of restructuring did not fall within the

provisions of the Act. As part of its submission it argued that the extension of the common law in such circumstances as set out in *Cambridge Gas (Cambridge Gas Transport Corp -v- Official Committee of Unsecured Creditors of Navigator Holdings Plc [2007] 1 A.C. 508)* had been overturned by subsequent decisions of the English Supreme Court (*Singularis Holdings Limited -v- PricewaterhouseCoopers [2014] UKPC 35* and *Rubin -v- Eurofinance [2012] UKSC 46*).

The Bermuda Court dismissed these arguments. In his ruling, the Chief Justice provided clear guidance on the ability to obtain recognition of Chapter 11 proceedings in the Bermuda Courts. The upshot of Energy XXI was that the Bermuda Court has the power to recognise and enforce (by way of a stay of proceedings or otherwise in accordance with local law) a foreign restructuring which has the effect of extinguishing claims against an insolvent Bermudian company. However, it may only properly do so as against parties who have submitted to the personal jurisdiction of the foreign court; and/or with respect to property of the company

which (by reason of its *situs*) is subject to the *in rem* jurisdiction of the foreign court. The Chief Justice further ruled that it was a perfectly proper use of the winding up provisions of the *Companies Act, 1981* to file a petition to wind up a company for the purpose of restructuring and specifically, to assist with a foreign restructuring.

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