

FINANCING IN BERMUDA – SAFE, FLEXIBLE AND EFFICIENT

As the Covid-19 storm rages, large companies are finding solutions on the island

The economic impact of the Covid-19 pandemic has been severe and far-reaching. We are seeing otherwise viable companies forced to restructure liabilities and business structures to try and salvage ongoing trading and keep ahead of the dark cloud of insolvency. It is no surprise that we have seen a rise in corporate restructurings and re-financings, particularly in the travel industry.

In spring 2020, Conyers provided Bermuda law advice in connection with three major deals involving some of the largest cruise companies in the industry. Conyers advised L Catterton, a global PE firm, on a \$400m investment in Norwegian Cruise Line Holdings Limited. This cash injection was part of a major refinancing allowing Norwegian to survive the effects of the pandemic on its operations. Viking Cruises Ltd has also been battered by the stormy seas of Covid-19. Conyers advised Viking on a refinancing that will allow the company to repay existing debts and continue trading. Finally, Conyers advised Carnival Corporation in connection with a significant financing of \$6bn.

Bermuda has a reputation for being a world-class international finance centre. The island has a flexible, English-based legal system, backed by a reputable regulator, and it is tax neutral. These attributes create a business-friendly environment allowing companies to access high-quality capital, while protecting investor and creditor rights. There continues to be a growing number of investment opportunities available to international investors capitalising on low interest rates, currency fluctuations and, especially now, distressed assets.

Financing features

Typically in an international financing transaction, Bermuda vehicles (generally incorporated as exempted entities) act as borrowers, guarantors and/or third party security providers. With recognised ownership and corporate governance structures, such vehicles can enhance opportunities for international companies to access capital efficiently.

Bermuda exempted entities are generally not subject to stamp duty on international loans and security documents, nor are they subject to exchange control or currency restrictions. They can generally grant guarantees without restrictions or limitations, subject to their constitutional documents. Security packages commonly include charges over the Bermuda obligor's assets, assignment of contractual rights or receivables, or security over the shares of the Bermuda obligor or of a relevant Bermuda subsidiary.

Security over shares of a Bermuda entity will usually be governed by Bermuda law for ease of enforcement; however, this is not always the case with asset security where the governing law will largely depend on the asset's location.

Registration of security over the assets or shares of a Bermuda entity is not required in Bermuda to ensure enforceability or validity of the security interest; it simply determines priority of the security interest, to the extent that Bermuda law governs. Specific rules apply to the registration of land, ships, aircrafts and insurance policies.

The concept of a security trustee or facility trustee is recognised in Bermuda, and Bermuda law places no restrictions on the actions these parties may take on behalf of the secured parties. This is particularly useful in syndicated loans where changes to the lender groups are common practice. Bermuda law recognises structural and contractual subordination. In an insolvency scenario, a liquidator will generally be bound by the terms of an intercreditor or subordination agreement, which a Bermuda obligor is a party to, provided such terms are not contrary to Bermuda insolvency laws.

Enforcement

Now, more than ever, the ease with which security can be enforced is considered paramount. Bermuda's law and practices provide a creditor-friendly system that is much valued by secured lenders. In a default scenario, secured lenders can enforce security and guarantees by reference to the contract granting these rights in accordance with the loan documentation. Enforcement is facilitated through self-help remedies which are designed to bolster the secured lenders' security, enabling the secured party to enforce without the assistance of the Bermuda courts. This is done by taking receipt of certain deliverables and agreeing amendments to constitutional documents.

Conclusion

The legal and regulatory system in Bermuda offers lenders and investors minimal risk and substantive creditor protection which, in turn, encourages the deployment of capital to a wide range of borrowers.



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