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COUNSEL & ATTORNEYS

LITIGATION & DISPUTE RESOLUTION



# LITIGATION & DISPUTE RESOLUTION

“Our Litigation and Dispute Resolution practice group is comprised of highly skilled specialists, who are effective and vigorous in arbitration matters as well as around the negotiating table. We have appeared in courts of first instance and every appellate court inclusive of the Privy Council. Our team is experienced and knowledgeable and provides professional advice to corporate and individual clients in all aspects of litigation disputes.” John F. Wilson- Senior Partner & Head of Litigation

Our practice areas include:

## Asset Tracing and Fraud

The Fraudulent Dispositions Act (the “FDA”) was enacted in The Bahamas in 1991 to protect against the disposition of assets with the intention to defraud creditors. Under the FDA, any disposition proved to have been made with an intent to defraud and at an undervalue shall be voidable at the instance of the creditor who has been prejudiced by such disposition. The creditor must prove that the purpose of the disposition in question was to defraud and that the liability to the creditor existed at the time of the disposition. Where the creditor is successful, the court will set aside the disposition of the asset as being fraudulent to the extent that it is necessary to satisfy the claim of the creditor. An action under the FDA must be commenced within two years from the date of the disposition in question. Where the action is not brought within two years, the disposition of the asset can no longer be challenged under this statute.

Additionally, the Register of Beneficial Ownership Act, 2018 was enacted to ensure that all natural persons who beneficially own companies incorporated under the Companies Act or the International Business Companies Act are listed in a secure search system only accessible to a designated person. Consequently, where fraudulent or illegal activity is alleged, the assets of a company may be traced to the natural beneficial owners of that company by the use of the secure search system.

## Civil Litigation

The law of The Bahamas is based on English common law and is supplemented by Bahamian legislation promulgated by the Parliament of The Bahamas.

The Bahamian court system is also modeled after that of the United Kingdom. Magistrates’ courts hear minor criminal and civil cases, and the Supreme Court hears more serious criminal and major civil cases. Appeals are heard by the Court of Appeal and then by the Privy Council in England, the highest appellate court of The Bahamas.

Civil litigation is an adversarial process, which encompasses court work in the non-criminal stream of actions in law. When commencing a civil lawsuit in The Bahamas, there are a few different methods to consider, such as whether the lawsuit should be commenced by a writ of summons, an originating summons, an originating motion or a petition.

The Civil Litigation and Dispute Resolution Practice Group of McKinney, Bancroft & Hughes (“MB&H”) is particularly known for its ability to conduct and manage complex and international commercial and civil litigation on behalf of its clients. It specializes in achieving smart and innovating solutions in cross-border disputes. Insolvency, banking, insurance and trust related matters, commercial and business disputes, labour cases and family and matrimonial disputes are amongst the areas of expertise of our lawyers in this practice area.

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## Insurance and Personal Injury Litigation

MB&H represents national and international insurers, re-insurers, agents and brokers as well as policyholders and individual third party claimants. We fight zealously on behalf of our clients in order to achieve the favourable settlement or results they deserve. Our expertise in negotiation and litigation is second to none. Our firm is regarded as one of the leading specialists in the personal injury, fatal accident and insurance fields. Our experienced litigators make regular appearances before the Supreme Court and the Court of Appeal, and we have also appeared before the Privy Council on insurance and personal injury matters.

We regularly handle disputes involving the construction of the insurance policy, motor vehicle accidents, slips and falls, accidents at work, property damage, personal injury, fatal accidents, maritime matters, professional negligence and medical negligence. We are often asked to advise on the issues of liability and the quantum of damages, and we provide expert advice on Bahamian insurance, personal injury and fatal accident law for use in foreign litigation and arbitration proceedings.

## Commercial Litigation

Commercial litigation generally relates to any type of dispute regarding business issues. The Commercial Litigation Practice Group of MB&H is comprised of experienced and dedicated attorneys in the area of commercial litigation. Our commercial litigation practice is led by some of the firm's most experienced trial lawyers, who have gained national and international reputation for successfully handling complex commercial litigation. Our attorneys are known for their expertise, practical approach and meticulous preparation. Our primary focus is always to understand our clients' objectives, give clear and strategic advice and ultimately achieve the best possible commercial outcome by providing dedicated service.

Our experience encompasses a wide range of commercial disputes, including disputes relating to business and shareholder issues, breach of contract, breach of fiduciary duty, corporate governance, fraud, banking, commercial property, professional negligence and debt recovery. Irrespective of the issues which our clients face, our approach will always be commercial and practical. We pride ourselves on understanding our clients' needs so that we can provide innovative solutions in a cost-effective manner. If litigation is counterproductive to achieving our clients' needs, we work with them to engage in alternative dispute resolution to reach an expeditious and effective solution which moves their business and commercial goals forward.

## Trust Litigation

Our Trust Litigation Practice Group represents and advises numerous private individuals, trustees (individuals and trust companies), businesses and other fiduciaries in a variety of disputes concerning trusts and estates. We provide full and comprehensive services to our private client and wealth management clientele and have litigated disputes for clients from around the world. Our team handles almost any kind of dispute involving personal representatives, trustees, beneficiaries, heirs, protectors and trust companies.

We act on behalf of trustees in applications for directions, which seek the guidance of the court on a number of issues, including terminating trusts, distributing capital or settling disagreements between trustees and executors of an estate. We have acted on behalf of beneficiaries who challenged the validity of a will or trust and in actions claiming a breach of duty on the part of the trustee or protector. In addition to our litigation services, the attorneys in this practice group review and advise on wills and trust instruments to ensure that they comply with Bahamian law and to interpret conflicting language therein. We also advise trust companies and private individuals in setting up the appropriate trust structure to meet their individual needs. As every trust structure in The Bahamas varies, this practice group also deals with litigation surrounding trust companies and liquidating trust companies at the behest of the trustee or the beneficiaries of a trust.



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## Insolvency and Restructuring

Insolvency and restructuring can be difficult to navigate in a complex and ever changing financial market. The members of our Insolvency and Restructuring Practice Group are nationally and internationally renowned for their expertise and proficiency in insolvency and restructuring. Our team regularly engages in a wide range of complex cross-border insolvency and restructuring matters and has a keen understating of insolvency and restructuring regimes around the world. We act on behalf of a broad range of clients including banks, corporations, fiduciaries, shareholders, liquidators, receivers, administrative receivers, directors, private equity and hedge funds. Our attorneys have participated in some of the largest liquidations and company reorganizations in The Bahamas.

Our primary focus is to understand our clients' objectives and provide the best service possible in an efficient and cost-effective manner. Our lawyers use multidisciplinary skills to find creative and practical solutions for our clients when faced with complex issues, which often arise during the course of insolvency and restructuring. We pride ourselves on our ability to explain complex legal issues in a clear and concise manner, our meticulous attention to detail and our ability to advocate vigorously on our clients' behalf. Our insolvency and restructuring services include liquidations, receiverships, bankruptcy and asset recovery.

## Quieting of Titles

As The Bahamas does not have a registered land system in place, defects in any title to property can only be resolved by a process commonly referred to as 'quieting the land'. By the Quieting Titles Act, 1959 (the "Quieting Act"), justices of the Supreme Court are granted the jurisdiction to resolve, after an investigation, any uncertainties or defects in title to land by issuing a certificate of title to a successful applicant.

An application is begun by way of a petition and supported by affidavits, which set out the history of the documentary and possessory title to the land in question. Once the application has been filed, the Quieting Act requires that a notice thereof, containing a detailed description of the property, be published in the local newspapers on three separate occasions. This allows any other person with an interest in the property to lodge an adverse claim and participate in the investigation process. After an examination of all the claims to the property in question, the court will determine which of the applicants has the better title to the property and award that applicant a certificate of title. MB&H has extensive experience in applying for and defending applications for a certificate of title under the Quieting Act.

## Cross-Border Litigation

The Bahamas thrives on foreign investments and relies on multinational corporations to support its two major industries, tourism and banking. While this has created an environment filled with unlimited opportunities for services and products, it comes with a multitude of legal risks and regulatory complexities, which often result in cross-border litigation.

This type of litigation differs from domestic litigation in that it involves multiple, interconnected and sometimes simultaneous proceedings in different jurisdictions. Cross-border litigation requires attorneys to have expertise in local law and procedure, but also experience and networks in international law. This is especially important considering that in The Bahamas foreign attorneys are generally not allowed to represent parties in court.

In cross-border litigation it is important that the matter is properly prepared and managed in order to avoid lengthy, costly and repetitive court proceedings. It is essential to have counsel with the experience and knowledge on how to navigate the possible legal, procedural and even cultural differences between the jurisdictions involved to ensure that the clients' interests are protected.

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MB&H has 29 attorneys with the ability to practice in 6 different jurisdictions and with extensive experience handling cross-border disputes. Our firm is also the exclusive member firm in The Bahamas for Lex Mundi, which is the world's leading network of independent law firms with in-depth experience in over 100 countries worldwide. This network can be used to the benefit of our clients and makes us the premier firm for cross-border litigation.

## Alternative Dispute Resolution (“ADR”)

Business persons around the world have, over the years, increasingly recognized the utility and benefits of non-judicial methods of dispute resolution. Therefore, from the outset of negotiations, they opt to incorporate these methods into the terms of their contracts. When effectively drafted, such terms allow the parties to avoid domestic courts for the private, more cost-effective, less time-consuming and less adversarial methods of ADR, like arbitration, mediation and conciliation. The most appropriate ADR method may depend on the circumstances of the dispute or potential dispute, and all ADR methods maintain high levels of privacy and confidentiality.

Settling disputes through ADR involves utilizing an independent and neutral third-party to facilitate a resolution. For instance, in mediation, there is one mediator who does not decide the case, but facilitates negotiations towards a mutually acceptable outcome. In conciliation, the conciliator proposes a non-binding settlement, which the parties can choose to accept or reject. Neither mediation nor conciliation is governed by statute.

Arbitration, on the other hand, is governed by the Arbitration Act, 2009 and the Arbitration (Foreign Arbitral Awards) Act, 2009, which govern arbitration agreements and proceedings in The Bahamas. If parties have agreed in writing to resolve their disputes by arbitration, this removes the dispute from the jurisdiction of the court and gives jurisdiction to an arbitral tribunal. The parties are allowed certain autonomy with respect to determining the arbitration process in that they are free to select the arbitral tribunal, the place of arbitration and other terms concerning the arbitration procedure. However, they must uphold the principles of fairness and equity, the right to be heard and the right to be represented by a lawyer.

Arbitration institutions are available to assist with the administrative functions if the parties so choose. Otherwise, the proceedings can be ad-hoc, in which case the arbitral tribunal will assume or delegate these functions. The arbitral tribunal may comprise one or more arbitrators, who render a final and binding decision, which is enforceable in 160 countries pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Arbitral awards can only be challenged before national courts in exceptional circumstances.

The attorneys at MB&H are no strangers to these methods. In addition to representing parties in arbitrations, mediations and other forms of ADR, the MB&H attorneys remain current and informed in the ADR field with regular attendance and participation in local and international conferences and training events.

Moreover, the MB&H attorneys have experience and are well-equipped to act as the independent third-party in any ADR proceedings. Our senior partner is registered as an International Centre for Dispute Resolution (“ICDR”) arbitrator and currently serves in this capacity in a number of ICDR cases. Similarly, other attorneys of the MB&H team are internationally certified arbitrators and mediators or have obtained other certifications and degrees relating to ADR.

MB&H provides effective and efficient assistance to clients throughout the ADR process: from the early stages of selecting the appropriate method and drafting the contract, to representing clients during the process and serving as the independent third-party. In this regard, the same high levels of efficiency, prudence and professionalism are applied to simple and complex matters.

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McKINNEY, BANCROFT and HUGHES is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau, Freeport and Lyford Cay.

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