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Cause No: FSD 2026-0225 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF PART XVII OF THE COMPANIES ACT (2026 REVISION)

AND IN THE MATTER OF BANCO MASTER, S.A.

AND IN THE MATTER OF A PETITION BY EFB REGIMES ESPECIAIS DE EMPRESAS LTDA., ACTING BY AND THROUGH ITS MANAGER AND SHAREHOLDER, EDUARDO FELIX BIANCHINI, AS FOREIGN REPRESENTATIVE OF BANCO MASTER S.A.

Appearances:	**Ms Fleur O'Driscoll and Ms Meenaa Azmayesh of Baker & Partners for the Applicant**
Before:	**The Honourable Justice Jalil Asif**
Heard:	**31 July 2026**
Ex tempore judgment delivered:	**31 July 2026**
Finalised judgment approved:	**13 August 2026**

Insolvency—recognition of foreign representative pursuant to Companies Act, Part XVII and common law—whether recognition to be granted in respect of liquidator appointed in extrajudicial process

JUDGMENT

1. This is my judgment on this application made by a petition filed on 10 July 2026 by EFB Regimes Especiais de Empresas Ltda seeking recognition as liquidator of Banco Master SA, a Brazilian entity which is currently in extrajudicial liquidation in Brazil, apparently as a result of being the victim of an alleged fraud. EFB Regimes Especiais de Empresas Ltda, which I shall refer to as "EFB", has formally been appointed as liquidator of Banco Master SA and several subsidiaries by the Central Bank of Brazil rather than through a court process, which is the reason why the process in Brazil is described as an extrajudicial one.

2. I have been told and I have seen evidence today in the form of an affidavit of foreign law sworn by Henrique Rodrigues Forssell, a partner in the Brazilian law firm of Duarte e Forssell Sociedade de Advogados based in Sao Paulo, Brazil, that the appointment of EFB has been made pursuant to statutory provisions in Brazil that allocate the role of appointing and supervising the liquidator to the Central Bank of Brazil. I am also told by Mr Forssell that, whilst the conduct of the extrajudicial liquidation in Brazil is subject to the supervision of the Central Bank of Brazil, it is also, ultimately, subject to the supervision of the courts of Brazil. I therefore have no concerns that it is appropriate to consider the role of EFB as being analogous to that of a liquidator appointed by a foreign court. The appointment is not to be thought of as being akin to, for example, the appointment of a receiver or a liquidator as a matter of a private contractual arrangement or entitlement.

3. I also note by way of background context that EFB has already obtained recognition of its appointment as liquidator both in the United States of America and in the Bahamas as part of its ongoing efforts to track down and recover the assets of Banco Master SA. EFB now applies to the Grand Court for recognition within the Cayman Islands of its appointment. What underlies the petition is that there are two Cayman entities in which it appears that the former managers of Banco Master SA have caused it to invest quite substantial sums of money. EFB wishes to investigate those transactions and to seek payment of the sums due to Banco Master SA, or possibly to make claw-

back claims, and it is in those circumstances that EFB has determined that it would be helpful for EFB to obtain formal recognition of its appointment by the Grand Court.

4. Ms Fleur O'Driscoll of Baker & Partners has appeared before me today to make that application and has been aided by Ms Meenaa Azmayesh, and I am grateful to them for their assistance.

5. Essentially, there are two routes by which EFB seeks recognition. The first is the statutory route through Part XVII of the Companies Act (2026 Revision) and the second, alternative, route is common law recognition. I will deal with the statutory route first, which arises under sections 240 to 242 of the Companies Act.

6. Section 240 plays two roles. First, it provides definitions of certain terms which are used within Part XVII of the Act, and secondly, as Ms O'Driscoll has described it, it identifies the gateway requirements that need to be satisfied in order for the court to have technical jurisdiction then to exercise the powers set out in section 241 of the Act.

7. In section 240, *"debtor"* is defined to mean *"a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established."* Save as regards the meaning of *"foreign bankruptcy proceeding"*, there is no doubt that Banco Master SA is a *"debtor"* for the purposes of section 240 of the Act.

8. The third definition in section 240 is that *"foreign representative"* means *"a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding."* Again, ignoring for now the question of the meaning of *"foreign bankruptcy proceeding"*, I am satisfied on the evidence that has been adduced before me today that EFB falls within that definition as a trustee, liquidator or other official appointed in respect of Banco Master.

9. The second definition in section 240 is the one that gives pause for thought in this particular case. The second definition is that of a *"foreign bankruptcy proceeding"*. Section 240 says "*foreign bankruptcy proceeding includes proceedings for the purpose of reorganising or rehabilitating an insolvent debtor."* The reason the definition gives pause for thought is that the process in Brazil is

not formally a court proceeding, and so the question needs to be answered whether the extrajudicial liquidation in Brazil nevertheless falls within the definition of *"foreign bankruptcy proceeding"* in section 241 of the Act.

10. The first point that Ms O'Driscoll raises is whether it is appropriate or necessary to give any consideration to the provisions of the US Bankruptcy Code, where the concept of foreign bankruptcy proceeding is addressed, and a body of law as to the meaning of foreign bankruptcy proceeding has developed. This has previously been considered in the *Picard* cases by Justice Jones in the Grand Court and by the Cayman Islands Court of Appeal, see: *Picard and Bernard L. Madoff Investment Securities LLC v Primeo Fund* [2013] 1 CILR 164 and [2014] 1 CILR 379 respectively, who both rejected that suggestion. As I indicated during the course of argument, in my view there is no warrant for considering the approach of the courts in the United States to the meaning of *"foreign bankruptcy proceeding"* when construing section 240 of the Companies Act, which is a question of the proper approach of this Court to the statutory interpretation of an Act of Parliament of the Cayman Islands. On normal principles of statutory interpretation, the language of the section should be given its plain and ordinary meaning unless that gives rise to ambiguity. So far as *"foreign bankruptcy proceeding"* is concerned, in my view there is no warrant, either in the language of section 240 itself or, so far as I am aware, in its legislative history that suggests that the meaning of *"foreign bankruptcy proceeding"* should be informed by the approach under the law of the United States of America.

11. There is, it seems to me, some uncertainty about what kinds of proceeding are intended to qualify as a *"foreign bankruptcy proceeding"* because the definition in section 240, as Ms O'Driscoll points out, is an inclusive one. It says that it *includes* proceedings for the purpose of reorganising or rehabilitating an insolvent debtor but does not delineate any boundaries to indicate what can come within the definition and what falls outside.

12. In my view, *"proceedings"* normally connotes some kind of court or quasi-judicial process, although it is right to say that nowhere in the Companies Act is there any definition of *"proceedings"*, as opposed to *"foreign bankruptcy proceeding."* What I do think is helpful in construing section 240, however, is to consider the terms of the Foreign Bankruptcy Proceedings (International Cooperation)

Rules 2018 where, albeit in secondary legislation, the wording of the Rules tends to support a construction of *"foreign bankruptcy proceeding"* that is not confined to court proceedings. The Rules provide in Rule 2(5) that the materials that must be presented to the Court on an application for recognition or assistance under section 241 of the Act should include:

> *"(5) A certified copy or an office copy of the order* ***of the court or other authority*** *by which the foreign representative was appointed shall be exhibited to the verifying affidavit."* (emphasis added)

The inclusion of the words *"or other authority"* in Rule 2(5) is a helpful indication that *"foreign bankruptcy proceeding"* in section 240 is not intended to be limited solely to court proceedings and is broad enough to cover other types of appointment of a liquidator that do not necessarily strictly involve a court process.

13. I am also supported and assisted in reaching that conclusion by the observations of Harris J in the Hong Kong decision in *Supreme Tycoon Limited* [2018] HKCFI 277, where Harris J explained his reasons in a case concerning recognition of a foreign voluntary liquidator why he did not follow the Privy Council's guidance in paragraph 25 of *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36 that common law recognition and assistance in respect of foreign insolvency proceedings does not extend to voluntary liquidations:

> *"9. In* Singularis Holdings Limited v PricewaterhouseCoopers *[2014] UKPC 36; [2015] AC 1675 at [25], the Privy Council (by a majority) suggested* obiter *that the common law power to recognise and assist foreign insolvency proceedings would not extend to voluntary liquidations:*
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>> *'[T]here is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up. In recognising the existence of such a power, the Board would not wish to encourage the promiscuous creation of other common law powers to compel the production of information. The limits of this power are implicit in the reasons for recognising its existence. In the first place,* ***it is available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It would not, for example, be available to assist a voluntary winding up, which is essentially a private arrangement*** *and although subject to the directions of the court is not conducted by or on behalf of an officer of the court.' (Emphasis added.)*
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> *10. However, the Singapore court in* Re Gulf Pacific Shipping Ltd *[2016] SGHC 287 declined to follow the Privy Council's dicta and proceeded to recognise a Hong Kong creditors' voluntary liquidation. The Singapore court reasoned [at paragraph 10] as follows:*
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>> *'[T]he foundational doctrine in the recognition of foreign insolvency proceedings is the promotion and facilitation of the orderly distribution of assets, as well as the orderly resolution and dissolution of the affairs of entities being wound up. The traditional, territorial focus on the interests of local creditors no longer has*

> *primacy over more internationalist concerns. Thus, the precise mode of the winding up would not generally be material, and no distinction should be drawn between voluntary and compulsory processes, or between in court and out of court dissolution. That, I believe, was the philosophical basis of the approach in* In re Betcorp Ltd *[400 BR 266 (Bankr D Nev 2009)], in which Judge Markell considered a broader approach to the interpretation of the relevant provisions of the US Bankruptcy Code, international usages and the UNCITRAL Model Law.'*

11. With respect, I too would not follow the Privy Council's dicta, for the following reasons.

12. As I explained in Joint Official Liquidators of A Company v B *[2014] 4 HKLRD 374, the rationale underlying the common law power of assistance is modified universalism. In the conventional case, one would expect an insolvent company to be wound up in its place of incorporation and for its liquidators to consider whether or not it is necessary to seek recognition and potentially assistance from the court in Hong Kong. In the case of liquidators appointed in jurisdictions with similar insolvency regimes to Hong Kong, the assistance may extend to granting orders that give the foreign liquidators substantially similar powers to, for example, investigate the affairs of a company by examination and orders for the production of documents as a Hong Kong liquidator would have. Indeed, as recognised by the Privy Council, the common law power of assistance exists for the purpose of surmounting the practical problems posed for a worldwide winding-up of the company's affairs by the territorial limits of the powers of each country's court.*

13. It is not obvious that the above rationale and purpose of cross-border insolvency assistance would call for a distinction between compulsory and voluntary winding-up.

14. The Privy Council's obiter *objection to recognising foreign voluntary winding-up seems to be that the foreign liquidator is not an officer of the foreign court and the winding-up is thus merely a private arrangement. However, while there is no doubt a difference between compulsory and voluntary winding-up in terms of the level of court supervision, the difference is one of degree, not of kind. The classic statement* [*in* Re Phoenix Oil and Transport Co Ltd (No 2) *[1958] 1 Ch 565, 570] explaining the difference between the two forms of winding-up is as follows:*

> *'In the case of voluntary winding up, the jurisdiction of the court is not invoked in order to place a company in liquidation. In the case of a creditors' liquidation, the creditors, through their committee of inspection, are in control as against the contributories; while in the case of a members' voluntary winding up it is the members who are in control. In both cases the court is given a certain degree of jurisdiction, but I think it can be accurately, though shortly, said that in both forms of voluntary winding up the court is in the background to be referred to if the necessity should arise. In the case of a winding up by the court, however, different considerations arise. In this case the court is conducting an administration, and so, as in the case of an ordinary administration action in the Chancery Division, it retains, under the express provisions of the statute, a much greater degree of control.'*

15. In my view, what matters for cross-border insolvency assistance is not whether the foreign insolvency officeholder is or is not an officer of the foreign court. What matters is whether the foreign proceeding is collective in nature, in the sense that it is 'a process of collective enforcement of debts for the benefit of the general body of creditors' [Re Lines Bros Ltd *[1983] Ch 1, 20]. It is with collective insolvency proceedings that the principle of modified universalism is concerned* [Cambridge Gas Transportation Corpn v Official Committee of Unsecured Creditors of Navigator Holdings *[2007] 1 AC 508].*

16. Furthermore, the purpose of cross-border insolvency assistance consists in meeting the foreign insolvency officeholders' practical needs. As recognised by the Privy Council, the common law power of assistance is available only when it is necessary for the performance of the office-holder's functions. Where a foreign insolvency proceeding is a collective proceeding

> *and the foreign insolvency officeholders need the Hong Kong court's assistance to discharge their functions, it would seem arbitrary and unduly restrictive to insist that they are not entitled to assistance merely because they were not appointed by the foreign court. Indeed one commentator [Look Chan Ho,* Cross-Border Insolvency: Principles and Practice *(Sweet & Maxwell, 2016), p 230] cited by the applicants argues thus:*
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> > *'It is suggested that the discrimination against non-court appointed officeholders is unhelpful. Insolvency representatives may be officers of the court without court appointment and they need the same information for the performance of their functions as their court-appointed counterparts.'*
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> *17. Therefore the mere fact of a foreign liquidation being a voluntary liquidation is no bar to the Hong Kong court recognising and assisting that liquidation under the principle of modified universalism. However, if the foreign liquidation is a solvent liquidation (for instance, a members' voluntary liquidation), it would not fall within the principle of modified universalism. A foreign solvent liquidation is not a collective insolvency proceeding, and is more akin to the 'private arrangement' the Privy Council was referring to. In this connection, with respect, I agree with Lord Neuberger's dissenting observations in* Singularis*. […]"*

14. I have set out that passage from Harris J's judgment *in extenso* as I find it a compelling explanation of where the boundary should lie between giving and refusing recognition and assistance to a foreign representative, namely is the foreign insolvency proceeding collective in nature in the sense that it is a process of collective enforcement of debts for the benefit of the general body of creditors. I consider that this is the key jurisdictional consideration to whether the court should give or refuse recognition and assistance at common law.

15. Moreover, I consider that this approach applies with equal force to provide the crucial characteristic that differentiates between the kinds of process that will fall within the inclusive definition of *"foreign bankruptcy proceeding"* for the purpose of section 240 of the Companies Act and those that will not, namely is the foreign insolvency proceeding collective in nature, enforcing debts for the benefit of the general body of creditors.

16. In this case, it is clear on the evidence that the extrajudicial liquidation in Brazil is a collective process for the benefit of the general body of creditors. I am therefore satisfied that it is an appropriate type of process to treat as being within the definition of *"foreign bankruptcy proceeding"* in section 240 of the Companies Act.

17. Section 241 of the Companies Act gives the court power to provide assistance of various kinds to the foreign representative. Before me today, Ms O'Driscoll limits the assistance that is sought to that specified in section 241(1)(a), namely:

> *"(a) recognising the right of a foreign representative to act in the Islands on behalf of or in the name of a debtor"*

Section 241(1) specifies four other types of orders that the court may make, but Ms O'Driscoll does not seek any of those orders today, and so I will say no more about them.

18. The factors to which the court should have regard when considering how to exercise its discretion are identified in section 242(1) of the Companies Act. I will set out the terms of section 242(1) in full, although in the circumstances of this case only a subset of those provisions is of relevance and applicable. Section 242(1) provides as follows:

> *"(1) In determining whether to make an ancillary order under section 241, the Court shall be guided by matters which will best assure an economic and expeditious administration of the debtor's estate consistent with [...]"*

The subsection then sets out seven factors, but I pause here to say that it is important to recognise that the governing purpose of section 242 is to make orders that *"best assure an economic and expeditious administration of the debtor's estate."* The seven factors which are then set out in section 242(1) are pointers for the Court as to the kinds of matters that it should consider in determining whether it is satisfied that the orders that it makes will best assure an economic and expeditious administration of the estate.

19. Turning to the seven criteria in section 242(1), these are

> *"(a) the just treatment of all holders of claims against or interests in a debtor's estate wherever they may be domiciled;*
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> *(b) the protection of claim holders in the Islands against prejudice and inconvenience in the processing of claims in the foreign bankruptcy proceeding;*
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> *(c) the prevention of preferential or fraudulent dispositions of property comprised in the debtor's estate;*
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> *(d) the distribution of the debtor's estate amongst creditors substantially in accordance with the order prescribed by Part 5;*
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> *(e) the recognition and enforcement of security interests created by the debtor;*
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> *(f) the non-enforcement of foreign taxes, fines and penalties; and*
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> *(g) comity."*

20. Stepping back and looking at the circumstances of Banco Master SA, it seems to me that the relevant considerations that I should bear in mind in this case are, first of all, sub-paragraph (a) of section 242(1) of the Companies Act, namely the just treatment of all holders of claims against or interests in a debtor's estate wherever they may be domiciled. Secondly, whilst I disregarded it in the course of argument, it seems to me there is a point under sub-paragraph (b), the protection of claim holders in the Islands from prejudice in the processing of claims in the foreign bankruptcy proceeding, and I will come back to that in a moment. Thirdly, sub-paragraph (c) is also relevant, the prevention of preferential or fraudulent dispositions of property comprised in the debtor's estate. Lastly is sub-paragraph (g), comity. These sub-paragraphs are of relevance to the grant of relief, in my view, for the following reasons.

21. First of all, as I have indicated earlier in this judgment, Banco Master SA has valuable claims against two Cayman entities. One is a fund in which Banco Master SA appears to have invested possibly over US $100 million. The other is a Cayman incorporated entity which itself was put into liquidation by the Chief Justice earlier this week, and in respect of which, Banco Master SA has substantial claims that it wishes to pursue for payment of sums which are said to have crystallised, or to be due, pursuant to various transactions and dealings.

22. The second relevant criterion is that the Cayman fund in which Banco Master SA invested, I was told by Ms O'Driscoll, has its own claims for fees that it alleges ought to be paid by Banco Master SA totalling some US $31 million. I understand that Banco Master SA is likely to dispute those fee claims, but if there is any merit in those fee claims at all, then it seems to me that recognition of EFB in the Cayman Islands may assist in protecting the fund which wishes to advance those claims against Banco Master SA.

23. Thirdly, section 242(1)(c), prevention of preferential fraudulent dispositions of property comprised in the debtor's estate, is of particular relevance because EFB considers that there may be viable claims in respect of fraudulent transactions or for fraudulent dispositions of Banco Masters SA's assets associated with the alleged investments.

24. Finally, as a matter of comity, in my view the Grand Court should be willing to provide assistance to the courts of Brazil, and to the Central Bank of Brazil in its role as supervisor of the extrajudicial liquidation of Banco Master SA.

25. Consideration of all of those factors seems to me to support and amply justify, at the very least, granting recognition of EFB within the Cayman Islands pursuant to Part XVII of the Companies Act to act on behalf of or in the name of Banco Master SA. Accordingly, I am persuaded by Ms O'Driscoll that this is an appropriate case to grant statutory recognition of EFB as foreign representative on behalf of and in the name of Banco Master SA.

26. By way of belt and braces, I suggested to Ms O'Driscoll during her argument that there may be some utility in also considering the position at common law in case there were ever to be a future challenge to my exercise of the statutory recognition jurisdiction. Ms O'Driscoll was easily persuaded that that was a suggestion that she wished to embrace.

27. In my view, the relevant considerations for recognition at common law are broadly aligned with the approach that ought to be taken under sections 240, 241 and 242 of the Companies Act, with the caveat, of course, that at common law there is no specific requirement that the foreign representative must have been appointed as a result of a foreign bankruptcy proceeding. This is consistent with Jones J's explanation in *Picard and Bernard L. Madoff Investment Securities LLC v Primeo Fund* [2013] 1 CILR 164 at paragraph 13 that Part XVII of the Companies Act is a partial codification of and supplement to the common law position.

28. I consider, adopting Harris J's explanation in *Supreme Tycoon Limited*, that as far as the common law is concerned the crucial requirement that opens the door to recognition and assistance of the foreign officeholder is that the Brazilian process is a collective process which would objectively be recognised, in the non-formal legal sense, as being equivalent to a collective proceeding under Cayman law.

29. Whilst it appears at first blush that what Harris J said in *Supreme Tycoon Limited* and what I have said in this case is inconsistent with what the Privy Council said in paragraph 25 of *Singularis*, I do

not think that it is, on proper analysis, and instead it is consistent with the overall approach in *Singularis* because the crucial feature that needs to be satisfied in order to grant recognition or assistance is that the foreign proceeding is collective in nature, not that it is formally a process initiated by a foreign court. It seems to me that what Harris J did in *Supreme Tycoon Limited* in recognising a voluntary liquidator, and what I am doing in this case in granting recognition to an extrajudicial liquidator, are entirely consistent with and achieve the purpose intended by common law recognition.

30. I therefore conclude that, if it were necessary to consider recognition of and the giving of assistance to EFB at common law, I would do so notwithstanding that the liquidation of Banco Master SA in Brazil is not being conducted formally as a process directly supervised by the courts of Brazil and is instead supervised by the Central Bank of Brazil, with the possibility of recourse to the courts of Brazil if needed.

31. Ms O'Driscoll has indicated that there are, I think, four subsidiaries of Banco Master SA that have been included within the Brazilian extrajudicial liquidation process but there is no application today for recognition of EFB as a liquidator of any of those entities, and so I do not extend the recognition order to the four subsidiary companies.

32. The final point, and this is a minor procedural point, is that the affidavit in support of the petition arguably does not fully comply with the requirements of the Foreign Bankruptcy Proceedings (International Cooperation) Rules. Mr Bianchini, who has sworn the affidavit in support of the petition, has set out in some detail the factual matters underpinning the petition, and these facts are then pleaded in the petition, but he has not formally said anywhere in his affidavit that he verifies the content of the petition. Looking at the Rules, it is a technical requirement of Rule 2(4), and the Rule does say in terms, a petition under this rule *shall* be verified by an affidavit sworn by the foreign representative. Notwithstanding that Mr Bianchini's affidavit addresses the facts in detail, it seems to me that, to avoid any future debate about whether there was a breach of the Rules, Mr Bianchini ought formally to confirm in a further affidavit that he does verify the contents of the petition. Ms O'Driscoll has very readily agreed on Mr Bianchini's behalf that he will provide that affidavit.

33. For the reasons I have addressed in this judgment, I will make the order sought recognising EFB Regimes Especiais de Empresas Ltda, as acting for and on behalf of Banco Master SA in the Cayman Islands.

Dated 13 August 2026

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THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT