

**IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT LUCIA COMMERCIAL DIVISION  
CLAIM NO. SLUHCM2016/0011**



**IN THE MATTER OF A PETITION  
FOR THE WINDING UP OF  
HARLEQUIN RESORTS (ST. LUCIA)  
LTD.**

**AND IN THE MATTER OF SECTION  
385, 386 and 387 OF THE  
COMPANIES ACT CAP 13.01 OF  
THE REVISED LAWS OF SAINT  
LUCIA, 2001**

**BETWEEN:**

**CREDITORS OF HARLEQUIN RESORTS (ST. LUCIA) LTD.  
represented by (1) JUDITH ANDERSON, (2) ANTHONY CLEMENTS  
and (3) LESLEY CLEMENTS**

**Petitioner**

**and**

**HARLEQUIN RESORTS (ST. LUCIA) LTD.**

**Respondent**

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**THE FIRST REPORT OF THE JOINT LIQUIDATORS  
Pursuant to Order of the Court dated 30<sup>th</sup> June, 2017**

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**Harlequin Resorts (St. Lucia) Ltd. – in  
Liquidation ('HSLU' or 'the Company')**

**The First Report of the Joint Liquidators**

**(Pursuant to Order of the Court dated  
June 30, 2017)**

KPMG

September 22, 2017

This report contains 11 pages and 4 appendices



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## 1. Important Notice

### 1.1 Basis of Report

On June 30, 2017, Her Ladyship, The Honourable Madam Justice Cadie St. Rose-Albertini ordered that *inter alia*:

1. Harlequin Resorts (St. Lucia) Ltd. ('HSLU' or 'the Company'), company No. 2001/C469, be wound up pursuant to sections 385(c) and 385(e) of the Saint Lucia Companies Act ('the Act');
2. Mr. Brian Glasgow and Mr. Craig Waterman of KPMG be appointed as Joint Liquidators of the Company;
3. Costs in the sum of \$7,000 are awarded to the Petitioners to be paid out of the liquidation estate;
4. Any act required or authorised to be done under this Order or by the Act may be done by one or both persons appointed;
5. The Joint Liquidators in discharging their obligation shall be empowered to carry out the functions outlined in **Appendix 2**.
6. The Joint Liquidators may apply to the Court for directions in relation to any matter arising on the winding up;
7. The Joint Liquidators shall comply with all the application provisions of the Act and in particular sections 404, 407, 408, 409 and 410 and any other applicable statute;
8. The liquidators shall present an initial report to the Court within 75 days of the Appointment; and
9. A copy of this order shall be lodged with the Registrar of Companies.

(the 'Appointment Order').

This report is intended to form the Joint Liquidators' First Report to the Court pursuant to the Appointment Order.

All amounts referenced in this Report are denominated in Eastern Caribbean Dollars ('XCD') unless otherwise stated.

A glossary of terms used in this Report is set out in **Appendix 1**.



## **1.2 Disclaimer**

This report is prepared solely for the use and reliance of the Eastern Caribbean Supreme Court and the pursuant to and in accordance with the provisions of the Companies Act of St. Lucia.

This report may not be copied or disclosed to any third party or otherwise be quoted or referred to, in whole or in part, without the Joint Liquidators prior written consent. In the event that this report is obtained by a third party or used for any purpose other than in accordance with its statutory purpose, any such party relying on the report does so entirely at their own risk and shall have no right of recourse against the Joint Liquidators, KPMG, and its affiliated entities, its partners, directors, employees, professional advisers or agents.

Neither the Joint Liquidators, KPMG and its affiliated entities, its partners, directors, employees, professional advisers or agents accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report or the information contained therein.

Work undertaken to prepare this report has been based primarily on:

- Information obtained from the Company's books and records; and
- Information provided to the Joint Liquidators by creditors of the Company.

Some of the particulars contained in this report are based on information provided to the Joint Liquidators, by the Company. Whilst the particulars in this report have been presented with all due care, the Joint Liquidators and/or KPMG do not warrant or represent that information provided by the Company is free from errors or omissions. The Joint Liquidators make no warranty as to the content, accuracy or completeness of the information provided to them by the Company.

This information has not been subject to an audit. Where indicated, certain figures in this report are estimates, which may be subject to change, including possible adjustment, in the future. Any listed assets and liabilities represent the most accurate data currently available to the Joint Liquidators.

This document should be treated as strictly confidential, and is not suitable for further disclosure or release.

Neither the Company's Directors nor Company Management have confirmed the factual accuracy of this report.





## 2. Background and events leading to the Appointment of Joint Liquidators

### 2.1 Background

Company Name	Harlequin Resorts (St. Lucia) Limited
Company Number	2001/C469
Nature of Business	Hotel and resort development company
Year of Incorporation	2007
Country of Incorporation	Saint Lucia
Directors	David Ames
Shareholder	Harlequin Hotels and Resorts Limited ('HHRL')
Ultimate Beneficiary	David Ames (as shareholder of HHRL)

### 2.2 Events leading to the Appointment of Joint Liquidators

HSLU, a hotel and resort developer, marketed a luxury resort in Saint Lucia known as the Marquis Estate. Investors entered into contracts with HSLU to purchase luxury villas in at the Marquis Estate, many with completion dates of December 2013.

The contracts contemplated that payments be made in stages. Investors paid deposits upon signing the contracts and in some cases continued to make further stage payments against their contracts.

The development was never constructed and the Marquis Estate remains as agricultural land.

On July 10, 2015 a group of 85 creditors (the 'Petitioning Creditors') served demands on HSLU for the return of payments totalling £2.4 million. HSLU failed to pay the sums demanded and as a result took steps by initiating winding up proceedings in the Eastern Caribbean Supreme Court in Saint Lucia. Following the recovery actions of the Petitioning Creditors, further creditors joined the proceedings as interested creditors and in support of the winding-up petition.

HSLU entered into negotiations with the Petitioning Creditors and other interested parties with the hope of achieving a Consent Order. The terms of the contemplated Consent Order were to give preference to these parties over and above those of the general body of investors.

On March 31, 2017 an application was filed with the Court by the Mr. Brian Glasgow in his capacity of the Bankruptcy Trustee of Harlequin Property (SVG) Limited ('HPSVG'), an affiliated Harlequin company, to join the proceedings as an interested party.





Counsel for Mr. Glasgow as the Bankruptcy Trustee, asserted that HPSVG was due monies from HSLU, and opposed the contemplated Consent Order on the grounds that it would give rise to a fraudulent preference among creditors, as no provision had been made for a vast number of existing creditors who were known to HSLU. Upon this application the application for approval of the contemplated Consent Order was withdrawn and the Court granted an order making HPSVG an interest party to the proceedings.

On May 26, 2017 the Court was made aware that HSLU had initiated a member's voluntary winding-up and Mr Jeffrey Coyne was the appointed liquidator of the Company. Given the ongoing court process with regards to the petition, the Court ordered that no steps should be taken by Mr Coyne with respect of the member's voluntary liquidation.

Section 386(2) of the Company's Act provides that a company is deemed unable to pay its debts if it is shown to the satisfaction of the Court that the value of the Company's assets is less than the value of its liabilities, taking into account its contingent and prospective liabilities.

The Company provided the Court a statement of affairs which revealed that the Company's liabilities exceeded the Company's assets, i.e. balance sheet insolvent. With no further evidence submitted to the contrary, the Court determined that the Company is not in a position to voluntarily pay its debts in full within 12 months. **As such the Court determined that the appropriate course of action was a compulsory liquidation rather than a member's voluntary liquidation.**

The Petitioning Creditors recommended the appointment of Mr. Brian Glasgow and Mr. Craig Waterman, of KPMG, be appointed Joint Liquidators of HSLU. They believed that Brian Glasgow's prior involvement in the insolvency of HPSVG would reduce the time required to grasp the affairs of the Company, expedite the liquidation process and reduce the costs of that process.

The Petitioning Creditors also submitted to the Court that when a company is insolvent the choice of liquidator rests with the creditors and not the Company. **As such, the Court determined that the creditor's recommendation of Craig Waterman and Brian Glasgow being appointed Joint Liquidators of the Company would be the correct course of action in these circumstances.**

### **2.3 Appointment of the Joint Liquidators**

By Order of the Eastern Caribbean Supreme Court on June 30, 2017, Mr. Craig Waterman and Mr. Brian Glasgow were duly appointed as Joint Liquidators over the Company.





### **3. Progress of the liquidation**

#### **3.1 Appointment of legal counsel**

Pursuant to the Appointment Order the Joint Liquidators were given the power to appoint an attorney-at-law to assist them in performing their duties as Joint Liquidators over the Company.

The Joint Liquidators have instructed Lex Caribbean to act as their legal representative on this matter.

#### **3.2 Notification of appointment**

As directed by Court, the Joint Liquidators filed a copy of the Appointment Order with the Registrar of Companies.

Although not mandated by the Act, out of courtesy, the Joint Liquidators also notified the following parties of their appointment:

- The Inland Revenue Department of Saint Lucia;
- Dave Ames – sole director and ultimate beneficial owner of HSLU;
- Mr. Bota McNamara – Attorney-at- Law and consultant for McNamara & Co
- McNamara & Co – Attorneys-at-Law for HSLU;
- Baker Clarke - Accountants for the Harlequin group of companies;
- Mr. Jeffery Coyne – previous liquidator of HSLU; and
- Financial institutions within St. Lucia.

#### **3.3 Company records**

On July 12, 2017 The Joint Liquidators issued correspondence to Mr. David Ames, as the sole director of the Company, to request various Company records that would assist in the conduct of the Liquidation. **At the date of this report, the Joint Liquidators have received no information directly from Mr. Ames.**

The Joint Liquidators have also requested Company information from various parties who acted on behalf of the Company. These requests have resulted in a small amount of Company information being made available on September 5, 2017 and the Joint Liquidators are currently conducting a review of these records.

Given the lack of Company records available to the Joint Liquidators and the seemingly common creditor groups, the Joint Liquidators also notified HPSVG requesting that creditors of the Company make contact if they have a claim against HSLU.

In addition, the Joint Liquidators have also written to the Self-Invested Personal Pensions ('SIPPs'), who have provided a list of creditors that they represent, who invested in the Company.





In the absence of further Company records being available, the Joint Liquidators will continue to investigate the level of indebtedness of the Company.

### **3.4 Statement of Affairs**

Under Section 397 of the Saint Lucia Companies Act, a Statement of the Company's Affairs ('SoA') is to be provided to the Official Receiver within 14 days of the appointment of a Liquidator. The Joint Liquidators requested the SoA from Mr. David Ames in a letter dated July 12, 2017.

Mr. Ames replied to the letter on July 20, 2017 indicating that he was unaware that he was required to prepare a SoA. He further stated that he was on holiday and would be returning in a week's time at which point he would initiate the process to prepare the SoA to be submitted. The Joint Liquidators have followed up with Mr. Ames on numerous occasions; the most recent of which was correspondence issued on September 6, 2017. At the date of filing this report, no response has been provided.

Under Section 397 (5) "any person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence." The Joint Liquidators believe that Mr. Ames is in contravention of the Act and has committed an offence.

The Registry of Companies and Intellectual Property has been kept updated, via written correspondence, on any correspondences made or received from Mr. Ames or his attorney. The last update has been sent to the Registry of Companies and Intellectual Property by letter on September 6, 2017.

To date, the only financial information available on the Company is that submitted as the Declaration of Solvency at the time of Mr Jeffrey Coyne's appointment as liquidator. When requested by the Joint Liquidators, Mr Jeffrey Coyne responded saying he did not hold any further information with regards to the Company.

Given the Joint Liquidators of the Company have limited information on the Company they have not been able to conduct a full financial review. The information they are currently aware of is set out below.

### **3.5 Assets**

#### **Marquis Estate**

The only known asset of HSLU is The Marquis Estate which comprises of 552 acres of land. This Estate is the largest private estate in St. Lucia. Originally the site of an 18th century sugar mill and more recently a banana plantation. No work in development of the hotel or resort has been commenced on the Marquis Estate and to date, the level of liabilities associated with Marquis Estate has not been quantified.

The Joint Liquidators are not aware of any construction having occurred on the development.

The Joint Liquidators have been in discussions with BCQS International ('BCQS'), to offer valuation advice with regards to the Marquis Estate. BCQS has had prior involvement with the Harlequin group of companies and it is believed this prior knowledge will benefit them in the preparation of the valuation.



The Joint Liquidators would like to engage BCQS in the near future to undertake a valuation of the Marquis Estate following which a sales strategy can be considered.

The Joint Liquidators attempted to obtain public liability insurance for the property. Request for quotations were sent to two companies, namely, Sagicor General Insurance Inc. ('Sagicor') and Sun General Insurance Company. A response was only received from Sagicor, who declined to provide a quote to insure the property. The key concern noted was that the vast area of the property will make it virtually impossible for a risk assessment to be done to determine the liability exposures.

#### **Cash and cash equivalents**

Upon appointment, the Joint Liquidators have not discovered any cash held by the Company, it is their understanding that the Company did not hold a bank account in its name and instead utilized the banking facilities of affiliate companies who acted as their agents.

The Joint Liquidators have also sent correspondence to local banking institutions requesting any information regarding bank accounts in the Company's name but to date, no bank accounts have been identified.

### **3.6 Liabilities**

Investors entered into contracts with the Company for the purchase of luxury villas in the Marquis Estate. Deposits and in some cases stage payments were paid by the petitioners to Harlequin Management Services (South East) Limited ('HMSSE'), an affiliated company incorporated in the United Kingdom, which served as the sales and marketing agent of the Harlequin Group.

The Joint Liquidators are currently unaware of the total indebtedness of the Company and continue to seek further information as to the extent of the creditors.

From the Declaration of Solvency filed with the Court, the Company appears to have creditors totalling £78 million.





## **4. Costs of the liquidation to date**

### **4.1 Receipts and Payments**

To date, there have been no receipts or payments with regards the liquidation of the Company.

As noted earlier, upon appointment there were no cash assets available to the Joint Liquidators. As such the Joint Liquidators have been unable to progress the administration of the liquidation with respect of engaging appropriate specialists required to liquidate the sole asset, the Marquis Estate.

### **4.2 Funding of future costs**

The Joint Liquidators are in the process of approaching the Bankruptcy Trustee and the Inspectors Committee of HPSVG with regards to a funding request.

In order to progress the sales strategy of the Marquis Estate, the Joint Liquidators require an independent valuation of the property. It is envisaged that a sum of approximately USD10,000 will be required to undertake this valuation.

Once the Joint Liquidators receive a valuation for the property further funding will be sought to take the property to market.

### **4.3 Liquidators' fees and disbursements**

#### **Liquidators' fees**

The Joint Liquidators fees have been charged on a time cost basis and are based on time properly incurred by the Joint Liquidators and their staff at an hourly rate commensurate to the level of the staff member undertaking the activity.

For the purpose of cost efficiencies, throughout the engagement, the Joint Liquidators will allocate tasks cost-effectively among senior and junior staff.

In the period June 30, 2017 to August 31, 2017 the Joint Liquidators and their staff have incurred time costs of USD10,243. This represents 32.75 hours at an average rate of USD312.78 per hour.

Further details of the time incurred is available in **Appendix 3**.

#### **Liquidator's disbursements**

The Joint Liquidators have incurred two out of pocket expenses in the period from appointment to August 31, 2017.

These disbursements relate to advertising the appointment of the Joint Liquidators and are for a total of XCD704.

Further details of the disbursements are available in **Appendix 4**.



## 5. Future action to be taken by the Joint Liquidators

Below the next steps to be taken by the Joint Liquidators:

- Request funding for the valuation from the inspectors of HPSVG;  
The Joint Liquidators will make a request to the inspectors of HPSVG for funding of the valuation. This request will be made by resolution. If the resolution is passed, the Joint Liquidators will engage BCQS to conduct the valuation of the property.
- Continue to issue further demands for information to David Ames.  
The Joint Liquidators will continue to press Mr. Ames for the SoA and any records of the Company. These records will be of significant assistance in the conduct of the Liquidation. Specifically, the list of creditors will allow the Joint Liquidators to make a call for claims.
- We will obtain a proposal from a real estate brokerage company to market the property. This will include a detailed marketing exposure plan and budget.

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In accordance with the Joint Liquidator's obligations to the Eastern Caribbean Supreme Court in Saint Lucia, we hereby file this report for and on behalf of the Joint Liquidators.

Craig Waterman  
Joint Liquidator  
September 22, 2017





## **Appendices**

### **Appendix 1 - Glossary**

<b>Act</b>	The Companies Act of Saint Lucia Cap.13.01
<b>BCQS</b>	BCQS International
<b>Harlequin Group</b>	A number of entities each with the name Harlequin that have been established throughout the Caribbean.
<b>HMSSE</b>	Harlequin Management Services (South East) Limited.
<b>HPSVG</b>	Harlequin Property (SVG) Limited
<b>HSLU or the Company</b>	Harlequin Resorts (St. Lucia) Ltd.
<b>SIPPs</b>	Self-invested personal pensions
<b>SoA</b>	Statement of Affairs
<b>USD</b>	United States Dollar
<b>XCD</b>	Eastern Caribbean Dollar



## **Appendix 2 – Functions empowered upon the Joint Liquidators**

- a) Bring or defend any action or other legal proceeding in the name and on behalf of the company;
- b) Carry on the business of the Company, or so far as be necessary, for the beneficial winding-up there-of;
- c) Appoint an attorney-at-law or other agents to assist them in the performance of their duties;
- d) Pay any classes of creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
- e) Make any compromise or arrangement with creditors or person claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- f) Compromise any calls and liabilities to call, debts and liabilities capable or resulting in debts, and all claims, present future, certain or contingent, ascertained or sounding only damages, subsisting or supposed to subsist between the company and contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or winding-up of company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
- g) Sell the real and personal property and things in action of the company by public auction or private contract on such terms and conditions as determined in their discretion, with power to transfer free and clear of all encumbrances, the whole thereof to any person or to sell the same in parcels;
- h) Do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal;
- i) Prove, rank and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his or her estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt and insolvency, and rateably with the other separate creditors;
- j) Draw accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note has been drawn, accepted make or endorse but or on behalf of the company in the course of its business;
- k) Appoint an agent to do any business which the Joint Liquidators are unable to do themselves; and
- l) Do all such things as may be necessary for winding-up affairs of the company and distributing its assets.





### Appendix 3 – Joint Liquidators time detail

#### Joint Liquidators fees (for the period June 30, 2017 to August 31, 2017)

June 30, 2017 to August 31 2017							
Workstream	Total time costs per workstream	Total hours per workstream	Liquidator	Senior Manager	Manager	Senior Associate	Associate
Administration	4,593.75	15.75	0.50	1.25	10.00	4.00	-
Asset Realisation	-	-	-	-	-	-	-
Creditors	5,068.75	15.75	-	2.75	13.00	-	-
Investigations	106.25	0.25	-	0.25	-	-	-
Trading	-	-	-	-	-	-	-
Strategy and legal	475.00	1.00	0.50	0.50	-	-	-
<b>Total</b>	<b>10,243.75</b>	<b>32.75</b>	<b>1.00</b>	<b>4.75</b>	<b>23.00</b>	<b>4.00</b>	<b>-</b>



#### **Appendix 4 – Joint Liquidators Disbursements**

<b>Disbursements</b>	<b>Cost XCD</b>
Postage	254
Advertising	450
<b>Total disbursements</b>	<b>704</b>