



# INSOL INTERNATIONAL

## News Update

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### EDITOR'S NOTE

As the year draws to a close and 2020 marks the start of a new decade, the global economy remains fraught with trade war-related doldrums that have hampered growth and hindered investor confidence. It looks like the Grinch might steal Christmas this year.

Indeed, *Winter is coming*. Regardless of whether you watch *Game of Thrones*, you will know what the winter of the economic cycle portends. In this edition, we present you with a veritable cornucopia of updates and court decisions from around the globe. From the Asia Pacific region, India has seen developments which reinforce the trajectory of the IBC as one of the most progressive restructuring and insolvency legislations in the world. In particular, the Indian Supreme Court in its ruling relating to [Essar Steel](#) has brought much needed clarity to the IBC. Also, [Jet Airways](#) has become the first Indian company in insolvency proceedings to utilise a Cross-Border Insolvency Protocol. Closer to home in Singapore, there have been two recent decisions that engage cross-border insolvency issues. This month's [Highlight Article](#) refers to a recent case involving the recognition of a Chapter 11 trustee and we also have a case report on an application in individual insolvency proceedings regarding the recognition of [Hong Kong bankruptcy](#) trustees.

In the Americas, a recent decision in [Delaware](#) has discussed the Barton doctrine and the application of the automatic stay in Chapter 15 cases. And the [US Court of Appeals](#) for the Fifth Circuit withdrew its original opinion issued earlier this year which held that a make-whole is "unmatured interest" that is disallowed in bankruptcy. We have also included an article that discusses the

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If you would like to introduce a new member to INSOL International please contact our Database Manager, [Tony Ashton](#)

ramifications of the Privy Council's decision in [Weaving](#) on investor certainty in Cayman Islands funds.

Rounding up Europe, Africa and the Middle East, a write up on the new [UAE Personal Insolvency Law](#) that recently came into force on 29 November 2019 and an article on certain challenges that may be faced in implementing the brand new [EU Directive on Preventive Restructuring Frameworks](#). Lastly, articles on the certainty of [cryptoassets](#) under English Law and [two topics](#) of practical interest to practitioners with clients trading in (or otherwise exposed to) cryptocurrency.

I am grateful to the authors who contributed the articles to this edition which address a mélange of interesting insolvency issues. I strongly commend the articles to you, which we shall read against the backdrop of potential economic turbulence in 2020. Certainly, this is a sign of the times.



**Debby Lim**  
**Fellow, INSOL International**  
**Partner, Shook Lin & Bok**  
**Singapore**

## HIGHLIGHT ARTICLE

### Singapore's Second Model Law Decision

#### ***Re Rooftop Group International Pte Ltd and Another (Triumphant Gold Ltd and Another, Non-parties) [2019] SGHC 280***

Rooftop Group International Pte Ltd (Rooftop) filed for Chapter 11 in the US Bankruptcy Court for the Northern District of Texas, and a US worldwide moratorium was granted. When litigation was continued in Singapore against the company, the Chapter 11 trustee sought the assistance of the Singapore court under the UNCITRAL Model Law on Cross-Border Insolvency (30 May 1997) (recently enacted under the Singapore Companies Act (Cap.50)). The Chapter 11 Trustee had applied for voluntary bankruptcy under Chapter 7 of the US Bankruptcy Code, one day after Rooftop's application for assistance. The issues for consideration before the court included whether the US Chapter 11 proceedings were foreign main or non-main proceedings; should the court recognise a person as a foreign representative even when they might be ill suited to the role; and when is common law recognition available as an alternative to recognition under the Model Law.

**Debby Lim**  
**Fellow, INSOL International**  
**Partner, Shook Lin & Bok LLP**  
**Singapore**

[Highlight Article >](#)

## CASES

## USA

**Court Decision Discusses the Barton Doctrine and the Automatic Stay in Chapter 15**

This recent decision in Delaware, *McKillen v. Wallace (In re Ir. Bank Resolution Corp.)*, No. 18-1797, 2019 U.S. Dist. LEXIS 166153 (D. Del. Sept. 27, 2019) discussed the Barton doctrine and the application of the automatic stay in Chapter 15 cases. The decision involved Irish Bank Resolution Corporation Limited, liquidated in a court proceeding in Dublin. Two liquidators appointed in the Irish case were recognised as foreign representatives in the Chapter 15 proceedings. The plaintiffs sought damages against the foreign representatives for allegedly misusing the Chapter 15 process and to terminate them as the foreign representatives.

[Patterson Belknap Webb & Tyler LLP Bankruptcy Update, 21 November 2019 >](#)

[Case Decision >](#)

## USA

**Fifth Circuit Withdraws Opinion that Make-Whole Constitutes Unmatured Interest in Bankruptcy**

On 26 November 2019 a three-judge panel of the US Court of Appeals for the Fifth Circuit withdrew its original opinion issued earlier this year in *In re Ultra Petroleum*, which held that a make-whole is “unmatured interest” that is disallowed in bankruptcy pursuant to 11 USC § 502(b)(2). The court’s revised opinion also eliminated dicta in the original opinion suggesting that the “solvent-debtor exception,” which provides that a solvent debtor should honour its contractual commitments (including the payment of postpetition interest), did not survive enactment of Section 502(b)(2) of the Bankruptcy Code.

[Andrew J. Gallo & P. Sabin Willett, Partners, Morgan, Lewis & Bockius LLP Case Note, 6 December 2019 >](#)

[Case Decision >](#)

## ARTICLES

## Cayman Islands

**Has the Privy Council’s Decision in *Weaving* Affected Investor Certainty in Cayman Islands Funds?**

This article analyses the Privy Council’s decision in *Skandinaviska Enskilda Banken AB (Publ) v Conway and another (as Joint Official Liquidators of Weaving Macro Fixed Income Fund Ltd)* [2019] UKPC 36. In particular, as to what impact the decision will have, if any, on investors in Cayman Islands funds. In *Weaving* the Privy Council upheld the decisions of the lower courts that redemption payments to a Swedish bank made shortly prior to the collapse of the *Weaving* fund were voidable preferences that must be repaid. In doing so, the Privy Council revisited the question of whether a fund’s NAV calculated in accordance with its constitutional documents can be revised.

[South Square Digest, November 2019, page 14 >](#)

## CASES

## India

**Cross-Border Insolvency Protocol Fills a Gap, but is not a Comprehensive Law**

In September this year, the National Company Law Appellate Tribunal (NCLAT) allowed the Dutch Bankruptcy Administrator to attend the meeting of Committee of Creditors (CoC) in the ongoing *Jet Airways* insolvency proceedings. The NCLAT advised the Resolution Professional and the Dutch Administrator of *Jet Airways* to explore a framework of cooperation. After extensive negotiations, the RP and DA agreed on a Cross-Border Insolvency Protocol. The NCLAT order approving the Cross-Border Insolvency protocol is a historical development under the IBC and paves the way for cross-border cooperation in countries which have not enacted cross-border Insolvency laws.

[Kesar Dass B & Associates Article, December 2019 >](#)

[Case Decision >](#)

## India

**The Essar Steel Saga: Supreme Court Brings Much Needed Clarity to IBC**

On 15 November 2019, a three judge bench of the Supreme Court delivered its judgment in the much-anticipated matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.*, Civil Appeal No. 8766-67 of 2019. The Supreme Court judgment is an authoritative pronouncement which settles several issues that were affecting the smooth working of the Code. Various aspects of corporate insolvency resolution process including the supremacy of the CoC's decisions, and more critically, limiting the powers of courts to interfere with commercial terms of a resolution plan have now been finally resolved.

[Khaitan & Co Newsflash, 19 November 2019 >](#)

[Case Decision >](#)

## Singapore

**Recognition of Foreign Bankruptcies in Singapore**

Unlike the recognition process of a foreign insolvency proceeding involving a corporation set out in the UNCITRAL Model Law on Cross-Border Insolvency there is little guidance (whether statute or case law) insofar as recognition in Singapore of a personal bankruptcy is concerned. This article explores a recent recognition application by the joint and several trustees in bankruptcy of a Hong Kong resident for recognition of the HK Bankruptcy Order in Singapore.

[Stephenson Harwood \(Singapore\) Alliance Going Concerns, December 2019 >](#)

[Case Decision >](#)

## Legislation

## Germany

**New Toolbox, New Questions**

The brand new Directive on Preventive Restructuring Frameworks (EU No 2019/1023 of 20 June 2019) presents a promising toolbox for restructuring debtor companies, containing features such as a very early starting point, the debtor-in-possession-approach, a flexible stay,

## United Arab Emirates

**The New UAE Personal Insolvency Law**

The UAE Insolvency Law No. 9 of 2019 (Law No.9) came into force on 29 November 2019. Law No.9 deals with the insolvency of natural persons, a move that has been widely anticipated following the announcements by the UAE Government at the time Law No. 9 of 2016

the restructuring plan's adoption out-of-court and the cross-class cram-down. This overview, however, points out certain challenges regarding two tools, namely the restriction of equity holders' rights and the stay. It also considers the potential problems arising from the question of international jurisdiction over the new frameworks.

[Eurofenix, Autumn 2019, page 20 >](#)

concerning corporate bankruptcy was introduced. Law No. 9 of 2019 introduces a new regime for the insolvency of natural persons; a rehabilitation framework through a Court supervised settlement plan; and a liquidation process for insolvent persons unable to be rehabilitated.

[Al Tamimi & Co Banking & Finance Update, 27 November 2019 >](#)

## Articles

### UK

#### Do We Now Have Crypto Certainty Under English Law?

Cryptoassets are capable of being property which can be owned and smart contracts can be legally enforceable, says a Legal Statement published by the UK Jurisdiction Taskforce of the LawTech Delivery Panel (UKJT) in November. While the Legal Statement is not binding, it will give market participants greater certainty around crypto transactions. The Legal Statement, which covers distributed ledger technology, cryptoassets and smart contracts, was drafted by senior barristers following a public consultation issued by the UKJT in May 2019.

[Clifford Chance Briefing, November 2019 >](#)

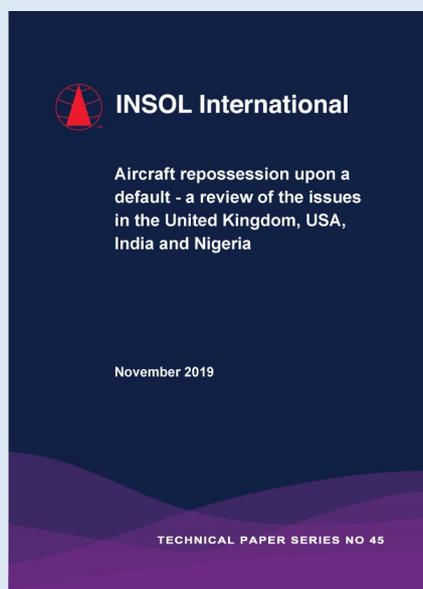
### UK

#### Cryptoassets, Cryptoliabilities: Bitcoin and Insolvency

This article considers two topics which are apt to arise in the cryptocurrency insolvency / bankruptcy context, specifically: (i) the getting in of an insolvent's bitcoin by the officeholder and the avoidance of misapplied or misappropriated bitcoin; and (ii) whether a "debt" owed in bitcoin is a "debt" for a "liquidated sum" such that it can found a statutory demand. These two topics have been selected on the basis that they may be of some practical interest to practitioners with clients trading in (or otherwise exposed to) cryptocurrency.

[South Square Digest, November 2019, page 44 >](#)

## Publications



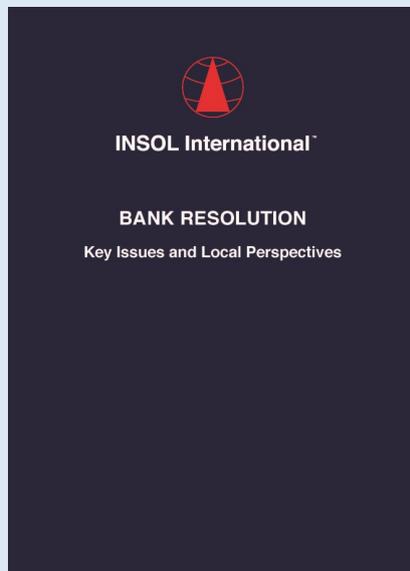
#### INSOL International Technical Paper - Aircraft repossession upon a default - a review of the issues in the United Kingdom, USA, India and Nigeria

As airline insolvencies make headlines around the world, INSOL International is very pleased to present the 45<sup>th</sup> Technical Paper under its Technical Papers Series titled 'Aircraft repossession upon a default - a review of the issues in the United Kingdom, USA, India and Nigeria.'

Repossession and recovery of aircraft is influenced by a combination of factors, including but not limited to: the laws or regulatory regime of the country in which the aircraft is located; and competing proprietary and other rights in relation to the aircraft, including rights pertaining to ownership, operation of the aircraft and / or security rights.

This paper considers the issues in relation to post-default repossession of aircraft from four representative countries: the United Kingdom, the USA, India and Nigeria. All four jurisdictions have codified procedures and laws regarding repossession, many of them similar to one another yet, as will be seen, the ease of aircraft repossession is quite different in each jurisdiction.

INSOL International would like to sincerely thank Henry Kikoyo, Oluseye Opasanya, Mitchell Aghatise and Ajay Kumar for this detailed analysis of aircraft repossession in these jurisdictions and for providing our members with this excellent technical paper.



## **BANK RESOLUTION: Key Issues and Local Perspectives**

INSOL International is very pleased to present an excellent book titled *Bank Resolution: Key Issues and Local Perspectives*, edited by Mr Simon Brodie.

Bank resolution regimes, the subject of the book, have significant implications for the financial economy and the real economy. It is therefore particularly important for such regimes to be effective. Especially, given the complexities of modern financial systems, a range of perspectives is beneficial in understanding and assessing these regimes. For this reason, the book includes contributions from experts in a number of fields.

It is hoped that the book will be of particular value to those who may be involved in future bank resolution processes and to those engaged in the design and operation of bank resolution regimes. While topics of special note are deliberately addressed in some detail, readers need not have any particular level of expertise in bank resolution in order to benefit from the book.

We would like to thank the contributors for committing their valuable time and writing the respective chapters. We also thank Simon Brodie, project leader and editor, for suggesting this topic to the INSOL Technical Research Committee and for his continued dedication thereafter to produce a publication that has a high level of content and practical relevance to readers.

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## CONFERENCES & SEMINARS



**LEARN. UNLEARN. RELEARN.**



## INSOL Cape Town

Sunday 15 March – Tuesday 17 March 2020

At INSOL Cape Town the chosen theme 'Learn. Unlearn. Relearn.' reflects the need to evolve and develop in current market conditions. Take advantage of a stellar technical programme featuring sessions on Brexit, the Neuroscience of Leadership, Crisis Communication, and Learning from Failure - in which CEOs will retell their stories. Along with the opportunity to connect with key senior professionals from across the globe.

Closing Deadline: 14 February 2020

[Register now](#) to secure your place!

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### New Delhi One Day Seminar



17 January 2020  
New Delhi, India

**Booking Deadline: 6 January 2020**

### Mexico City One Day Seminar



13 February 2020  
Mexico City, Mexico

**Early Booking Deadline: 6 January 2020**

Register before 6 January to secure your place at the first INSOL International seminar of 2020, in the cosmopolitan city of New Delhi! Our Main Organising Committee have created a fantastic programme which includes a judicial panel discussing recent updates to Indian Law amongst other inspiring topics looking at both local and international cross-border restructuring developments. This is a seminar not to be missed!

As the capital of India, New Delhi is a multi-cultural city with a bubbling mixing pot of celebrations and history. Combine your visit with trips to historical monuments such as the Red Fort, as well as indulging in delicious food and walking through the many lush gardens and parks in this bustling, fast paced city! A city that is sure to excite the senses!

We would like to thank our generous sponsors of the seminar:

Platinum Sponsors: EY  
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For further information and details on sponsorship opportunities, please contact [Zeenat Edah-Tally](#)

INSOL International is hosting its next Latin America seminar in Mexico City!

Mexico City is not one to be missed! Visit its neighbourhoods flooded with art nouveau and art deco, enjoy its cuisine and lose yourself in the streets of the city with the most museums in the world.

The seminar chairs and Main Organising Committee are busy preparing an engaging technical programme! Please contact [Danielle Timmons](#) for further information.

We would like to thank our generous sponsors of the seminar:

Platinum Sponsor: DSI Consulting  
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We look forward to seeing you in Mexico City!

## Tel Aviv One Day Seminar



4 May 2020  
Tel Aviv, Israel

**Early Booking Deadline: 23 March 2020**

INSOL International is hosting its second one day seminar in Tel Aviv!

Labelled the 'Mediterranean Capital of Cool' by the New York Times, Tel Aviv is one of the most vibrant cities in the world! Combining sandy

## Channel Islands One Day Seminar



17 June 2020  
St Helier, Jersey

**Early Booking Deadline: 24 April 2020**

Our 2020 Channel Islands seminar will be held on Thursday 17 June in St. Helier, Jersey in association with ARIES, and with the support of restructuring professionals from both Jersey and Guernsey.

Mediterranean beaches with world-class nightlife, Tel Aviv has a buzzing cultural scene, incredible food and UNESCO recognised architecture.

The seminar chairs and Main Organising Committee are busy preparing an engaging technical programme. Please contact [Danielle Timmons](#) for further information.

We look forward to seeing you in Tel Aviv!

Please save the date!

Just 45 square miles in size, the island of Jersey is a haven of beautiful beaches, great country walks, fascinating history and fantastic wildlife.

The seminar chairs and Main Organising Committee are busy preparing a cutting-edge technical programme!

Please contact [Zeenat Edah-Tally](#) for further information.

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