



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE

As we quickly head towards the end of another year, I would like to welcome the new members to the committee responsible for producing the electronic newsletter. I am sure that you will enjoy the opportunity to be involved with INSOL and assist in the production of a vital piece of communication for our members. I would also like to thank those members who have reached the end of their term with the committee. Thank you for all of your contributions. Further, can I also thank Louise Jennings in the INSOL office in London for the opportunity to Chair this committee.

Now back to the current edition. You will see a great range of articles and case notes that have been assembled from across multiple jurisdictions and regions. Starting with the [Highlight Article](#), which covers some more possible insolvency reform in Australia around illegal 'phoenixing'. Phoenixing is an issue which I am sure is not limited to Australia, however, it is costing the Australian economy somewhere between \$2.9 billion and \$5.1 billion annually. A Bill is currently before the Australian Parliament which, it is hoped, will assist with bringing those who carry out such illegal activity to account. As noted in the article, insolvency practitioners, certainly within Australia, lament the lack of funding for them which would assist in this pursuit.

Other highlights from this edition include a case note on a recent decision of the [Federal Court of Australia](#) which held that it could make a request to the New Zealand High Court for a joint hearing in respect of applications relating to the pooling of various funds held by companies subject to Australian and New Zealand liquidations. If such a request is issued, this will be the first such coordination between courts in Australia and New Zealand.

From Hong Kong, you will see a case note on a decision from the [Hong Kong Court of Appeal](#) which included obiter comments on the circumstances in which a winding up petition would be set aside where the parties to a contract had agreed to arbitration or dispute resolution.

If you would like to send an article for inclusion in one of our forthcoming issues please contact our Technical Officer, [Louise Jennings](#)

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

Moving across to Europe, Africa and the Middle East, there are case notes out of the Netherlands and UK, with the [Netherlands](#) case providing a ground-breaking ruling in which a group of bond holders took control of an English telecoms group through a coercive share pledge enforcement against its Dutch Holding Company. The District Court of Amsterdam approved the enforcement despite objections. In the [UK](#), the Court of Appeal upheld an order to strike out a claim of US\$100 million brought by an unsecured creditor of the now defunct London Mining Plc against PwC and two of its insolvency partners. The case note indicates that the decision is a useful reminder of the principles of contractual interpretation and how the courts will be slow to rewrite the terms of a defective contract.

Crossing to the Americas, the Bankruptcy Court for the Southern District of New York has recently issued another entry into the law around [Chapter 15 of the US Bankruptcy Code](#), ruling that an investment fund organised under Cayman Islands law and involved in a liquidation proceeding there, had its COMI in the Cayman Islands rather than New York.

Finally, President Trump recently signed the [Small Business Reorganization Act](#) into law, to take effect on 22 February 2020. This law will offer small businesses the opportunity to utilise a condensed and price conscious Chapter 11 bankruptcy proceeding.

Enjoy the articles and case notes included in this month's edition. I am sure that you will gain great insights from across the various jurisdictions within which our members practice.



***Ian Dorey
K&L Gates
Australia***

HIGHLIGHT ARTICLE

Phoenixing: A concept best left in the *Harry Potter* books

Recent changes in restructuring laws in Australia, such as the introduction of the 'safe harbour' provisions, aim to motivate directors to embrace change and restructuring efforts to save distressed companies. However, further proposed and possible reforms on the horizon focus on stemming directors' involvement in "unsavoury" restructuring, namely the practice of 'phoenixing' whereby the assets of a financially distressed company are transferred to another associated entity leaving creditors of the distressed company with little chance of recovery. On 4 July 2019, the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 (Cth) (Phoenixing Bill) was reintroduced to the House of Representatives. The Phoenixing Bill proposes a new voidable transaction referred to as a 'creditor-defeating disposition' to tackle the phoenixing problem.

*Ian Dorey, Partner
James Thompson, Lawyer
K&L Gates
Australia*

[Highlight Article >](#)

[Phoenixing Bill >](#)

THE AMERICAS

CASES

LEGISLATION

USA

New York Bankruptcy Court Issues Ruling on Recognition of Foreign Proceedings

A foreign proceeding can be recognised under Chapter 15 of the Bankruptcy Code as either a “foreign main proceeding” or a “foreign non main proceeding” 11 U.S.C. § 1517. On 12 August 2019, the Bankruptcy Court for the Southern District of New York issued another entry in the body of case law concerning this provision, ruling that an investment fund organised under Cayman Islands law, and involved in a liquidation proceeding there, had its COMI in the Cayman Islands rather than New York.

[Patterson Belknap Webb & Tyler LLP Bankruptcy Update, 22 August 2019 >](#)

[Case Decision >](#)

USA

Small Business Reorganization Act Signed into Law - A New Frontier for Small Business Bankruptcies

On 26 August, 2019, President Trump signed the Small Business Reorganization Act (SBRA) into law. The SBRA is scheduled to take effect on 22 February 2020. As we reported in the May issue of the News Update, the SBRA offers small businesses with aggregate liabilities that do not exceed US\$2,725,625 the opportunity to resolve their outstanding debts through a condensed and price-conscious chapter 11 bankruptcy proceeding. Both articles on this new legislation are linked below.

[Squire Patton Boggs eSQUIRE Global Crossings, 27 August 2019 >](#)

[Squire Patton Boggs eSQUIRE Global Crossings, 23 April 2019 >](#)

[Small Business Reorganization Act >](#)

ARTICLES

USA

Benefits of Protected Contracts: Utilising Repurchase Facilities and Securities Contracts as an Alternative to Standard Lending Arrangements

As the market continues to mature, financial institutions will continue to explore new and innovative ways to obtain liquidity from existing pools of assets including obtaining asset-level leverage (particularly for mortgage loans). This Legal Update analyses the benefits of protected contracts under the US Bankruptcy Code and discusses the advantages of using repurchase facilities and securities contracts as alternatives to traditional lending arrangements.

[Mayer Brown Perspective, 20 August 2019 >](#)

CASES

Australia

Cross-Border Cooperation: Federal Court of Australia Considers "Classic Candidate" for Coordination with High Court of New Zealand

On 22 August 2019, the Federal Court of Australia in *Kelly, in the matter of Halifax Investment Services Pty Ltd (In Liquidation) (No 5)* held that it could make a request to the New Zealand High Court that there be a joint hearing of those courts in respect of applications relating to the pooling of various funds held by companies subject to Australian and New Zealand liquidations, respectively. Such a 'letter of request' could be issued by the FCA to a foreign court in the context of an Australian insolvency process pursuant to section 581 of the Corporations Act 2001 (Cth).

[K&L Gates Legal Insight, 27 August 2019 >](#)

[Case Decision >](#)

Australia

Trouble in Paradise: No Privilege for Stolen Documents

In an era of sophisticated cyberattacks and data leaks, questions have been raised over whether the doctrine of legal professional privilege should be extended to provide clients with a legal right to seek relief, such as an injunction, to prevent a party from using privileged material obtained in an unauthorised fashion. This question has finally been decided by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 (delivered on 14 August 2019), a timely reminder on the need to exercise caution before widely circulating privileged documents.

[Jones Day Commentary, September 2019 >](#)

[Case Decision >](#)

CASES

Hong Kong

No If, No But - Will an Arbitration Agreement Always Trump a Winding-up Petition?

In *But Ka Chon v Interactive Brokers LLC* [2019] HKCA 873, the Hong Kong Court of Appeal dismissed an appeal to set aside a statutory demand arising out of online forex futures trading debts. In doing so, Vice-President Kwan of the Court of Appeal made obiter comments on the circumstances in which a winding-up petition would be set aside where the parties to a contract had agreed to arbitration for dispute resolution.

[Herbert Smith Freehills Dispute Resolution E-Bulletin, August 2019 >](#)

[Case Decision >](#)

CASES

Netherlands

Bondholders Take Control of Lebara Via Enforcement

In a “ground-breaking” ruling in the Netherlands, a group of bondholders took control of telecoms group Lebara through a coercive share pledge enforcement against its Dutch holding company, Vieo. The District Court of Amsterdam approved the enforcement on 30 July despite objections from Vieo’s former shareholder. The next day its shares were transferred to a new company entirely controlled by holders of Vieo’s €350 million senior secured notes.

[Kirkland & Ellis Alert, 14 August 2019 >](#)

[Case Decision English >](#)

[Case Decision Dutch >](#)

UK

Attempting to Stave off the Inevitable

The Court of Appeal has upheld an Order to strike out a US\$100m claim brought by an unsecured creditor of the now defunct London Mining Plc against PwC and two of its insolvency practitioners. The decision is a useful reminder of the principles of contractual interpretation and how the courts will be slow to rewrite the terms of a defective contract. It further highlights the duty of administrators to act in the best interests of the company for the general body of creditors.

[Clifford Chance Client Briefing, August 2019 >](#)

[Case Decision >](#)

LEGISLATION

Guernsey

Guernsey Insolvency Law Reform

As a result of a consultation with industry bodies and professionals that has spanned several years, the States of Guernsey have drafted The Companies (Guernsey) Law, 2008 (Insolvency) Amendment Ordinance, 2019 (“the Ordinance”) which introduces a number of proposed additions to the Companies Law. It is envisaged that the Ordinance will be passed and enacted by the end of 2019. The Ordinance aims to enhance and streamline the insolvency process for stakeholders in Guernsey. This article explores various areas of the proposed changes.

[Andrea Harris, Fellow, INSOL International, Director, KRyS Global, August 2019 >](#)

ARTICLES

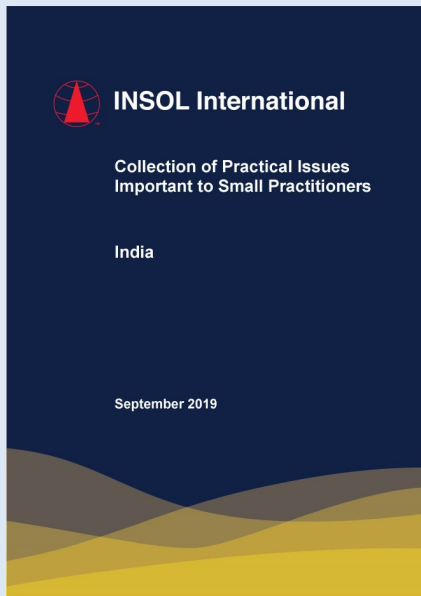
UK

Restructuring the Next Wave of Cov-lite Debt

Market conditions remain relatively benign from a debtor’s perspective, so the issuance of cov-lite loans continues – in many ways reminiscent of conditions in 2005 – 2007 immediately prior to the credit crunch. The current raft of loans lack even the basic financial covenant protection that existed in the mid-2000s. These covenants were key leverage points for lenders in a number of restructurings in 2008 – 2010. So what will happen if there is some sort of forced market correction, and a substantial number of these cov-lite loans become distressed?

[White & Case Insight, 11 July 2019 >](#)

Publications



A Collection of Practical Issues Important to Small Practitioners - India

This study on India under the Small Practice Technical Paper Series focuses on "A Collection of Practical Issues Important to Small Practitioners". The paper was written for INSOL by Dr. K.S. Ravichandran, KSR & Co Company Secretaries LLP, India and provides an update to the author's paper on India published in July 2015.

INSOL International sincerely thanks Dr. K.S. Ravichandran for providing INSOL members with this very informative and practical paper on India.

The advertisement features a dark blue background with a white and red globe icon on the left. The text 'THE 2020 INSOL DIRECTORY' is written in large, white, bold letters, slanted upwards. Below it, in smaller white text, is 'The comprehensive directory restructuring, insolvency and turnaround professionals through'. To the right, the text 'Reach and influence recovery, insolvency and turnaround professionals across the globe' is written in white. At the bottom right, a white rounded rectangle contains the text 'To advertise in the 2020 INSOL Directory contact: Jack Roberts, GTI, 01491 826262, jack.roberts@groupgti.com'.

CONFERENCES & SEMINARS



REGISTRATIONS NOW OPEN

INSOL Cape Town Learn. Unlearn. Relearn.

Sunday 15 March – Tuesday 17 March 2020

CAPE TOWN INTERNATIONAL CONVENTION CENTRE
South Africa

We are pleased to announce that registration for INSOL's Annual Conference and Ancillary Meetings, in the exciting city of Cape Town is now open.

INSOL would like to thank the following sponsors who are generously supporting INSOL Cape Town:

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UNCITRAL Webinar



24 September 2019, 1pm BST (GMT +1)

Booking Deadline: 20 September 2019

INSOL International is proud to present its second webinar on the topic 'Developments at UNCITRAL Working Group V, with the focus on the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments'. Our speakers will look at some of these model laws and discuss best practice, how they have been implemented, and the current limitations. This will be a 1 hour session with Q&A where attendees will have the opportunity to ask questions to the Working Group V members on the panel.

The panel will discuss:

- UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments
- UNCITRAL Model Law on Enterprise Group Insolvency
- Directors' Obligations in the Period Approaching Insolvency
- Future Work of WGV

Please contact [Penny Robertson](#) for further information and sponsorship opportunities.

P.R.China One Day Seminars



Beijing: Monday 14 October 2019
Shanghai: Wednesday 16 October 2019

Booking Deadline: 30 September 2019

Registrations are closing on 30 September – secure your place now for the annual secure your place at the annual INSOL International P. R. China seminars, taking place in Beijing on Monday 14 October and in Shanghai on Wednesday 16 October 2019.

The Seminar Co-Chairs and the Main Organising Committee have prepared a fascinating programme on the key issues in cross-border restructuring and Asian insolvency, concerning both P. R. China and the region at large.

As two of the most iconic cities in P. R. China, we hope that you will be able to join us in October for a rewarding professional experience, and the opportunity to explore this vibrant country, which provides both tradition and modernity in equal measure.

We would like to thank the sponsors of our seminar:

Platinum Sponsor: Fangda Partners
Gold Sponsor: Archers

Campbells
Jiangsu Letian Law Firm
Latham & Watkins LLP

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

Hong Kong One Day Seminar



Friday 18 October 2019
Hong Kong

Booking Deadline: 8 October 2019

After a hugely successful inaugural seminar in 2018, INSOL International will be running its second annual Hong Kong Seminar on Friday 18 October 2019.

Hong Kong the perfect fusion of when East meets West, with an iconic skyline and incredible views throughout. Come experience the city's world class cuisine and breath-taking landscapes with us this October!

The chairs and Main Organising Committee have prepared a dynamic technical programme which will culminate with a cocktail reception at Liberty Exchange, located in the heart of Central Hong Kong.

Please contact [Danielle Timmons](#) for information on remaining sponsorship opportunities.

We would like to thank the sponsors of our Seminar:

Platinum Sponsors: Briscoe Wong
 Carey Olsen
 Lipman Karas
 Tanner De Witt

Gold Sponsor: Perun Consultants
Breakfast Sponsor: Holman Fenwick Willan
Coffee Break Sponsor: Conyers
Lunch Sponsor: Duff & Phelps

Tokyo One Day Seminar



Thursday 7 November 2019
Tokyo

Booking Deadline: 18 October 2019

Registrations are open for the INSOL International Tokyo One Day Seminar, taking place for the second time in Japan. The Main Organising Committee have put together an engaging and interesting programme with the overarching theme being '*Further Development in Asian Insolvency and Cross-Border Restructuring*'.

As the capital of Japan, Tokyo mixes modern skyscrapers and neon signs with its traditional culture, including museums, theatres and historic shrines. Whether you want to shop in the famous Harajuku district, visit the Imperial Palace, take a stroll along Tokyo bay or sample Japan's unique cuisine, there is plenty to explore during your visit.

We would like to thank the sponsors of our Seminar:

Platinum Sponsors:
Anderson Mōri & Tomotsune
KPMG FAS Co., Ltd.

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Nagashima Ohno & Tsunematsu
Oh - Ebashi LPC & Partners
PwC Advisory LLC, PwC Japan Group

Cocktail Reception Sponsor: Harneys

Coffee Break Sponsor: Nishimura & Asahi
Lunch Sponsor: EY

For further information please contact [Zeenat Edah-Tally](#)

Africa Round Table Open Forum



22 November 2019
Swakopmund, Namibia

Booking Deadline: 25 October 2019

INSOL International and the World Bank are delighted to announce the date of the next Africa Round Table (ART) Open Forum on insolvency reform, to be held on 22 November 2019 at the Swakopmund Hotel and Entertainment Centre, Swakopmund, Namibia. As we are celebrating the 10th anniversary of the Africa Round Table initiative, the theme for this year's event is *"Celebrating a decade of Insolvency Reform in Africa and anticipating what lies ahead"*.

Thank you to our sponsors:

ASO Capital
DLA Piper
ENS Africa
Grant Thornton
PwC

For further information please contact [Penny Robertson](#)

Bahamas Offshore One Day Seminar



Thursday 5 December 2019
Nassau, The Bahamas

Early booking deadline: 15 October 2019

INSOL International and RISA are hosting a joint One Day Seminar in Nassau, The Bahamas on Thursday 5th December 2019.

Come join us in the luxurious Bahamas, where the stunning scenery and culinary delights can't be beat!

The seminar chairs and Main Organising Committee have prepared an engaging educational programme featuring both offshore and cross-border topics.

We would like to thank the sponsors of our Seminar:

Platinum Sponsors: EY
Lennox Paton
McKinney Bancroft & Hughes
PwC Bahamas

Gold Sponsor: Graham Thompson
Attorneys

Please contact Danielle Timmons for information on remaining sponsorship opportunities

New Delhi One Day Seminar



17 January 2020
New Delhi, India

Following on from the success of the Indian seminar in 2016, INSOL International is delighted to announce the date of its next One Day Seminar, to be held in New Delhi on Friday 17 January 2020. Please save the date!

The Main Organising Committee are putting together an inspiring technical programme, which is set to look at local issues in India as well as international cross-border restructuring developments and hot topics.

As the capital of India, New Delhi is a cosmopolitan and multi-cultural city with a fantastic mixing pot of celebrations and history. Combine your visit to this wonderful location with a trip to historical monuments such as the Red Fort, as well as indulging in delicious food and enjoying walks through the lush gardens and parks located in this bustling, fast paced city that is sure to excite the senses!

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

Platinum Sponsors: J. Sagar Associates
Kesar Dass B. and Associates

For further information and details on sponsorship opportunities, please contact Zeenat Edah-Tally

Mexico City One Day Seminar



13 February 2020
Mexico City, Mexico

Early Booking Deadline: 6 January 2020

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 educational program! Please contact Danielle.Timmons@insol.org for further information.

We look forward to seeing you in Mexico City!

Tel Aviv One Day Seminar



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 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

4 May 2020
Tel Aviv, Israel

Early Booking Deadline: 23 March 2020

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

Committee are busy preparing an engaging technical programme. Please contact Danielle.Timmons@insol.org for further information.

We look forward to seeing you in Tel Aviv!

Electronic Newsletter Editorial Committee

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Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales	Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)	National Association of Federal Equity Receiver
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Association of Business Recovery Professionals - R3	INSOL India	Recovery and Insolvency Specialists Association (BVI) Ltd
Association of Restructuring and Insolvency Experts (Channel Islands)	Insolvency Practitioners Association of Malaysia	Recovery and Insolvency Specialists Association (Cayman) Ltd
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Commercial Law League of America (Bankruptcy and Insolvency Section)	Japanese Federation of Insolvency Professionals	Turnaround Management Association Brasil (TMA Brasil)
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