



# INSOL INTERNATIONAL

## News Update

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### EDITOR'S NOTE

As ever, this month's newsletter contains a wide-ranging selection of articles both in terms of subject matter and geographically. The [highlight article](#) this month examines the ambitious new EU Directive on restructuring frameworks. This focuses on efforts to harmonise EU insolvency legislation which if successful are likely to have far reaching effects on the European restructuring industry. This development is particularly timely in the light of: Brexit, which by the time you read this will be further down the road with a potential no-deal scenario for the UK; the ongoing trade war between the USA and China; and the current slowdown in the European economy.

We also have an article on the [new Dutch restructuring legislation](#) which has been described as aiming to incorporate the best elements of Chapter 11 and schemes of arrangement. Both procedures have their supporters and both have advantages and disadvantages but, if this effort to marry the two together is successful, and we should know by late 2020, it could be a major leap forward in the European restructuring industry.

A number of articles this month relate to the use of alternative dispute resolution in cross-border insolvency proceedings. The Co-Chair of the newly formed [INSOL Mediation Colloquium](#) reports on INSOL's work to develop ideas and encourage mediation of cross-border insolvency or restructuring disputes. This INSOL initiative comes at an opportune moment as the United Nations Convention on International Settlement Agreements Resulting from Mediation known as the "[Singapore Convention](#)" is signed in Singapore to assist international trade and promote mediation as an "alternative and effective method" of resolving trade disputes. So far, 46 states including the US, China, India, Laos, Malaysia, Philippines, Republic of Korea, Sri Lanka, Brunei and Singapore have signed the Convention. We also have an article on the recent and increasing use of [ADR in cross-border restructuring in Singapore](#). This all coincides nicely with the launch of INSOL's Asia Hub earlier this week in Singapore. More details regarding this exciting development for restructuring and insolvency in the Asia region, can be found in the official [Press Release](#).

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](#)

From [India](#), we have more clarity on the new corporate insolvency resolution process with particular reference to commercial decisions of the Committee of Creditors, the classification of creditors and the manner of distribution of proceeds. There are also important decisions by the Privy Council in respect of offshore cases dealing with antecedent transactions in the [Bahamas](#) - *AWH Fund (In Compulsory Liquidation)* and [Cayman Islands](#) - *Skandinaviska Enskilda Banken AB (PUBL) (SEB) v Conway and Shakespeare* - or *Weaving* as we mere mortals know it.

From [Australia](#) we have an article discussing an innovative approach to overcoming limits to the ability of liquidators to obtain foreign assistance for production of documents from third parties in common law jurisdictions.

Finally, we have news of the latest developments in the UNCITRAL world, including the formal adoption of a new [Model Law for Enterprise Group Insolvencies](#); and from the [UK](#) the surprising return of the government's preferential status in insolvency proceedings.

All in all another excellent selection from the team at INSOL.



**Stephen Briscoe**  
**FFP (BVI) Ltd**  
**British Virgin Islands**

## HIGHLIGHT ARTICLE

### **New EU Directive on Restructuring Frameworks**

The new EU Directive on preventive restructuring frameworks was published in the Official Journal of the European Union on 26 June 2019 and entered into force on 16 July 2019. The objective of the Directive is to harmonise the laws and procedures of EU member states concerning preventive restructurings, insolvency and the discharge of debt. Outside of the banking and insurance sectors, EU insolvency legislation has to date focussed on regulating cross-border insolvency proceedings and addressed, in particular, issues concerning the jurisdiction of the courts, the recognition of the effects of proceedings in other member states and conflicts of laws. The Directive represents the first major step in the process of harmonising Europe's diverse insolvency laws. Member states are required to pass national laws to implement the Directive by 17 July 2021 at the latest.

**Dr. Volker Kammel, Partner**  
**Charlotte Møller, Partner**  
**Reed Smith LLP**

[Highlight Article >](#)

## THE AMERICAS

### CASES

#### The Bahamas

##### **Privy Council Hands Down Judgment on the Extra-Territorial Jurisdiction of Cross-Border Clawback Claims in a Bahamian Mutual Fund Liquidation**

A judgment of the Judicial Committee of the Privy Council in an important case affecting the insolvency law of The Bahamas was handed down on 29th July 2019 following an appeal from The Court of Appeal of The Bahamas. The JCPC held that the Liquidator of a Bahamian Mutual Fund, *AWH Fund* (In Compulsory Liquidation) was entitled to serve a fraudulent preference claim outside the jurisdiction. The judgment raises important issues of international cross-border jurisprudence as well as issues for the Bahamian legislature concerning the jurisdictional reach of clawback claims in winding up proceedings.

[Case Note, Lennox Paton, July 2019 >](#)

[Case Decision >](#)

#### Cayman Islands

##### **Privy Council Upholds Weaving Preference Claim**

The Judicial Committee of the Privy Council has upheld both the Grand Court and the Cayman Islands Court of Appeal's decisions in *Skandinaviska Enskilda Banken AB (PUBL) (SEB) v Conway and Shakespeare* (as Joint Official Liquidators of Weaving Macro Fixed Income Fund Limited) in which it was held that redemption payments made shortly prior to the collapse of Weaving Macro Fixed Income Fund (Weaving or Fund) constituted preferences over the Fund's other creditors and must be repaid.

[Mourant Update, July 2019 >](#)

[Case Decision >](#)

## ASIA PACIFIC

### CASES

#### India

##### **NCLAT Essar Steel Judgment**

The recent decision of the National Company Law Appellate Tribunal ('NCLAT') in *Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Limited & Ors.* has dealt with various important legal issues in relation to the new corporate insolvency resolution process ('CIRP') in India. This article summarises the key aspects of the judgment relating to the issue of whether approval of plan extinguishes all claims against the corporate debtor; the commercial decisions of the Committee of Creditors; the power of distribution of proceeds; the classification of creditors; the manner of

### LEGISLATION

#### Singapore

##### **The Singapore Convention on Mediation: A Primer**

The Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, was adopted by the UN General Assembly in December 2018 and opened for signature in Singapore on 7 August 2019. The Convention is a significant step forward in promoting mediation and aims to contribute to the development of a mature, rule-based global commercial system by facilitating international trade and promoting the use of mediation for the

distribution of proceeds; and how profits during the CIRP Period should be dealt with.

[AZB & Partners, Client Alert, July 2019 >](#)

[Case Decision >](#)

resolution of cross-border commercial disputes.

[K&L Gates Legal Update, 25 July 2019 >](#)

## ARTICLES

### Australia

#### **The Singularis Work-Around? Overcoming Limitations to the Common Law Power of Assistance for Foreign Insolvency Investigations**

The decision of *Singularis Holdings Ltd v PricewaterhouseCoopers* (Singularis) was a welcome development in cross-border insolvency insofar as it resurrected the principle of 'modified universalism'. Nevertheless, it is clear from Singularis that the scope of foreign court assistance available in jurisdictions which must rely solely on the common law power to provide assistance has important limitations. A key practical issue that arises is that Singularis identifies clear limits to the ability of liquidators to obtain foreign assistance for production of documents from third parties in such jurisdictions. This article discusses an innovative approach to overcoming this obstacle.

[Article by Noel McCoy, Partner, Norton Rose Fulbright Australia, July 2019 >](#)

*This article first appeared in Volume 16, Issue 4 of International Corporate Rescue and is reprinted with the permission of Chase Cambria Publishing.*

### Singapore

#### **Alternative Dispute Resolution in Insolvency and Restructuring Proceedings**

The increasing complexity of restructuring and insolvency cases has piqued a growing interest in Singapore for employing alternative dispute resolution processes, either separately or in combination with main court proceedings, to resolve disputes. Imminent changes to Singapore's mediation landscape suggest that mediation will soon become one of the tools available for insolvency and restructuring practitioners to resolve their clients' concerns. Similarly, there is room for employing arbitration in specific types of dispute, which will assist with insolvency and restructuring matters and help to resolve them more expediently. This article considers the use of mediation and arbitration in cross-border restructuring in Singapore.

[Oon & Bazul Article, 12 July 2019 >](#)

*This article was first published by International Law Office, July 2019.*

## EUROPE, AFRICA & THE MIDDLE EAST

## LEGISLATION

### Netherlands

#### **The Netherlands Launches Bill on New Dutch Scheme "CERP" - Will This Create a Restructuring Hub in Europe?**

With the introduction of the bill on court confirmation of extrajudicial restructuring plans

### UK

#### **Update on UNCITRAL - The New Model Law for Enterprise Group Insolvencies**

The United Nations Commission on International Trade Law (UNCITRAL) has formerly adopted a new model law for

('CERP'), the Netherlands has pioneered the implementation of the recent EU Directive on preventive restructuring frameworks. CERP goes beyond implementation of EU-wide legislation: once the bill comes into force, the new law aims to provide a toolkit at a par with the most advanced and flexible restructuring practices available today, such as the UK's and Singapore's Schemes of Arrangement and the US' Chapter 11, and allows for a restructuring at a much lower cost, within a short time frame and with high deal certainty. This article introduces the new Dutch Scheme and the highlights of the new bill. A more detailed description is also provided in the booklet below.

[Article by Ferdinand Hengst, Partner & Professor Reinout Vriesendorp, Partner, De Brauw Blackstone Westbroek, July 2019 >](#)

[De Brauw Blackstone Westbroek Booklet on CERP >](#)

enterprise group insolvencies alongside a guide to enactment and a guide for directors of enterprise groups, which was presented by Working Group V (Insolvency) at the General Assembly's 52nd Session in Vienna on 15 July 2019. The new model law has been in development since 2010 and provides a solution for managing and coordinating the reorganisation or insolvency of an enterprise group that has companies in insolvency-related proceedings in multiple jurisdictions. This new model law complements the Model Law on Cross-Border Insolvency (1997) and the Model Law on the Recognition and Enforcement of Insolvency- Related Judgements (2018).

[Update by Kathlene M. Burke, Associate, Skadden, Arps, Slate, Meagher & Flom \(UK\) LLP and International Women's Insolvency and Restructuring Confederation delegate to UNCITRAL Working Group V, August 2019 >](#)

## LEGISLATION

### UK

#### Tax Insolvency Reforms

The UK government has published draft legislation to implement changes particularly relevant for the restructuring and insolvency market. One such reform will raise HMRC from an unsecured creditor to a secondary preferential creditor in insolvencies commencing on or after 6 April 2020, but only in respect of VAT, PAYE Income Tax and certain other taxes. HMRC will, however, remain an unsecured creditor for taxes levied directly on businesses, such as corporation tax and employer national insurance contributions. The policy, announced without consultation in the Autumn Budget 2018, aims to increase returns for HMRC in insolvencies. Until 2003, HMRC ranked as preferential creditor and the reintroduction of a Crown preference is seen by many as a retrograde step.

[Kirkland Alert, 17 July 2019 >](#)

## ARTICLES

### UK

#### Dispute Resolution: A New Beginning?

In late 2018, as part of its "Toward 2021" Task Force, INSOL formed Working Group 22. The Working Group's mandate was to review the operation and performance of the College of Mediation that INSOL had previously established, and to make recommendations about the way in which it could encourage mediation of cross-border insolvency or restructuring disputes. In this article, the chair of Working Group 22, the Hon Paul Heath QC details INSOL's work in this field, the areas in which further consultation is necessary, and the possibility of enlarging the scope of its project to encompass other forms of dispute resolution. INSOL has created a "Mediation Colloquium" in order to develop the Working Group's ideas.

[South Square Digest, p.64, July 2019 >](#)



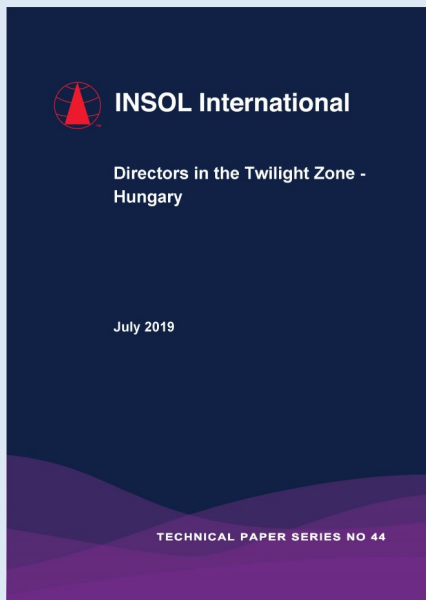
### The wave of insolvency reform across the region: Analysing the new bankruptcy laws in Morocco and Bahrain

With a wave of insolvency reform taking place across the MENA region, INSOL International is delighted to present a technical paper on the recent reforms that have been introduced in Morocco and Bahrain.

The aim of this technical paper is to evaluate whether the new 2018 bankruptcy statutes in Morocco and Bahrain have adequately addressed the main deficiencies of the past laws by measuring the laws' consistency with US and international best practices and identifying remaining deficiencies that could be addressed through implementing regulations, or through capacity-building initiatives.

In addition to these crucial elements, there are other significant elements that must be incorporated for the restructuring mechanism to be effective, particularly for small businesses, which are the key drivers of economic growth in the region. This paper includes a discussion of these elements.

INSOL International would like to sincerely thank Adam Al-Sarraf, Attorney Advisor - International, Commercial Law Development Programme, US Department of Commerce, USA for making this technical paper available to the INSOL International membership



### Directors in the Twilight Zone - Hungary

This technical paper, provides members with a detailed overview of Hungarian insolvency law in relation to wrongful trading and other actions potentially giving rise to liability for directors, managers, advisors and other third parties who trade companies in the 'twilight zone' of insolvency. During this period transactions entered into by a company are also vulnerable to attack and the paper examines on what basis such transactions may be set aside.

The authors have provided detailed answers to the template of questions set for the 5th edition of the 'Directors in the Twilight Zone' publication which was published in May 2017, in ebook format.

This paper has been included as an additional country chapter to the publication and [Directors in the Twilight Zone V](#) now covers 31 different jurisdictions providing an excellent resource to our members.

INSOL International sincerely thanks Zoltan Fabok and Gábor Kökényesi, DLA Piper Posztl, Nemescsói, Györfi-Tóth & Partners Law Firm, Hungary for this detailed analysis and for writing this excellent technical paper and additional country chapter for the Directors in the Twilight Zone publication.





# SAVE THE DATE

# INSOL Cape Town

INSOL International Annual Conference  
15 – 17 March 2020  
Cape Town International Convention Centre



Main sponsors:



## P.R.China One Day Seminars



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

**Booking Deadline: 30 September 2019**

Registrations are now open for the annual INSOL International P. R. China seminars, taking place this year in Beijing on Monday 14 October and in Shanghai on Wednesday 16 October 2019!

The Seminar Co-Chairs and the Main Organising Committee are finalising a fascinating programme on the key issues in

## 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 18th October 2019.

Hong Kong is the perfect fusion of when East meets West, with an iconic skyline and incredible views throughout. Come experience

cross-border restructuring and Asian insolvency, concerning both P. R. China and the region at large. It is anticipated that these will be well attended events providing fantastic networking opportunities, with attendees from both Asia and further afield expected.

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 provide both tradition and modernity in equal measure. With the chance to visit some of the most recognisable landmarks in the world as well as a fantastic occasion to eat at Michelin starred restaurants and visit a host of wonderful shops and museums, this is a visit that will tick all boxes!

We would like to thank the sponsors of our seminar:

Platinum Sponsor: Fangda Partners  
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Please contact [Zeenat Edah-Tally](#) for further information and sponsorship opportunities.

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:

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## 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, based on issues and cases in Japan as well as

## Africa Round Table Open Forum



22 November 2019  
Swakopmund, Namibia

**Booking Deadline: 25 October 2019**

Registrations are open for the 10<sup>th</sup> Anniversary Africa Round Table Open Forum hosted by INSOL International and the World Bank Group. The theme for this year's event is *"Celebrating a decade of Insolvency Reform in Africa and anticipating what lies ahead"* and will be held on



discussions on topics further afield 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:

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Coffee Break Sponsor: Nishimura & Asahi  
Lunch Sponsor: EY

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

## 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 5 December 2019.

22 November 2019 at the Swakopmund Hotel and Entertainment Centre, Swakopmund, Namibia, where the desert meets the sea!

Thank you to our sponsors:

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

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

The Seminar Co-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:

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