



# INSOL INTERNATIONAL

## News Update

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### EDITOR'S NOTE



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In these unsettling and uncertain times, we hope that this News Update finds each of you well, healthy and safe. With the accelerated spread of COVID-19, our daily lives have been disrupted and businesses across different industries are being deeply and, for the vast majority, adversely impacted.

While we sincerely hope that the pandemic crisis comes to an end quickly, we cannot overlook the fact that we have some challenging times ahead of us on a global scale. We see references in several jurisdictions to the reduction in demand for non-food goods, plunging capital markets, volatile currency markets and the potential for companies to layoff personnel and close plants, in order to accommodate a significant reduction in revenues. It is becoming clear that the radical slowdown of international trade transactions and local production restrictions will hamper supply chains.

In light of this grim scenario, debt restructuring and insolvency filings will likely become unavoidable for many companies. Travel, transportation, hospitality, entertainment, construction, shipping, oil and gas and technology are some of the areas mentioned as most affected. In this month's issue we have some insightful [predictions](#) on the serious consequences of the outbreak from a restructuring perspective. With the airline industry being one of the first industries to fall victim to the effects of the pandemic, this month's [Highlight Article](#) addresses the judicial reorganisation of the airline *Avianca Brasil* and the judicial battle that ensued over the Cape Town Convention. We also report from the UK on some of the [survival strategies](#) that airlines may use to try to overcome and manage these turbulent times.

In addition to drastic interest rate cuts, central banks and governments across the globe have put in place economic measures to further support businesses and mitigate the economic disruption caused by the pandemic. We have an [overview](#) of the measures taken by central banks and governments in France, Germany, the UK, the US and the EU. Some jurisdictions including [Australia](#), [Germany](#) and [Spain](#) have already taken steps to adapt insolvency laws in light of COVID-19 by, for example, suspending the obligation to file for insolvency until later this year and to introduce new laws to permit company-specific bailouts. No doubt we will see more jurisdictions adapting their insolvency legislation where necessary in light of the current extraordinary economic situation.

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

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Turning to our monthly trip around the globe in pursuit of insolvency news, this edition includes excellent articles and case updates with news and highlights from [Bermuda](#) and [Hong Kong](#) regarding the appointment and recognition of “light touch” provisional liquidators to Hong Kong listed companies. From [Puerto Rico](#), we report on the first recognition under Chapter 15 and in another first, this time from [Hong Kong](#), the sanctioning of a scheme of arrangement involving a PRC governed debt. A three-year ground-breaking project in [Myanmar](#) has led to a new insolvency and restructuring framework, introducing the concept of corporate rehabilitation by the enactment of the Insolvency Law 2020. Finally, from [Singapore](#) we report on the second successful application for super priority rescue financing under its new debt restructuring regime.

Our sincere thanks to all the authors who have contributed articles to this edition.

Stay safe.

## HIGHLIGHT ARTICLE

### **The Avianca Brasil Case and the Cape Town Convention**

Aircraft lessors in Brazil benefit from special provisions excluding them from judicial reorganisation proceedings. Section 199 of the Brazilian Bankruptcy Law provides that “*in no circumstances will the rights arising out of lease agreements of aircrafts or their parts be suspended*”. In 2011, Brazil ratified the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment affording further protections to lessors.

On 10 December 2018, *Oceanair Linhas Aéreas S.A.* and *AVB Holding S.A.* (jointly, *Avianca Brasil*) filed for judicial reorganisation. The following day, the Court of Bankruptcies and Judicial Reorganisations of the City of São Paulo admitted the case and granted injunctive relief in order, among other things, to suspend repossession actions by lessors of aircraft, stating that such a measure was necessary, given the serious risk of irrecoverable damages to thousands of consumers, the proximity of the year end and, therefore, high season for tourism. A judicial battle followed - would general principles, such as preservation of going concern or social function, justify overriding the literal and clear wording of the law?

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Advogados, Brazil**

[Highlight Article >](#)

## THE AMERICAS

### CASES

#### Bermuda

##### **Creditors, Comity and Corporate Rescue: Bermuda Court Appoints Light-touch Provisional Liquidators to North Mining Shares Company Limited**

On 1 November 2019, the Supreme Court of Bermuda appointed provisional liquidators to North Mining Shares Company Limited, a company incorporated in Bermuda and listed in Hong Kong. The provisional liquidators were appointed on a 'light touch' basis and 'for restructuring purposes only', in circumstances where creditor action in Hong Kong was threatening the company's survival. This latest ruling on Bermuda's 'light-touch' jurisdiction shows the extent to which the Bermuda and Hong Kong courts will work together to facilitate the restructuring of companies experiencing short term liquidity issues.

[Walkers Global Advisory, March 2020 >](#)

[Case Decision >](#)

#### Puerto Rico

##### **Bankruptcy Court for the District of Puerto Rico Recognizes its First Chapter 15 Case**

On 5 March 2020, the Bankruptcy Court for the District of Puerto Rico entered an order converting a set of jointly-administered chapter 7 bankruptcy cases to cases pending under chapter 15 of the United States Bankruptcy Code. Notably, while the Bankruptcy Code does not provide any express statutory mechanism for conversion to chapter 15 from another chapter of the Bankruptcy Code, conversion to chapter 15 is similarly not disallowed by the Bankruptcy Code. This novel bankruptcy case results in one of the first chapter 15 filings in the Bankruptcy Court for the District of Puerto Rico.

[Steven Berman, Partner, Mathew Ceriale, Associate, Andrew Wit, Law Clerk, Shumaker, Loop & Kendrick LLP, 24 March 2020 >](#)

### ARTICLES

#### USA

##### **The Coronavirus and its Likely Impact on the Bankruptcy World: Eight Predictions from two Restructuring Professionals**

The coronavirus known as COVID-19 was unheard of in the U.S. a scant six or seven weeks ago. Today, it dominates the world press, politics and personal and professional routines are now materially impacted. The coronavirus's impact on capital markets, supply-chain disruption, hospitality and transportation is already seismic and being compared with the "economic shockwave" akin to the 9/11 economic ramifications. The resulting economic pandemic and its impact on the bankruptcy and restructuring world is, and will continue to be, very real. The authors of this article look at the likely impact and make eight predictions as to how COVID-19 will alter the restructuring landscape in both the near term (and possibly longer).

[ABI Insider, 16 March 2020 >](#)

## CASES

## Hong Kong

**Gibbs Rule and the First Hong Kong Scheme Involving a PRC Law Governed Debt**

*China Lumena New Materials Corp (in provisional liquidation)* [2020] HKCFI 338 (decision made on 23 January 2020 and reasons given on 4 March 2020) is the first reported scheme of arrangement in Hong Kong seeking to compromise debt governed by PRC law. Under the *Gibbs Rule*, a foreign composition does not discharge a debt unless it is discharged under the law governing the debt. In this case, the Hong Kong Court considered an exception to the *Gibbs Rule* and more generally the principles of sanctioning a scheme.

[Stephenson Harwood Insolvency Law Update, March 2020 >](#)

[Case Decision >](#)

## Hong Kong

**Recognising Foreign Soft-Touch Provisional Liquidation and Bypassing Legend? – *Re Joint Provisional Liquidators of Moody Technology Holdings Ltd***

The Hong Kong Court may not exercise its statutory power to appoint soft-touch provisional liquidators, but the Court routinely exercises its common law power to recognise foreign soft-touch provisional liquidators. Is this common law development legitimate? According to DHCJ William Wong SC in *Re Joint Provisional Liquidators of Moody Technology Holdings Ltd* [2020] HKCFI 416, the answer is a resounding 'yes'. This judgment provides the most detailed reasons yet reaffirming and explaining the soundness of Harris J's practice in this area.

[Des Voeux Chambers Case Highlights, 12 March 2020 >](#)

[Case Decision >](#)

## LEGISLATION

## Australia

**Temporary Changes to Insolvency Laws: Australian Federal Government Addresses COVID-19 Financial Distress**

The Australian Federal Government has passed temporary amendments to insolvency and corporations laws in light of the challenges COVID-19 poses to many otherwise profitable and viable businesses. The changes proposed in Schedule 12 to the Coronavirus Economic Response Package Omnibus Bill 2020 (Cth) (the Bill) are intended to avoid unnecessary insolvencies and bankruptcies by providing a safety net for:

- directors and businesses to help them operate during a temporary period of

## Myanmar

**Modernising Insolvency in Myanmar: Opportunities and Challenges**

A three-year ground-breaking project in Myanmar has led to a new insolvency and restructuring framework established by the enactment of the Insolvency Law 2020. The Law introduces to Myanmar the concept of corporate rehabilitation. The rehabilitation process in Part V of the Law has been carefully crafted to deal with the current business environment in Myanmar. However, it also has the capacity to facilitate increasingly complex rehabilitations as the Myanmar economy develops. In addition, and having regard to the preponderance of micro, small and medium enterprises as the life-blood of Myanmar's economy, a specific stand-alone regime within the Insolvency Law is

- illiquidity rather than enter voluntary administration or liquidation; and
- individuals to assist them with managing debt and avoiding bankruptcy.

The Bill passed both Houses of Parliament on 23 March 2020 and is expected to shortly receive Royal Assent.

[Herbert Smith Freehills Legal Briefing, 24 March 2020 >](#)

[Coronavirus Economic Response Package Omnibus Bill 2020 \(Cth\) >](#)

devoted to the financial distress of MSMEs. The new Insolvency Law adopts the UNCITRAL Model Law on Cross-Border Insolvency which should serve to assist in increasing the level of foreign capital deployed within Myanmar.

[Scott Atkins, Partner, John Martin, Partner, Norton Rose Fulbright, March 2020 >](#)

[Insolvency Law 2020 >](#)

## ARTICLES

### Singapore

#### Guide to Super Priority Rescue Financing in Singapore

Singapore introduced major reforms to its debt restructuring regime with the Companies (Amendment) Act 2017 coming into effect on 23 May 2017. The reforms were introduced to support debtor-led restructurings through a “turbo charged” scheme of arrangement regime and include rescue financing provisions allowing the grant of super priority status. This Guide summarises the legislative landscape and recent cases involving super priority rescue financing in Singapore, including Swee Hong Ltd's recent successful super priority rescue financing over unencumbered assets. This is the first case involving super priority over assets not otherwise subject to any security interest.

[DHC Capital Insights, Thought Leadership Series, March 2020 >](#)

## EUROPE, AFRICA & THE MIDDLE EAST

## LEGISLATION

### Germany

#### Law for the Mitigation of the Consequences of the COVID-19 Pandemic

The German Federal Government is currently working on a Law for the mitigation of the consequences of the COVID-19 pandemic in the areas of Insolvency, Corporate, Civil and Criminal Procedure Law. The amendments to the existing regime aim at enabling companies that have become insolvent or are facing financial difficulty as a result of the COVID-19 pandemic to continue business operations. This shall be achieved by way of a comprehensive suspension of the obligation to file for

### Spain

#### Spanish Measures for Restructurings / Insolvency in the Context of COVID-19: Threats and Opportunities

This article details the series of measures recently enacted by the Spanish government (in Royal Decree-Law 8/2020 and Royal Decree 463/2020), in the current context of COVID-19 and their implications for insolvencies and restructurings. While the ‘State of Alarm’, declared on 14 March 2020, is in place, there is no obligation to file for voluntary insolvency nor will the Courts accept an application for mandatory insolvency filed by a creditor until

insolvency until 30 September 2020 and by a number of additional measures detailed in this article.

[Freshfields Bruckhaus Deringer Update, 23 March 2020 >](#)

two months after the end of the State of Alarm. If the debtor has by then filed for voluntary insolvency this will be given preference, even if filed after the mandatory one.

[Ashurst Newsflash, 23 March 2020 >](#)

## LEGISLATION

### United Kingdom

#### **COVID-19 Government and Central Bank Measures Supporting Business**

In addition to drastic interest rate cuts, central banks and governments across the globe have taken action, predominantly in the form of fiscal spending (e.g., tax cuts and holidays) and large lending schemes, to help businesses weather the COVID-19 storm. This paper provides an overview of the measures taken by central banks and governments in France, Germany, the UK, the US and the EU. Some jurisdictions have already taken steps to adapt insolvency law in light of COVID-19 by, for example, suspending the obligation to file for insolvency until later this year and to introduce new laws to permit company-specific bailouts.

[Kirkland & Ellis Paper, 22 March 2020 >](#)

## ARTICLES

### United Kingdom

#### **Survival Strategies for Airlines Facing Insolvency – Fallout from the Coronavirus (COVID-19) Pandemic**

The coronavirus pandemic has unleashed significant uncertainty in the global markets, which is expected to lead to distress and insolvencies across a number of industries, with the airline industry being one of the first to fall victim. Whilst the airline industry is susceptible to business failures given its sensitivity to a wide range of factors, from political instabilities, fuel prices to natural disasters and terrorism, arguably the threat from the coronavirus pandemic is unprecedented. Airline insolvencies are complex, multifaceted, cross-border operations with many variables. This article looks at some of the survival strategies that airlines may use to try to overcome and manage these turbulent times in circumstances where their operations have not completely grounded to a halt.

[Brown Rudnick Alert, March 2020 >](#)

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