



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE

For me, as a simple restructuring and insolvency lawyer, the picture arising from the financial press on where the restructuring world is heading is not clear. On the one hand we see the first signs of an economic slowdown in the global economy; uncertainty persists in relation to Brexit; there are conflicting messages about the trade war between China and the US; and according to the EU's Economic and Financial Affairs Commissioner, Pierre Moscovici, the damage is being felt particularly in European countries which "*rely on exports and are open to trade.*" On the other hand, we receive signals from the market that the European economy continues to grow, albeit that growth is slowing; there are reports that stock markets are breaking records while unemployment, interest rates and inflation are historically low.

Although it is not clear when the next recession will hit the European market, the [Highlight Article](#) this month details how the Dutch legislator, like many European jurisdictions, is preparing for the inevitable downturn by proposing new legislation aimed at improving restructuring capabilities.

Many restructuring opportunities are at present focused on a number of sectors that are directly affected by the trade wars or commodities volatility. A recent example in Europe is the restructuring of *Nyrstar*, a group with a business specialised in zinc and other metals. Sector specific restructuring issues are at stake in a number of contributions to this month's newsletter. The oil and gas sector in particular is throwing up many restructuring opportunities for US restructuring professionals. The recent decision of the United States Bankruptcy Court for the District of Colorado in the [Badlands](#) restructuring, as detailed as well as the [EXCO](#) bankruptcy Chapter 11 restructuring are testament to this.

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](#)

What *Nyrstar* also demonstrated was that many of the larger restructurings are of course cross-border insolvencies with knock-on effects in different countries. In this month's issue, we refer to a number of recent decisions addressing cross-border recognition including a decision of the [U.S Bankruptcy Court](#) which addresses key issues of jurisdiction, recognition and public policy and the decision of the Hong Kong Companies Court in [Re: Da Yu Financial Holdings Limited](#) which breaks new ground by calling for tighter cross-border coordination and outmoding the practice of "parallel schemes" in different jurisdictions. Finally, we have a case report from Canada on the recognition of an English Scheme of Arrangement there under the CCAA of the [Syncreon](#) group. Coincidentally, this restructuring has kept me healthily busy for over twelve months, but thankfully for our readers the article covers the key points in much less time.



Vincent Vroom
Partner, Loyens & Loeff N.V.
The Netherlands

HIGHLIGHT ARTICLE

New Restructuring Tool: An Update from The Netherlands

European legislators, including those in the Netherlands, are in the process of introducing new bankruptcy and restructuring laws in the hope that these will cushion the blow once the next recession hits. The Highlight Article this month discusses two such new proposals which are relevant to Dutch restructuring practice and which could have knock on effects on international restructurings. The first development is the introduction of the draft transfer of undertakings bill (*Wetsvoorstel overgang van onderneming in faillissement*) and the second relevant development is the draft bill on "court sanctioning private composition to avoid bankruptcy" (*de Wet homologatie onderhands akkoord ter voorkoming van faillissement*, 'the WHOA'). The WHOA introduces the possibility in the Netherlands for a company to offer a composition to its creditors outside an insolvency proceeding and has the potential to become an effective and frequently used restructuring tool. We hope to be able to discuss the first successful WHOA restructuring in next year's update.

Vincent Vroom
Partner, Loyens & Loeff N.V.
The Netherlands

[Highlight Article >](#)

CASES

Canada

First English Scheme of Arrangement Recognised in Canada under the CCAA

In a recent decision, the Ontario Superior Court of Justice recognised the English law schemes of arrangement of the *Syncreon* group under the Companies' Creditors Arrangement Act, RSC 1985. This was the first time a Canadian court was asked to determine whether proceedings under Part 26 of the Companies Act 2006 could be recognised as "foreign proceedings" under Part IV of the CCAA. The schemes, which included third party releases in favour of the Canadian operating entity of the *Syncreon* group, were given full force and effect in Canada.

[Hogan Lovells Five Minute Workout, 1 November 2019 >](#)

[Case Decision >](#)

USA

A Bankruptcy Code Chapter 15 Primer: Decision in New York Addresses Key Issues of Jurisdiction, Recognition, Public Policy, and More

Judge Martin Glenn recently issued a decision in two related chapter 15 cases, *In re Foreign Econ. Indus. Bank Ltd. "Vneshprombank" Ltd.*, No. 16-13534, and *In re Larisa Markus*, No. 19-10096, 2019 Bankr. (Bankr. S.D.N.Y. Oct. 8, 2019). The decision offers a useful tutorial on chapter 15. It discusses, amongst other things, the elements for recognition, the role of a foreign representative, and the distinction between foreign main and foreign non-main proceedings.

[Patterson Belknap Webb & Tyler Bankruptcy Update, 15 October 2019 >](#)

[Case Decision >](#)

CASES

USA

Midstream Companies have Renewed Hope: Running-with-the-Land Oil and Gas Dedication Survives a Bankruptcy Challenge, Offering Precedent in Contra to *Sabine*

A shockwave was sent through the oil and gas industry in 2016, when the United States Bankruptcy Court for the Southern District of New York in the *Sabine* bankruptcy case held that under Texas law a dedication in the applicable midstream contract did not create a covenant running with the land, but instead was a right involving personal property that could be separately assumed or rejected in a bankruptcy case. On 30 September 2019, however, the United States Bankruptcy Court for the District of Colorado, applying Utah law, issued a decision holding that certain midstream gas / gathering processing and saltwater disposal contracts did constitute covenants running with the land.

ARTICLES

USA

EXCO Bankruptcy Illustrates Power of Chapter 11 Restructuring

In a world where quick Chapter 11 cases that fail to fully utilise the tools available under the bankruptcy code have become the norm, the *EXCO* cases serve as an example of the power of Chapter 11 to meaningfully restructure an oil and gas business and leave it positioned for go-forward success in a volatile commodities market. On 28 June 2019, EXCO Resources and its debtor affiliates (collectively, EXCO) emerged from bankruptcy having equitised over \$1 billion of funded debt and shed significant litigation overhang and burdensome midstream contracts.

[Kirkland & Ellis Article, New York Law Journal, 7 November 2019 >](#)

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ASIA PACIFIC

CASES

Hong Kong

A Call for Closer Cross-Border Coordination Between Jurisdictions in the Novel Case of *Re: Da Yu Financial Holdings Limited* (Formerly Known as China Agrotech Holdings Limited)

In *Da Yu Financial Holdings Limited (formerly known as China Agrotech Holdings Limited)* [2019] HKCFI 2531 (17 October 2019), the Hong Kong Companies Court handed down a landmark decision in relation to an important aspect of schemes of arrangement for debt restructuring – professional fees. The decision also breaks new ground by calling for tighter cross-border coordination and outmoding the practice of “parallel schemes” in different jurisdictions. The Court called for all jurisdictions to provide assistance by giving effect to Hong Kong schemes without requiring Hong Kong office-holders to go to the trouble of instituting full-blown parallel insolvency proceedings in the offshore jurisdiction.

[Des Voeux Chambers Case Highlight, 4 November 2019 >](#)

[Case Decision >](#)

LEGISLATION

Hong Kong

New Delisting Regime and Backdoor Listing Rules - How the Recent Changes will Impact Restructurings of Listed Companies

As part of its efforts to combat shell related activities, the Hong Kong Stock Exchange has issued a raft of amendments to its Listing Rules and issued numerous related guidance letters. The latest amendments, which took effect on 1 October 2019 relate to backdoor listings and continuing listing criteria. Additionally, the Stock Exchange has ratcheted up its scrutiny of suitability for listing of new listing applicants. These changes primarily target shell related activities. However, they also have an impact on other restructurings, including those arising from insolvency of listed companies. This briefing analyses some of the changes and their impact on restructurings of insolvent listed companies.

[Stephenson Harwood Insight, 6 November 2019 >](#)

New Zealand

Insolvency Law Reform – Voidable Transactions and Other Matters

The Ministry of Business, Innovation and Employment has published a Cabinet Paper outlining proposed reforms to New Zealand's insolvency laws to take account of certain recommendations made in the second report of the Insolvency Working Group from May 2017. These reforms include: providing better consumer protection for people with gift cards or vouchers purchased from retailers who go into receivership; and ensuring that the protection for wages owed to employees of failed businesses is broadened to cover entitlements to long service leave and payments in lieu of notice. Draft legislation implementing the reforms and other technical amendments included in the Cabinet Paper, is expected to be introduced next year.

[Buddle Findlay Legal Update, 14 November 2019 >](#)

[Cabinet Paper >](#)

EUROPE, AFRICA & THE MIDDLE EAST

CASES

Jersey

Jersey Schemes of Arrangement: Is It Now Time to Decapitate the Headcount Test?

Practitioners in Jersey and many other jurisdictions who advise on creditors' and members' schemes of arrangement, will be very familiar with the practical challenges presented by the requirement for a majority in number of creditors or members (known as the 'headcount test'), to approve the relevant scheme or compromise at the court convened meetings, in addition to the requirement for approval by a certain number either in value of creditors or voting rights of members. In the recent Jersey decision *In the matter of Atrium European Real Estate Limited* [2019] JRC198, the Royal Court in Jersey offered judicial commentary on the headcount test in the context of a members' scheme of arrangement of a listed company.

[Appleby Insight, 7 November 2019 >](#)

[Case Decision >](#)

UK

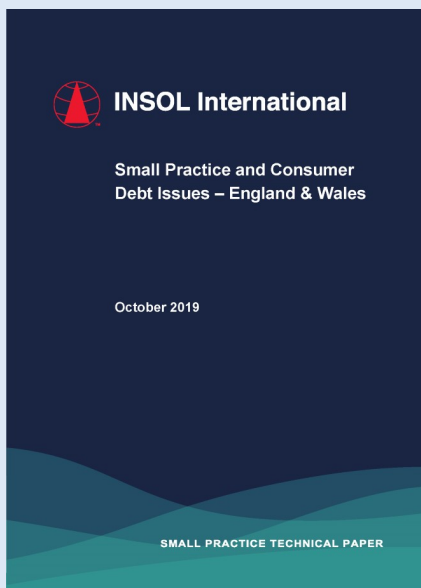
Supreme Court Upholds First Successful Claim for Breach of the So-Called "Quincecare" Duty of Care

The Supreme Court has upheld the first successful claim for breach of the so-called Quincecare duty of care: *Singularis Holdings Ltd (In Official Liquidation) (A Company Incorporated in the Cayman Islands) v Daiwa Capital Markets Europe Ltd* [2019] UKSC 50. The judicial attention that this cause of action is currently receiving highlights the litigation risks of inadequate safeguards / processes governing payment processing at financial institutions, and the recent decision is therefore likely to be of significant interest to the sector. This case is an important decision in the insolvency of Singularis and will return significant assets to the liquidation estate.

[Herbert Smith Freehills LLP Banking Litigation Blog Post, 31 October 2019 >](#)

[Case Decision >](#)

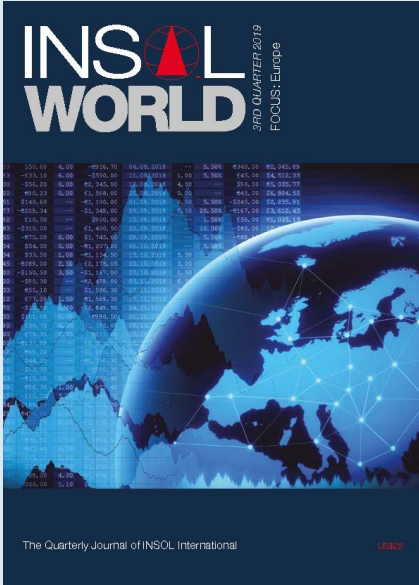
Publications



INSOL International Small Practice Paper - England & Wales

INSOL International is pleased to present a study on England and Wales under its Small Practice Technical Paper Series focusing on "Small Practices and Consumer Debt Issues." The paper was written for INSOL by Ms Yin Lee of David Rubin and Partners and provides an update, in relation to England and Wales, to the paper on the UK by David Rubin, of the same firm, published in September 2011.

INSOL International sincerely thanks Ms Yin Lee for providing INSOL members with this very informative and practical paper on England and Wales.



INSOL World Quarter 3

The Third Quarter 2019 edition of INSOL World with the focus on Europe is now available to view online.

It can also be found on our website by navigating to the [Technical Library](#).

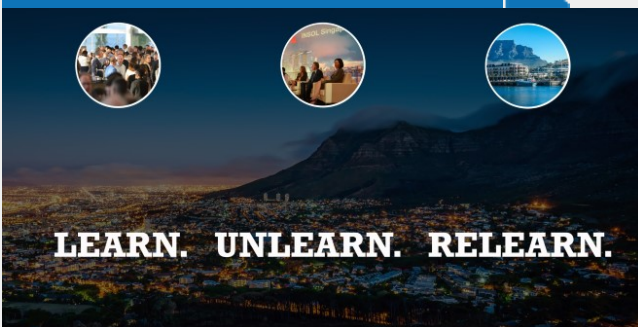
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CONFERENCES & SEMINARS



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.

As an INSOL member, you can secure an early bird discount by registering before 12 December 2019. [Register now](#) to secure your place!

3 Weeks to the Early Booking Deadline

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New Delhi One Day Seminar



17 January 2020
New Delhi, India

Early booking deadline: 22 November 2019

Following on from the success of the Indian seminar in 2016, INSOL International is delighted to announce that registrations for the seminar in New Delhi on Friday 17 January 2020 are open! Register now to book your place at this exciting seminar!

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

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 programme! Please contact [Danielle Timmons](#) for further information.

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: EY
J. Sagar Associates
Kesar Dass B. and Associates

Coffee Break Sponsor: Law Offices of A. Anand

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

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

Platinum Sponsor: DSI Consulting

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

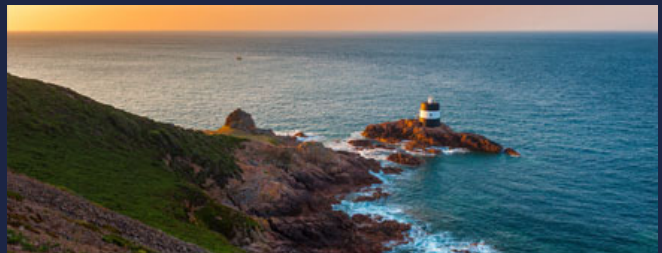
INSOL International is hosting its second one day seminar in Tel Aviv!

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 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!

Channel Islands One Day Seminar



4 June 2020
St Helier, Jersey

Early Booking Deadline: 24 April 2020

Our 2020 Channel Islands seminar will be held on Thursday 4 June in St. Helier, Jersey in association with ARIES, and with the support of restructuring professionals from both Jersey and Guernsey.

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 [Danielle Timmons](#) for further information.

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