



INSOL INTERNATIONAL

News Update

[SHOW ARCHIVE](#)

April 2019 | ISSUE NO. 4

This issue is kindly
sponsored by...

David Rubin & Partners

Chartered Accountants
Licensed Insolvency
Practitioners

CONTENTS

[HIGHLIGHT ARTICLE](#)[THE AMERICAS](#)[ASIA PACIFIC](#)[EUROPE, AFRICA &
MIDDLE EAST](#)[PUBLICATIONS](#)[CONFERENCES &
SEMINARS](#)[GROUP OF THIRTY-SIX](#)[MEMBER ASSOCIATIONS](#)

EDITOR'S NOTE

This month's newsletter is the first to be issued after INSOL's Annual Regional Conference held in Singapore. Under the theme "Looking into the future: what to expect and how to prepare", the Conference was a tremendous success, with over 940 delegates from 66 countries across the world.

With contributions from four continents and ten countries, this month's newsletter is no less impressive. I thank each of our contributors for their efforts and also our readers, without whom the newsletter would not happen.

Our [feature article](#) is from The Bahamas. It discusses the extraterritorial effects of clawback claims in insolvency proceedings from a Bahamian perspective and the case of *AWH Fund Ltd (In Compulsory Liquidation) (Respondent) v ZCM Asset Holding Company (Bermuda) Ltd (Appellant)* in which a decision by the Privy Council is now pending.

A similar question regarding the extraterritoriality of US avoidance claims was recently considered by the United States Court of Appeals for the Second Circuit in the Madoff Case, where the Court moved towards a universal approach – see this timely article on the reach of [US avoidance actions](#) which discusses the approach adopted in the United States.

There is also a case brief on the decision of the BVI Commercial Court in [Re Constellation Overseas Ltd](#) where that court appointed "soft touch" liquidators for the first time; and an article on a recent decision of the [Grand Court of the Cayman Islands](#) which clarified the circumstances in which third party litigation funding would be sanctioned in a liquidation context.

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 _shton](#)

From the Asia-Pacific region, our contributions include an article on the recent judgment of the Hong Kong High Court in [Dai Guoliang \[2019\] HKCFI 597](#), which provides helpful analysis on that court's approach to the making of individual bankruptcy orders against a foreign national. There is also an analysis of the impact on insolvency professionals of the recently released [Australian Banking Royal Commission Report](#). Additionally, there is an article on the geo-political and security issues surrounding the fate of [Hanjin Philippines' bankruptcy and the Subic shipyard](#).

Additionally, from Europe, Africa and the Middle East, we have a case brief on what is understood to be the first recognition order granted by the [Dubai International Financial Centre Court](#) in respect of a BVI court-appointed liquidator; and also legislative updates, which include an analysis of the [EU Directive on Insolvency Restructuring and Second Chance](#) and the recently enacted [Code of corporate crisis and insolvency in Italy](#). Finally, we have the Insolvency Lawyers' Association Technical Committee and the City of London Law Society's Insolvency Law Sub-Committee recently published [joint paper](#) responding to the UK Government's proposed reforms to the English restructuring and insolvency regime.

The contributions to this newsletter will help you to keep abreast of insolvency-related developments around the world and I commend each of the articles to our readers.



***Tara Cooper Burnside
Fellow, INSOL International
Partner
Higgs & Johnson
The Bahamas***

HIGHLIGHT ARTICLE

The Extraterritorial Effect of Clawback Claims in Insolvency Proceedings – The Bahamas Experience

The highlight article this month considers the extraterritorial application of claw-back claims under Bahamian insolvency law. The question arose for the first and only time to date in the liquidation of AWH Fund Ltd, a Bahamian international business company which was placed into liquidation by The Bahamas Supreme Court in 2002. At first instance, the Supreme Court of The Bahamas found that there was no jurisdiction for the Court to order service outside of the Bahamas in relation to a claw-back claim. On appeal, the Court of Appeal disagreed with the Supreme Court.

The Court of Appeal's decision on this matter has been further appealed to the Privy Council. The appeal was heard on 4 February 2019 and judgment was reserved. Needless to say, insolvency practitioners in The Bahamas are anxiously awaiting the decision of the Privy Council on this important issue. If the appeal is successful, legislative amendments would be required to permit a liquidator's voidable preference claw-back claim to be served on persons who are outside the jurisdiction of The Bahamas and prosecuted thereafter.

Tara Cooper Burnside
Fellow, INSOL International
Partner
Higgs & Johnson
The Bahamas

[Highlight Article >](#)
[Supreme Court Case Decision >](#)
[Appeal Court Case Decision >](#)

THE AMERICAS

CASES

BVI

The Final Frontier: Constellation Overseas Ltd & Others

This recent case saw the BVI Commercial Court boldly go where it had not gone before when for the first time it appointed "soft touch" provisional liquidators over six BVI companies. The Applicants form part of a group of companies headquartered in Brazil which is one of the global leaders in offshore drilling in the oil and gas industry. The Group first commenced restructuring under judicial supervision in Brazil and then sought relief from the BVI Court and other jurisdictions as ancillary support for the main proceedings in Brazil.

[Rosalind Nicholson, Partner and Rhonda Brown, Associate, Walkers, Case Note, 8 April 2019 >](#)

[Case Decision >](#)

Cayman Islands

Third Party Litigation Funding: Credit Where it's Due?

In the recent decision in *Re Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation)*, the Grand Court of the Cayman Islands clarified the circumstances in which it would sanction the use of a third party litigation funding agreement in a liquidation context. This case is particularly interesting due to the Court's treatment of secured creditor interests, where the proposed funder's fees were to be paid out of charged assets in priority to the rights of those secured creditors.

[Mourant Update, April 2019 >](#)

[Case Decision >](#)

CASES

USA

The Reach of Avoidance – Second Circuit Court of Appeals Holds in Madoff that Bankruptcy Code can be used to Recover Subsequent Extraterritorial Transfers

On 25 February 2019, the United States Court of Appeals for the Second Circuit issued a decision holding that a trustee is not barred by either the presumption against extraterritoriality or by international comity principles from recovering property from a foreign subsequent transferee that received the property from a foreign initial transferee. In reversing the District Court's Decision, the Court of Appeals

ARTICLES

USA

Proposed UNCITRAL Model Law on Enterprise Group Insolvency

In December 2018, at its 54th session in Vienna, Working Group V (Insolvency Law) of the United Nations Commission on International Trade Law (UNCITRAL) discussed revisions to its Enterprise Group Insolvency: Draft Model Law (the EGI Model Law) as well as the EGI Model Law's Guide to Enactment. Additional discussions concerning the draft law and guide will take place in May 2019 during the Working Group's 55th session in New York City. The final text of the EGI Model Law is intended to govern the conduct and administration of insolvency proceedings involving enterprise group

concluded that, because section 550(a) of the Bankruptcy Code is designed to remedy a debtor's fraudulent (or preferential) transfer of property, the proper focus for determining the impact of the statute should be on the location of the initial transfer, not on the location of the recipient of the transfer or of any subsequent transferee.

[Shearman & Sterling Perspectives, 8 April 2019 >](#)

[Case Decision >](#)

members that may be pending in several different countries.

[Jones Day, Business Restructuring Review, April 2019 >](#)

[Enterprise Insolvency Draft Model Law >](#)

ASIA PACIFIC

CASES

Hong Kong

***Re Dai Guoliang* 2019 HKCFI 597 - A Tool to Bear in Mind in the Asset Recovery Toolbox**

In this recent Judgment dated 28 February 2019 by Deputy High Court Judge Maurellet SC in *Re Dai Guoliang* [2019] HKCFI 597, the Hong Kong Court considered how its discretion to make a bankruptcy order should be exercised with respect to a foreigner. The judgment covers helpful analysis on the approach the Court ought to take, which is highly relevant to litigators in Hong Kong in recovery strategy planning going forward.

[Conyers Dill & Pearman Case Note, March 2019 >](#)

[Case Decision >](#)

ARTICLES

Australia

Impact of the Australian Banking Royal Commission on Insolvency Professionals

The final report of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was released to the public on 4 February 2019. For the insolvency industry, the report raises important matters in the areas of corporate governance (and the executive responsibilities that administrators and liquidators assume as statutory insolvency officials and as "gatekeepers" over the financial services industry); of directors' duties (in particular, the grounds for making claims against former directors on behalf of creditors); and the impact of a more aggressive enforcement culture adopted by regulators.

Philippines

The Geo-Politics of Bankruptcy

This article highlights the geo-political and security issues surrounding the fate of Hanjin Philippines' bankruptcy and the Subic shipyard. What distinguishes this bankruptcy from other restructuring and insolvency matters is that it concerns not only the company's financial situation and local economic considerations, but is also likely to have significant impact on the geographic front line of the American – Chinese competition for geo-political influence in Southeast Asia and the Pacific maritime passage. The outcome of the competition to control the results of the Hanjin Shipbuilding bankruptcy may well rest on critical intelligence and insight into the local knowledge of political, commercial, banking and financial dynamics at play both in South Korea and in the Philippines.

EUROPE, AFRICA & THE MIDDLE EAST

CASES

UAE

A Cross-border Recognition First in the Dubai International Financial Centre Court for BVI Liquidator

On 25 March 2019 in the Dubai International Financial Centre Court (DIFC), Justice Ali Al Madhani granted the application by the BVI court-appointed liquidator for recognition of the BVI liquidation Order in respect of regulated forex brokerage firm FCI Markets. This is understood to be the first time in the DIFC court such recognition has been granted. FCI Markets went into liquidation in the BVI last January. The company allegedly targeted airline cabin crew with offers of 120% returns on investments of around \$25,000. The liquidator is now seeking to recover approximately US\$200 million or 734.5 million dirhams for creditors.

[Tim Prudhoe, Prudhoe Caribbean Case Note, 10 April 2019 >](#)

LEGISLATION

EU

EU Directive on Insolvency, Restructuring and Second Chance

On 28 March 2019 the European Parliament adopted a Directive on insolvency, restructuring and second chance (the Directive). It has three main aims: to ensure that member states have a preventive restructuring framework – which includes a restructuring plan; to ensure that entrepreneurs have a second chance through an effective debt discharge mechanism; and to ensure that Member States put in place measures to raise the efficiency of restructuring, insolvency and discharge of debt procedures more widely. This article provides more detail on the key features of the Directive and how it affects certain Member States.

[Freshfields Bruckhaus Deringer LLP Article, March 2019 >](#)

A version of this article is due to be published in International Corporate Rescue, Issue 3.

LEGISLATION

Italy

The New Italian Crisis and Insolvency Code: Focus on Early Warning

Whilst over the past few years, the Italian insolvency legislation has been significantly and intensively amended, it is only in 2019 that a comprehensive and organic reform has been enacted. The Italian legislative decree no. 14 of 12 January 2019 now provides a Code of corporate crisis and insolvency implementing the general principles and guidelines set forth by the Italian legislator in 2017, taking into account input received at the European Union level. The Code represents a significant step forward with a view to aligning the Italian legislation with the more advanced insolvency

UK

Summary of ILA / CLLS Issues Paper on UK Insolvency Reforms

The Insolvency Lawyers' Association Technical Committee and the City of London Law Society's Insolvency Law Sub-Committee published a joint paper responding to the UK Government's proposed reforms to the English restructuring and insolvency regime. The two committees argue that the English scheme of arrangement has been well-suited to the financial restructurings in the market since the financial crisis in 2008 (where the scheme has been used to implement a largely consensual deal agreed over a period of months against remaining hold-out creditors at a finance /

regimes, as well as with the latest provisions and principles of the European Union legislative framework.

[Rita Gismondi, Fellow, INSOL International, Gianni Origoni, Grippo, Cappelli & Partners Article, April 2019 >](#)

holding company level) - but that the restructurings of tomorrow pose different challenges owing to evolutions in the financing markets

[Summary of ILA / CLLS Issues Paper, April 2019 >](#)

[ILA / CLLS Issues Paper >](#)

Publications



INSOL World Q1 2019

The First Quarter 2019 edition of INSOL World with a focus on the Asia Pacific Region is now available to view online. It can also be found on our website by navigating to the [Technical Library](#)

Hard copies of the issue are now being mailed out to all members and should appear on your desk within the next couple of weeks. If, however, you do not receive your copy by the end of April, [please let us know](#).

INSOL International sincerely thanks Mourant for sponsoring INSOL World.

mourant

SEMINARS

Stockholm One Day Seminar



Wednesday 22 May 2019
Stockholm

Booking Deadline: 10 May 2019

Register now for the second INSOL International – INSOL Europe Nordic seminar to be held in Stockholm, Sweden on Wednesday 22 May 2019.

Channel Islands One Day Seminar



Thursday 20 June 2019
Guernsey

Early Booking Deadline: 30 April 2019

Registrations are now open for the sixth Channel Islands One Day Seminar that will take place in Guernsey on the 20 June 2019.

The technical programme will focus on the new EU Directive on restructuring, as well as looking at restructuring cases in the region, Brexit and board directors' responsibilities

Register online and view further details on our website >

We would like to thank the sponsors of our Seminar:

Platinum Sponsor: DLA Piper
Gold Sponsor: Hannes Snellman
Lunch Sponsor: Walthorn Advokaten

For further information and details of sponsorship opportunities, please contact [Penny Robertson](#)

Register online and view further details on our website >

We would like to thank the sponsors of our Seminar:

Platinum Sponsors: Bedell Cristin | Grant Thornton | Ogier
Coffee Break Sponsor: KRyS Global
Lunch Sponsor: South Square
Dinner Sponsors: BDO | Carey Olsen

For further information and details of sponsorship opportunities, please contact [Penny Robertson](#)

Hong Kong One Day Seminar



Friday 18 October 2019
Hong Kong

INSOL International will be running its second annual Seminar in Hong Kong on Friday 18 October 2019.

The chairs of this Seminar and the Main Organising Committee are currently preparing a busy and engaging programme. More details will be available shortly, but please contact [Danielle Timmons](#) with any queries in the meantime.

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
Coffee Break Sponsor: Conyers Dill & Pearman
Lunch Sponsor: Duff & Phelps
Cocktail Reception Sponsor: Harneys

Tokyo One Day Seminar



Thursday 7 November 2019
Tokyo

INSOL International will be running its second One Day Seminar in Tokyo on Thursday 7 November 2019. Please save the date!

The overarching theme will be '*Further Development in Asian Insolvency and Cross-Border Restructuring*'. It is anticipated that this will be a well-attended seminar, drawing an audience from Japan, Republic of Korea, China, Hong Kong, amongst other nations, and also from the UK, Australia and the US.

Details will be available on our website shortly.

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

Africa Round Table Open Forum



22 November 2019
Swakopmund, Namibia

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"*.

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

Bahamas Offshore One Day Seminar



Thursday 5 December 2019
Nassau, The Bahamas

The INSOL International - RISA Offshore One Day Joint Seminar will be held on 5 December 2019! Please save the date.

The chairs of this Seminar and the Main Organising Committee are currently preparing a busy and engaging programme. More details will be available shortly, but please contact [Danielle Timmons](#) with any queries in the meantime.

We would like to thank the sponsors of our Seminar:

Platinum Sponsors: EY | Lennox Paton | PwC |
McKinney Bancroft & Hughes
Gold Sponsor: Graham Thompson

Electronic Newsletter Editorial Committee

Stephen Briscoe (Chair)

Scott Abel

Tara Cooper Burnside

Ian Dorey

Matthew Goucke

Volker Kammel

Sim Kwan Kiat

David Lawton

Fábio Rosas

Andrew Thorp

Alison Timme

Vincent Vroom

FFP, British Virgin Islands

Fellow, INSOL International, Buddle Findlay, New Zealand

Fellow, INSOL International, Higgs & Johnson, Bahamas

K&L Gates, Australia

Fellow, INSOL International, Walkers, Cayman Islands

Reed Smith, Germany

Rajah & Tann, Singapore

Bracewell LLP, USA

Cescon Barrieu, Brazil

Harneys, British Virgin Islands

PwC, South Africa

Fellow, INSOL International, Loyens & Loeff, UK

This issue is kindly sponsored by:

David Rubin & Partners



INSOL International GROUP THIRTY-SIX

AlixPartners LLP	EY	Norton Rose Fulbright
Allen & Overy LLP	Freshfields Bruckhaus Deringer	Pepper Hamilton LLP
Alvarez & Marsal	FTI Consulting	Pinheiro Neto Advogados
Baker McKenzie	Goodmans LLP	PwC
BDO	Grant Thornton	Rajah & Tann Asia
Brown Rudnick LLP	Greenberg Traurig LLP	RBS
Clayton Utz	Hogan Lovells	RSM
Cleary Gottlieb Steen & Hamilton	Huron Consulting Group	Shearman & Sterling LLP
Clifford Chance	Jones Day	Skadden, Arps, Slate, Meagher &
Conyers Dill & Pearman	King & Wood Mallesons	Flom LLP
Davis Polk & Wardwell LLP	Kirkland & Ellis LLP	South Square
De Brauw Blackstone Westbroek	KPMG LLP	Weil, Gotshal & Manges LLP
Deloitte LLP	Linklaters LLP	White & Case LLP
Dentons	Morgan, Lewis & Bockius LLP	
DLA Piper		

INSOL International Member Associations

American Bankruptcy Institute	Ghana Association of Restructuring and Insolvency Advisors	Malaysian Institute of Certified Public Accountants
Asociación Argentina de Estudios Sobre la Insolvencia	Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)	National Association of Federal Equity Receiver
Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales	INSOL Europe	NIVD – Neue Insolvenzverwaltervereinigung Deutschlands e.V.
Association of Business Recovery Professionals - R3	INSOL India	Recovery and Insolvency Specialists Association (BVI) Ltd
Association of Restructuring and Insolvency Experts	Insolvency Practitioners Association of Malaysia	Recovery and Insolvency Specialists Association (Cayman) Ltd
Australian Restructuring, Insolvency and Turnaround Association	Insolvency Practitioners Association of Singapore	REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law	Instituto Brasileiro de Estudos de Recuperação de Empresas	Restructuring and Insolvency Specialists Association (Bahamas)
Business Recovery and Insolvency Practitioners Association of Nigeria	Instituto Iberoamericano de Derecho Concursal	Restructuring and Insolvency Specialists Association of Bermuda
Business Recovery and Insolvency Practitioners Association of Sri Lanka	Instituto Iberoamericano de Derecho Concursal - Capitulo Colombiano	Restructuring Insolvency & Turnaround Association of New Zealand
Business Recovery Professional (Mauritius) Ltd	International Association of Insurance Receivers	
Canadian Association of Insolvency and Restructuring Professionals	International Women's Insolvency and Restructuring Confederation	South African Restructuring and Insolvency Practitioners Association
	Japanese Federation of Insolvency Professionals	

Commercial Law League of America
(Bankruptcy and Insolvency
Section)

Especialistas de Concursos
Mercantiles de Mexico

Finnish Insolvency Law Association

Korean Restructuring and
Insolvency Practitioners Association

Law Council of Australia (Business
Law Section)

Malaysian Institute of Accountants

Turnaround Management
Association (INSOL Special Interest
Group)

Turnaround Management
Association Brasil (TMA Brasil)



Note: The INSOL News update will be circulated monthly.

If you would prefer not to receive an electronic copy of this newsletter in the future please let us know by clicking on the attached link.

PLEASE NOTE THAT THIS E-MAIL WAS SENT FROM AN ADDRESS THAT CANNOT ACCEPT INCOMING MESSAGES.

PLEASE DO NOT REPLY TO THIS ADDRESS.

If you have any queries or comments contact [Louise Jennings](#)

Copyright © INSOL INTERNATIONAL 2019. All Rights Reserved. Registered in England and Wales, No. 0307353.

INSOL, INSOL INTERNATIONAL, INSOL Globe are trademarks of INSOL INTERNATIONAL.

[UNSUBSCRIBE](#) | [PRIVACY POLICY](#)