



# INSOL INTERNATIONAL

## News Update

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### EDITOR'S NOTE

The July edition of INSOL's News Update covers a broad range of topics from around the world.

This month's Highlight Article discusses the recent restructuring of [Ballantyne Re plc](#), an Irish Reinsurance SPV, by means of an Irish law scheme of arrangement. It is particularly noteworthy that this is the first substantive use of an Irish scheme of arrangement to restructure the debts of a company in recent years; and following the sanction by the Irish Court, the scheme was recognised as a foreign main proceeding under chapter 15 of the U.S. Bankruptcy Code.

The recent debut of the "[Super Speedy Prepack](#)" features in an article on chapter 11 filings in the United States. Pre-packaged filings of this type allow the debtor company to emerge from chapter 11 proceedings in less than a month, in some cases after a few days. The article focusses on the circumstances that facilitate such extremely short bankruptcies. Also included in this edition is a snapshot of the [insolvency and restructuring petition filings](#) and resultant court orders in respect of companies in six different offshore jurisdictions showing the level of activity in each.

The recognition of foreign proceedings and the powers of foreign officeholders in other countries feature in two cases. The [Cayman Islands Court](#) provided clarification regarding the recognition for foreign receivers while the [English High Court](#) recognised a winding up of a solvent Bermudian fund. Meanwhile in a landmark decision, the [Australian High Court](#) ruled that employee entitlements must be prioritised in the insolvency of a 'trading trust' while the [Hong Kong Court](#) confirmed that clauses in joint venture agreements allowing one party to exclude the other in the case of an insolvency are

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](#)

legally valid. Finally, from the [Singapore Court of Appeal](#) we have a seminal decision on financial disclosure requirements and third party releases in group restructurings.

Once again, the contributions in this edition of the newsletter make for interesting reading. Enjoy them.



**Dr. Volker Kammel**  
**Partner**  
**Reed Smith LLP, Germany**

## HIGHLIGHT ARTICLE

### Landmark Scheme of Arrangement to Restructure US\$1.65 Billion of Senior Debt Sanctioned by the Irish High Court

The Highlight Article this month covers a landmark scheme of arrangement recently sanctioned by the Irish High Court and recognised as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code. This cross-border restructuring is of note both in an Irish and international context not only because of its scale but also because it is the first substantive use of an Irish scheme of arrangement to restructure the debts of a company in recent years where restructurings of insolvent companies have been principally completed through the examinership process. The Irish legislation on schemes of arrangement is broadly similar to the relevant legislation in England, Australia and other jurisdictions and the judgment of Mr Justice Barniville in the Irish High Court approving the scheme underlines the persuasiveness of English and international jurisprudence in this area and the willingness of the Irish courts to consider the well-developed jurisprudence of those jurisdictions in evaluating and sanctioning a scheme of arrangement.

**Ruairi Rynn, Partner**  
**Niamh Cacciato, Senior Associate**  
**William Fry**  
**Ireland**

[Highlight Article >](#)

[Case Decision >](#)

## THE AMERICAS

### CASES

#### Cayman Islands

##### The Grand Court Clarifies Recognition for Foreign Receivers

A recently released decision from the Grand Court of the Cayman Islands clarifies the circumstances in which receivers appointed by

#### USA

##### The “Super Speedy Prepack” Has Arrived... Is That a Big Deal?

Pre-packaged Chapter 11 filings have been prevalent in the last few years but it wasn't until this year that the US saw the debut of the “super

foreign courts or by foreign governmental bodies will be recognised in the Cayman Islands, and the juridical basis for such orders. In the matter of the *Silk Road Funds Ltd* (Unreported, 8 February 2018, Smellie CJ) examined the matters that the Court would consider when deciding whether to grant orders allowing recognition and enforcement of the functions and powers of receivers appointed by a foreign court.

[Nick Dunne, Partner and Emma Hill, Senior Associate, Walkers, Case Note, July 2019 >](#)

[Case Decision >](#)

speedy prepack,” that is, a prepackaged filing that runs the course of reorganisation in a month or less from filing to emergence. In February, FULLBEAUTY Brands, a prepack, had its plan confirmed within one day of filing and emerged from Chapter 11 three days later. Sungard Availability Services filed a prepack on May 1 and had its plan of reorganisation confirmed within 19 hours of filing and emerged from bankruptcy in less than two days. What conditions made these super speedy prepacks possible and what significance, if any, should be attached to them as harbingers of reorganisations to come in the next downturn?

[FTI Consulting Insight, June 2019 >](#)

## ARTICLES

### Cayman Islands

#### Offshore Company Petition Filings & Court Orders - Current Trends 2019 & Review of 2018

This report provides a snapshot of the insolvency and restructuring petition filings and resultant court orders in respect of companies in six offshore jurisdictions over 2018 and 2019 to date. Bermuda, Isle of Man and Guernsey all showed levels of activity in 2018 in line with previous years. Cayman petition filings in 2018 rose 50% relative to the previous year. After an uptick in activity in 2017, Mauritius and the British Virgin Islands (BVI) filings returned to previous levels in 2018. Petitions against Asian companies incorporated offshore have declined somewhat, although there are still a number of high-profile individual cases making their way through the offshore courts.

[Appleby Offshore Insight, June 2019 >](#)

## ASIA PACIFIC

### CASES

#### Australia

##### Landmark High Court Decision Puts Employees First in Australian Insolvency

For some time now, there has been uncertainty in Australian insolvency law about whether or not insolvency practitioners should apply the statutory priority regimes established by sections 433, 566 and 561 of the Corporations Act 2001 (Cth) when distributing the assets of a “trading trust”. In a landmark and long-awaited decision, the High Court of Australia in dismissing the appeal in *Carter Holt Harvey Woodproducts Australia Pty Ltd v The Commonwealth of Australia and Others* [2019] HCA 20 (Amerind) has unanimously held that

#### Hong Kong

##### Hong Kong Court Validates Contractual Clause Providing for Exclusion Rights Upon Insolvency

Joint venture agreements often contain clauses conferring a right on an innocent party to exclude a defaulting party from the joint venture upon the occurrence of specified events, including the insolvency of the defaulting party. The Court considered in *Hsin Chong Construction Company Limited* [2019] HKCFI 1531 (date of judgment 13 June 2019) whether such a provision should be void.

that employee entitlements must be prioritised in an insolvency, regardless of whether the employing entity is trading in its own right or as trustee.

[Natalie Tatasciore, Partner, King & Wood Mallesons, 28 June 2019 >](#)

[Case Decision >](#)

[Stephenson Harwood Insolvency Law Update, June 2019 >](#)

## Singapore

### Singapore Court of Appeal Issues Seminal Decision on Financial Disclosure Requirements and Third Party Releases in Group Restructurings

The recent decision of the Supreme Court of Singapore in *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd* [2019] SGCA 29 sets out what is now the leading analysis in 'group scheme' restructurings. It provides useful guidance to creditors and scheme companies alike on the scope and ambit of third party releases, the financial disclosure and the creditor classification issues which might arise in such schemes and the test for the abuse of process in schemes of arrangement. In this case the Singapore Court of Appeal declined the scheme application due to 'woefully inadequate' financial disclosure by the applicant.

[Allen & Gledhill Legal Bulletin, 27 June 2019 >](#)

[Case Decision >](#)

## EUROPE, AFRICA & THE MIDDLE EAST

### CASES

#### UK

##### Directors' Liability for Unlawful Dividends

On 19 June 2019 in the case *Re Burnden Holdings (UK) Limited* (in liquidation) the English court considered whether directors had overstepped the mark and breached their duties by paying a dividend and creating security. In addition to the breach of duty claims, the transactions were also challenged as defrauding creditors. The Burnden case serves as an important reminder of directors' duties when considering a dividend, and identifies the potential consequences of any breach of those duties. The claim in this case was initiated by a liquidator, six years after the transactions in question had taken place, and four years after the start of the liquidation. In this respect, it is also a lesson that years after the event, claims can still be initiated, as long as they fall within the statutory limitation period.

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

#### UK

##### English High Court Recognises Winding Up of Solvent Bermudian Fund

On 17 May 2019, judgment was handed down in the UK High Court by Mrs Justice Falk in a case where recognition of a winding up of a foreign investment fund was granted under the Cross-Border Insolvency Regulations 2006 (CBIR). This is the first time that a UK court has examined in detail the United Nations Commission on International Trade Law (UNCITRAL) Model Law on insolvency and the interplay with its Guides to Enactment, as well as case law from various jurisdictions concerning its application to solvent scenarios. The decision provides welcome clarification on the question of the applicability of the CBIR to just and equitable liquidations and paves the way for subsequent recognitions of this nature.

[Case Note, EY, June 2019 >](#)

## ARTICLES

### UK

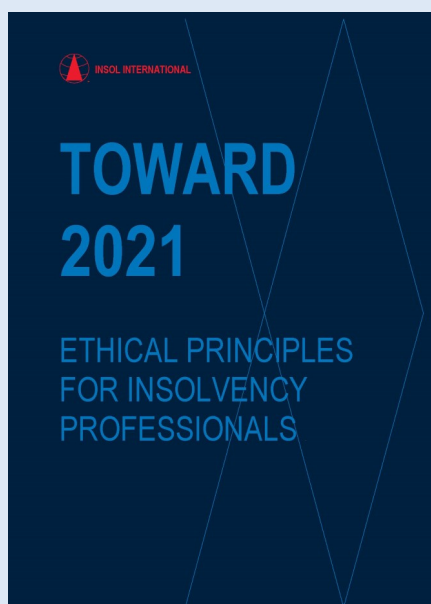
#### Arcadia Group CVAs: Given the Green Light

On 12 June 2019, after a tense meeting with landlords and creditors, the company voluntary arrangements (CVAs) proposed by the Arcadia Group Ltd (Arcadia) were approved by the requisite majority of creditors, allowing the group to restructure its balance sheet and stave off, at least for the time being, a liquidation or administration proceeding. Arcadia now faces a nervous wait to see if any creditors challenge the CVAs within the statutory 28-day period. Following that, Arcadia's near-term future on the UK high street will look somewhat more secure.

*This article first appeared in the July 2019 issue of PLC Magazine*

[White & Case News Brief, June 2019 >](#)

## Publications



#### INSOL International - Ethical Principles for Insolvency Professionals

We are pleased to introduce to you the '*Ethical Principles for Insolvency Professionals*' (the "Principles") developed as part of INSOL International's Taskforce Initiative *Toward 2021*. The concept behind the Principles is to provide a guide to best practice while allowing for the differing nature of legislation and insolvency practice in different jurisdictions.

We wish to sincerely thank Samantha Bewick, formerly of KPMG LLP (UK), for chairing the Working Group preparing these principles, with the assistance of Narelle Ferrier of ARITA (Australia); Mat Ng of Ernst & Young (Hong Kong); Evan Flaschen, formerly of Bracewell LLP (USA), Melissa Coakley of Clifford Chance LLP (UK); and David Lawton

of Bracewell LLP (USA) and Dr Lezelle Jacobs of the University of Wolverhampton.



## INSOL International

The Role of Artificial Intelligence (AI) and Technology in Global Bankruptcy and Restructuring Practices

July 2019

## INSOL Special Report - The Role of Artificial Intelligence (AI) and Technology in Global Bankruptcy and Restructuring Practices

As the so-called 'Fourth Industrial Revolution' gains pace, the emerging technological breakthroughs including Artificial Intelligence (AI) are directly and indirectly impacting on almost every business and commercial activity globally. INSOL International carried out a member survey with a view to producing a report on the role of AI, in relation to both global bankruptcy and restructuring practices. This was done to determine the extent such technology is currently being used and to gain insight as to what the future will look like with AI playing a major role.

The survey included 32 in-depth questions and the results contained in this report are quite varied and interesting.

INSOL would like to sincerely thank Christian Toms and Jane Colston of Brown Rudnick LLP, UK for leading this project which took over one year to complete due to the extensive work that was carried out to formulate the survey and thereafter produce this excellent report. We appreciate their hard work and continued interest throughout this period.

## CONFERENCES & SEMINARS



# SAVE THE DATE

# INSOL Cape Town

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



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## P.R.China One Day Seminars



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

INSOL International will be running its annual P. R. China seminars this year in Beijing on Monday 14 October and in Shanghai on Wednesday 16 October 2019!

Please save these dates as the Seminar Co-Chairs and the Main Organising Committee prepare a fascinating programme on the key issues in 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 provides 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  
Gold Sponsor: Campbells

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

## Hong Kong One Day Seminar



Friday 18 October 2019  
Hong Kong

### Early Booking Deadline: 31 July 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 co-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  
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## Tokyo One Day Seminar



Thursday 7 November 2019  
Tokyo

### Early Booking Deadline: 26 July 2019

Registrations are now open for the INSOL International Tokyo One Day Seminar, taking place for the second time in Japan. The Main Organising Committee has prepared a stimulating and relevant programme based on issues and cases in Japan as well as discussions on topics further afield.

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. The full programme and registration details are available on our website now.

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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## 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 10<sup>th</sup> 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:

Main Sponsors: DLA Piper  
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For further information please contact [Penny Robertson](#)

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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.

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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