



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE

It is not surprising that key financial markets appear to be on tenterhooks recently as it remains unclear whether and how the trade disputes between the US and China will be resolved soon. The connectivity and inter-dependence amongst trading nations can reap tremendous benefits in times of growth, but can also cause tremendous damage in times of uncertainties.

As we brace ourselves for a fallout from the conflict between the global powers, we look at how courts in different jurisdictions address perennial issues in cross-border insolvency. The question of recognition and effect of a foreign order is a common theme, as can be seen in a number of encouraging firsts. In Asia Pacific, we see the first successful recognition of a Singapore interim moratorium order under its new restructuring regime in a foreign court ([H&C S Holdings](#)); and the first successful recognition in Hong Kong of a Japanese winding up and trustee ([Kaoru Takamatsu](#)). In the UK, we have an important decision which says that the reference date for determination of COMI is the date of the recognition application ([Toisa Limited](#)), which is in line with the position in the US and Singapore. On a different but no less important note, we saw the first successful application for super-priority under the new rescue financing mechanism in Singapore ([Asiatravel.com](#)).

On the other hand, we see difficult questions of coordination and consistency in [Avianca](#) – as courts in the US and Brazil deal with how a US Chapter 15 stay syncs with a Brazilian restructuring and the Cape Town Convention (an international convention dealing with, among other things, insolvency related issues in aircraft businesses).

I am grateful to the authors who contributed the interesting articles in this edition. I strongly commend the articles in this edition to you, which we shall read against the backdrop of a potentially turbulent economic landscape ahead.

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](#)



Sim Kwan Kiat
Partner
Rajah & Tann Singapore LLP

HIGHLIGHT ARTICLE

Recognition in the High Court of England and Wales of Singapore's New Moratorium Law in Relation to H&C S Holdings Pte Ltd under Section 211B(1) of the Companies Act (Cap. 50)

On 25 March 2019, in what is seen as a landmark decision, the High Court of Justice of England and Wales recognised the moratorium relief granted by the Singapore High Court to H&C S Holdings Pte Ltd under Section 211B(1) of the Singaporean Companies Act (Cap. 50) as a foreign main proceeding under the UK Cross-Border Insolvency Regulations 2006. This is thought to be the first time a court outside Singapore has recognised the enhanced section 211B of the Singapore Companies Act which deals with a court-sanctioned arrangement or compromise (known as a scheme of arrangement) between a company and its creditors when the former is in distress or insolvent. The ruling is positive for debt workouts across different jurisdictions and a boost to Singapore's ambition to become Asia's debt restructuring hub.

Sim Kwan Kiat
Partner
Rajah & Tann Singapore LLP

[Highlight Article >](#)

THE AMERICAS

CASES

USA

Latest Airline Restructuring News – Avianca Brazil – What Happens in Cape Town Stays in Cape Town

Chapter 15 of the United States Bankruptcy Code promotes cooperation between the United States courts and parties involved in international insolvency proceedings. A recent chapter 15 case in the United States Bankruptcy Court for the Southern District of New York has caused some turbulence in the aviation finance world concerning the precise

USA

Down But Not Out (of the Money)

Are underwater interest holders entitled to a share of the premium on a sale free and clear of liens under US Bankruptcy Code section 363? This article reviews the case of *Hanmi Bank* which establishes that out of the money junior lien holders may now be entitled to share in the proceeds of a sale free and clear of their interest, even where senior lienholders are not being paid in full.

role that the US Bankruptcy Court plays in such a case.

[Norton Rose Fulbright International Restructuring Newswire, April 2019 >](#)

[Case Decision >](#)

[DLA Piper Restructuring Global Insight, Issue 28, 26 March 2019 >](#)

LEGISLATION

USA

The Small Business Reorganization Act Reintroduced: A Way Forward for Small Business Reorganization?

Last month, the US Congress reintroduced the Small Business Reorganization Act, under which a new subchapter V would be added to chapter 11 of the United States Bankruptcy Code. This new subchapter would provide small businesses with aggregate liabilities that do not exceed \$2,566,050 with an opportunity to resolve outstanding liabilities through a streamlined and cost-effective Chapter 11 bankruptcy proceeding.

[Squire Patton Boggs eSQUIRE Global Crossings, 23 April 2019 >](#)

[Small Business Reorganization Act >](#)

ASIA PACIFIC

CASES

Hong Kong

Cross-border Restructuring in Hong Kong – First Recognition of Japanese Winding-Up

Since mid-2014, the Hong Kong Court has made a series of decisions, using common law principles, to recognise and assist foreign insolvency office holders. The vast majority of recognition orders have been made where the applicant was a liquidator or provisional liquidator from a common law jurisdiction. The recent case of *Re Kaoru Takamatsu* [2019] HKCFI 802 is significant as it is the first time the Hong Kong Court has recognised a Japanese winding up proceeding and granted assistance to a bankruptcy trustee appointed by the Japanese Court.

[Case Note by Eloise Fardon, Senior Associate and Vivian Lau, Associate, Stephenson Harwood, May 2019 >](#)

[Case Note Chinese Version >](#)

[Case Decision >](#)

Singapore

Landmark Decision: Singapore's First Successful Application for Super Priority Rescue Financing

On 8 April 2019, Asiatravel.com Holdings Ltd and its subsidiary, AT Reservation Network Pte Ltd (the Applicants) obtained Singapore's very first super priority order for rescue financing pursuant to section 211E(1)(b) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"). The Honourable Justice Kannan Ramesh granted the order giving priority to the debt arising from rescue financing over all the Applicants' unsecured and preferential debts (as specified in section 328(1)(a) to (g) of the Act).

[Case Note by Meiyen Tan, Partner, Thenuga Vijakumar, Senior Associate, Dennis Oh, Associate, Averill Chow, Trainee, Oon & Bazul LLP, April 2019 >](#)

CASES

UK

Clarity on Cross-Border Conundrum

The type of recognition granted by the recognising court under the UNCITRAL Model Law will depend on whether the originating proceedings are 'foreign main' or 'foreign non-main' proceedings, which in turn hinges on the centre of main interests (COMI) of the insolvent entity. In a recent ground breaking decision by Judge Catherine Burton in the matter of *Toisa Limited*, the English court has followed the precedent set down by the US Bankruptcy Court in undertaking this COMI analysis at the date of the recognition petition, rather than the date that the insolvency proceedings were initiated. This has the scope to significantly simplify the recognition of cross-border insolvencies going forward, particularly in respect of Chapter 11 recognitions in the UK.

[Reed Smith Global Restructuring Watch, 5 April 2019 >](#)

ARTICLES

Germany

Insolvency Cross Winds Take Creditors by Surprise

When *Servion*, the struggling wind turbine manufacturer, filed for preliminary self-administration in Germany on 9 April, many of its counterparties with English law contracts were surprised to learn that their standard insolvency termination clauses no longer worked. Nor did the carefully negotiated set-off provisions that were supposed to operate beyond the date of the insolvency proceedings. Both of these provisions were blocked by the German insolvency proceedings.

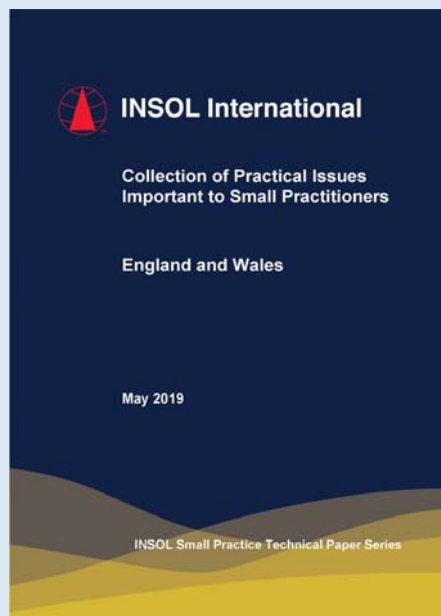
[Ashurst RSSG Thought of the Month, 30 April 2019 >](#)

Greece

NPLs in Greece: The Make-or-break Moment

While Greece has addressed many of its fiscal inconsistencies, the real economy has yet to reap the benefits of stabilisation, recording only a sluggish growth of 1.9% in 2018. A significant factor is the high level of non-performing loans (NPLs) in the banking system. This article looks at proposed measures aimed at drastically resolving the NPL issue including a number of off-balance sheet schemes involving the use of special purpose vehicles.

[Eurofenix, p.30-31, Spring 2019 >](#)



INSOL International Small Practice Paper - England and Wales

This study on England and Wales, under the Small Practice Technical Paper Series, focuses on "A Collection of Practical Issues Important to Small Practitioners". The paper was written for INSOL by Kevin Lucas FCA FABRP, Managing Director, Lucas Johnson Limited and provides an update, in relation to England and Wales, to a paper on the UK written by Peter Sargent in April 2012.

INSOL International sincerely thanks Kevin Lucas for providing INSOL members with this very informative paper.

SEMINARS

Stockholm One Day Seminar



Wednesday 22 May 2019
Stockholm

INSOL International and INSOL Europe will be holding the second Nordic seminar at The Grand Hotel in Stockholm, Sweden on Wednesday 22 May 2019.

We look forward to seeing many of you there!

We would like to thank the sponsors of our Seminar:

Platinum Sponsor: DLA Piper
Gold Sponsor: Hannes Snellman
Lunch Sponsor: Walthon Advokater

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

Channel Islands One Day Seminar



Thursday 20 June 2019
Guernsey

We have now reached capacity for the upcoming Channel Islands One Day Seminar and are operating a waitlist. Please contact [Louise Coulson](#) for further information.

We would like to thank the sponsors of our Seminar:

Platinum Sponsors: Bedell Cristin
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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](#)

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 14th October and in Shanghai on Wednesday 16th 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 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!

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 18th 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 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 Carey Olsen Lipman Karas Tanner De Witt
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Coffee Break Sponsor:	Conyers
Lunch Sponsor:	Duff & Phelps
Cocktail Reception Sponsor:	Harneys

Tokyo One Day Seminar

Africa Round Table Open Forum



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.

We would like to thank the sponsors of our Seminar:

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



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*".

Thank you to our sponsors: DLA Piper

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

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 5th December 2019. Come join us in the luxurious Bahamas, where

the stunning scenery and culinary delights can't be beat!

The seminar chairs and Main Organising Committee have prepared an engaging educational program featuring both offshore and cross-border topics!

Please contact Danielle Timmons for information on remaining sponsorship opportunities.

We would like to thank the sponsors of our Seminar:

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Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales	Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)	National Association of Federal Equity Receiver
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Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law	Insolvency Practitioners Association of Singapore	REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
Business Recovery and Insolvency Practitioners Association of Nigeria	Instituto Brasileiro de Estudos de Recuperação de Empresas	Restructuring and Insolvency Specialists Association (Bahamas)
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Especialistas de Concursos Mercantiles de Mexico	Japanese Federation of Insolvency Professionals	Turnaround Management Association Brasil (TMA Brasil)
	Korean Restructuring and Insolvency Practitioners Association	
	Law Council of Australia (Business Law Section)	



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