



# INSOL INTERNATIONAL

## News Update

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March 2019 | ISSUE NO. 3

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### EDITOR'S NOTE

At the time of finalising this month's newsletter, Brexit is still on course to take place on 29 March 2019 although, following yesterday's (12 March) rejection of the renegotiated deal, a request for an extension to Article 50 and thereby a delay to Brexit is looking possible. Whilst this month's [Highlight Article](#) carefully manages to avoid using the "B-word", the reality is that depending on how the next couple of weeks progress we may face an entirely different landscape come April. One of the other articles in the newsletter does, however, address the main consequences for the cross-border European restructuring and insolvency landscape of a [no-deal Brexit](#) scenario.

The uncertainty in one of the most important restructuring venues in the world of course offers opportunities for other countries. Various legislative initiatives across the world aim to improve the restructuring capabilities of applicable local laws. Certain well-known legal frameworks in the United States (Chapter 11) and England and Wales (schemes of arrangement, company voluntary arrangement) frequently inspire these legislative proposals in other countries. In this respect it is worth noting that [India's revised Insolvency Framework](#) moves away from a "Debtor-in-possession" type system and purports to move closer to the regime that applies in the UK.

On a sector level, [retail](#) continues to be in a very difficult place. Well known and internationally active retail groups such as Toys R Us as well as large but more local victims of the downturn in retail (e.g. Debenhams in England, Intertoys in the Netherlands) have gone through a material restructuring often through insolvency proceedings. One of the sometimes overlooked but very important factors in these restructurings is caused by "bricks and mortar" issues. Many of the more traditional retailers still have many stores, which causes issues in the current online environment.

## MEMBER ASSOCIATIONS

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](#)

Singapore remains at the forefront of countries aiming to bring their restructuring and insolvency regime well into the 21st century. We report this month on the recent recognition by the Singapore High Court of US bankruptcy proceedings in respect of the [Zetta Jet](#) entities as a foreign main proceeding as well as the Trustee appointed therein - the first reported decision under the Singapore Model Law in which the COMI of a Singapore-incorporated company was found to be in a different jurisdiction, namely the US. No doubt the developments in Singapore will be heavily debated at the upcoming INSOL conference in Singapore, which will take place in only a few weeks from now.



**Vincent Vroom**  
**Partner**  
**Loyens & Loeff N.V.**

## HIGHLIGHT ARTICLE

### The Netherlands as a Litigation & Restructuring Hub

The Highlight Article this month details the recent launch of the long-awaited Netherlands Commercial Court (NCC). The NCC aims to provide fast, efficient and predictable litigation in international disputes, whereby both the proceedings and judgments are in principle entirely in English. Another interesting feature of the Dutch legal system is that the Netherlands has a very efficient system to deal with collective settlements in mass claims. In a world where a large number of international restructurings are becoming increasingly hostile in nature, having an efficient court process in the English language will assist in moving complex restructurings forward. The NCC as well as the collective action possibilities should help in making the Netherlands not only a hub for dispute resolution, but more broadly for restructurings and special situations.

**Vincent Vroom**  
**Partner**  
**Loyens & Loeff N.V.**

[Highlight Article >](#)

## THE AMERICAS

### CASES

#### Canada

##### The Bluberi CCAA Proceedings: Litigation Funding in Insolvency

On 4 February 2019, the Court of Appeal of Quebec released its decision in the matter of *Callidus Capital Corporation and al. v. 9354-9186*

#### USA

##### Are Power Purchase and Similar Agreements Excluded from the Automatic Stay under the Safe Harbour for Forward Contracts? Recent US

*Québec Inc. (formerly Bluberi Gaming Technologies Inc.)*. The Court of Appeal considers how litigation funding arrangements (the first approved in a Canadian insolvency context) are to be utilised in Companies' Creditors Arrangement Act proceedings. In particular, when a debtor company, subject to protection under the CCAA has no assets except a litigation claim, who should decide whether to pursue the claim or accept a settlement - the debtor or the creditors?

[Gowling WLG Case Note, 8 February 2019 >](#)

[Case Decision >](#)

## Utility Bankruptcies Raise this and other Important Questions

Both the *First Energy Solutions* and *PG&E* bankruptcies have seen proceedings regarding power purchase and similar agreements (PPAs) that raise this question. This Legal Update discusses the proceedings and the safe harbour issues they raise. As these cases clearly demonstrate, the potential application of the safe harbours for qualified financial contracts to PPAs and similar agreements is often far from clear.

[Mayer Brown Legal Update, 27 February 2019 >](#)

## ARTICLES

### USA

#### The Real Estate Problem of Retail

This article considers the recent and unprecedented number of retailers filing for bankruptcy in the US. From iconic stores such as Sears and Toys 'R' Us, to department stores such as Bon Ton, to mall stores including Brookstone, The Rockport Company, Nine West, among others. The reasons given for such filings vary but one theme seems to be constant - the inability of retailers to maintain "bricks and mortar" operating expenses in the era of online shopping.

[Squire Patton Boggs, eSQUIRE Global Crossings, 25 February 2019 >](#)

### USA

#### The Year in Bankruptcy: 2018

This review chronicles the business bankruptcy, financial, economic, and related developments during 2018. It includes a summary of the notable business bankruptcy rulings in 2018; the U.S. Supreme Court's four rulings in 2018 involving issues of bankruptcy law; the legislative and regulatory developments of 2018; and notable plan confirmations and exits from bankruptcy in 2018.

[Jones Day, Business Restructuring Review January / February 2019 >](#)

## ASIA PACIFIC

## CASES

### Australia

#### Lost at Sea – the Position on Claw-Back Proceedings for Foreign Insolvency Proceedings that have been Recognised under the Cross-Border Insolvency Act

In proceedings brought by the US Chapter 7 bankruptcy trustee appointed by Zetta Jet Pte Ltd (a Singaporean entity) the Australian Federal Court has clarified the limitations for foreign entities and their insolvency appointees recognised under the Cross-Border Insolvency

### Singapore

#### A Review of Restructuring and Insolvency Cases Dealing with the May 2017 Amendments to the Singapore Companies Act

The Singaporean Companies Act was amended in May 2017 to introduce a number of enhancements to Singapore's debt restructuring laws. This article reviews the various court decisions (both reported and unreported) that have been issued dealing with these new

Act in pursuing action in Australia to un-wind antecedent transactions (by attempting to use the voidable transaction provisions of the Australian Corporations Act).

[Baker McKenzie Client Alert, 14 January 2019 >](#)

[Case Decision >](#)

provisions in the past year or so since they became operative. This includes another recent decision relating to the Zetta Jet entities - the first reported decision under the Singapore Model Law in which the COMI of a Singapore-incorporated company was found to be in a different jurisdiction, namely the US.

[Oon & Bazul LLP Article, March 2019 >](#)

## ARTICLES

### India

#### India's Revised Insolvency Framework: Too Fast from too Slow?

The passing of the Insolvency and Bankruptcy Code 2016 (IBC) by the Indian Parliament in May 2016 was a landmark event for the Indian insolvency regime. The IBC seeks to address the many shortcomings of the previous insolvency regime, and to consolidate and streamline the framework governing insolvency and liquidation in India. This article provides an update on the current insolvency regime in India and the changes that have been brought about by the IBC.

[South Square Digest March 2019, p.21-27 >](#)

## EUROPE, AFRICA & THE MIDDLE EAST

### CASES

#### UK

##### An Otherwise Lawful Dividend can be a Transaction Defrauding Creditors

The case of *BTI 2014 LLC v Sequana SA* [2019] EWCA Civ 112 offers a warning to directors and companies. The English Court of Appeal concluded that the payment of a lawful dividend can be susceptible to challenge under section 423 of the Insolvency Act 1986 (transactions defrauding creditors) and that directors could have a duty to have regard to the interest of creditors in declaring the dividend.

[Clifford Chance Briefing, February 2019 >](#)

[Case Decision >](#)

### LEGISLATION

#### UK

##### Changing Priorities in UK Company Insolvencies

In a consultation issued by the UK tax authority, HM Revenue & Customs (HMRC), on 26 February 2019, a change in the order of asset distribution in the insolvency of UK companies has been proposed. The amendments would newly favour certain taxes collected and held by an insolvent entity ahead of certain secured and unsecured creditors and would come into force in April 2020. The consultation is open for comments from interested parties until 27 May 2019.

[K&L Gates Legal Insight, 28 February 2019 >](#)

[HMRC Consultation >](#)

## ARTICLES

## Brexit: Deal or No Deal?

UK legislation to deal with the impact of a “no deal” Brexit in the restructuring and insolvency market was enacted at the end of January. The prospect of Brexit is evolving rapidly — currently daily — following recent rejection of the negotiated deal and calls for a second referendum. This Alert considers the potential practical implications for the cross-border European restructuring and insolvency landscape of a “no deal” Brexit, in the context of recent developments.

[Kirkland & Ellis Alert, 7 March 2019 >](#)

## PUBLICATIONS



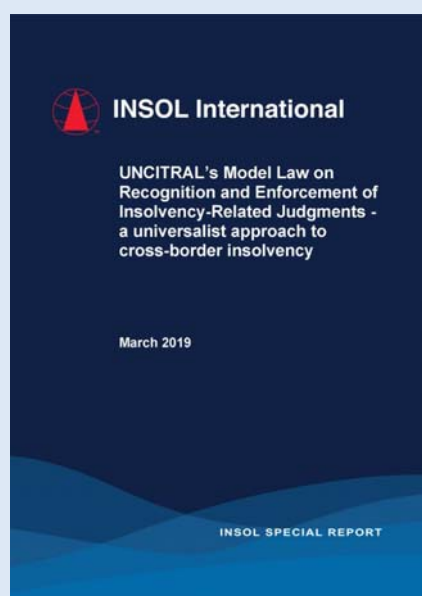
### Employee Entitlements II

March 2019

INSOL International is delighted to announce the publication of the second edition of its book on employee entitlements, *Employee Entitlements II*, more than a decade after publishing the original *Employee Entitlements* book in 2005. In this second edition of the book, the number of jurisdictions covered has increased from 24 to 35.

It has long been recognised that one particularly vulnerable group of stakeholders in insolvency proceedings is the employees of insolvent businesses. Unlike many other creditors, they can do little to protect their position while insolvency is looming and they often have no other sources of income once insolvency strikes.

INSOL International would like to sincerely thank the many authors around the world who contributed to the country chapters, and David Cowling and Natalie Tatasciore of King & Wood Mallesons, Australia, for leading this project and bringing it to fruition.



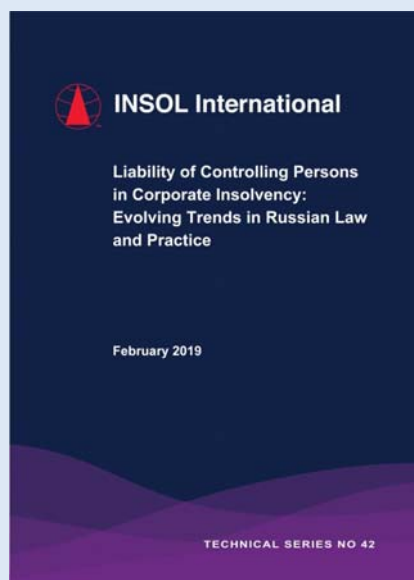
### INSOL International Special Report - UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments - a universalist approach to cross-border insolvency

March 2019

This Special Report summarises two influential cross-border cases under the Model Law on Cross-Border Insolvency addressing insolvency-related judgments and the commentary these cases prompted, leading to the introduction of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments. The main part of the Report describes key provisions of the MLIRJ and its accompanying Draft Guide to Enactment. This is followed by a discussion of the likely path towards adoption of the MLIRJ across the globe.

INSOL International would like to sincerely thank Evan J

Zucker and Rick Antonoff of Blank Rome LLP, USA, for authoring this timely and relevant Special Report on the MLIRJ which members will no doubt find useful in light of its recent adoption.



## INSOL International Technical Paper - Liability of Controlling Persons in Corporate Insolvency: Evolving Trends in Russian Law and Practice

February 2019

This paper provides an overview of the new rules; the recent trends in court practice in application of the rules; and the Russian Supreme Court Resolution which provides clarification on the general principles of secondary liability, the status of controlling persons, the grounds for holding controlling persons liable, as well as certain procedural aspects.

INSOL International sincerely thanks Pavel Novikov and Andrey Bogdanov of Baker McKenzie, Russia, for providing our members with this interesting and informative technical paper.

## CONFERENCES & SEMINARS



### REGISTRATION FOR THE 2019 INSOL SINGAPORE CONFERENCE IS NOW CLOSED!

Thank you to all those who have registered to attend the conference.

We look forward to welcoming you to Singapore.

We would like to thank all our sponsors for the INSOL Singapore Conference:

Main Sponsors:	Borrelli Walsh   Lipman Karas   Norton Rose Fulbright   RSM Restructuring
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Wednesday Networking Coffee Break:  
Wednesday Networking Lunch:  
Thursday Welcome Breakfast:  
Thursday Networking Coffee Break:  
Thursday Networking Lunch:  
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Fellows Forum and Reception:  
Small Practice Meeting:

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Burford Capital  
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Scheibe und Collegen  
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## INSOL Singapore - Offshore Ancillary Meeting

2 April 2019

Thank you for registering to attend our Offshore Ancillary Meeting, we look forward to welcoming you to Singapore.

INSOL International would like to thank our offshore sponsors:

Main Sponsor: Carey Olsen | LX Legal  
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Lunch break Sponsor: Walkers

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

## INSOL Singapore - Small Practice Issues Open Meeting and Reception

2-3 April 2019

### Technical Programme

- Guest speaker: marketing strategy: get yourself noticed!
- This Land is my land... realization of real estate abroad

Delegate places are limited therefore your early registration is appreciated. To register your attendance and for further details please contact [Kim Bloomberg](#)

INSOL International would like to thank our Small Practice Meeting and Reception sponsor, Porzio Bromberg & Newman P.C.

**Stockholm One Day Seminar**

**Channel Islands One Day Seminar**



Wednesday 22 May 2019  
Stockholm

### Early Booking Deadline: 5 April 2019

Registrations are now open for the second INSOL International – INSOL Europe Nordic seminar.

**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



Thursday 20 June 2019  
Guernsey

### Early Booking Deadline: 30 April 2019

Registrations are now open for the sixth Channel Islands One Day Seminar.

**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

## 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!

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: Carey Olsen |  
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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 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*".

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

## Offshore One Day Seminar



Thursday 5 December 2019  
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.

## Electronic Newsletter Editorial Committee

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Business Recovery and Insolvency Practitioners Association of Nigeria

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International Women's Insolvency and Restructuring Confederation

Japanese Federation of Insolvency Professionals

Korean Restructuring and Insolvency Practitioners Association

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REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"

Restructuring and Insolvency Specialists Association (Bahamas)

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Turnaround Management Association (INSOL Special Interest Group)

Turnaround Management Association Brasil (TMA Brasil)



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