



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE

As quickly as you have said Happy New Year to family and friends, February is upon us. No doubt many of you have taken advantage of the early bird discount and are gearing up for INSOL Singapore from 2 – 4 April 2019. If you haven't yet registered, don't despair the extra amount payable will be worth it to attend what shapes up to be another great INSOL conference.

But back to the present. As always, a great range of articles and case notes have been assembled from across the globe.

The [feature article](#) laments the missed opportunities in Australia around proper restructuring reform. The financial services sector in Australia is "steeling" itself for a tough year after the Royal Commission into Misconduct in the Banking, Superannuation and Financial Service Industry handed down its report. The political focus will be on this industry so there is unlikely to be any opportunity in the short term for further insolvency reform in Australia.

Looking across the edition, we start in the Americas where [Quadriga](#), one of the largest cryptocurrency exchanges in Canada, has recently filed for creditor protection after the death of its CEO leaving US \$144 million inaccessible. Also from Canada we report on a decision of the [Supreme Court](#) around the interaction of environmental obligations and the Bankruptcy and Insolvency Act. From the [Cayman Islands](#), we have an offshore restructuring and insolvency case round up for 2018 and turning to the US, we report on a case from a Court in New York around [Chapter 15](#) where offshore debtors were allowed to take control of an investment account in the US.

Moving across to Asia Pacific and a range of cases starting with Hong Kong, where the High Court of Hong Kong "reels in" an

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](#)

objectionable [Peruvian fisheries](#) business by refusing to assist the New York based Chapter 11 Trustee. In [New Zealand](#), the High Court has affirmed the view that company directors cannot veto a Deed of Company Arrangement. Asia Pacific is rounded out by articles out of Australia relating to legislation with respect to the new [UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments](#) as well as an article continuing on the theme of [cryptocurrency and insolvency](#) detailing the issues that Courts around the world have grappled with in recent insolvency proceedings.

Europe, Africa and the Middle East are also not forgotten with notes on a recent case in the UK on [dividend payments](#) to shareholders prior to insolvency as well a proposal from the [European Council](#) to substitute or supplement the absolute priority rule. [Italy](#) has joined the fray with insolvency reform and the article in this edition discusses the changes to be brought about there by the new Bankruptcy Code.

I will leave you to read in depth this month's edition and remind you that it is not too late to register for INSOL Singapore. I hope to see many of you there.



Ian Dorey
Partner
K&L Gates

HIGHLIGHT ARTICLE

Australia – Safe Harbour but have we Missed the Boat?

In 2015 the Australian Federal Government launched its National Innovation and Science Agenda (Innovation Agenda) with a clear focus on encouraging entrepreneurship, innovation and investment across the Australian economy. As a result of this Innovation Agenda, over the course of 2017 and 2018, Australia saw the first real reforms to corporate insolvency laws for over 20 years, including the introduction of a safe harbour for directors from personal liability for insolvent trading and a stay on the enforcement of "ipso facto" clauses.

Whilst the reforms implemented have been welcomed, there is a view that these could have gone further if Australia was to truly embrace a restructuring mindset. By contrast Singapore, with its recent significant insolvency law reforms and its adoption of the UNCITRAL Model Law on Cross-Border Insolvency in March 2017 has unashamedly positioned itself to become the restructuring hub of the Asia Pacific region. This article examines the shortcomings of Australia's existing voluntary administration system and some missed opportunities for further reform.

Ian Dorey
Partner
Rebecca Dalais
Lawyer
K&L Gates

[Highlight Article >](#)

THE AMERICAS

CASES

Canada

QuadrigaCX's Insolvency: Problems in Tracing and Recovering Cryptocurrency When Keys Stored in Cold Wallets Are Missing

QuadrigaCX ("Quadriga"), one of the largest cryptocurrency exchanges in Canada, has filed for creditor protection under the Companies' Creditors Arrangement Act in Nova Scotia. The filing was precipitated by the sudden death of the exchange's CEO, Gerald Cotton. It has been alleged that Cotton had not disclosed to anyone the password to his hard drive or the keys to more than CAD \$190 million (approximately U.S. \$144 million) in cryptocurrencies held in a cold storage wallet, an offline wallet used to store cryptocurrencies. It has also been reported that there may be irregularities in the flow of funds and cryptocurrencies into and out of Quadriga's accounts and wallets.

[Blank Rome Case Note, February 2019 >](#)

Canada

Supreme Court of Canada Decision in Redwater: Early Implications

On 31 January 2019, the majority of the Supreme Court of Canada allowed the appeal of the AER and the Orphan Well Association and held that the abandonment and reclamation obligations of the debtor were binding on the Trustee, were neither "creditor" claims nor claims provable in bankruptcy and, therefore, did not conflict with the general priority scheme in the Bankruptcy and Insolvency Act. This Update offers a detailed analysis of the decision and the implications for the energy industry, the energy regulatory regime, the financial sector and more.

[Osler, Hoskin & Harcourt LLP Case Note, 1 February 2019 >](#)

[Case Decision >](#)

Cayman Islands

In the Courts 2018: Insolvency & Restructuring

This article (part of an annual offshore case round up) summarises a number of interesting insolvency and restructuring case decisions from the courts of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey and Mauritius. The cases show how similar and connected issues have been addressed by the different courts including in relation to foreign arbitral awards as grounds for winding up petitions and the ability of foreign office-holders to obtain recognition and assistance in these different jurisdictions.

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

USA

Chapter 15: Court Permits Foreign Debtors to Access and Receive Funds in U.S. Account

A court in New York has allowed offshore debtors to take control of an investment account in the U.S. over the objection of a shareholder. At stake was the court's discretion to permit chapter 15 debtors to access the funds and to transfer them outside the U.S. The shareholder asserted that its interests weren't fully protected, but the court ruled that on balance the debtors' need for the money outweighed the shareholder's concerns.

[Patterson Belknap Webb & Tyler Bankruptcy Update, 31 January 2019 >](#)

[Case Decision >](#)

CASES

Hong Kong

Hong Kong Court Spits Out Ceviche: “Objectionable” Peruvian Fisheries Business Chapter 11 Trustee Refused Common Law Assistance

In a highly international cross-border restructuring, the High Court of Hong Kong has refused to assist the New York based Chapter 11 trustee of a Singaporean subsidiary of the Cayman incorporated Peruvian business China Fishery Group. Significantly, the Court held that there was no way that the Chapter 11 proceedings could be recognised given the applicant had no connection to the US.

[Herbert Smith Freehills e-bulletin, January 2019 >](#)

[Case Decision >](#)

New Zealand

Company Directors Can't Veto DoCA

The power of administrators in a voluntary administration to authorise and execute a Deed of Company Arrangement (DoCA) without the board's consent has been recently affirmed by the New Zealand High Court. The decision provides welcome confirmation that a DoCA approved by creditors cannot be stymied either by unwilling directors, or by the absence of a functioning board.

[Chapman Tripp Brief Counsel, 31 January 2019 >](#)

[Case Decision >](#)

LEGISLATION

Australia

The Next Frontier: UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments

UNCITRAL has recently published its Model Law on Recognition and Enforcement of Insolvency-Related Judgments (MLREIJ), with a recommendation that nations adopt it into their domestic law. The MLREIJ provides a framework for the domestic recognition and effectuation of "insolvency-related judgments" issued by the courts of a foreign jurisdiction thereby streamlining cross-border insolvency proceedings, by reducing the prospect of conflicting judicial decisions. The MLREIJ has not yet been adopted in Australia (or any other nation) – this article provides the 'need to know' details and the factors that favour its adoption.

[Baker McKenzie Client Alert, Restructuring & Insolvency, January 2019 >](#)

ARTICLES

Australia

Cryptocurrency and Insolvency: 2018 the Year in Review

Late 2017 will be remembered as the period in which everyday investors adopted cryptocurrency as an alternative investment class and rode the highs of Bitcoin at USD\$20,000. In contrast, 2018 will be remembered as the year that cryptocurrency plunged and insolvency practitioners globally had to start considering how the asset class could be dealt with. The year began with one formal insolvency proceeding in the ongoing *Mt Gox* saga in Japan. By the year's end courts around the world began grappling with the many issues that arise once an insolvency proceeding includes crypto-assets.

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

EUROPE, AFRICA & THE MIDDLE EAST

CASES

UK

English Court of Appeal Provides Clarification Regarding the Regulation of Dividend Payments to Shareholders

In the recent case of *Global Corporate Ltd v Hale* [2018] EWCA Civ 2618, the Court of Appeal was asked to assess whether sums, described as "interim dividends", paid to a director / shareholder had been made in accordance with section 830 of the Companies Act 2006 prior to the company's insolvency. The Judgment is of interest both to companies seeking to declare dividend payments and insolvency practitioners who are considering whether to challenge the validity of such payments made prior to a company's insolvency.

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

[Case Decision >](#)

LEGISLATION

EU

Has Newton Had His Day? Relativity and Realism in European Restructuring

The forthcoming EU Directive on Preventive Restructuring Frameworks looks set to create an extensive toolbox with which Member States may equip entrepreneurs and enterprises seeking to respond to distress, without invoking formal insolvency proceedings. This article focuses on the primary conditions that must be met before a restructuring plan may be made effective against a claimant class, amongst whose members it has not attracted requisite support, i.e. on the preconditions for a 'cram-down' against a dissenting class.

[Eurofenix Winter 2018-2019, P.20-23 >](#)

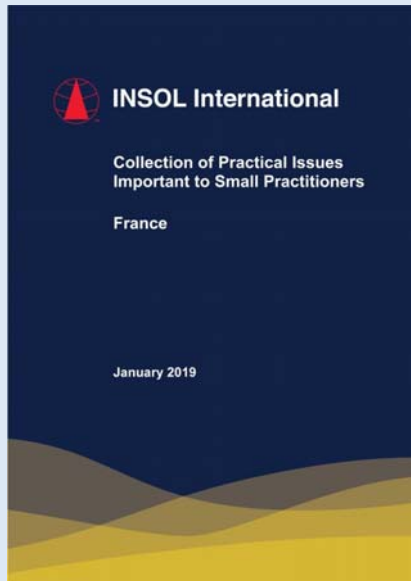
Italy

Italy's New Insolvency Code

On 10 January 2019, the Italian Government enacted a new bankruptcy code which replaces large swathes of Italy's insolvency legislation. The Code will entail a major overhaul of Italy's bankruptcy and restructuring framework, including by introducing alert measures that seek to identify and address distress situations at an early stage; providing mechanisms designed to facilitate the restructuring of corporate groups; limiting the use of judicial compositions with creditors to going-concern restructurings (as opposed to liquidations); and re-defining the requirements of debtor-in-possession financings.

[Cleary Gottlieb Alert Memorandum, 28 January 2019 >](#)

PUBLICATIONS



INSOL International Small Practice Paper - France

January 2019

This paper on France under the Small Practice Technical Paper Series focuses on "A Collection of Practical Issues Important to Small Practitioners". It provides a wealth of practical information and was written for INSOL by Isabelle Didier, Judicial Administrator, Founding Partner, CID & Associates and Founder and President of French Think Tank, GRIP 21; Myriam Maily, GRIP 21, Consultant to International Organisations; and Alexis Thomas, Law Student.

INSOL International sincerely thanks Isabelle Didier, Myriam Maily and Alexis Thomas for providing INSOL members with this very informative paper.

CONFERENCES & SEMINARS

INSOL Singapore
Annual Regional Conference
2 - 4 April 2019
Singapore

Main sponsors:

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ONE MONTH REMINDER, CLOSING DEADLINE 1 MARCH 2019

There is only one month to go until our booking deadline closes for INSOL Singapore 2019. Don't miss out on this opportunity to learn, share and network against the fantastic backdrop of the multicultural city of Singapore.

[Visit our website to reserve your place now](#)

Delegates from around the globe will be joining us to hear from some of the best speakers in the industry, including a keynote address by Professor Richard Susskind OBE, which will provide INSOL delegates with valuable insights as to what to expect in the future along with possibly some practical suggestions on how to prepare.

[Read more about the conference programme](#)

We look forward to welcoming you to Singapore.

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

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Small Practice Meeting:	Porzio Bromberg & Newman P.C.

For further information on sponsorship please contact Tina McGorman

REGISTER

before 1 March 2019 to secure your place!

INSOL Singapore - Offshore Ancillary Meeting

2 April 2019

We are delighted to be holding our offshore ancillary meeting in Singapore prior to the INSOL Annual Conference.

For more information on the programme please click [here](#)

To securely book your place for the offshore meeting before the booking deadline of the 1 March 2019 register [here](#)

INSOL International would like to thank our offshore sponsors:

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

Stockholm One Day Seminar



Wednesday 22 May 2019
Stockholm

Co-host: INSOL Europe

Early Booking Deadline: 5 April 2019

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

[Register online and view further details on our website >](#)

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

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 22 June 2019.

[Register online and view further details on our website >](#)

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.

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 Developments 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](#)

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