



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE

Welcome to the January edition of the INSOL News Update. Hopefully this new year of 2019 brings new clarity and solutions to the challenges of the modern era.

The [Highlight Article](#) this month is from Brazil and discusses the increasing use there of the out-of-court reorganisation procedure - aimed at specific groups of creditors - and some recent cases that have benefited from recognition under Chapter 15 of the US Bankruptcy Code.

In other articles this month, there is a report on a decision of the [High Court of Hong Kong](#) which examined a liquidator's powers to distribute a Hong Kong company's assets in the PRC; and a decision arising out of the collapse of CBL Insurance group in which the [High Court of New Zealand](#) was asked to consider whether the powers of interim (provisional) liquidators extended to entering into a commutation agreement with its largest creditor.

The benefits of cross-border insolvency co-operation are demonstrated in the report on the recently effective complex cross-border restructuring of the [Noble Group](#) of companies, involving the implementation of parallel English and Bermuda schemes of arrangement, recognition of the English scheme in the U.S. via Chapter 15 and, ultimately, a so-called "light touch" Bermuda provisional liquidation procedure. In contrast, the recent decision of the English Court of Appeal in the case of [OJSC International Bank of Azerbaijan](#) upheld the common law rule in *Gibbs*, that debt obligations governed by English law can only be discharged by an English process, despite its seeming incompatibility with the principle of modified universalism espoused by the Model Law.

Finally, the [Dubai International Financial Centre](#) makes its company and insolvency law even more versatile, with the introduction of a mechanism which will operate in a similar manner to a scheme of arrangement under English law.

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](#)

Thank you to all our contributors and I hope you enjoy reading this month's excellent selection of articles.



Fábio Rosas
Partner
Cescon, Barrieu, Flesch & Barreto
Advogados

HIGHLIGHT ARTICLE

Modern Trends in Out-of-Court Reorganisations and Cross-border Proceedings in Brazil

Less popular than the judicial reorganisation in the past, in recent years in Brazil, out-of-court reorganisation has proved to be an increasingly popular and effective measure to restructure the indebtedness of companies (including indebtedness with international financial institutions around the world). In an out-of-court reorganisation, the company may choose a focused group of creditors of the same nature or legal type to be restructured out-of-court. Recently out-of-court reorganisations in Brazil involving international debt have resorted to Chapter 15 of the United States Bankruptcy Code in order to give effect in the United States to and confirm the terms of the out-of-court reorganisation plans approved and ratified in Brazil.

Fábio Rosas
Partner
Luiz Guilherme Halasz
Associate
Cescon, Barrieu, Flesch & Barreto Advogados

[Highlight Article >](#)

THE AMERICAS

CASES

BVI

A Person Aggrieved: Challenging a Liquidator's Decision

In *Stevanovich v Wide & McDonald*, a recent decision of the BVI Commercial Court, a former director of the company sought to challenge the liquidators' decision to admit a proof of debt in circumstances where the liquidators had subsequently brought proceedings against him seeking a contribution to the assets of the company. The claim that the liquidators had admitted was the only claim made against the company. If the decision to accept the claim were

USA

Intercreditor Agreements After *Momentive*: When a Hindrance is Not a "Hindrance"

When a company encounters financial difficulties, intercreditor agreements are becoming increasingly important, as competing classes of creditors seek to maximize their share of the company's limited assets. Disputes often follow, as can be seen from the recent bankruptcy case of MPM Silicones, LLC and its affiliates (collectively, "*Momentive*"). This Legal

set aside, there would be no reason for the liquidation (or the contribution proceedings) to continue.

[Mourant Update, January 2019 >](#)

[Case Decision >](#)

Update delves into the US District Court for the Southern District of New York's recent decision in intercreditor litigation relating to *Momentive's* bankruptcy.

[Mayer Brown Legal Update, 13 December 2018 >](#)

[Case Decision >](#)

ARTICLES

USA

Proposed Amendments to Chapter 15 of the Bankruptcy Code

On 20 August 2018, the National Bankruptcy Conference (the NBC) submitted a letter (the NBC Letter) to representatives of the House Subcommittee on Regulatory Reform and the House Committee on the Judiciary that proposed certain technical and substantive amendments to chapter 15 of the Bankruptcy Code. The NBC is a voluntary, nonpartisan, not-for-profit organisation composed of approximately 60 of the nation's leading bankruptcy judges, professors, and practitioners. It has provided advice to Congress on bankruptcy legislation for 80 years. This article summarises the proposed amendments.

[Jones Day Business Restructuring Review, November - December 2018 >](#)

[The NBC Letter >](#)

ASIA PACIFIC

CASES

Hong Kong

Distributing Mainland Cash in Hong Kong Liquidation: Yuan More Reason to Depart from the Pari Passu Principle

A recent decision of the High Court of Hong Kong examined a liquidator's powers to distribute a Hong Kong company's assets in the PRC (being an RMB balance held in a Mainland bank account, a chose in action governed by Mainland law and subject to foreign exchange restrictions). Particularly, the Court looked at an unusual set of facts which meant there was some doubt as to whether the liquidator's proposed distribution was in keeping with certain key insolvency principles.

[Herbert Smith Freehills e-bulletin, 21 December 2018 >](#)

New Zealand

Scope of Powers of Interim Liquidators Considered by the High Court of New Zealand

In one of the decisions arising out of the collapse of New Zealand-based CBL Insurance group (CBLI), the High Court of New Zealand was asked to consider whether the powers of interim (provisional) liquidators extended to allowing the interim liquidators to enter into a commutation agreement with CBLI's largest creditor. The transaction had been assessed by actuaries as being in the best interests of CBLI's remaining creditors. This article considers whether the Court was right to take the approach that it did to the application.

[Case Note by Scott Barker, Partner, Buddle Findlay, 7 January 2019 >](#)

LEGISLATION

Australia

Enhanced Protection for Employee Entitlements and Measures to Combat Illegitimate "Phoenixing"

Two Australian Bills are expected to be passed in 2019 to address the growing problems associated with "phoenixing," the term used to describe situations where a company's directors strip out its cash and assets, liquidate the company and then restart it - usually under a slightly different name. The new company then rises from the ashes like the mythical bird, leaving among those ashes, creditors' claims including the Australian Taxation Office and sums due to employees.

[DLA Piper, Global Insight Series, 17 December 2018 >](#)

EUROPE, AFRICA & THE MIDDLE EAST

CASES

UK

Noble's Restructuring Now Effective; Lessons for Future Schemes

This cross-border restructuring, described by the English court as "of the utmost complexity," involved moving the Bermuda incorporated, Singapore-listed company's centre of main interests from Hong Kong to London, implementing parallel English and Bermuda schemes of arrangement, recognition of the English scheme in the U.S. via Chapter 15 of the U.S. Bankruptcy Code, and, ultimately, a so-called "light touch" Bermuda provisional liquidation procedure. The scheme of arrangement raised several crucial issues that were the subject of detailed consideration by the English court, principally: class constitution, scheme process, restructuring timetables, third-party releases, and disclosure of fees.

[Kirkland & Ellis Alert, 20 December 2018 >](#)

[Convening Judgment >](#)

[Sanction Judgment >](#)

UK

The Rule in *Gibbs* Marches On

The so-called "rule in *Gibbs*" is a common law rule which states that a discharge of a contractual obligation is only valid if effected by the law governing the obligation. The Cross-Border Insolvency Regulations 2006 (CBIR) implement and give the force of law in the UK to the UNCITRAL Model Law. Earlier this year in *Bakhshiyeva v Sberbank of Russia* and others [2018] EWHC 59 (Ch) (18 January 2018) Mr Justice Hildyard upheld creditors' objections to the grant of a permanent stay under the CBIR of their English law claims. Eleven months to the day and the Court of Appeal has unanimously affirmed the decision of Mr Justice Hildyard and held that the CBIR cannot be used to undermine the effect of the rule in *Gibbs*.

[Client Alert, Baker McKenzie, December 2018 >](#)

[Case Decision >](#)

LEGISLATION

UAE

Dubai's DIFC Introduces Scheme of Arrangement

In yet another example of the Dubai International Financial Centre (DIFC) making its company and insolvency law even more versatile, the DIFC has introduced a mechanism which will operate in a similar manner to a scheme of arrangement under English law. The law came into effect on 12 November 2018. The expectation is that the new DIFC mechanism will provide yet another advanced tool in an otherwise sophisticated tool box.

PUBLICATIONS

INSOL International Small Practice Paper - Czech Republic

December 2018

This study on Czech Republic under INSOL International's Small Practice Technical Paper Series focuses on "Small Practices and Consumer Debt Issues" and was written by Petr Sprinz, Partner, HAVEL & PARTNERS, Czech Republic and provides an update to the paper on the same topic written by Ivan Barabáš in December 2012.

INSOL International sincerely thanks Petr Sprinz for providing INSOL members with this very informative paper.

[View Small Practice Paper](#)



INSOL Singapore

Annual Regional Conference

2 - 4 April 2019

Singapore



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We hope you will join us in Singapore for the INSOL Annual Conference, 2 - 4 April 2019. The programme is packed with exceptional speakers covering highly relevant contemporary topics, providing insight, analysis and learning opportunities. As always, the INSOL conference offers unparalleled networking opportunities with other leading members of the profession. [Read more about the conference programme](#) here

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

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

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before 1 March 2019 to secure your place!

INSOL Singapore - Offshore Ancillary Meeting

2 April 2019

Following on from our very successful one day seminar that took place in New York in April last year, we are holding a further offshore ancillary meeting in 2019 at the Marina Bay Sands Expo and Convention Centre, Singapore on the 2nd April before the Annual Regional INSOL conference.

The programme will bring together world class and experienced professionals to discuss hot topics and provide a cutting edge perspective to cross border and offshore insolvency and restructuring.

To securely book your place for the offshore meeting before the early booking deadline of the 14th January 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

Following on from our successful 2018 seminar in Helsinki, INSOL International is delighted to announce our first seminar to take place in the beautiful city of Stockholm. This seminar is organised in association with INSOL Europe and with the support of restructuring professionals from across the Nordic region...**READ MORE**

REGISTRATIONS OPEN FEBRUARY 2019

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

Channel Islands One Day Seminar



Thursday 20 June 2019
Guernsey

INSOL International is delighted to announce the date of its 2019 Channel Islands seminar, to be held on Thursday 20th June 2019 in St Peter Port, Guernsey. The seminar is organised in association with ARIES, the Channel Islands INSOL member association, and with the support of restructuring professionals from Jersey and Guernsey...**READ MORE**

REGISTRATIONS OPEN FEBRUARY 2019

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

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 '*For further development in Asian insolvency and cross-border restructuring*'. Details will be available on our website shortly...**READ MORE**

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

Bahamas One Day Seminar



Thursday 5 December 2019
Bahamas

INSOL International will be running its first one-day seminar in the Bahamas on Thursday 5 December 2019. Please save the date! Details will be available on our website shortly.

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

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Business Recovery and Insolvency Practitioners Association of Nigeria	Instituto Iberoamericano de Derecho Concursal - Capitulo Colombiano	REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
Business Recovery and Insolvency Practitioners Association of Sri Lanka	International Association of Insurance Receivers	
	International Women's Insolvency and Restructuring Confederation	

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Group)

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