



INSOL INTERNATIONAL

News Update

[SHOW ARCHIVE](#)

December 2018 | ISSUE NO. 12

This issue is kindly
sponsored by...

David Rubin & Partners

Chartered Accountants
• Licensed Insolvency
Practitioners

CONTENTS

[HIGHLIGHT ARTICLE](#)[THE AMERICAS](#)[ASIA PACIFIC](#)[EUROPE, AFRICA &
MIDDLE EAST](#)[PUBLICATIONS](#)[CONFERENCES &
SEMINARS](#)[GROUP OF THIRTY-SIX](#)

EDITOR'S NOTE

"Fast away the old year passes" – taking with it gains in equity markets and crude oil prices and leaving a wake of political and financial uncertainty: Brexit, Federal Reserve interest rates, and international trade talks, to name a few.

As 2018 draws to a close, our [Highlight Article](#) derives a few useful lessons from U.S. bankruptcy cases over the past year – and another pair of articles consider [recent cases](#) defining the scope and limitations of the authority and jurisdiction of U.S. bankruptcy courts.

We also review recent [Singapore case law](#), which provides guidance with respect to the extent and conditions of its statutory moratorium and the ambit and effect of a charge. These case notes serve the dual purpose of illuminating the nation's recently enacted insolvency law – and reminding you to register this month for INSOL Singapore in April 2019.

Among other news, in contrast to recent Australian legislation creating a safe harbour for directors of distressed Australian companies, a landmark [German decision](#) increases the risk of personal liability for directors by interpreting many D&O policies to exclude coverage for GmbHG Section 64 claims.

I encourage you to take a few minutes out of a busy season for this worthwhile reading. And may December find you "laughing, quaffing all together," even if you don't fa-la-la-la-la.

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](#)



David L. Lawton
Senior Counsel
Bracewell LLP

HIGHLIGHT ARTICLE

2018 in Review: A Selection of U.S. Bankruptcy Decisions

On 28 November 2018, the Federal Reserve warned that “[a]sset valuations appear high relative to their historical ranges in several major markets, suggesting that investor appetite for risk is elevated.” If sustained, such appetite may herald elevated activity for insolvency professionals in the years to come. In anticipation of a less benign credit cycle, this year-end retrospective highlights a few developments in U.S. bankruptcy case law in 2018 in preparation for next year and beyond.

David L. Lawton
Senior Counsel
David Shim
Associate
Bracewell LLP

[Highlight Article >](#)

THE AMERICAS

CASES

ARTICLES

USA

Third Circuit Confirms There’s no Wiggle Room with Jurisdictional Limitations

A precedential decision issued on 28 November 2018 by the U.S. Court of Appeals for the Third Circuit highlights the limits of bankruptcy judges’ authority to transfer non-core proceedings to other courts. The Third Circuit’s opinion in this case also emphasises the importance of choosing the right forum for filing post-confirmation litigation.

[Case Note Squire Patton Boggs, 7 December 2018 >](#)

[Case Decision >](#)

Fugitive’s French Funds Left Fraught: Ninth Circuit BAP Authorises Compelled Consent Directives

When Michael Mastro fled to France to avoid turning over assets in an involuntary bankruptcy case filed against him, the chapter 7 trustee requested “unusual assistance” by asking the bankruptcy court to compel Mastro to sign a consent directive, allowing the trustee to request documents from international banks and financial institutions. This request led to an issue of first impression for the Ninth Circuit Bankruptcy Appellate Panel — do bankruptcy courts have the authority to compel debtors to sign consent directives?

[Case Note Weil, Gotshal & Manges LLP, 5 November 2018 >](#)

[Case Decision >](#)

ASIA PACIFIC

CASES

INDIA

Binani Cement's Saga: The End!!

The recent decision of the National Company Law Appellate Tribunal (NCLAT) in the case of Binani Cement Limited considered the rejection of a resolution plan by the adjudicating authority on the grounds that it was discriminatory for not providing for all financial creditors and operational creditors equitably. To decide the various issues the NCLAT reviewed: i) the object of the Insolvency and Bankruptcy Code, 2016 (IBC); ii) the object of a 'resolution' in accordance with the IBC and iii) what is expected from the committee of creditors (which consists only of financial creditors).

[Case Note, Jayesh H, Senior Partner, Ashish Mukhi, and Sumitava Basu, Principal Associates, Juris Corp Advocates & Solicitors, 12 December 2018 >](#)

[Case Decision >](#)

CASES

SINGAPORE

The Ongoing Evolution of Singapore's New Restructuring Law

Two recent (and ongoing) cases have provided valuable guidance on the application of key provisions in Singapore's new restructuring regime, including the qualifying criteria to obtain moratorium protection under section 211B(1) of the Companies Act (Cap 50, 2006, Rev Ed) (the Act); and the level of disclosure required to be provided by a company seeking to obtain moratorium protection pursuant to section 211B(4) of the Act.

[Case Note, Shaun Langhorne, Partner, Hogan Lovells Lee & Lee and Patrick Bance, Director, Borrelli Walsh, 7 December 2018 >](#)

[IM Skaugen Case Decision >](#)

SINGAPORE

A Singapore Court Sets Precedent on the Ambit and Effect of a Charge in Cases of Insolvency and Enforcement Involving a Receiver and Manager

The Singapore High Court in this case considered, in the context of claims of mandatory insolvency set-off and equitable set-off, the effect of a no-assignment clause and a no-charging clause on a pre-existing fixed charge and / or crystallised floating charge over the chargor's assets, setting new precedent and providing much needed comfort and clarity on the manner in which the security interests of secured parties are protected.

[Case Note, Cosimo Borrelli, Managing Director and Annabelle Cai, Director, Borrelli Walsh, 11 December 2018 >](#)

[Case Decision >](#)

CASES

Germany

New Insurance Risks for Directors & Officers in Germany

Claims brought by insolvency administrators under Section 64 of the German Limited Liability Companies Act GmbHG are not only among the most common, but also the most financially significant claims faced by the directors of distressed German companies. In a landmark decision, the Higher Regional Court of Düsseldorf recently determined that claims brought under Section 64 of the GmbHG are not covered by insuring provisions found in many D&O insurance policies.

[Jones Day Commentary, November 2018 >](#)

LEGISLATION

ARTICLES

UAE

IRELAND

The New UAE Banking Law and its Impact on Islamic Financing in the UAE

On 23 September 2018, the President of the United Arab Emirates promulgated Federal Law No. 14 of 2018 on the Central Bank and Organisation of Financial Institutions and Activities (the New UAE Banking Law) which came into force on 30 September 2018 on the day of its publication in the Official Gazette. The New UAE Banking Law will have impact on the regulatory landscape in the UAE for both fully fledged Islamic financial institutions and also conventional financial institutions operating through an Islamic finance window (Islamic Financial Institutions or IFIs).

[Clifford Chance Briefing, November 2018 >](#)

Dispute Resolution Funding in Ireland

Dispute resolution funding has been in the spotlight in Ireland following the delivery of the Persona judgment by the Irish Supreme Court in May last year. This article discusses the growing demand for dispute resolution funding in Ireland with reference to the Persona judgment and other industry developments that are driving demand for change.

[Vannin Capital's In Conversation Series, November 2018 >](#)

PUBLICATIONS

**INSOL International Small Practice Paper - Japan
November 2018**

This study on Japan under INSOL International's Small Practice Technical Paper Series focuses on "Small Practices and Consumer Debt Issues" and was written by Naoki Kondo and So Miyamoto, Oh-Ebashi LPC & Partners, Japan.

INSOL International sincerely thanks Naoki Kondo and So Miyamoto for providing INSOL members with this very informative paper.

[View Small Practice Paper](#)

INSOL International Technical Paper - New Cross-border Insolvency and Restructuring Law in Switzerland

November 2018

On 1 January 2019, a revised law on cross-border insolvency – Chapter 11 of the Swiss Federal Code on Private International Law - will enter into force in Switzerland. This paper provides a brief general overview of the Swiss insolvency regime and details the key changes to be implemented by the new cross-border provisions.

INSOL International sincerely thanks Roger Bischof, partner, Bonnard Lawson, *Fellow, INSOL International*, Switzerland for writing this excellent technical paper.

[View Technical Paper](#)

European High Yield Bond Restructurings - A User's Guide

December 2018

This User's Guide provides a wealth of information useful to practitioners and highlights the key factors impacting on a HYB restructuring; the recent trends and what to expect in the near future.

INSOL International sincerely thanks Alastair Beveridge and Mark Sinjakli for leading this project, and the co-authors Jacco Brouwer and John Bruce, all of AlixPartners, for producing this excellent Guide. A significant amount of research was carried out over a long period to produce this publication and INSOL is grateful to the authors for their hard work, continued interest and commitment shown throughout.

[View Guide](#)

CONFERENCES & SEMINARS



INSOL Singapore

Annual Regional Conference

2 - 4 April 2019

Singapore



Main sponsors:

**BORRELLI
WALSH** 保華



LIPMAN KARAS
A SPECIALIST LEGAL PRACTICE

NORTON ROSE FULBRIGHT



FIVE WEEKS TO THE EARLY BOOKING DEADLINE

INSOL Singapore 2nd – 4th April 2019 features two days of relentlessly relevant and exciting insight on topics as diverse as IP valuation, cryptocurrencies, block-chain and restructuring online businesses. Don't miss this opportunity to learn, debate and connect with key senior professionals from across the globe.... **READ MORE**

REGISTER

before 14th January 2019 to secure the early bird discount!

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 this 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:

Main Sponsor:	Carey Olsen LX Legal
Breakfast Sponsor:	Higgs & Johnson
Coffee break Sponsor:	KRyS Global
Lunch break Sponsor:	Walkers

For further information and details of sponsorship opportunities please contact [Sarah Smith](#)

Stockholm One Day Seminar



Wednesday 22 May 2019
Stockholm

Co-host: INSOL Europe

INSOL International and INSOL Europe are pleased to announce the date of our joint Stockholm one day seminar on Wednesday 22 May 2019. This is our second seminar in the Nordic-Baltic region, and follows the successful seminar in Helsinki in 2018, also hosted with our member association Finnish Insolvency Law Association.

For further information please contact Penny Robertson

Channel Islands One Day Seminar



Thursday 20 June 2019
Guernsey

INSOL International are delighted to announce the date for our next Channel Islands One Day Seminar that will take place in Guernsey on the 22 June. Please save the date in your diary.

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.

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

Electronic Newsletter Editorial Committee

Stephen Briscoe (Chair)

Scott Abel

Tara Cooper Burnside

Ian Dorey

Matthew Goucke

Volker Kammel

Sim Kwan Kiat

David Lawton

Fábio Rosas

Andrew Thorp

Alison Timme

Vincent Vroom

FFP, British Virgin Islands

Fellow, INSOL International, Buddle Findlay, New Zealand

Fellow, INSOL International, Higgs & Johnson, Bahamas

K&L Gates, Australia

Fellow, INSOL International, Walkers, Cayman Islands

Reed Smith, Germany

Rajah & Tann, Singapore

Bracewell LLP, USA

Cescon Barrieu, Brazil

Harneys, British Virgin Islands

PwC, South Africa

Fellow, INSOL International, Loyens & Loeff, UK

This issue is kindly sponsored by:

David Rubin & Partners

AlixPartners LLP	Dentons	Linklaters LLP
Allen & Overy LLP	DLA Piper	Morgan, Lewis & Bockius LLP
Alvarez & Marsal	EY	Norton Rose Fulbright
Baker McKenzie	Ferrier Hodgson	Pepper Hamilton LLP
BDO	Freshfields Bruckhaus Deringer	Pinheiro Neto Advogados
Brown Rudnick LLP	FTI Consulting	PwC
BTG Global Advisory	Goodmans LLP	Rajah & Tann Asia
Clayton Utz	Grant Thornton	RBS
Cleary Gottlieb Steen & Hamilton	Greenberg Traurig LLP	RSM
Clifford Chance	Hogan Lovells	Shearman & Sterling LLP
Conyers Dill & Pearman	Huron Consulting Group	Skadden, Arps, Slate, Meagher &
Davis Polk & Wardwell LLP	Jones Day	Flom LLP
De Brauw Blackstone Westbroek	King & Wood Mallesons	South Square
Deloitte LLP	Kirkland & Ellis LLP	Weil, Gotshal & Manges LLP
	KPMG LLP	White & Case LLP

INSOL International Member Associations

American Bankruptcy Institute	Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)	NIVD – Neue Insolvenzverwaltervereinigung Deutschlands e.V.
Asociación Argentina de Estudios Sobre la Insolvencia	INSOL Europe	Restructuring and Insolvency Specialists Association (Bahamas)
Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales	INSOL India	Recovery and Insolvency Specialists Association (BVI) Ltd
Association of Business Recovery Professionals - R3	Insolvency Practitioners Association of Malaysia	Recovery and Insolvency Specialists Association (Cayman) Ltd
Association of Restructuring and Insolvency Experts	Insolvency Practitioners Association of Singapore	Restructuring and Insolvency Specialists Association of Bermuda
Australian Restructuring, Insolvency and Turnaround Association	Instituto Brasileiro de Estudos de Recuperação de Empresas	REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law	Instituto Iberoamericano de Derecho Concursal	Restructuring Insolvency & Turnaround Association of New Zealand
Business Recovery and Insolvency Practitioners Association of Nigeria	International Association of Insurance Receivers	Russian Union of Self-Regulated Organisations of Arbitration Managers
Business Recovery and Insolvency Practitioners Association of Sri Lanka	International Women's Insolvency and Restructuring Confederation	
	Japanese Federation of Insolvency Professionals	

Canadian Association of Insolvency
and Restructuring Professionals

Commercial Law League of America
(Bankruptcy and Insolvency
Section)

Especialistas de Concursos
Mercantiles de Mexico

Finnish Insolvency Law Association

Ghana Association of Restructuring
and Insolvency Advisor

Korean Restructuring and
Insolvency Practitioners Association

Law Council of Australia (Business
Law Section)

Malaysian Institute of Accountants

Malaysian Institute of Certified
Public Accountants

National Association of Federal
Equity Receiver

Society of Insolvency Practitioners
of India

South African Restructuring and
Insolvency Practitioners Association

Turnaround Management
Association (INSOL Special Interest
Group)

Turnaround Management
Association Brasil (TMA Brasil)



Note: The INSOL News update will be circulated monthly.

If you would prefer not to receive an electronic copy of this newsletter in the future please let us know by clicking on the attached link.

PLEASE NOTE THAT THIS E-MAIL WAS SENT FROM AN ADDRESS THAT CANNOT ACCEPT INCOMING MESSAGES.

PLEASE DO NOT REPLY TO THIS ADDRESS.

If you have any queries or comments contact [Louise Jennings](#)

Copyright © INSOL INTERNATIONAL 2018. All Rights Reserved. Registered in England and Wales, No. 0307353.

INSOL, INSOL INTERNATIONAL, INSOL Globe are trademarks of INSOL INTERNATIONAL.

[UNSUBSCRIBE](#) | [PRIVACY POLICY](#)