



# INSOL INTERNATIONAL

## News Update

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### CONTENTS

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

### EDITOR'S NOTE

This edition arrives shortly after the eighth Africa Round Table conference was successfully held last month – this time in beautiful Mozambique. This year's theme, "Multinational Insolvencies in an African Context" provided the backdrop for many an insightful, important and at times very lively debate! Attendees were privileged to hear from many key role players on UNCITRAL's Model Law on Cross-Border Insolvency, including judges, practitioners and leading international experts, to name but a few.

Turning to November's newsletter, this month's [highlight article](#) focuses on an interesting judgment coming out of the Supreme Court of Appeal of South Africa, where some clarity was provided on the ranking of a practitioner's unpaid fees where business rescue proceedings are followed by liquidation proceedings. Debates on practitioner fees across most jurisdictions on the African continent are expected to continue as reform and regulatory frameworks are placed more and more into the spotlight.

Hot off the press is the announcement by the [Dubai International Financial Centre Authority](#) that it proposes to replace its current insolvency regime. Key aspects of the proposed reform include a new rehabilitation process and adoption of the UNCITRAL Model Law on Cross-Border Insolvency (with some modification). The interesting and sophisticated concept of cross-class cram-down is also looked at. This concept leads us to Europe, where the key elements of the [draft EU Restructuring Directive](#) are highlighted, including reference to such cross-class cram-downs. The 'safe harbour' model, which is extended to interim financing in the Directive, would certainly be welcomed further afield and onto the African continent, in some shape or form.

In the United States of America, the U.S. Bankruptcy Court for the Southern District of New York granted [Agrokor d.d](#) full Chapter 15

## 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](#)

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recognition of the Croatian restructuring proceedings. This case, and in particular the concept of modified universalism, was used a case study at the recently held Africa Round Table insolvency conference and certainly provides for interesting reading. Keeping on the US continent, in the face of what is referred to as the largest recall in automotive history, the case of [Takata Corporation](#) highlights the complexities of cross-border insolvency, but also just how relevant and important it is.

Finally, heading east, the Asia Pacific region again provides for some very relevant debate on the topic of [environmental duties](#) (and the ability of a liquidator to disclaim certain property) – this time arising from the Australian High Court.

Enjoy reading this month's edition – the articles are thought-provoking, educational and inspiring from start to finish.



**Alison Timme**  
**Director**  
**PwC, South Africa**

## HIGHLIGHT ARTICLE

### From Business Rescue Proceedings to Liquidation – Ranking of a Practitioner's Fees

In South Africa, and across a large part of the African continent, as insolvency reform and the introduction of rescue or administration type insolvency processes are written into law and put into practice, so the often thorny subject of remuneration and expenses has been placed firmly in the spotlight. There are questions of reasonableness, overall quantum and ranking, the latter of which was recently opined on by the Courts in South Africa in the case of *Diener N.O. v Minister of Justice and Others*, the main subject of this article.

**Alison Timme**  
**Director**  
**PwC, South Africa**

[Highlight Article >](#)  
[Case Decision >](#)

## THE AMERICAS

### CASES

#### BRAZIL

**TJ-SP Authorises Company Under Judicial Reorganisation to use ICMS Credit to Buy Input**

#### USA

**Agrokor's Landmark Dual Recognition Proceedings in the U.K. and U.S.; Bankruptcy Court Finds *Gibbs* Rule Does Not Prevent Recognition and Enforcement Under Chapter 15.**

The São Paulo State Court of Appeals recently authorised an agribusiness company under judicial reorganisation to use ICMS tax credit for the acquisition of raw materials and other inputs, despite debts owed to the State. Such authorisation, as a rule, is prohibited in cases in which the taxpayer has tax debts with the State, even though such debts are subject to instalment payment programmes.

[Tauil & Chequer Legal Update, 10 October 2018 >](#)

On 24 October 2018, after almost two months of review and deliberation, the U.S. Bankruptcy Court for the Southern District of New York issued a written opinion granting *Agrokor d.d.* and its affiliates full chapter 15 recognition of the Croatian restructuring proceedings and court-approved settlement agreement. The opinion is especially important because of its analysis of the English *Gibbs* rule. This Alert summarises the Chapter 15 cases and the main takeaways from the U.S. court's opinion.

[Kirkland & Ellis Client Alert, 5 November 2018 >](#)  
[Case Decision >](#)

## CASES

### USA

#### **U.S. Court Enjoins Asian Investor from Invoking Shareholder Purchase Rights in an Asian Joint Venture**

A U.S. Bankruptcy Court recently enjoined a Hong Kong-based investor from exercising its shareholder purchase rights in an Asian joint venture. The Bankruptcy Court's order also prevents the investor from proceeding with litigation to enforce its rights in a Hong Kong court. Neither of the joint venture partners, or the joint venture itself, are debtors in a domestic or foreign insolvency proceeding.

[K&L Gates Legal Insight, 1 November 2018 >](#)  
[Case Decision >](#)

## ARTICLE

### USA

#### **Takata – Anatomy of a Complex Cross-Border Restructuring**

In the face of the largest recall in automotive history, *Takata Corporation* and its subsidiaries worldwide implemented one of the largest and most complex global restructurings seen in years. The restructuring was anchored by a chapter 11 case in the United States Bankruptcy Court for the District of Delaware, along with insolvency proceedings in Japan buttressed by ancillary proceedings in other jurisdictions.

[Norton Rose Fulbright Article, October 2018 >](#)

## ASIA PACIFIC

## CASES

### AUSTRALIA

#### **High Court Locks the Gate on Linc Energy Appeal**

The High Court has decided not to hear an appeal about the ability of the Linc Energy Limited liquidators to disclaim property of the

## LEGISLATION

### AUSTRALIA

#### **A New Director Identification Number, Coming Soon for Every Australian Director**

On 1 October 2018, the Australian Government released the Treasury Laws Amendment (Registries Modernisation and Other Measures)

company – this means the liquidators could disclaim that property, including any obligations under the specific environmental protection order (EPO) issued under Queensland's environmental legislation. The current position stands that the disclaimer notice had the effect of avoiding obligations of both the company and its liquidators under the EPO.

[Baker McKenzie Client Alert, September 2018 >](#)  
[Case Decision >](#)

Bill 2018 for public consultation. This Bill introduces a new regime featuring a Director Identification Number (DIN) which will be assigned to each director, with the aim of better tracking directors and tackling the practice of illegal phoenixing.

[Clayton Utz Article, 25 October 2018 >](#)

## EUROPE, AFRICA & THE MIDDLE EAST

### LEGISLATION

#### UAE

##### DIFC to Up Its Game Yet Again

In September 2018 the Dubai International Financial Centre Authority announced that it proposes to replace its current insolvency law with a new law to update the insolvency regime to bring it in line with international best practice and that it has launched a consultation in relation to the same. This article looks at the key aspects of the proposed reforms.

[Freshfields Bruckhaus Deringer LLP Article, November 2018 >](#)

### ARTICLES

#### EUROPE

##### A New EU Landscape for Restructuring: Having Your Cake and Eating it Too?

The landscape for out-of-court restructurings in Europe is set for significant changes, which may come much earlier than expected. The purpose of this briefing is to explain the key elements of the future EU Restructuring Directive, its transpositions into national laws and practical consequences.

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

#### UK

##### The Corporate Insolvency Framework Review: A New UK Rescue Culture?

Almost forty years on from the introduction of Chapter 11 in the US, the UK government has announced plans to reform the UK's insolvency and restructuring framework. It appears that the Government's intention is to create a more debtor-friendly environment. This article examines the potential the Government's proposals have to effect a shift in the dynamic of the UK rescue culture.

[South Square Digest, October 2018 >](#)

### PUBLICATIONS

**Financing the Rescue Process - A Comparative Analysis of the Financing Regimes in Australia, Canada, South Africa, United Kingdom and United States of America**

October 2018

INSOL International sincerely thanks Dr Eric Levenstein, Director, Werksmans Attorneys, South Africa for this Special Report which provides an overview of post-commencement finance principles including: the need for such finance in a restructuring process; the potential sources of and the challenges inherent in sourcing post-commencement finance; and the manner in which the provision of post-commencement finance is treated in the ranking of claims in a business rescue ... **READ MORE**

[View Special Report](#)

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 **INSOL Singapore**

**Annual Regional Conference**

2 - 4 April 2019  
Singapore

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We are delighted to announce that registration for the INSOL Annual Conference 2019 is now open! You can book your place at the early bird rate until 14 January 2019.

[REGISTER NOW](#)

The Annual Conference has the theme “Looking to the future: what to expect and how to prepare”.... **READ MORE**

### **INSOL SINGAPORE - OFFSHORE ANCILLARY MEETING** **2 April 2019**

Following on from our successful one day offshore ancillary meeting held in New York this year, we will be holding an offshore ancillary meeting next year again prior to INSOL Singapore... **READ MORE**





## SAVE THE DATE

INSOL International Channel Islands One  
Day Seminar  
20 June 2019

Guernsey

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