



INSOL INTERNATIONAL

News Update

[SHOW ARCHIVE](#)

OCTOBER 2018 | ISSUE NO. 10

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

This month, we are very excited to introduce the new look version of the INSOL News Update and, as usual, there are a number of intriguing articles which will be of interest to many of you.

Starting off in the Americas region, the [highlight article](#) deals with a recent decision of the Grand Court of the Cayman Islands which confirms that, in certain circumstances, a director will be entitled to rely upon the indemnification and exculpation provisions contained in the company's articles of association (despite not being a party to that agreement). Also from the Cayman Islands is an article summarizing the most recent decision in the long-running [Herald Fund v Primeo Fund](#) proceedings in which it was determined that a 'redemption creditor' was entitled to statutory interest in the same manner as ordinary unsecured creditors (despite a statutory deferment behind ordinary creditors in terms of principal). There is also an informative [article](#) from Canada in which the British Columbia Supreme Court confirmed the court's broad power and discretion to stay the operation of an agreement to arbitrate if necessary to maximize recoveries for the benefit of all stakeholders in an insolvency proceeding.

Turning to the Asia Pacific region, we have an article dealing with the Supreme Court of Western Australia Court of Appeal's decision on [insolvency set off](#). Also from Australia, we have an [article](#) considering whether a creditors' scheme of arrangement may potentially achieve a quicker and cheaper resolution of various underlying claims, rather than litigating protracted class action proceedings. In Singapore, we have articles dealing with (a) increasing liberalisation of [third party litigation funding](#) and (b) the recent passing of the brand-new [Omnibus Insolvency Bill](#).

In terms of EMEA, in Jersey we have a decision in the [Z Trusts](#) case finding that the costs of proving a claim are not recoverable

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](#)

from the assets of an insolvent trust. From the UK, we have an article detailing the practical implications for the cross-border European restructuring and insolvency landscape of a possible [“no-deal” or “hard” Brexit](#). From Italy we have an interesting summary of the recent restructuring efforts of [Astaldi](#), a multi-national construction company.

As always, there are a variety of interesting articles from around our global network and I hope that, as I have done, you also find them engaging and thought-provoking.



Matthew Goucke
Fellow, INSOL International
Partner
Walkers, Cayman Islands

HIGHLIGHT ARTICLE

Directors' Indemnities Revisited

A recent judgment of the Grand Court of the Cayman Islands in *Steven Goodman v Dawn Cummings and Ors*, unreported, (Mangatal J) has provided clarification of the circumstances in which a former director of a company may rely on indemnification provisions contained in a company's articles of association and, in particular, whether – in the absence of any separate director's service agreement – such provisions will be deemed to form part of the contract between the director and the company (notwithstanding that the articles of association are often described as a 'statutory contract' made between the company and its members – the director(s) is not a direct contractual counterparty).

Matthew Goucke, Fellow, INSOL International
Partner
Peter Kendall
Senior Counsel
WALKERS, Cayman Islands

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

THE AMERICAS

CASES

CANADA

Receiver of Insolvent Power Generation Company in British Columbia Wins Battle with BC Hydro – Allowing Dispute to be Heard by the Court Instead of by Arbitration

CAYMAN ISLANDS

Cayman Court Confirms Redemption Creditors' Entitlement to Statutory Interest

In this most recent decision in the long-running *Herald Fund v Primeo Fund* proceedings, the Grand Court of the Cayman Islands

In a recent decision *Industrial Alliance Insurance and Financial Services Inc. v Wedgemount Power Limited Partnership* 2018 BCSC 970, the British Columbia Superior Court confirmed that under Canada's Bankruptcy and Insolvency Act, courts have broad powers and discretion to protect the interests of creditors and other affected parties including by staying the operation of an agreement to arbitrate if it is necessary to maximise recoveries in an insolvency proceeding.

[Baker McKenzie Case Note, 3 October 2018 > Case Decision >](#)

determined, for the first time, the question of whether a redeemed but unpaid investor is entitled to receive statutory interest on its debt for the period it remains unpaid. Ultimately, it was determined that a 'redemption creditor' was entitled to statutory interest in the same manner as ordinary unsecured creditors (despite a statutory deferment behind ordinary creditors in terms of principal).

[Mourant Update, October 2018 > Case Decision >](#)

ASIA PACIFIC

CASES

AUSTRALIA

Set-Off Under Section 553C – It Forges On

On 21 September 2018, the Supreme Court of Western Australia Court of Appeal delivered the eagerly anticipated decision in *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd (In Liquidation) (Receivers and Managers Appointed)*. The appeal decision has come down on the side of what many considered to be the correct position for set-off compared to the findings in the first *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd (In Liquidation) (Receivers and Managers Appointed)* case which held that mutuality, and therefore the right of set-off, was effectively lost by reason of the grant of security.

[K&L Gates Case Note, October 2018 > Case Decision >](#)

SINGAPORE

Singapore High Court Opens the Door on Commercial Third-Party Funding for Insolvent Companies

On 11 September 2018, a Singapore court issued a declaration allowing a *commercial* third-party funding agreement to proceed and be enforceable under the common law. This is the latest development in the steady liberalisation of the litigation-funding market in Singapore. The ruling in this case was precipitated by the collapse and subsequent restructuring of *PT Trikom Sel Oke Tbk* one of the largest telecommunications and mobile devices companies in Indonesia.

[Case Note by Ashok Kumar, Gregory Leong and Cephas Yee, BlackOak LLC, 2 October 2018 >](#)

LEGISLATION

SINGAPORE

Singapore's Omnibus Insolvency Bill

Singapore's new Insolvency, Restructuring and Dissolution Bill (IRDB) was passed on 1 October 2018 after its second reading in Parliament; its effective date has yet to be announced. The Bill proposes to consolidate Singapore's insolvency

ARTICLE

AUSTRALIA

Creditors' Schemes of Arrangement – a Restructuring Tool to Pre-empt Class Action Risks?

In recent years, Australian companies have been besieged by a proliferation of class actions, including shareholder class actions. Australia's

laws for both personal bankruptcy and corporate insolvency under a single piece of "omnibus" legislation and introduces some important new provisions including restrictions on the operation of contractual ipso facto clauses when judicial management or a scheme of arrangement is afoot; and a significant number of amendments and provisions updating and modernising insolvency practice.

[Article by Patrick Ang and Chew Xiang, Rajah & Tann Singapore LLP, 3 October 2018 >](#)

[Insolvency, Restructuring and Dissolution Bill >](#)

active litigation funding market has contributed to this phenomenon. Class actions are inevitably costly, time-consuming and capable of posing significant disruption and irreversible damage to the defendant companies. For directors of a company threatened with class action litigation, one possible solution – which this article seeks to explore – is to propose a creditors' scheme of arrangement to compromise potential claims and forestall the commencement or continuation of court proceedings against the company.

[Clayton Utz Article, 27 September 2018 >](#)

EUROPE, AFRICA & THE MIDDLE EAST

CASES

JERSEY

Z Trusts – Costs of Proving a Claim are not Recoverable from the Assets of the Insolvent Trust

On 10 September 2018, the Royal Court handed down its judgment on the final outstanding issue in the current round of the *Z Trusts* case on the question of entitlement, in the context of an insolvent trust, to recover from the insolvent estate the costs incurred in proving a claim. Following its determination in July that the claims of creditors of an insolvent trust should rank *pari passu* rather than on a first in time basis, the Court dealt separately with the question of whether a creditor (in this case also a former trustee) could claim from the insolvent trust its costs incurred in proving its claim.

[Mourant Update, September 2018 >](#)
[Case Decision >](#)

ARTICLES

ITALY

Astaldi Files for Concordato In Bianco

Astaldi, the Italian multinational construction company, filed on Friday (28 September) for *concordato in bianco*. This is an in-court restructuring proceeding under the Italian Bankruptcy Law, which imposes a standstill period for up to six months. Astaldi's reference to certain provisions in the Bankruptcy Law indicates that it intends to use the standstill period to prepare for a *concordato preventivo* filing.

This report discusses:

- Key takeaways for bondholders;
- *Concordato in bianco*; and
- *Concordato preventivo*

UK

Hard choices: Restructuring and Insolvency Dealmakers Face Uncertainty Ahead of Possible "Hard Brexit"

The U.K. and the E.U. are stepping up preparations for a possible "no deal" Brexit (the U.K. is scheduled to leave the E.U. on 29 March 2019; it is yet to be determined what kind of deal or transition arrangements - if any - will be reached). The U.K. Government has issued guidance on the prospect of a "no deal" Brexit, including the possible future of the cross-border European restructuring and insolvency landscape. This alert considers the potential practical implications of this scenario and the key takeaways for a "no deal" Brexit.

[Hogan Lovells Article, 4 October 2018 >](#)

This article will appear in Volume 15 issue 6 of International Corporate Rescue

[Kirkland & Ellis Client Alert, 24 September 2018 >](#)

[UK Government's Announcement >](#)

PUBLICATIONS

INSOL International Book - Insolvency and Trusts

September 2018

This book discusses a range of issues that arise in insolvency situations, such as can a trust, settlor, a trustee, a beneficiary, or a protector become insolvent and what is the effect of bankruptcy on a trust and a settlor; can an insolvency procedure extend to trust assets located in local as well as foreign jurisdictions; and can trusts be challenged to obtain assets, to obtain information, and to examine witnesses. ... **READ MORE**

[View Book](#)

INSOL International Special Report - Developments in Asian Restructuring and Insolvency Regimes

October 2018

In the recent past, we have seen significant changes in the legal and regulatory environments in many countries in the Asia Pacific region. In China, a number of legislative changes have been introduced to liberalise the NPL market and debt for equity swaps. In Singapore, the Companies Amendment Act 2017 came into force last year which made sweeping changes to the existing schemes of arrangement and judicial management procedures. In Australia the Companies Act 2001 was amended and new 'safe harbour' provisions were introduced to protect company directors against insolvent trading claims, and a stay on enforcing so-called *ipso facto* clauses was introduced. This report discusses these key developments and more ... **READ MORE**

[View Report](#)

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



Save the date for the INSOL International Asia Pacific Annual Regional Conference taking place in Singapore at the Sands Expo and Convention Centre, Marina Bay Sands... [READ MORE](#)

Registrations are now open!

[REGISTER NOW](#)

Africa Round Table Open Forum



Friday 26 October 2018
Polana Serena Hotel, Maputo, Mozambique

We would like to thank the following sponsors for their generous support of Africa Round Table:

Platinum sponsors: DLA Piper | PwC
Gold sponsors: Bowmans | ENSAfrica

Hong Kong One Day Seminar



Wednesday 7 November 2018
Four Seasons Hotel, Hong Kong

We would like to thank the following sponsors for their generous support of the INSOL Hong Kong One Day Seminar:

Dinner sponsor: Grant Thornton

[READ MORE](#)

Platinum Sponsors: Carey Olsen | Conyers Dill & Pearman | Lipman Karas | Tanner De Witt

Lunch Sponsor: Zolfo Cooper

Coffee Breaks Sponsor: Campbells

Cocktail Reception Sponsor: Harneys

[READ MORE](#)

BOOKING DEADLINE
24 OCTOBER

[REGISTER NOW](#)

Electronic Newsletter Editorial Committee

Stephen Briscoe (Chair)	FFP, British Virgin Islands
Scott Abel	<i>Fellow, INSOL International</i> , Buddle Findlay, New Zealand
Tara Cooper Burnside	<i>Fellow, INSOL International</i> , Higgs & Johnson, Bahamas
Ian Dorey	K&L Gates, Australia
Matthew Gouke	<i>Fellow, INSOL International</i> , Walkers, Cayman Islands
Volker Kammel	Reed Smith, Germany
Sim Kwan Kiat	Rajah & Tann, Singapore
David Lawton	Bracewell LLP, USA
Fábio Rosas	Cescon Barrieu, Brazil
Andrew Thorp	Harneys, British Virgin Islands
Alison Timme	PwC, South Africa
Vincent Vroom	<i>Fellow, INSOL International</i> , Loyens & Loeff, UK

This issue is kindly sponsored by:

David Rubin & Partners



INSOL International
GROUP THIRTY-SIX

AlixPartners LLP
Allen & Overy LLP
Alvarez & Marsal
Baker McKenzie
BDO
Brown Rudnick LLP
BTG Global Advisory
Clayton Utz

Dentons
DLA Piper
EY
Ferrier Hodgson
Freshfields Bruckhaus Deringer
FTI Consulting
Goodmans LLP
Grant Thornton

Linklaters LLP
Morgan, Lewis & Bockius LLP
Norton Rose Fulbright
Pepper Hamilton LLP
Pinheiro Neto Advogados
PwC
Rajah & Tann Asia
RBS

Cleary Gottlieb Steen & Hamilton
Clifford Chance
Conyers Dill & Pearman
Davis Polk & Wardwell LLP
De Brauw Blackstone Westbroek
Deloitte LLP

Greenberg Traurig LLP
Hogan Lovells
Huron Consulting Group
Jones Day
King & Wood Mallesons
Kirkland & Ellis LLP
KPMG LLP

RSM
Shearman & Sterling LLP
Skadden, Arps, Slate, Meagher & Flom LLP
South Square
Weil, Gotshal & Manges LLP
White & Case LLP

INSOL International Member Associations

American Bankruptcy Institute

Asociación Argentina de Estudios
Sobre la Insolvencia

Asociación Uruguaya de Asesores
en Insolvencia y Reestructuraciones
Empresariales

Association of Business Recovery
Professionals - R3

Association of Restructuring and
Insolvency Experts

Australian Restructuring, Insolvency
and Turnaround Association

Bankruptcy Law and Restructuring
Research Centre, China University
of Politics and Law

Business Recovery and Insolvency
Practitioners Association of Nigeria

Business Recovery and Insolvency
Practitioners Association of Sri
Lanka

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

Hong Kong Institute of Certified
Public Accountants (Restructuring
and Insolvency Faculty)

INSOL Europe

INSOL India

Insolvency Practitioners Association
of Malaysia

Insolvency Practitioners Association
of Singapore

Instituto Brasileiro de Estudos de
Recuperação de Empresas

Instituto Iberoamericano de
Derecho Concursal

International Association of
Insurance Receivers

International Women's Insolvency
and Restructuring Confederation

Japanese Federation of Insolvency
Professionals

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

NIVD – Neue
Insolvenzverwaltervereinigung
Deutschlands e.V.

Restructuring and Insolvency
Specialists Association (Bahamas)

Recovery and Insolvency
Specialists Association (BVI) Ltd

Recovery and Insolvency
Specialists Association (Cayman)
Ltd

Restructuring and Insolvency
Specialists Association of Bermuda

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

Restructuring Insolvency &
Turnaround Association of New
Zealand

Russian Union of Self-Regulated
Organisations of Arbitration
Managers

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](#)