

TOUCHPOINT

THE INSOL NEWSLETTER FOR SMALL PRACTICES



August 2019

Welcome from the Chair



Dr. Eric Levenstein
Director, Werksmans
Attorneys, South Africa

**Chair, Small Practice
Issues Committee**

As Chair of INSOL's Small Practice Issues Committee, it is my pleasure to be in a position to introduce our brand new Small Practice Issues Group newsletter, "Touchpoint", to all of you. The Small Practice Group now has its own dedicated newsletter where INSOL members can contribute articles, case law updates and pertinent news about practice. We are looking to include features such as opportunities for secondments within practices, details of work referrals within the Small Practice membership and the publication of the profiles of members. A lot of the content of the newsletter will be drawn by feedback and input from members. We look forward to an informative and exciting publication which will serve to promote the relationship between members and further to enhance networking opportunities amongst members of this group.

This newsletter includes original articles specially commissioned from good friends of INSOL and reproduces articles from practitioners across the globe. We hope to widen the contribution network in future editions and if you or any of your colleagues would like to contribute on issues which you think would be of interest to the small practitioner community, please be in touch. This newsletter was an initiative which emanated from Task Force 2021. I would like to thank Peter Sargent and Andrew Tate, who master-minded the newsletter project and for their input and contribution to the conceptualisation and publication of the newsletter.

I thought it useful to provide some background and insight into the Small Practice Issues Group.

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Peter Sargent
Quantuma LLP

**INSOL Small
Practice Board
Director**

Members will recall the start of the Taskforce consultation which began back in 2015 which was tasked with the onerous and difficult job of rethinking how INSOL worked for its members. I recall the mantra of 'effortless access' to services and one of the main issues which arose was the communication between members, their member associations and INSOL. Many if not most individual members of INSOL actually work in what they consider are small practices, but many members also see INSOL as a big firm organisation with little relevance to their day to day work.

The board of INSOL in general consists of representatives of these membership associations and a small number of special interest representatives such as the World Bank. The Taskforce decided that the small practitioner community was a special interest group which needed its own representation to help break the myth that INSOL was for big firms only.

My job, therefore, as a director of INSOL is to represent the interests of the global small practitioner community. A massive task on which we are only just getting started. This newsletter is just one of the first initiatives and hopefully many more will follow. We live in a shrinking world where even small businesses trade more and more across the globe. Assets are owned in many jurisdictions, suppliers can be anywhere on the planet, owners can also live anywhere. The need for the smaller practitioner to develop, grow and hold on to international connections has never been greater. One of my aspirations is to find a way so we can channel these opportunities to members of our community.

ARTICLES

India

Overview and Procedure of Insolvency Law in India

The Insolvency and Bankruptcy Code 2016 (IBC / Code) was made effective in India in

December 2016 and has proved to be a game-changer in the resolution of debt in the country.

Before the IBC, creditors were constrained to approaching civil courts where endless litigation gave promoters a chance to delay payments without losing control of their companies. The banking sector was plagued with rising NPA numbers.

With the advent of IBC, the entire scenario has changed and the promoter is now forced to think twice before committing a default. The process is 'creditor-in-control' which is the biggest deterrent for a promoter. This article provides an overview of the new legislation in India and an idea about how it works.

[Article by Anagha Anasingaraju, Partner, KANJ & CO LLP, India, July 2019 >](#)

New Zealand

Insolvency Practitioners to be Licensed and Regulated

The New Zealand parliament has passed the Insolvency Practitioners Regulation Act 2019 (IPRA) and the Insolvency Practitioners

Regulation (Amendment) Act 2019 (IPRAA), which developed from the Insolvency Practitioners Bill 2010.

The provisions that enable the Registrar of Companies to prescribe the requirements for a licence (such as setting minimum standards of competence and experience), grant accreditation to professional bodies, and for regulations to be made, will come into force immediately. The balance of the legislation will come into effect gradually over the next 12 months. This article provides the key points that you need to know.

[Kensington Swan Article, June 2019 >](#)

Cutting Edge Issues for South African Boards of Directors Facing Financial Distress in 2019

South Africa, like other international jurisdictions, has sought to regulate directors' obligations in order to prevent reckless trading, which causes prejudice to suppliers of goods and services, employees and other trading parties involved with the financially distressed company. It is important, however, to understand that it is necessary to maintain a balance between the competing goals and interests of different stakeholders such as the directors who manage the company, and the creditors and shareholders who have a distinct and independent interest in the company's continued success. This article looks at South African directors obligations as set out in the Companies Act No. 71 of 2008; particularly with regard to their potential exposure to claims whilst sitting on boards of companies in South Africa.

[Werksmans Legal Brief, June 2019 >](#)

Brexit, Borders and Bankruptcy - the Glass Half Empty

The possibility of a no deal Brexit moves ever closer. Even if an agreement is reached this may not deal with all the many issues facing the UK. Such "issues" certainly extend into the arena of insolvency legislation and, in particular, a no deal Brexit will have implications for cross-border insolvency cases.

At present the Recast Insolvency Regulation provides for mutual recognition and application of the insolvency legislation of EU member states across all other EU member states (excepting Denmark). It applies to both company and individual insolvency regimes. This article looks at the effect of the loss of this mutual recognition which has assisted UK insolvency practitioners in dealing with administration of cases when assets are located in other EU states.

[Article by Kathryn MacLennan, Partner, KBL Solicitors LLP, July 2019 >](#)

Insolvency Law Reform - Who is Calling the shots?

Given the impact of corporate insolvencies on the wider economy of a state, it is not surprising that insolvency law reform is being influenced beyond the government departments responsible for policy and legislative oversight. In particular, taxation authorities are having an influence on recent developments. This note will consider recent contrasting approaches in the UK and Australia, dealing respectively with, the partial re-introduction of the Crown preference and the proposed measures to combat illegal phoenix activity.

[Article by Peter Walton, Professor of Insolvency Law, University of Wolverhampton and Chris Umfreville, Lecturer, Aston University, July 2019 >](#)

VIDEO SERIES

Andrew Tate in conversation with Small Practice Committee Members
Eric Levenstein (Chair), Robert Hänel and John Mairo on Directors' Responsibilities



PODCAST SERIES

Alternative Roles for Small Practitioners in Cross-Border Restructuring

Eric D. Schwartz, Partner, Morris, Nichols, Arsht & Tunnell LLP in conversation with Michael E. Foreman. Michael (now Managing Director, Borrelli Walsh) discusses his role as General Counsel and Chief Restructuring Officer of UTAC Holdings Ltd. (including its subsidiary Global A&T Electronics Ltd.) in its successful restructuring of \$1.13 billion of US dollar debt.

[Listen Here >](#)

May 2018

CONFERENCE REPORT



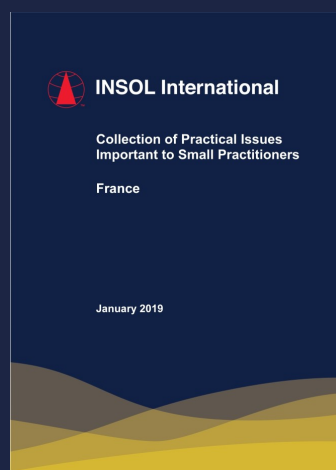
INSOL Singapore 2019 had a successful, well-attended Small Practice Issues Open Meeting, sponsored by Porzio, Bromberg & Newman, P.C. USA. The Small Practice Issues Committee Chair Eric Levenstein (Werksman Attorneys, South Africa) provided opening remarks, highlighting the growth of INSOL's Small Practice membership and programming.

The session began with a discussion, led by Mary Hall on **"Marketing Strategy: Get Yourself Noticed"**. This was followed by a panel session chaired by Robert Hanel, entitled **"This Land is my Land...Realization of Real Estate Abroad"**. The panel consisted of John Baird, Mylène Boché-Robinet, Luis Fernando Palomino Bernal and Xavier Pareja.

[Click here](#) to read the full report by John S. Mairo, and view the PowerPoint presentation materials via the link below.

"This Land is my Land...Realization of Real Estate Abroad" PowerPoint Presentation

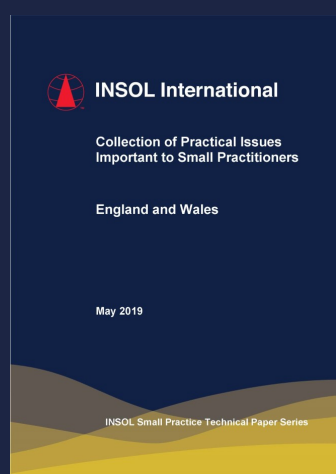
SMALL PRACTICE PUBLICATIONS 2019



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 Mailly, GRIP 21, Consultant to International Organisations; and Alexis Thomas, Law Student.



INSOL International Small Practice Paper - England and Wales

May 2019

This study on England and Wales, under the Small Practice Technical Paper Series, focuses on "A Collection of Practical Issues Important to Small Practitioners". The paper was written for INSOL by Kevin Lucas FCA FABRP, Managing Director, Lucas Johnson Limited and provides an update, in relation to England and Wales, to a paper on the UK written by Peter Sargent in April 2012.

All of the Small Practice technical publications are available for members to view in our [technical library](#). In addition to our technical projects, we have a quarterly Small Practice feature article in INSOL World.

If you would be interested in contributing to any of our technical projects or in writing an article for INSOL World please contact Jelena Wenlock at jelena@insol.ision.co.uk.

Small Practice Membership Issues Committee

Eric Levenstein (Chair)	Werksmans Attorneys, Republic of South Africa
Eric Baijal	BBM Solicitors, UK
William Courage	Courage Consulting, Canada
Adam Crane	HSM, Cayman Islands
Robert Hanel	Anchor Rechtsanwälte, Germany
Ayo Kusamotu	<i>Fellow, INSOL International</i> , Kusamotu & Kusamotu, Federal Republic of Nigeria
David Lewis	BDO Canada Limited, Canada
John Mairo	<i>Fellow, INSOL International</i> , Porzio, Bromberg & Newman, P.C., USA
Peter Sargent	Quantuma LLP, UK
Daniel Sejas	MHS Sprecher Grier, UK
Dawie Van der Merwe	Independent Advisory (Pty) Ltd, Republic of South Africa

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

INSOL International Member Associations

American Bankruptcy Institute	Finnish Insolvency Law Association	Malaysian Institute of Accountants
Asociación Argentina de Estudios Sobre la Insolvencia	Ghana Association of Restructuring and Insolvency Advisors	Malaysian Institute of Certified Public Accountants
Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales	Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)	National Association of Federal Equity Receiver
Associação Portuguesa de Direito da Insolvência e Recuperação	INSOL Europe	NIVD – Neue Insolvenzverwaltervereinigung Deutschlands e.V.
Association of Business Recovery Professionals - R3	INSOL India	Recovery and Insolvency Specialists Association (BVI) Ltd
Association of Restructuring and Insolvency Experts (Channel Islands)	Insolvency Practitioners Association of Malaysia	Recovery and Insolvency Specialists Association (Cayman) Ltd
Australian Restructuring, Insolvency and Turnaround Association	Insolvency Practitioners Association of Singapore	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 Brasileiro de Estudos de Recuperação de Empresas	Restructuring and Insolvency Specialists Association (Bahamas)
Business Recovery and Insolvency Practitioners Association of Nigeria	Instituto Iberoamericano de Derecho Concursal	Restructuring and Insolvency Specialists Association of Bermuda
Business Recovery and Insolvency Practitioners Association of Sri Lanka	Instituto Iberoamericano de Derecho Concursal - Capitulo Colombiano	Restructuring Insolvency & Turnaround Association of New Zealand
Business Recovery Professionals (Mauritius) Ltd	International Association of Insurance Receivers	
	International Women's Insolvency and Restructuring Confederation	

Canadian Association of Insolvency
and Restructuring Professionals

Commercial Law League of America
(Bankruptcy and Insolvency
Section)

Especialistas de Concursos
Mercantiles de Mexico

Japanese Federation of Insolvency
Professionals

Korean Restructuring and
Insolvency Practitioners Association

Law Council of Australia (Business
Law Section)

South African Restructuring and
Insolvency Practitioners Association

Turnaround Management
Association (INSOL Special Interest
Group)

Turnaround Management
Association Brasil (TMA Brasil)



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