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Editors' Column

Mark Craggs
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Fellow, INSOL International
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In this issue our focus is on INSOL International's annual conference which was held in Singapore during April. The timing of the conference could not have been more fitting, given Singapore's recent emergence as a serious contender as a jurisdiction of choice for cross-border restructurings, facilitated by the introduction in 2017 of wide-ranging reforms to its companies legislation. The wave of insolvency law reforms and proposals for reform which has concurrently swept across Asia is testament to the impact which Singapore has achieved in global restructuring circles and the apparent desire of other jurisdictions not to lose competitive advantage and provide a similarly benign environment for local and international enterprise seeking to restructure their liabilities.

Meanwhile, the volatility and uncertainty which have in recent months blighted international markets and politics serve as a reminder to us all that the next downturn might be closer than we think; once again, there is a pressing need for experienced global restructuring professionals to be on high alert for whatever shocks the global economy throws our way.

The conference itself was – as ever – excellent. The Marina Bay Sands provided a first-class setting for the conference programme and more than enough quality venues for the plenary, breakout and ancillary sessions (and social functions!) enjoyed by delegates throughout. The quality of speakers and panel sessions again reached the heights we have come to expect from INSOL International events. Julie Hertzberg succeeded Adam Harris as President of INSOL International and in this issue we are delighted to feature Julie's first President's Column. We are all indebted to Adam for his achievements during the period of his presidency, including the successes of Taskforce 2021 and the resulting changes which have been implemented to ensure that INSOL International continues to thrive and innovate. We look forward to continuing to work with Julie to build on those successes during her presidency.

Further highlights included the announcement of the opening of INSOL International's new office in Singapore – its first-ever office outside London – and the launch of the INSOL International Foundation Certificate in International Insolvency Law, a new postgraduate certificate programme aimed at new entrants to the insolvency profession, especially those in emerging market and developing jurisdictions. The programme is designed to build on the successes of the Global Insolvency Practice Course – commonly referred to as the Fellowship – by attracting younger or inexperienced practitioners to study towards receiving an INSOL International-endorsed accreditation in international and cross-border insolvency. We are pleased to report that the take-up for the course – which commences on 1 September 2019 – has been very positive, and we look forward to welcoming a new generation of insolvency professionals to our ranks.

This issue contains write-ups of all the conference sessions and our contributors have adeptly captured the essence of the discussions which took place. Highlights include "Restructuring Online Businesses", "ASEAN and Trends in the Development of Global Restructuring Regimes", "Asia and Offshore – the Future of Asian Offshore Restructuring" and "Doing business in India – New Changes". Cryptocurrency, blockchain and "smart contracts" featured heavily in the programme, and the many discussions which ensued in the coffee breaks throughout the conference. Kenneth Kraft provides an overview of Professor Richard Susskind OBE's engaging keynote address, "An Unvarnished View of the Future (aka "The End of Lawyers?")".

We also pay tribute to Gabriel Moss QC, who sadly passed away on 15 March 2019, and for whom an obituary appears in this issue. There is little that we can add here concerning Gabriel's stature in the world of international insolvency except to draw readers' attention to the Privy Council's postscript to its judgment in *UBS AG New York v Fairfield Sentry Ltd* [2019] UKPC 20:

"While this judgment was being prepared the Board received the very sad news of the untimely death of Gabriel Moss, who so skilfully presented the case for the liquidators. The Board wishes to pay tribute to his intellect and humanity and acknowledge his unrivalled contribution to corporate insolvency law as a practitioner, author and university teacher."

We thank all our contributors – and those who organised and participated in the conference programme – for their practical insights and hard work which help keep this publication at a consistently high standard.

Mark Craggs

President's Column

By Julie Hertzberg
Alvarez & Marsal
USA

There are hundreds of thoughts I wish to share as I draft my first official President's Column for INSOL World. I promise not to bore you with all of them for this Edition but let me start with the most important one – thank you for your support. I have been involved with INSOL International for over 15 years, and in that time, unquestionably interacted with the highest caliber professionals around the globe. From our Member Association network to the G36 firms to the burgeoning list of INSOL Fellows, I am constantly reminded how lucky I am to be a part of this close-knit international community. It is my privilege to lead the organization and continue the work of my predecessors.

I would like to take this opportunity to welcome Alastair Beveridge of AlixPartners LLP, UK who has joined the Executive Committee, and Andrew Tate, Kreston Reeves, UK, who will be taking over from Nick Edwards, Deloitte, UK as the R3 representative on the Board of Directors. I would like to thank Nick for his dedication to INSOL and all the hard work over the years and look forward to working with Alastair and Andrew as part of the INSOL team.

I am still processing the feedback we received at our annual conference in Singapore in April. It was inspiring to see the momentum build from the start of the Ian Fletcher International Insolvency Law Moot competition (held in conjunction with the International Insolvency Institute, Queensland University of Technology and Singapore Management University) and the filled to capacity ancillary programming for the Judicial and Academic Colloquia, the offshore, small practice and younger members meetings, and the fifth annual INSOL Fellows forum through to the culmination of the Annual Conference itself. For me personally, I enjoyed speaking with delegates about where they see the future of INSOL International, particularly as we embark on the next phase of our Taskforce 2021 initiatives including the launch of our Asia hub.

This issue is dedicated to a synopsis of the materials covered in Singapore. I take heed of the advice from our outside experts questioning the future of our respective professions as restructuring and insolvency advisors. We must never stop challenging the status quo or we become obsolete. As members of INSOL International, we won't accept complacency and we recognize the restructuring and insolvency world often takes us outside of our own jurisdictions. Conferences like Singapore remind all of us how cooperation is critical to establishing seamless cross border insolvency and restructuring regimes which encourage lending and better global business practices.

I can't allow this opportunity to go by without mentioning the lovely welcome Jason Baxter, our COO, and I received in May on our recent journey to the R3 annual conference in sunny Northumberland, England. Now, this is my chance to see who actually is reading this welcome. If you have visited this area, you know it is not known for its balmy weather. However, I think R3 ensured an exception just for us with a 20 degree Celsius sunset drinks reception.

Also, in May, our colleagues from INSOL Europe co-hosted with INSOL International a one-day seminar in Stockholm. I am pleased to report we had participants from ten countries and lively debates regarding the content of the programme. This built on the success of our similarly branded seminar last year in Helsinki and we look forward to future co-branded events with INSOL Europe.

So, the big question? What is next on my INSOL agenda as the summer months are upon us. Rest assured, it is not

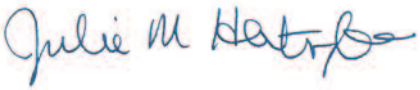
just about vacation time. We are busy moving forward with setting up the Asia Hub office and hiring staff there. We continue to improve our IT and communications outlets for the membership to personalize your member experience. I have also dusted off my well-worn copy of the Taskforce 2021 to prepare our achievements report card. And, the entire INSOL staff has been working since the conclusion of the Singapore conference to prepare a novel curriculum for the Cape Town conference in March 2020. Our number one goal is to ensure you make the most of your connections with INSOL International.

Lastly, I would like to note the passing of our dear friend, Gabriel Moss QC, whose legacy will ensure he is not forgotten. Whether it is due to his participation in some of the most sophisticated cross-border cases, or his creativity in drafting publications, to his witty sense of humour, Gabriel was a friend to all and has left his mark in INSOL International history.

For those of you embarking on summer holidays, have a restful and enjoyable time with your families.

Until next time,

Julie



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INSOL Singapore, 1 – 4 April 2019

Yet again INSOL's Annual Regional Conference raised tremendous interest and a high volume of registrations. This year, taking place in a spectacular and vibrant Singapore, we were delighted to welcome over 950 delegates from 69 countries, who joined us for several days of cutting edge technical programme delivered by leading experts, as well as unrivalled global networking opportunities.

The theme for the conference "*Looking to the future: what to expect and how to prepare*" emphasised the importance of the law and practice of insolvency looking ahead to anticipate the challenges of a rapidly evolving global market driven by the technology surge.

To set the theme, both days of the conference started with keynote addresses by Professor Richard Susskind OBE (on Day 1), and the Futurist Keith Coats (on Day 2), who provided delegates with valuable insights as to what to expect in the future and how to prepare for tomorrow's world today. Reports on these plenaries and the rest of the technical programme follow in this issue for the benefit of those unable to attend. Also, if you have not already done so, take a look at the INSOL Singapore photo and video gallery on our website at https://www.insol.org/singapore-media-gallery, in case you need a reason to attend the next INSOL event!

In addition to the main programme, a number of ancillary meetings preceded the conference: Academic and Judicial Colloquia, the Offshore meeting, INSOL Fellows forum, Younger Members reception, as well as Small Practice meeting and reception. Representatives of the INSOL Member Associations also had the opportunity to meet and share knowledge and experience during a dedicated round table.

We would like to express our deepest thanks to the members of the Main Organising Committee and the Technical Committee for all their hard work, dedication and enthusiasm, culminating in such an outstanding programme.

Our thanks also go to all our sponsors for their tremendous support of the conference and INSOL International. This enables us to carry out various activities around the world and develop new projects and member services, to ensure INSOL responds to its members' needs and consolidates its leadership role in international educational matters relating to turnaround and insolvency topics.

Let's get social!

By Robyn Le Cornu, UK

When my husband came home and delivered the request for me to do the reviews for the INSOL Singapore Conference Welcome and Closing Cocktail Receptions, I had to think about my response. There was a deadline for the review and we were heading to Bali for a couple of weeks break post-conference – the timing would be tight. But then again, how difficult could it be? I've attended many of these events as an Accompanying Person and have looked forward to it each year. So I agreed…..and was once again extremely impressed! These events give us not only a wonderful networking opportunity but also enable us to reconnect with friends we've not seen for a year or so.

The Welcome Cocktail Reception was once again sponsored by BDO and I was definitely not disappointed. On arrival, as is our wont, we split up and began wandering around a fabulous area complete with a tropical outdoor area for those who prefer the warmth rather than the comfortably air-conditioned main room. Having come from a very long UK winter, guess where I spent most of my time! The floor length windows afforded a gorgeous view of the lights across the river. The menu available was plentiful; there were so many options it was difficult to choose what to nibble on. From butler passed canapés to Cantonese delicacies to Indian cuisine…. And for dessert, if you didn't try the mango cheese Breton then you really missed out! I was thrilled that we were treated to a tropical thunderstorm – although some weren't as impressed and hightailed it back inside. Five Stars to BDO and the INSOL organising team for outdoing themselves once again. It was a great night.

The Closing Cocktail Reception sponsored by AlixPartners was more informal. Rather than the more formal Gala Dinner we had come to expect, the Closing Cocktail Reception was very well received. We were all winding down and saying our goodbyes to friends and colleagues we likely wouldn't see until the 2020 INSOL Conference which is to be held in Cape Town, SA. But it was the perfect opportunity for me to do what I do best, which is to be invisible and discover what the delegates *really* thought about the Conference. I am short, nondescript and 60 – no-one notices me! So I can wander around hearing things that otherwise might not be reported!! In other words, I lurk! But sadly you probably already know the goss – which is none; the Conference was an outstanding success by all accounts. Delegates were very impressed with the calibre of speakers and felt that the panels were not only interesting but very informative. I did not hear a single negative word about the INSOL Singapore conference, and so my job was done. I was obsolete!!

An Unvarnished View of the Future (aka "The End of Lawyers?")

Report by Kenneth D. Kraft
Dentons Canada LLP, Canada

Keynote Address: Professor Richard Susskind OBE
President, The Society for Computers and Law

Professor Richard Susskind's thought-provoking talk was divided into six main headings: 1. Mindset; 2. Snapshot; 3. Evolution; 4. Technology; 5. Jobs; 6. You. The talk concluded with a Q&A session with BBC World News personality, Sharanjit Leyl.

For "mindset", Susskind noted that new Black & Decker executives were shown a photo of a power drill and were asked if that is what the company sells. The answer was no. The company actually wanted its executives to focus on how to bring better value to their customers.

For "snapshot", Susskind referred to the book he co-authored, "The Future of Professions: How Technology will Transform the Work of Human Experts". The authors posited two futures – one version will be reassuringly familiar and the second version will be disruptive as machines perform tasks that we thought only humans could do. Susskind pointed out that eBay has resolved about 60 million disputes without any lawyers being involved. In tax, about 50 million people now use software to prepare and file their own tax returns instead of using an accountant.

On "evolution", Susskind noted that crafts are becoming standardized. Tax compliance was eventually made available cheaply online. However, accountants thought that advising and planning was too bespoke and could not be commoditized. Even this is no longer true. Software can do the planning. Each profession thinks that they provide certain bespoke services that machines cannot replicate. The reality is proving this to be untrue.

As for "technology", Susskind talked about exponential growth, noting that processing power doubles every two years. In 2020, machines will have the processing power equal to that of the human brain. By 2050 the average machine will have more processing power than all of humanity. In 2005 a computer memory card could hold 125 MegaBytes. By 2014, a computer memory card could hold up to 125 GigaBytes. There is now a programme that can predict the outcome of patent disputes more accurately than lawyers using mathematical computations. As Susskind noted, isn't that what every client really wants to know from their lawyer: What are my chances of winning? Lawyers traditionally thought of that as a legal question, not a mathematical equation. However, it really is math so there is no reason that machines cannot more accurately predict the outcome.

In technology, there is no finishing line. The latest achievement is never enough. In the short term futurists likely are overstating the potential transformative effects of new technologies. However, in the long term (say 10-12 years), Susskind believes that the transformative impact is hugely understated. In the early 1990s the web came online. In 1997 "Big Blue" beat Gary Kasparov at chess. This was something previously thought to be impossible. People thought certain expertise required human intuition, creativity and imagination, not "brute force" processing power. The exponential increase in computing power proved this wrong. We have reached the point where some machines actually learn from experience. Clients have paid for "my judgement". However, Susskind asks, "To what problem is judgement the solution?" Client has a problem. The so-called hole in the wall is uncertainty. Can a computer handle uncertainty as well as a human? Yes, it can.

On "jobs", Susskind noted that in 2020, at least one of the "Big Four" accounting firms will have about 20% of their work force made up of tech experts. Lawyers need to be concerned that most of the people developing new legal technology are not in law firms. This will radically transform the legal market in the next decade. The slice of the pie being allocated to machines will increase with a corresponding reduction in that being allocated to humans. That is both our challenge and our opportunity. Susskind noted that clients do not want a professional adviser. They want predictability of outcome. However, now we can build systems to deliver certainty. Lawyers can either view it as a phenomenal opportunity or hope to retire before the change comes.

In the Q&A session with Ms. Leyl, Professor Susskind was asked how he can reassure people that the future isn't frightening. He responded that he was not intending to reassure anyone. Ms. Leyl turned to the moral question – are there areas where humans still matter? Professor Susskind noted that machines today can create poetry and music. No reason to think that a machine cannot capture the moral sense of a community. Also, the boundaries of what may be considered acceptable technology will change over the next 50 years. The last couple of questions focussed on what type of education should our children focus in on and how will we make money? For education, there is no way to know. As for making money, that may become a quaint notion as machines do an increasing share of the work.

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The Impact of Outbound Chinese Investment for Restructuring

Report by Richard C. Pedone
Fellow, INSOL International,
Nixon Peabody LLP, USA

Chair: Andrew Koo, EY
Gang Han, Cedar Holdings Group
Howard Lam, *Fellow, INSOL International*,
Latham & Watkins LLP
Yi Jiang, China International Capital Corporation Limited

In 2016, Chinese outbound investment into other countries totaled more than $260 Billion. By 2018, outbound investment from China had fallen to $120 Billion. While these amounts are modest compared to annual outbound investment from the United States, they represent a significant increase from the amount China invested abroad a decade ago and clearly indicate that investors from China, both government backed and private, will be at the table in more restructurings.

How Chinese foreign investment decisions are made and, more importantly, how they are managed when cycles shift and the investments face headwinds, are of central interest to restructuring professionals around the globe. As we all ask when we approach a new engagement - who are the stakeholders, what are their goals, who do they answer to, how will they behave in the restructuring negotiation, and what will they, in the end, accept? For those of us outside China dealing with distressed investments made by China and Chinese investors, these questions are often difficult to answer. Importantly, market forces and even traditional cultural norms may not be the driving factor.

To help us understand these issues the Technical Committee for the Singapore conference brought together four panellists to discuss "The impact of outbound Chinese investment for restructuring". Andrew Koo of EY chaired the discussion. He was joined by Gang Han, Howard Lam, *Fellow, INSOL International*, and Yi Jiang.

Each brought a unique perspective and valuable insights to those of us who do not practice full-time in China but increasingly find ourselves at the negotiating table with Chinese investors. They each have decades of experience dealing with restructuring matters in China.

The panel emphasized the connection between investment decisions and China's Five Year Plan, the Belt and Road initiative, and Chinese regulators' efforts to manage domestic Chinese debt. The panelists also touched on the traditional role of investment through Hong Kong.

Importantly, the panelists and their experience highlight for those of us who are at the table with Chinese investors on only an intermittent basis, that traditional assumptions of what is driving others "in the room" may not be sufficient. One must ask questions such as how the investment at issue fits within China's Five Year Plan, what is the real time horizon for the Chinese investor, what is their standing at home, and how might they achieve their goals? In the coming months, as trade tensions shift the landscape, more of us will need to understand how different Chinese investors will behave in restructuring scenarios.

ASEAN and Trends in the Development of Global Restructuring Regimes

Report by Stephen Packman
Fellow, INSOL International, Archer & Greiner, PC, USA

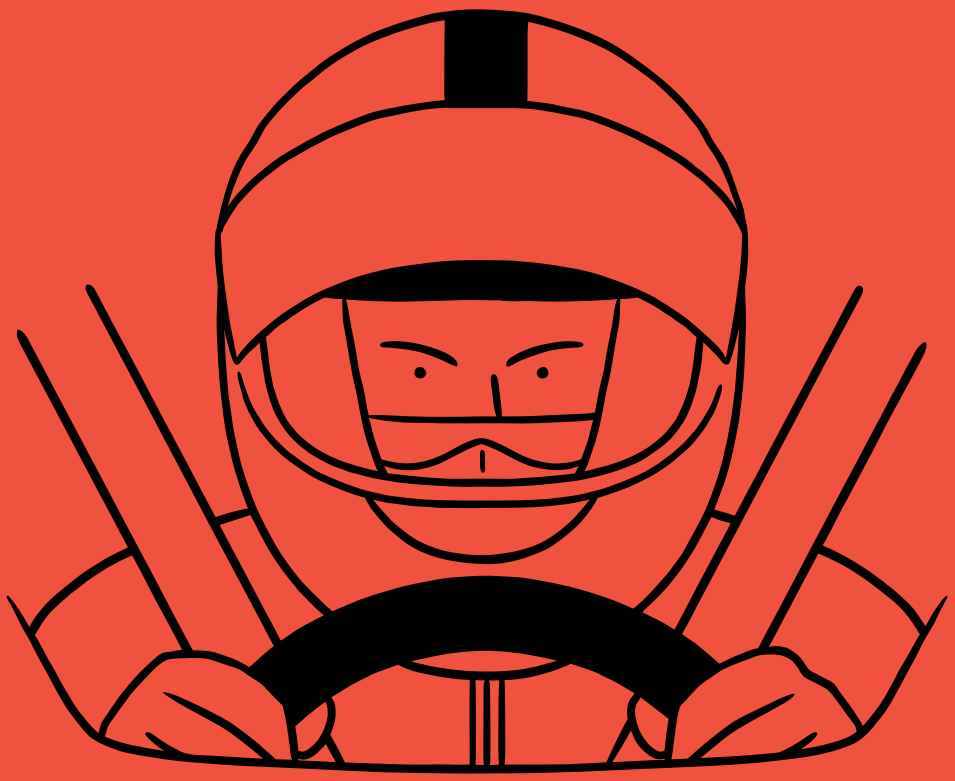
Chair: Patrick Ang, Rajah & Tann Singapore LLP
Sumant Batra, Past President, INSOL International,
Kesar Dass B. & Associates
Lee Shih, Skrine
Dr Ricardo Simanjuntak, Ricardo Simanjuntak & Partners

The esteemed panel, hosted by Patrick Ang, first discussed economic developments in ASEAN member states as well as India.

India has seen recent economic GDP growth of approximately 7% with some weakness in the growth of infrastructure. India now boasts the world's fifth largest economy and continues to remain at the center of global growth. Sumant attributed much of this success to the easing of barriers to business banking in India.

Malaysia is recovering from adverse political events. According to Lee, Malaysia's GDP grew by 4.2% last year but tempered this comment with the reality of a fading euphoria over the new government. Foreign investment continues to filter into Malaysia, primarily from China and Japan, said Lee.

Indonesia has sustained economic growth of 5.2%. Ricardo noted his country's mission to convince the world that its economy is improving and presents a good investment opportunity. Indonesia's government wants to build its infrastructure and maintain steady growth.



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Patrick weighed in with Singapore's blueprint for growth over the next five to seven years. Singapore has historically supported a strong manufacturing economy and looks to be a major hub in the future for the manufacturing industry. Patrick forecasted growth in Singapore's infrastructure, the service sector, project financing and in its quest to become the restructuring center for the region.

The panel next presented a short video from investment banker, Rajiv Vijendran of Maybank Kim Eng, one of the region's largest investment banks. Rajiv forecasted growth in the economies of the Philippines and Vietnam but commented that raising capital for large projects in the region has been difficult. Property development is strong due to moderate interest rates, as is oil and gas in certain sectors. Rajiv also forecasted a continuing trend of companies shedding marginal business segments.

Trends in the region's oil and gas sector were next on the agenda. Indonesia has undergone an easing of regulation in the industry. Malaysia (and generally the entire region) currently has very low oil and gas prices. In fact, Lee thought the sector had reached the bottom. Indonesia is viewed as easing regulations in the industry while Singapore also has low pricing but an uncertain outlook, according to Patrick. Sumant sees little traction in India's oil and gas sector at present but noted the commencement of several steel-related restructurings, struggles in certain areas of real estate, and power structure problems causing lenders to push for restructurings. Sumant forecasted a potential increase in future oil and gas restructurings in India.

In general, Malaysia has sustained marked technology growth at the expense of job displacement. Lee mentioned continuing problems in manufacturing due to job displacement caused by technological influences, increasing pension fund issues and a decline in EPF investments. Ricardo commented that Indonesia is generally facing economic stress across many sectors.

Sumant believes the Indian restructuring laws are generally working well with lenders using the new laws to force borrowers to "pay up". India has undergone a huge behavioral change in the restructuring industry as more borrowers look to become current on debt. There is now an increased ability of borrowers and lenders to restructure debt out of court as promoters are disqualified from participating in a plan. However, this development has resulted in reluctant strategic investors. Lenders in general are looking for more flexibility in restructurings.

Patrick joined the discussion and said that in Singapore construction will continue to experience stress as offsite assemblage of structures increases which in turn minimizes labour costs. The Chief Regulator in Singapore favours restructurings over liquidations, more equitable outcomes with price allocations for each competing class of creditors and interests. There is now a focus in Singapore on a coordinated restructuring effort with notice to affected constituents and increasing interface between regulators and the Court.

Ricardo presented an informative slide on restructuring alternatives in Indonesia. There are presently two restructuring scenarios in Indonesia: a receiver is appointed where a bankruptcy petition is filed by or against a company; or an administrator is appointed by the commercial court where a petition is filed for suspension of debt. Both avenues can lead to a restructuring.

Malaysian restructurings currently have a higher level of creditor involvement and commensurate expectations. Lee is in favour of a change in the restructuring law which would allow the appointment of an independent professional to assess whether a restructuring plan is equitable.

India has moved distinctly from liquidations to more favoured rescue plans. So far, though, there has been insufficient constituent "buy in" to the plan process. There is still desperation by lenders to recover on assets which impedes the rescue process. However, liquidation has become more of a last resort in India as asset-by-asset sales do not produce sufficient value. Now, in India, those favouring liquidation must demonstrate that a restructuring cannot happen. There is a general trend toward stakeholders favouring liquidation on a going concern basis over separate asset sales. Sumant also notes an increase in schemes of arrangement in India but, at times, problems arise with notification of large numbers of creditors of critical issues such as the terms of a plan. Generally, though, the trend is moving toward utilizing technology for notices, meetings and similar endeavors in larger cases.

Singapore has seen increasing creditor participation in restructurings. Many creditors, however, look for a set formula for recovery. Patrick too favours appointment of a neutral party to resolve issues in cases and, where appropriate, a financial advisor to advise minority interests whether a plan is indeed fair and equitable.

The audience had many questions for the panel at the conclusion of the presentation. In sum, the panel gave us three overarching takeaways in Asia: a concerted move to debtor-in-possession restructurings; adoption of a "rescue" approach; and a greater trend toward modernization of insolvency laws.

Developments in the Resolution of Distressed Banks

Report by David Colovic
Lipman Karas, Australia

Chair: Dr Lars Westpfahl, Freshfields Bruckhaus Deringer LLP
Alessandro Gullo, International Monetary Fund
Pooja Sinha, Global Legal Solutions
Sonya L. Van de Graaff, *Fellow, INSOL International*, Morrison & Foerster LLP

The far-reaching consequences of the Global Financial Crisis led to an overhaul of the regulatory framework of the global financial sector, including the introduction

of new distressed bank resolution mechanisms.

This session, chaired by Dr Lars Westpfahl, traversed the implementation of the "Key Attributes" - the new resolution framework for systematic financial institution collapses, considered subsequent banking collapses in a variety of geographical locations and arrived at a number of observations relating to the status of the resolution mechanisms and further challenges for the sector. The eminently qualified panel also comprised Alessandro Gullo, Sonya Van de Graaff and Pooja Sinha.

Mr Gullo explained that the Key Attributes were underpinned by the broad recognition not only that financial stability and the avoidance of public bailouts are a "public good" – but also that financial institutions are suspect to systemic risks and a potential source of economic stress and financial instability.

The Key Attributes initially adopted by the FSB in 2011 (and later refined in 2014) set out a number of essential features that are considered necessary for an effective resolution regime, although not all the resolution powers suit every jurisdiction and economy. The Key Attributes provide a set of standards or powers, mandated to public authorities, with the overarching aim to efficiently resolve banking distress scenarios by stabilising or providing for an orderly winding down.

Fundamental to the powers is the aim to achieve a balance with private property rights, depositor protection, taxpayer exposure and financial integrity. The main planks of the Key Attributes are sustained recovery and comprehensive recovery resolution planning.

Discussion followed on the need to accommodate different legal systems and markets in the implementation of the Key Attributes, together with some commentary on the work that the IMF does to help countries "fit" into the International standard.

The session continued with Ms Van de Graaff's informative analysis of the European experience, leading with the failure of the Spanish bank Banco Popular Español S.A. collapse, the first test case under the new resolution framework adopted in the EU via the Bank Recovery and Resolution Directive. On one level Banco Popular is a textbook example of how powers should be exercised and how resolution should occur, but on another raises questions about issues relating to appropriation of investors' assets and the tensions between secrecy and transparency. Ms Van de Graaff also described the peculiarities of the Italian State bailout of Monte dei Paschi di Siena bank.

The differences in geographical treatments were then highlighted in Ms Sinha's detailed explanation of the contrasting approach in Asia, where "micro" considerations such as political and economic factors and individual identities were described as more likely to influence the specific resolution regime than elsewhere.

Asia presents challenges because of its unsophisticated cross-border arrangements, where the Key Attributes, while serving as a helpful guide, are not always easily implemented. As much has become apparent from specific collapses in India in crisis situations arising relating to

pension funds and infrastructure lenders, where *ad hoc* solutions have prevailed. The recent Indonesian experience is similar.

The overall conclusion from the informative session was that while considerable progress has been made over the last decade to deal with systematically important financial institutions under stress, the implementation of resolution mechanisms is far from consistent across the globe such that additional fine-tuning is necessary. Further, the panel identified certain new risks for the global financial sector in the nature of new world challenges that are beginning to present themselves - such as the potential impact of cyber-security breach and how new age assets like crypto-currencies might challenge the resolution framework.

Asia and Offshore – the Future of Asian Offshore Restructuring

Report by Smitha Menon
WongPartnership LLP, Singapore

Chair: Hugh Dickson, Grant Thornton
Theron Alldis, SC Lowy
Aisling Dwyer, Maples Group
Fraser Hern, Walkers Global

A dynamic panel chaired by Hugh Dickson (Grant Thornton) and comprising Theron Alldis (SC Lowy), Aisling Dwyer (Maples Group) and Fraser Hern (Walker Global) boldly, and with good humor, debated the following hot button issues on the future of offshore restructuring.

1. Which jurisdiction will be best placed to deal with large, complex Asian restructurings?

As a starting point, the panelists candidly asked if insolvency practitioners had an insular or almost self-serving perspective of the secondary debt market. Investors are really only concerned with having the opportunity to put their money to work and the competition between jurisdictions to be the apex restructuring jurisdiction is of far less relevance to the user than insolvency practitioners may assume.

The determining factor is where the debt capital of the company is and which money markets the company is accessing.

For historical reasons, such as pre-handover concerns and estate duty laws in Hong Kong making it beneficial to keep wealth offshore, Asian companies traditionally used offshore entities in their structure. Although these historical reasons are no longer prevalent, many businesses continue to use offshore entities in their structures given the neutral tax platform, lack of stamp duty on transfers and stable infrastructure. Even if no debt is raised in offshore jurisdictions and no business is carried out there, it would be *"jurisdictionally arrogant"* to assume one jurisdiction can handle all parts of the restructuring. Offshore jurisdictions may not be the main actor but are part of the process and play an invaluable role in facilitating a holistic restructuring.

The availability of restructuring legislation is not the be all and end all as Hong Kong remains the main restructuring hub in Asia despite not having a statutory framework for restructuring relying instead on common law principles and a strong judiciary. Consistency in court decisions is paramount as all successful restructurings need not just speed but certainty.

The presence of talented and competent insolvency practitioners also plays a decisive role in choosing the jurisdiction to restructure in. The restructuring is often hosted in the jurisdiction where the main advisors are located. However, the jurisdiction may change as the restructuring progresses, in circumstances in which it moves from being an out-of-court to a court-supervised process as, in the latter stage, everything is then dealt with through the prism of that country's law.

The reality of today's cross-border business world is that there is rarely a "host" jurisdiction given structures are multi-jurisdictional in nature and you typically end up with a few jurisdictions that are more or less relevant to the restructuring, depending on the stage of the process at a particular point in time.

Coming back to the user, *what exactly is the market's preference?* The following four factors are key to an investor's forum selection for restructuring:

(a) A creditor-friendly jurisdiction where the investor has the ability to enforce claims or drive the restructuring;

(b) Local law / rules pertaining to foreign creditors / investors that are not restrictive or less favourable;

(c) A jurisdiction where outcomes are easier to predict and are consistent as this helps the investor value the investment and price the risk since they can more accurately predict the timing of the process and its outcome;

(d) Where the actual assets are, as, in certain jurisdictions, restructuring the debt at topco level, outside of the jurisdiction where the downstream assets are, would not be feasible due to a lack of recognition of the foreign restructuring.

The audience was asked to vote on which of the commonly cited factors was the most important in choosing a jurisdiction to restructure. The result was as follows:

- Cross-border co-operation and enforcement mechanisms – 38%
- Independent and predictable judiciary – 31%
- Professional and judicial infrastructure – 21%
- Speed and cost – 10%

2. Which onshore jurisdiction(s) will be the boom market(s) and how will that impact offshore restructurings?

The general consensus was Asia. Based on data from the

IMF as at March 2019, the non-performing loans in Asia remain in the high numbers. The front runners for "boom markets" are India and People's Republic of China.

India has more than 40% of its loans outside the country and, in the last 12 to 24 months, almost 80% of the restructuring activity in Asia has been India-related.

India is clearly more attractive to investors now because of the recently-enacted Indian Bankruptcy Code. Specifically, with the Code, certain factors which existed previously – such as delays in the process, the inability to effect out-of-court restructurings, the system being more favourable to sponsors / promoters and incoherent legislation – have largely been eradicated and replaced with tools that can help investors.

Now that the "dirty dozen" companies have gone through the National Company Law Tribunal ("NCLT") process under the Code, the pace is expected to slow down. There is expected to be more one-time settlements and mid-cap private deals. Further, the Indian Supreme Court's rejection of the move by the Reserve Bank of India to have every debtor company automatically submitted to an NCLT process after 180 days will regulate the pipeline of restructuring cases.

China was unanimously regarded by the panel as always being a huge market for restructuring given the significant amount of debt trading there. There are also more opportunities there as asset management companies lend less to debtor-in-possession / rescue financing and mezzanine lending situations. The challenges in injecting capital in the domestic Chinese market and in injecting capital in an entity distinct from the local Chinese entity as well as the lack of certainty in domestic law create the *"perfect storm"*, making China a big source of work for the offshore restructuring industry. Cayman companies can now list on the Shanghai Stock Exchange and the relevance of Cayman to Chinese investing companies (investment funds both inbound and outbound) continues to be high. As with India, Chinese restructurings are expected to be largely domestic, although public consultation on cross-border recognition between Hong Kong and China suggests that could be a game-changer. If Hong Kong schemes can be recognised in China, the opportunities for Hong Kong as a restructuring jurisdiction would sky rocket.

Chinese tech companies (like Weibo and Tencent) need to access the international money markets, given the difficulties in obtaining funding for their business in China, and this creates restructuring opportunities in those regions too. In a similar vein, an estimated $500 billion has been promised for the One Belt One Road initiative and not all of this funding is expected to come from Chinese banks or Silk Road funds. Money from offshore markets will necessarily result in offshore structures being utilised.

The Chinese judicial system's embracing of technology has also opened up new ways of conducting a restructuring. Alibaba has been used as a platform to run auction sales and recently, three Boeing 747s were successfully sold on TaoBao for tens of millions of dollars after six previous sales attempts!

When the audience weighed in on which jurisdiction would be the most important source of restructuring and insolvency cases, the top two countries were, unsurprisingly, China (61%) and India (22%).

3. Will regulatory pressures on beneficial ownership and transparency change the restructuring and insolvency market?

There was some skepticism over what drives such populist measures and whether there was really a burning social need for the same.

Those in favour of these measures cite the need to deal effectively with tax evasion, money laundering and the financing of terrorism as well as the legal, reputational and financial risks associated with not knowing the real owner. Lobbyists also consider secrecy over ownership as being undemocratic.

According to the Tax Justice Network, of 112 jurisdictions surveyed in 2018, 34 had the requirement of beneficial ownership registers. Only 1% of the countries surveyed provided free or easily accessible public registers. This suggests that the issue is more an emotive one and that disclosure of ultimate beneficial owners have little, if any, effect on choice of jurisdiction for restructurings.

Most jurisdictions have KYC processes and the panel queried the need for this material to be made public. Instead, the focus should be on whether the information-gathering and vetting is robust and can withstand scrutiny. Further, the information is there should regulators need it and most entities are listed, licensed or regulated entities with reporting obligations. The added cost to business from implementing such disclosure requirements can also be prohibitive where business margins are thin.

Confidentiality over beneficial ownership should not, of itself, be a red flag. There are many sound reasons for confidentiality that have nothing to do with money laundering or economic crime.

However, 61% of the audience was of the view that public registers *would* have a material impact on jurisdiction selection by Asian clients.

4. Closing Remarks from the Honourable Justice Kannan Ramesh

The audience was treated to closing remarks from the Honourable Justice Kannan Ramesh, who made three main observations:

- First, the rise in China outbound investment, especially to new places like Africa. This is a change from Chinese investment being traditionally inbound.
- Secondly, the focus on India arising from the legislative and policy changes to the regime which has shifted from a debtor-friendly to a creditor-friendly system. While the hard law has changed with the enactment of the Indian Bankruptcy Code, it is not yet apparent whether corresponding changes have been made to the soft law and infrastructure such as ensuring adequate professional skills and consistency in decisions. Soft law provides the landscape that makes the application of the hard law attractive.
- Thirdly, the disclosure of beneficial ownership being, from the audience's perspective, a material factor in choice of restructuring jurisdiction is surprising and possibly reflective of the seniority of the audience. It is possible a younger generation of Asians would see things differently.

Dealing with Non-Performing Loans

Report by Ben Crilly
Borrelli Walsh, Indonesia

Chair: Dr José M. Garrido, International Monetary Fund
Nikhil Shah, Alvarez & Marsal
Geoff Simms, *Fellow, INSOL International,* AJCapital Advisory
Justin Wai, Blackstone Group (HK) Ltd

The holding of the INSOL Conference in Singapore provided the perfect location for the panel to address the development of frameworks for Dealing with Non-Performing Loans ("NPLs") across three Asian jurisdictions – India, Indonesia and the People's Republic of China ("PRC").

Each jurisdiction operates under very different political and legal frameworks and the panel set out about describing and contrasting each market with a particular focus on four areas:

1. How banks are dealing with NPLs;
2. Role of regulators;
3. Experience of investors; and
4. Expectations for future developments.

India

Nikhil Shah set out the transformation of the Indian market following the implementation of India's new Insolvency and Bankruptcy Code ("IBC") – a significant change in India's insolvency regime – which Shah explained is considered by the Modi government as its signature economic reform in its first five years of government.

Mr Shah noted that prior to the introduction of the IBC, typical recovery by creditors was approximately 25 cents in the dollar with the resolution period averaging about 4,5 years. Shah says approximately 80 companies have now completed restructurings under the IBC's Corporate Insolvency Resolution Process ("CIRP"), with recoveries averaging nearly 50 cents in the dollar over an average resolution period of about 2 years.

He explained that the Reserve Bank of India ("RBI") had set the tone for the use of the new laws through their enforcement actions on non-complying banks – including resulting in the replacement of some bank CEOs.

In addition, Mr Shah noted the RBI's involvement in banks initiating CIRP proceedings against 12 of the country's largest defaulters – now referred to as the 'Dirty Dozen' – tangibly demonstrated to promoters the risks of non-compliance with their obligations. Four of these companies have now completed the CIRP process.

Furthermore, he explained the importance of a growing number of licensed Asset Reconstruction Companies, established to acquire NPLs from banks or companies and assets from CIRP processes. This has brought liquidity and further optionality to the Indian NPL market.

A Bloomberg TV report from April 2018 played by the panel measured USD150-200 billion in stressed assets in the Indian banking system. Mr Shah explained that the size of the Indian NPL market opportunity, together with early successes of the IBC, which provides a tangible recovery process and demonstrated protection for creditor rights, has transformed the India NPL resolution process and brought with its significant interest from foreign investors – something Mr Shah expects to continue to grow.

Indonesia

Geoff Simms contrasted the transformation of the Indian NPL framework with that of Indonesia, describing little change in the Indonesian approach to NPLs from 'extend and pretend' restructurings.

Mr Simms noted, amongst other things, that the lack of progress was predominantly as a result of entrenched practices of state-owned banks that do not allow for loan write-offs because of concerns about perceived corruption and losses being caused to the state.

He explained that this, together with large price-discovery gaps, difficulty in enforcement action for foreign lenders and recent legal challenges to the rights of ownership for secondary NPL portfolios (which have seen recovery action by secondary holders disallowed), have resulted in limited NPL portfolio sales in Indonesia. Only foreign banks have transacted, and these limited portfolio sales have changed hands at substantial discounts to par.

In Mr Simms' view, it is unlikely that Indonesia will see any substantial short-term change in NPL frameworks and that a catalyst for change was required. Aside from an economic event, he believes one such catalyst could be greater accountability of auditors, which have been exposed in a number of recent Indonesian bankruptcies.

PRC

Justin Wai provided an NPL investors' perspective of the PRC, which together with Italy is the world's largest market by transaction value.

Mr Wai walked the audience through the PRC market framework, which broadly involves PRC banks selling NPLs to one of the country's four state-owned asset management companies or 'bad banks' who are responsible for working out or selling to the market. He explained that while supply is tightly controlled by the PRC's central bank, the People's Bank of China ("PBOC"), transaction volumes are accelerating as PBOC policy expands.

Mr Wai noted it is that expansion in policy and transaction volumes that has attracted Blackstone's interest in the market.

Mr Wai explained the investor experience in PRC has generally been positive, however, one limitation remained limited servicing talent on the ground which has so far led to a larger deviation of outcome versus developed markets such as Europe and the USA. As a result, he says while transaction volumes and foreign interest will continue to grow, further market development is required before investors can be confident of returns consistent with other markets.

Restructuring Online Businesses

Report by Kwun Yee Cheung
Baker McKenzie, Hong Kong

Chair: Laura R. Hall, *Fellow, INSOL International*, Allen & Overy LLP
Mary Buttery, Cassels Brock & Blackwell LLP
James Stewart, Ferrier Hodgson
Ángel Martin Torres, KPMG

The retail sector continues to undergo fundamental structural changes. Whilst recapping some of the well-known difficulties which the industry continues to face, the panel went on to share very interesting and thought-provoking experiences in relation to the restructuring of online businesses.

To set the scene, the panel explored the impact of consumer trends and behaviours, digital innovation and the changing expectations of millennials, using lots of data to support the observations shared. A video presentation brought home the reality that the future will look very different. Areas of focus will include the handling of consumer data, loyalty programs and mobile apps which will meet customer needs with innovation and creativity.

The growth of the online retail sector is a global phenomenon and not limited to a particular market. In the US and Australia similar trends are apparent with traditional high street pre-Christmas retail shopping on a dramatic decline, in Australia by up to 15% in the two weeks preceding Christmas in 2018. This is affecting the normal retail calendar cycles because consumers can shop online a few months ahead of Christmas given the ease and convenience of doing so. There has also been a shift in the way consumers are spending their money. In the US, more consumers are spending their money on technology than apparel. Amazon was given as an example of an eco-system that has been created as consumers shop for an array of services including music and films. 64% of US households are Amazon users. It was observed that in Asia, especially China, the same phenomenon is evident via Alibaba which has a strong on-line platform and is highly digital.

Millennials will determine spending patterns over the next 20 years. They are already seen to be the most value-based generation since the 1960s as they conscientiously decide how to spend their money, enabled by the digital platforms and technology with which they have grown up. Some examples were given of retailers playing to this change to in order to appeal to the next generation of consumers. Videos were played showing a Nike campaign with the slogan "Believe in something even if it means sacrificing something" and a Gillette campaign where the infamous slogan "The best a man can be" is changed to "The best a man can be". Retailers are conscious that millennials want to stand for something different.

Data gathering is another growing area with the rise of AI and is very significant for online businesses as intellectual property becomes a principal source of value in asset-light digital businesses. The global revenue from AI is expected to be USD 37 million by 2025 and will be a big driver of successful online businesses.

By way of introduction to the case-studies, the panel outlined the following principles which are critical for retail businesses to succeed:

1. Being digitally agile. There needs to be a "mobile first" strategy enabling consumers to move at ease between different platforms at the same time whilst enjoying the same experience.
2. Supply chain efficiency. A simple payment and return policy is seen as important for success as research shows consumers will give up after just 30-40 seconds of trying to pay. A "one-click" process is essential to the retail strategy.
3. AI and data analytics. Retailers must be able to analyse what consumers are purchasing and offer more of the same.
4. Social media engagement. This is a huge part of a successful online business as millennials live off their social devices and social media. Retailers need to have multiple channels to reach the market.

The emphasis was clear, retailers cannot expect something magical to happen; they must recognise the very real changes taking place and embrace and implement the right changes in order to succeed.

The first online restructuring case study was based on "BuildDirect", a 100% online enterprise. A Canadian company with warehouses in the United States and operations in India and China. Its major proprietary asset was technology, which took a long time to develop and was key to its online retail value. At the time of its insolvency filing the company had investor debt of USD 60 million and was losing USD 2.5 million per month with no hard assets to dispose and realise value. Things looked bleak but a number of factors led to the company's successful restructuring, which eventually took only 5 months to complete via a court-supervised restructuring under the Canadian Companies' Creditors Arrangement Act (which involved the injection of DIP financing):

1. Management - first and foremost, the directors acted very quickly. They had the foresight to recognise the problem and the need to get a restructuring done swiftly.
2. Employees - the employees were generally young and technologically sophisticated, which meant they closely followed all communications from the company (which were themselves well-timed and specific). In addition, the company demonstrated its commitment to its workforce

by putting in place an employee retention plan.

3. Consumers - the consumers were tech savvy and could easily go elsewhere. The ability to continue its supplies to customers during the restructuring and avoid inconveniencing its customers was very important to the success of the restructuring. Had there been delays to the supply chain, the outcome could have been very different. The company managed to secure the support of its suppliers, which, in turn, allowed it to continue to supply its own customers.
4. Investors - the company needed to raise funds but had few hard assets to attract potential investors. Accordingly, it turned to interim investors for DIP financing, which was eventually converted to equity. Having supportive investors who understood the business was key.

The second case study was based on "VTC Passenger Transport Vehicle ("VTC")" in Spain, which had a licence to run an online platform similar to Uber, paying a fee. VTC ran the operational business: drivers, cars leased, and licences from local authorities to provide passenger transport services. Services were hired through the online platform. A change in local legislation enacted as a consequence of competition between VTC and ordinary taxi drivers resulted in the business suffering losses and in need of additional cash and a debt refinancing. VTC's banks engaged KPMG to conduct an Independent Business Review and option analysis, focussing on the main issues affecting the company, as well as its potential future evolution from a commercial, operational and financial point of view, plus debt restructuring options available to it. KPMG's work revealed jurisdictional and regulatory issues and operational and financial challenges. KPMG was able to align the interests of the sponsors and the banks in agreeing the terms of a refinancing to pave the way for the future success of VTC.

To wrap up the session, the panel indicated that certain factors are key to a successful restructuring of online businesses, including the following:

1. Digital agility and social engagement.
2. Investors who believe in the business model which is being developed and see the value and commit to the vision.
3. Supply chain efficiency.
4. Financial restructuring alone is insufficient.
5. A key asset to any online business is its customer database.
6. The value is likely to be in technology and not hard assets, although this will not discourage millennials who readily recognise that all the value of a business can lie in its technology.

Doing Business in India – New Changes

Report by Dinkar Venkatasubramanian
EY, India

Chair: Sajeve Deora, BTG Global Advisory
Sunil Kanoria, SREI Infrastructure Finance Limited
Shyam Maheshwari, SSG Capital Management Limited (Singapore) PTE Limited
Cyril S. Shroff, Cyril Amarchand Mangaldas

The Indian banking sector has been at the forefront of driving economic growth. In the last several years, though, the sector has been plagued by growing non-performing assets ("NPA") on account of various reasons. The total stressed assets pool reached about USD 1.5 trillion to USD 2 trillion (about 15% of total advances) for the overall banking system as at March 31, 2018. Absence of an effective resolution framework compounded the problem. Since 2014, many steps have been taken by the Government, the Reserve Bank of India ("RBI") and individual banks to enable rescue and revival. A robust, modern and sophisticated insolvency framework was established with the enactment of the Insolvency and Bankruptcy Code, 2016 ("IBC" or the "Code"). The IBC seeks to achieve resolution of debtors in distress and, failing that, their liquidation in a timely manner under the oversight of the National Company Law Tribunal ("NCLT"). Financial creditors have been provided with a greater role and powers through the committee of creditors. The management and control of assets of the debtor is handed over to an Insolvency Professional ("IP"), who is responsible for operating the debtor's enterprise as a going concern and managing the insolvency resolution. It is one of the most important legislative reforms of our time in India, designed to effectively deal with incumbent NPAs and the resultant logjam in availability of credit.

Implementation of IBC

The success of any law depends on its implementation. The IBC was passed by both Houses of the Parliament in May 2016. The Government moved at an unprecedented pace to enact and operationalize the IBC. On June 1, 2016, the National Company Law Appellate Tribunal, the Principal Bench of NCLT at New Delhi, and 11 benches of NCLT were constituted.

The Insolvency and Bankruptcy Board of India ("IBBI"), the regulator, was established on October 1, 2016. With a view to build a cadre of competent IPs, 897 IPs were granted temporary licences, to be renewed after taking the Limited Insolvency Examination, which commenced on December 31, 2016. The subordinate legislation was put in

place by the IBBI in record time and the IBC was made operational on December 1, 2016. All this happened in a little over two years.

Progress made

In June 2017, the RBI recommended filing of cases under the IBC in all cases with loan amounts greater than USD 800m and which were classified as non-performing by banks as of March 31, 2016. Under the recommended criterion, 12 large accounts amounting to about 25 per cent of the current gross NPAs of the banking system qualified for immediate reference under the IBC. Later, during 2017, another list of 28 larger accounts (with total outstanding loan amount of another 25 per cent of gross NPAs) was released by the RBI.

As at March 31, 2019, NCLT ordered commencement of insolvency in 1,858 cases, of which 152 cases were closed on appeal, 91 were withdrawn, 94 yielded resolutions and 378 resulted in liquidation. 1,143 cases were undergoing resolution process.

The panel noted delays in the resolution of cases. Of the 1,143 ongoing cases, nearly a third have exceeded the allowed period of 270 days at March 31, 2019 owing to litigation. Cyril Shroff stated that while there have been delays, the current position represents a significant improvement compared with past experience. Shyam Maheshwari noted that the biggest change brought about by the IBC is the change in mindset of market participants, primarily business-owners. Now that loss of control is a possibility, business-owners are working on resolving stressed loans in good time in order to avoid insolvency.

Evolution of jurisprudence

The panel noted the contribution of the judiciary – the NCLT, the appellate tribunal and the Supreme Court – in the development of a robust law on the ground. In particular, Cyril Shroff commended a number of factors for contributing to the success of the IBC, namely the role of the Supreme Court for deciding on some important matters relating to the upholding of the constitutional validity of the law, the role played by financial creditors and trade creditors in an insolvency, the value of the commercial acumen of the committee of creditors and the fine balance which is normally struck between the sanctity of the process and the maximisation of value. Justice Arjan Sikri (recently retired from the Supreme Court) also emphasised that the law has been a success owing to all stakeholders co-operating and moving in one direction.

Concerns on the ground

The panel discussed a few concerns over the implementation of the Code on the ground. These included:

- Lack of an effective bilateral work-out mechanism by creditors (following the withdrawal of the "12-Feb-18 Circular") resulting in "all roads leading to IBC" putting immense pressure on already struggling bandwidth and infrastructure at NCLTs;
- Promoters not being able to bid for assets (Sec 29A, IBC). There was a suggestion that a distinction should be made between genuine business failure and malfeasance in order to allow promoters to bid for assets. Cyril suggested that Sec 29A has pushed business owners to resolve pre-IBC.
- Lack of participation of institutional investors. While stressed asset funds are typically looking for opportunities to invest, their participation has been hindered by a lack of quality information for due diligence purposes, as well as regulatory uncertainty.
- Implementation of resolution plans have been fraught with uncertainty owing to lack of clarity on the treatment of contingent liabilities and the lack of a single window clearance.
- Distribution of insolvency proceeds to secured and unsecured financial creditors and trade creditors has also been litigated owing to a lack of clarity as to the application of certain provisions of the Code.

Many of these concerns are being addressed, either by changes to the law or via developing jurisprudence.

Insolvency of Financial Institutions

In November 2018, the liquidity crisis of Infrastructure Leasing & Financial Services Limited (IL&FS) put the financial health of financial institutions sharply in focus. Sunil Kanoria stated that while the Government reacted swiftly in the case, an effective resolution mechanism for financial institutions should be taken up as a matter of priority.

What to expect in the near future

In 2016, when the Code was being introduced, the biggest challenge ahead was considered to be its successful implementation. The journey of the Code in its first two years was nothing short of a roller-coaster ride. No stakeholders were ready to compromise, which created "real-time" stress test for the Code. But against all odds, the Code has had a successful first two years and has withstood many tests.

As the large cases are being resolved, the remaining ones comprise a wide variety of cases of differing sizes and complexity which will undoubtedly present a unique set of challenges.

There is a pressing need to de-clog the NCLT infrastructure by innovative means (e.g. direct admissions) and also protect erosion in value of debtors seeking a restructuring. The evolution of the stressed assets resolution framework could be pursued through the following measures:

- Adherence to timelines and developing certainty and consistency of the law to enable flow of private capital into stressed assets.
- Pre-packaged insolvency as an innovative mechanism to address certain India-specific issues.
- Development of an effective work-out mechanism enabling banks and borrowers to address difficulties faced in good time before the onset of insolvency. This should include provision for a robust business revival plan which is implemented by competent turnaround professionals.
- Implementing legislation to effectively deal with cross-border insolvency (noting that a Draft Bill is already pending before the Parliament), group insolvencies and the introduction of personal insolvency framework specifically for individuals who are guarantors to insolvent corporates.

The Evolving Role of Litigation in Restructuring and Insolvency Proceedings

Report by Aisling Dwyer
Maples Group, Hong Kong

Chair: Ashok Kumar, BlackOak LLC
Clive Bowman, IMF Bentham Limited
Lexa Hilliard QC, Wilberforce Chambers
David Molton, *Fellow, INSOL International,*
Brown Rudnick LLP

Expertly chaired by Ashok Kumar, this session involved some lively debate amongst practitioners holding very different viewpoints, interspersed with enlightening video interviews with members of the judiciary.

First topic was the use of mediation and arbitration in restructuring and insolvency litigation, and the contrast between jurisdictions was stark. David Molton explained how mediation was regularly ordered by the US Courts in restructuring and insolvency cases, with the relevant judge referring the mediation to another judge of his/her court. David thought that it worked really well as it brought parties to the table and gave them an independent evaluation of the issues. Lexa Hilliard QC baulked at this idea for two reasons: the lingering worry that judges of the same court might discuss details revealed during mediation and the imposition of mediation upon the parties rather than a voluntary election.

A further concern was whether the 'behind closed doors' approach associated with mediation and arbitration was appropriate for insolvency proceedings that are usually transparent and in the public domain given their collective nature.

However, the panellists accepted that the cost and time of litigation are inimical to the insolvency process and so mediation (and to a lesser extent arbitration), could offer a real solution. The panellists also agreed that for mediation to be a viable alternative, any potential abuses of the process (e.g. entering into mediation for the collateral purpose of acquiring information for the litigation) would need to be addressed. One possible solution might be sanctions for parties who failed to engage in a bona fide way in mediation but policing that would be difficult.

Whilst the panellists had to move on to deal with third-party funding, we were left to consider whether, and if so how, mediation would work in a cross-border restructuring process.

On the issue of third-party funding, Clive Bowman explained that there has been a growing acceptance of litigation funding and the positive impact it can have on restructuring and insolvency litigation.

However, the more provocative issue was whether alternative funding, such as crowdfunding, would or could replace traditional third-party funding. The panellists were of the view that despite the potential benefits which might result from additional forms of funding being available, there were too many potential obstacles to surmount. Those stumbling-blocks included how the enforcement of adverse costs orders would work with a disparate group of investors from a global online community, who had clubbed their funds together for the purpose of raising a fighting fund for the restructuring and insolvency litigation. Equally difficult would be the scenario where the initial fighting fund was not enough; would the initial investors be bound to provide more financing or could further investors get involved and how would any recovery work amongst the two or more sets of investors? Clearly, an insurance policy would be needed to cover off these risks but how would the insurance industry view such funding? In addition, communications with a potentially large disparate group of online investors might be unwieldy, although presumably the establishment of a representative committee and the use of modern technology could streamline that process. Finally, certain jurisdictions prevent fee-sharing between lawyers and non-lawyers which would create structural headaches in the use of funding like crowdfunding.

Although cold water was ultimately poured on the idea of alternative forms of funding displacing the growing role of "traditional" third-party funding in restructuring and insolvency litigation, the audience was left with no doubt that the landscape is changing, and for the better, with quicker, cheaper and more effective solutions on the horizon to deal with disputes and their funding.

Cars, Travel and Media: the Ramifications of Disruption for Restructuring

Report by Susan Moore
Stephenson Harwood LLP, UK

Chair: Lisa M. Schweitzer, Cleary, Gottlieb,
Steen & Hamilton LLP
Nick Edwards, Deloitte LLP
Dominic Emmett, Gilbert+Tobin
Chai Ridgers, Harneys Westood & Riegels

In introducing the session, Justice Ramesh commented that the subject matter 'sounds a bit like a movie'. The audience was indeed then treated to a fascinating and engaging session from the esteemed speakers, who together brought many years of experience and so were ideally placed to assess the impact of disruption on the chosen sectors.

In introducing the session, and ahead of analysing the sectors in question, the Chair reflected on the range of drivers of disruption, spanning changes in consumer

preferences, developments in technology, and politics. Nick Edwards then assessed the automotive sector, Chai Ridgers tackled aviation, and Dominic Emmett addressed the media sector.

Nick opened the discussion on the automotive sector by observing, aptly, that the road ahead is winding and the scenery profoundly new. A number of disruptors were discussed, being predominantly those below though there was also a mention of 'diesel gate'.

Electrification of vehicles was identified as a key disruptor. Although progress has been somewhat slow to date, there may soon be a tipping point after which change may accelerate. A number of countries are planning to reduce emissions and/or ban sales of new petrol vehicles with the effect that production capacity will increasingly require battery capacity. Therefore, if car manufacturers aren't also producing batteries, what does this mean for their competitiveness? Furthermore, will some manufacturers need to relocate to be proximate to battery production?

Also, the impact of tariffs shouldn't be underestimated, with the example cited of the Australian automotive industry failing after a low import tariff environment was introduced. Then of course the impact of Brexit is awaited. The shift in consumer attitudes away from car ownership towards ride sharing is considered to be more of a 'next generation' phenomenon albeit there are already headwinds.

The conclusion was that the move to electrification is likely to have a very material impact on restructuring activity, albeit will be an opportunity for some.

Turning to aviation, Chai introduced the topic by recapping on the extent of distress in this sector in recent years: as well as financial restructurings, there have been a number of failures, numbering 345 airlines that have failed since 1994.

Operators generally have complicated business models requiring vast capital and labour, and operate within strict regulatory regimes, on both a national and international level. They are also highly reliant on other supporting industries.

Much of the disruption in this sector is driven by external factors. Triggers for disruption include fuel cost, which has been an influential factor as there has been much change over recent years, and the question is whether airlines are on the right side of hedging agreements. The list of disrupters extends to extreme weather such as the two category 5 typhoons in Asia last year that affected 0.5% of global air travel at that time. More recently the tragedies resulting in the grounding of certain Boeing planes, which poses significant financial risk to affected airlines, as the cost of, and lost revenue from, a grounded plane is estimated to be $250,000 per plane per day. Then of course we have the impact of Brexit, passenger compensation schemes and last but not least the subject of CO2 emissions given the extent of global emissions coming from the aviation sector.

Chai concluded by predicting more failures of smaller carriers as they are squeezed between the larger carriers and the larger low cost providers.

Dominic moved on to media, relaying that there are a number of lessons, reflecting on the disruption caused by technology development coupled with changes in consumer preferences, for example:

- The industry has seen the proportion of advertising revenue shift dramatically towards 'new media', which now accounts for over a third and is predicted to rise further.
- In the last 3 years, usage of mobiles and tablets by people aged between 18 and 34 has doubled whilst television viewing by a similar group has dropped by a third.
- Consistent with the above, mobile phone advertising has increased whilst newspaper advertising has decreased.

The CEO of Ten Network in Australia explained in a video clip the challenges created by the onslaught of streaming services over the last few years, increasing content choice, coupled with a large uptick in the number of subscribers.

The disruptive factors are predicted to drive distressed M&A activity in 'old media' as those companies cannot fix the issues they face on their own and/or in time, and the challenge for the more traditional providers is how to change and how to monetise existing content. There have been wider ranging implications too, such as the failure of paper company Norske Skog which operates paper mills and had excess capacity. All in all the impacts of the disruption are real and they are great.

At the conclusion of the session, we were left with a few takeaways to ponder on:

- Disruption is a fact of life and is happening at an even faster pace than previously.
- One should look broadly for potential winners and losers in a disrupted market.
- Remember that disruption is not the same as extinction!

Congratulations to Fellows of the Class of 2017 – 2018!

The successful graduates of the Global Insolvency Practice Course Class of 2017/2018 were presented with their INSOL Fellowship certificates at the Opening Ceremony in Singapore by Adam Harris, INSOL President. The following are now recognised as a *Fellow, INSOL International*:

John Baird, Windeyer Chambers, Australia; **Emma Beechey**, Barrister at New Chambers, Australia; **Ashley Bell**, Debtwire, Hong Kong; **Roger Bischof**, Bonnard Lawson Shanghai, China; **Guy Cowan**, Campbells, Cayman Islands; **Roger Elford**, Charles Russell Speechlys LLP, UK; **Gavin Finlayson**, Bennett Jones, Canada; **Laura Hall**, Allen & Overy, USA; **Ferdinand Hengst**, De Brauw Blackstone Westbroek, The Netherlands; **Okorie Kalu**, Punuka Attorneys, Nigeria; **Andres Martinez**, The World Bank Group; **Noel McCoy**, Norton Rose Fulbright, Australia; **Nicoleta Mirela Nastasie**, Bucharest Tribunal, Romania; **Ben Rhodes**, Grant Thornton Ltd, Guernsey; **Geoff Simms**, AJCapital, Indonesia; **Benjamin Tonner**, McGrath Tonner, Cayman Islands; **Nicolas Veron**, Ronico GmbH, Switzerland; **Jason Weiner,** Schafer and Weiner PLLC, USA; **Luke Wiseman**, KPMG LLP, UK.

Being Futurefit: Understanding how to prepare for tomorrow's world today

Report by Dr David Burdette
Senior Technical Research Officer, INSOL International

Keynote Address: Keith Coats
Founding Partner of TomorrowToday Global and Futurist

The second day of the Singapore conference was opened by a plenary session, where the futurist Keith Coats provided delegates with some tools for thinking about the future. His description of a futurist was stated as being "someone who intentionally builds the capacity to see and understand the implications and meaning of change." Translating this into the business world, he stated that all leaders should have the ability to be futurists and then provided some examples (Kodak, Blockbuster and Blackberry) of companies whose leaders had failed to see and understand the implications and meaning of change.

Stating that one cannot have a leadership strategic discussion without context, Keith then went on to provide a framework for understanding context. His discussion on context started with a reference to the military term VUCA – an acronym that looks at a world that is volatile, uncertain, complex and ambiguous – but focused instead on a framework for looking at the impact of globalisation. Referring to a research study that took three years to complete, Keith then set out the four key elements that had been distilled from the research regarding the impact of globalisation, namely i) increasing interdependence, ii) accelerating non-linear change, iii) increasing complexity and iv) an increasing emphasis on difference. Interestingly, Brexit and the increasing move towards nationalism and tribalism around the globe were referred to as examples of an increasing emphasis on difference. In Keith's view, these four things combine to say we are living in times of extraordinary change.

Keith went on to say that the pace of change is leaving people behind, rendering their business thinking redundant, as well as the tools and even business models they used in the past. As a result, there is a need to understand how to look intelligently into the future and to create a framework that allows one to do this. In doing so, Keith then went on to refer to the results of a survey by Fortune magazine on the biggest inhibitors of change within organisations. Rather surprisingly, a lack of understanding around the nature of disruptive change was the most important revelation to come out of the survey. Keith then provided delegates with a model called TIDES, which looks at five key disruptors: i) technology, ii) institutional change, iii) demographics, iv) environmental ethics and v) shifting societal values. According to Keith, paying attention to these key disruptors and asking the right questions within each one, can go a long way towards futureproofing oneself.

Stating that leaders need to be adaptive in a fast-changing world, Keith then provided what he calls the DNA of adaptable intelligence, consisting of four elements that allow people at an organisational level to be "adaptively intelligent", namely i) the ability to live with change and uncertainty, ii) the need to invite learning, iii) the ability to give away control and iv) to embrace difference.

Having promised to provide delegates with some tools to think like a futurist, Keith then shared his thoughts on this. In doing so he firstly referred to the adaptive leadership model where a distinction is made between the "dance floor" and the "balcony". Most executives tend to want to be on the dance floor, where they learnt their trade in the first place, but doing so restricts their vision as they only have an immediate view of the periphery. By moving to the "balcony" they would have a better overall view of what is going on in the business because of a better perspective. The second tool Keith discussed was curiosity, or "curiosity conversations", which is linked to the third tool which consists of asking better questions ("a good leader is not a person who has a lot of experience and directs people but a person who asks the right questions!"). The third (and arguably the most important) tool Keith discussed was: Learn. Unlearn. Relearn. Being able to learn, unlearn and relearn is difficult but is also necessary if one is to adapt to the rapidly changing world we live in. The final tool Keith provided was the need to experiment more with new things without the fear of failure.

In meeting the challenges thrown up by a rapidly changing world, Keith emphasised the need to understand the nature of the changes taking place and having the coherency to recognise change. In order to do that, he said, we all need to think like futurists. He wound down his talk with a quote from Abraham Lincoln's Congressional speech in December 1862, saying that it is as relevant in 2019 as it was in 1862:

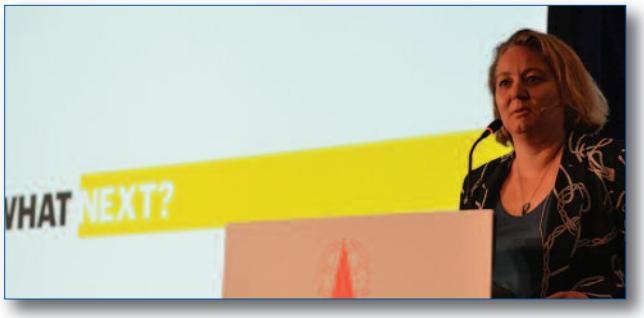
> "The dogmas of the quiet past, are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise — with the occasion. As our case is new, so we must think anew, and act anew. We must disenthrall ourselves, and then we shall save our country."

The session closed with a table discussion where Keith posed the question: "what is the question you should be asking, but aren't?" This was an excellent presentation which will no doubt help equip those who heard it to deal more effectively with the challenges posed by what appears to be a most disruptive future.

Blockchain – A Practical Introduction

Report by Geraint Kang
Tan Kok Quan Partnership, Singapore

Address: Leanne Kemp
Everledger



To the casual observer, the purported wonders of blockchain may as well be an impenetrable mire of marketing jargon and technobabble. The situation is made worse when both its proponents and detractors have both been equally vocal in championing or dismissing the technology, with few offering balanced views on the subject. But whether we are witnessing the start of blockchain's ascendency or downfall, it is clear that blockchain is here for the immediate future, and it is vital for insolvency practitioners to gain an understanding of the topic if they are to meaningfully participate in this changing world.

INSOL should therefore be fully commended for dedicating a significant portion of the second day of the conference on this exciting (although sometimes confusing) topic, starting with a presentation by Leanne Kemp, CEO of Everledger, who first laid out the basic parameters of blockchain technology, before illustrating the technology's potential with an overview of Everledger's application in the diamond industry.

Blockchain, Leanne explained, is a digital database construct that consists of storing encrypted "blocks" of data (for example, the properties of a diamond and its related transactions), where each block is a cryptographical hash of the prior block in the chain, thereby linking the two. It is a system that promises security, stability, and immutability. It is technology that can be applied in various sectors (such as financial services and supply chain management), to replace "untrustworthy" third-party intermediaries by operating on a form of shared-consensus where multiple parties can interact on a ledger simultaneously, and to agree upon what is truth.

Leanne highlighted that security is of the key features of the blockchain. Cryptography is used to encrypt data on each block – thus, in order to access the data, a user must have both a public and private key (essentially, a sort of password based on cryptographic algorithms). Further, unlike traditional methods of data security, where information is stored locally, information on the Blockchain is stored, replicated and validated, by numerous users on the blockchain, making the information theoretically immutable – information cannot be deleted, but only appended to, and the only way to make a change is to have it recorded across all nodes on the network.

There are public blockchains (such as Bitcoin), where participants are not openly known to everyone else on the network, and are identifiable only by an anonymous digital ID. There are also private blockchains (such as those used in the diamond industry), where participants are fully known to those in the network. The deployment of these blockchains can vary, from the technology being used in single companies (such as Berkshire Hathaway), to across entire industries (*e.g.* the diamond industry as a whole). Blockchain also features the use of *"Smart Contracts"*, which are a set of stored procedures that enables data to be executed real time once certain conditions are met.

If blockchain can indeed set out what it promises to do – creating a new framework for trust in transactions – the application for this technology may well be as revolutionary as the world wide web. However, it remains to be seen whether blockchain is capable of achieving this vision – as conference goers would learn in a later seminar, hackers have able to steal billions of dollars from "immutable" bitcoin exchanges, forcing several of these exchanges (such as Mt Gox) into insolvency.

In the second part of her presentation, Leanne spoke of the use of Everledger in the diamond industry. In a nutshell, Everledger uses blockchain technology to trace the provenance of diamonds being sold, with the aim of creating a global immutable ledger that tracks items of value. By combining blockchain technologies with other technologies, Everledger allows for the creation of a digital twin of a physical object, by taking data measurements from the physical object and inputting that information into a blockchain. This information is then made accessible to those in the diamond industry, from insurers to financers to retailers, who are then able to obtain information on the history of a particular blockchain. The use of such technology can then be used to combat the sale of conflict or counterfeit diamonds, or enable greater transparency and certainty in the financing of diamonds.

That said, Leanne also pointed out that perhaps part of the reason why Everledger was able to succeed in the diamond industry was due to factors beyond the scope of the technology – for example, even before the introduction of Everledger, the diamond industry was already highly consolidated (for example, 90% of diamonds are cut in a single city), and that the key players in the industry had already started to come together to create a shared protocol to ensure greater traceability. Everledger was then able to step into this existing climate to allow the existing protocols to transcend the physical realm and into the digitial sphere.

In addition, the uniqueness of each diamond also made it possible to easily create a digital twin for each physical good being sold and transacted upon. It thus remains to be seen if industry wide application of blockchain can be adopted in more fractured or commoditized industries, but in the meantime, it would seem that Everledger's success in the diamond industry foreshadows its growth in other

industries dedicated to selling unique, historied, products, with Leanne identifying the art, antiquities, wine, and gemstones industries as potential room for expansion.

Finally, the segment ended with a video demonstrating the features of Everledger's Diamond Providence Platform, which can be viewed on Everledger's YouTube page.

Blockchain: Where are the Opportunities?

Report by Sabina Schellenberg
FRORIEP Legal AG, Switzerland

Chair: Harriet Territt, Jones Day
Nicholas Dimitriou, Great South Gate Asset Management
Brooke Hall-Carney, Lipman Karas
Dr Meeta Vouk, IMB Research Centre

Harriet Territ chaired a lively and inspiring session on "Blockchain: where are the opportunities?" The panellists provided an excellent overview on the blockchain technology and the wide range of its applications.

It started with an introduction about how strongly the blockchain technology is already present and how fast "we are moving from the World Wide Web to the World Wide Ledger".

This introduction was followed by an outline about how blockchain works and which characteristics there are. We learned that blockchain is a technology for storing information based on a distributed ledger concept. blockchains are decentralized as opposed to today's centralized systems – "a team sport" according to Harriet.

In the second part of the session the audience was actively involved. Each panellist presented an area in which blockchain can play a role and aimed to convince the audience to invest in this sector. The audience was then divided into groups and each group was asked to decide in which sector the group would most likely invest USD 10,000,000.

Although blockchain will not solve every problem the panelists vividly presented how in some sectors and fields of applications blockchain has real advantages with respect to transparency, security, reliability, costs and efficiency. The following fields of application were presented: Financial Services (including tokenization of assets), Trade Finance and Supply Chains, Digital Currencies and Government Services:

- In the financial services sector, the use of blockchain technology was discussed at a very early stage. Above all, because the technology has the capacity to make existing processes efficient and faster. This also includes the digitisation of assets which makes it easier to store such assets and trade them via blockchain. Risks that may arise here, however, are obviously the risks of theft or fraud.
- In the area of trade finance and supply chain, there is a great deal of potential in particular, as current processes require banks to issue letters of credit or other forms of finance against shipped goods which can lead to long delays in payment for the seller or exporters. With blockchain technology assets can be tracked in real-time and banks know in real-time when goods are delivered and in what condition and release payments automatically on delivery of goods. Crucially, blockchain reduces the risk of fraud where goods are stolen or substituted during transportation.
- In the context of the implementation of blockchain technology in the field of digital currencies it was explained that it is only through the use of digital currencies that direct payments from peer to peer can be made without a central intermediary being involved. Another advantage is that it helps the unbanked access financial services globally.
- Finally, in a different sector of application, the extent to which blockchain technology can be used in government services was highlighted by the panel. Here, too, many applications are already running. For example, land registers are kept with blockchain-based systems; and, in the area of health insurance, health records can be stored more securely through the use of blockchain technology. In the future, blockchain can also play a major role in the area of voting. The fact that highly sensitive data is processed with a technology that is not yet mature and untested could, however, pose problem without appropriate safeguards.

In the ensuing discussion among my group as to the field in which the funds could be invested, a consensus emerged that the investment should not be made in the area of digital currencies. Here we saw the greatest risks, especially because the value of these currencies fluctuates so widely and since business can quite effectively be transacted without cryptocurrencies. We opted instead to invest in trade finance and supply chain, but nevertheless saw substantial potential in the field of government services.

This assessment was shared by the audience more generally, which voted as follows: 52% would invest in Supply Chain and Trade Finance, 26% in Government Services, 11% in Financial Services and only 7% in Digital Currencies.

The session was stimulating and worthwhile. The audience benefited from the extensive experience of all panellists, who were able to demonstrate the wide range of applications of blockchain technology without losing sight of the limitations and risks that this technology carries.

What Are "Smart Contracts" and How Might they Utilise Blockchain Technology to Revolutionise the Finance Sector?

Report by Linda Johnson
KPMG, Channel Islands

Chair: Stephen Rutenberg, Polsinelli
Mary Hall, Oracle Blockchain Product Marketing
Andras Kristof, Akomba Labs Pte Ltd
Jasmine Ng, NEM Malaysia

Smart contracts are all the rage in the blockchain world, so it was unsurprising that this session attracted good attendance.

The panel started by outlining that the true innovation of blockchain is its ability to automate trust and transparency among the parties using it. This embedded trust allows consumers, enterprises, and governments to automate how they manage any transactional relationship, making it perfect for contracting in the finance sector.

Smart contracts

Smart contracts are smart because they execute on their own using blockchain technology, allowing the performance of credible transactions without any intervention from third parties (agents, lawyers etc). Smart contracts work on an 'If-Then' principle, which means that the ownership of an asset will be passed on to the buyer *only* when the pre-programmed conditions embedded in the blockchain database are met.

The blockchain technology also works as a real time escrow service, meaning that both the funding and the ownership right are stored in the system and distributed to the participating parties at exactly the same time. Moreover, the transaction is verified and encrypted, so faultless delivery is guaranteed, and the database provides a record of consent and an unalterable audit trail. As trust between the parties is no longer an issue, there is no need for an intermediary, as all the traditional intermediary functions can be pre-programmed into a smart contract. The benefits extend beyond cost savings; they include speed, security, transparency and legal compliance.

Too good to be true?

Given the focus on insolvency and dispute resolution, delegates questioned 'where can things go wrong?', 'can a smart contract be a dumb contract?' and 'will this technology displace the legal profession as we know it?'

Dispute resolution in the blockchain was considered by the panel to be completely feasible; however, they questioned whether automatic foreclosure is the future we want? For example, if we use smart contracts with automatic default and enforcement clauses, how does this play out in the case of a moratorium in terms of protecting assets?

The panel highlighted that the smart contract is only as smart as the person who wrote it, as it simply replaces what was on paper before. So it is conceivable that smart contracts may indeed be flawed. Furthermore, the smart contract can't control underlying assets being changed or tampered with, self-execution removes discretion, and the blockchain is as weak as the weakest link i.e. the one party that refuses to certify. Plus computing technology still does not exist to deal with some core aspects of transacting, for example at present physical delivery is currently off-chain.

However, things are advancing at pace. Technological advancements will enable the transfer of title documents (or similar) to be included within the chain. The internet of things, 5G, AI predictive analytics etc will tie together the ever-increasing volume and sources of data; this interconnectivity, coupled with advancements in computing technology, will facilitate a vast increase the complexity of future smart contracts. Furthermore, if the blockchain data will never be erased / forgotten, so how will this work within the context of GDPR where you have the right to be forgotten? The panel stressed that, with embedded insolvency or dispute resolution provisions, think how important it will be to read the fine print!

The panel wrapped up with some words of caution: the blockchain is good for accountability, bad for privacy; however, it is learning to be more private. The future is positive, and solutions to problems are being developed, but it's early days as it is not yet 100% proven, and the blockchain is not a panacea or one-size-fits-all. Finally, with regard to the legal profession, Stephen stressed that humans will be increasingly needed for humanity, noting "we won't be draftsman, but we will still need humanity to regulate, moderate and arbitrate."

So whilst smart contracts and blockchain technology are here to stay, there are still many challenges that will need to be addressed from the perspective of insolvency, enforcement and dispute resolution. Watch this space!

Dealing With Cryptocurrency Assets in Insolvency

Report by Lynne Van
Anthony Harper, New Zealand

Chair: Lee Pascoe, *Fellow, INSOL International,*
Norton Rose Fulbright
Justine Lau, Mourant Ozannes
Daniel J. Saval, Kobre & Kim LLP
Liz Steininger, Least Authority TFA GmbH

This session demystified blockchain technology and its application in crypto-assets and Bitcoin. The volatile

nature of crypto-assets and the massive drop in price of Bitcoin between January 2018 and December 2018 (falling by approximately $700 billion) means this industry remains a real area of interest for insolvency practitioners.

Lee Pascoe chaired the panel, comprised of Justine Lau, Daniel Saval and Elizabeth Steininger.

Participants were taken across the globe, looking at extant cryptocurrency insolvency proceedings in various jurisdictions, including Canada (Quadriga CX), Switzerland (Envion AG), South Korea (Yapin/Youbit), the USA (Gigawatt Inc), Italy (Bitgrail S.r.l), Japan (MT Gox Co Ltd) and even my corner of the world, New Zealand. The 'snapshot' gave the audience a good introduction to the nature of crypto-assets and the extent of loss caused to investors.

An introduction into the history of cryptocurrency followed, with discussion about Digicash and the creation of Bitcoin. Partakers of the session were acquainted with a myriad of technological terms, including 'concession algorithms', 'public keys', 'private keys', 'immutable ledgers', helping practitioners understand the technology underpinning crypto-assets and the relevance of the terms if faced with a crypto-insolvency proceeding.

The immediate steps necessary to preserve the value of crypto-assets, and the nature of the transactions, was explained as the audience was navigated through the nature and importance of, and differences between, 'private keys', 'public keys' and 'hot'/"cold wallets', with the panel's comments and explanations being reinforced during the session through a online question and answer session.

A real time demonstration of transfer of cryptocurrency was given, showing the ease with which cryptocurrency assets could be transferred, highlighting the importance of securing the private key for an account, and emphasising the borderless and faceless nature of crypto-assets.

The panel then moved on to discuss the tracing of crypto-assets where the assets were 'lost' or stolen, with helpful insight about some key aspects of tracing crypto-assets and process due to their faceless and private nature. Practitioners were given practical tips, including why orders against an exchange or third party custodian of the accounts would likely be more effective.

The timing and methodology for realising and distribution of crypto-assets, and rights of token holders, was explained by review of case studies, including MT.Gox, Bitgrail S.r.l and Envion AG.

A fascinating summary of the Mt. Gox liquidation was given, touching on the circa 850,000 bitcoin hack (causing loss of approximately USD$450 million) which led to the Bitcoin exchange giant (the largest in the world by trading volume) filing for liquidation in 2014. The panel looked at how the increase in value of Bitcoin at the time of realisation resulted in the company no longer being insolvent, and the Court order which approved a petition for the insolvency proceeding to be transferred to a civil rehabilitation so that creditors could receive their investments in their original crypto-assets rather than the fiat value at the time of the collapse.

The issues arising under the Envion AG liquidation in Switzerland were also touched on, with a discussion on how claims of token holders were determined to demonstrate what issues could arise with respect to crypto-assets in an insolvency proceeding.

The nature of investor interests in crypto-assets was also covered. In this regard, the Italian experience of Bitgrail S.r.l was compared with the Swiss example in Envion AG, to raise awareness of how interests could arise as either proprietary interests or contractual interests.

This session struck the perfect balance between being sufficiently technical, so that the audience could understand the technology underpinning crypto-assets which underpinned the panel's comments, and giving insight and real practical tips that could be applied by practitioners if faced with an appointment to a business in this sector.

Europe, Africa & Middle East – What is New and Changing?

Report by Robin Abraham
Clifford Chance LLP, UAE

Chair: Robin Abraham, Clifford Chance LLP
Sarah Levi, Lazard Limited
Ferdinand Hengst, *Fellow, INSOL International*, De Brauw Blackstone Westbroek N.V.
Antonia Menezes, *Fellow, INSOL International*, The World Bank Group

On the final afternoon of INSOL Singapore, Robin Abraham from Clifford Chance chaired a panel to discuss "Europe, Africa & Middle East - What is new and changing?". Robin was joined on stage by panellists Ferdinand Hengst from De Brauw, Antonia Menezes from the World Bank Group Insolvency team and Sarah Levi from Lazard.

The panellists focussed the discussion on three main topics: (i) restructuring law reform and what makes a good restructuring law, (ii) the role of funds in restructuring, and (iii) different attitudes of banks in mature and emerging markets to distressed situations.

Robin and Antonia highlighted the state of insolvency law reforms in the Middle East and Africa. For example, Antonia noted that the OHADA law was a single insolvency law that covers 17 West African jurisdictions and is an example of a solid law that introduced a new pre-insolvency conciliation procedure, provisions for post-commencement financing and the adoption of the UNCITRAL Model Law. However, there was limited experience of the law being implemented in practice.

Robin noted that the catalyst for law reform in the Middle East had been the realisation at the time of the Dubai World default in 2009 that the regime in place at that time did not provide means for a distressed company to have breathing space to develop a restructuring plan or an effective tool to implement a plan. At the time this led to a special decree being passed and tribunal being established specifically to deal with the Dubai World issue.

A video was shown where Mark Beer, OBE (the registrar of the Dubai World Tribunal) spoke to Mark Hyde (the Clifford Chance partner who led much of the restructuring discussions for the debtor) and gave his perspective on the background to the introduction of the decree and the establishment of the Tribunal over a 9-day period.

Ferdinand gave his view of what made an effective restructuring law. Points he highlighted included:

- an ability to bind the debtor and its creditors to a majority-supported agreement which is fair to the economic owners;
- a stay on enforcement, at least against unsecured ordinary creditors, i.e. debtors should be able to continue to operate their business while they are undertaking their restructuring, thereby maintaining value.
- the need to respect the relative position of creditor classes;
- provisions for cross-class cram down; and
- priority for new money financing.

As a banker, Sarah was able to give a commercial perspective, and she discussed how financial advisers look at laws when it comes to determining a strategy for a restructuring. Sarah noted that she would typically first determine a strategy to achieve a desired outcome, negotiate a commercial transaction with the relevant stakeholders and then try to find the legal framework that allowed implementation in the most efficient way. In some cases, legal frameworks available may be limited and this will in turn impact strategy.

Sarah also noted that advisers take a lot of comfort from precedent, with nobody wanting to be a test case.

The discussion moved on to look at the role of funds in restructuring.

Robin noted that funds are being seen more often in the Middle East, but they are still relatively rare. Nevertheless they could be seen as bringing positive momentum to deals, given their need to structure an exit for their investments.

Sarah commented that as the banks have retreated from stressed situations, funds have become more prevalent, often acting as lenders of last resort or short-term turnaround operators. They have been helpful in situations where the banks are unable to provide funding and provide liquidity to the debt when the banks can no longer hold the debt instrument. That said, they can be unhelpful to restructuring advisers when they adopt a "hold-out" strategy and block a solution in exchange for a pay-out.

Sarah noted that most distressed situations she got involved with nowadays either have funds in from the start, or funds get involved in the course of the restructuring; therefore, it is key to manage them carefully. Clearly, it is important to understand their upfront motivations and what they are trying to achieve.

The discussion ended with panellists giving their views on attitudes of banks and how they vary across markets.

Antonia noted that she observed generally conservative lending with high collateral requirements throughout Africa. Sarah, who works across mature and emerging markets, noted that banks are keen to protect their own balance sheets, which can reduce flexibility to do more fundamental restructurings. This was particularly the case where there was a lack of a tried-and-tested restructuring framework leading to problems continually being pushed down the road until, in some cases, businesses fail.

Nevertheless, the panellists all agreed that there is more realism being brought into restructurings and generally banks are becoming more realistic when it comes to provisioning, albeit often as a reaction to new accounting rules.

Monetising the Secret Sauce, Maximising the Value of IP in Retail Insolvencies

Chair: Kate Warwick, FTI Consulting
Philip Abelson, White & Case LLP
Mark D. Bloom, Greenberg Traurig, P.A.
Peter Bullock, King & Wood Mallesons

Recent retail insolvencies and potential insolvencies provide fantastic examples of the challenge of optimising the value of IP where an insolvency event has or potentially will occur.

Panellists addressed the key issues that arose and the outcome or potential outcome covering:

- key elements of IP and their respective challenges (brand licensing arrangements, customer data and evolving IP such as AI);
- valuation (reorganisation versus liquidation, stakeholder influence); and
- evolving case law (IP and restructuring).

The session centred on key case studies such as Toys R Us, Nine West, J Crew, Jamie's Italian, Steinhoff and most recently Sears, and run as a free-flowing discussion, providing delegates with the opportunity to ask questions and contribute throughout the duration.

Hot Topics: Anticipating the Business Impacts of an Evolving World

Report by Ian Dorey
K&L Gates, Australia

Chair: Timothy Graulich, *Fellow, INSOL International*
Davis Polk & Wardwell LLP
Giuliano Colombo, Pinheiro Neto Advogados
Stuart Frith, Stephenson Harwood LLP
David Kidd, Linklaters
Orla McCoy, *Fellow, INSOL International*, Clayton Utz

This session on Hot Topics was chaired by Timothy Graulich and the panel included practitioners from Brazil, UK, Australia, the US and Asia. It was an excellent panel with lively discussion around a number of key topics.

Tim, as the chair, made the brave decision to allow the audience the power to choose what was covered from what was referred to as three megatrends. The three megatrends were:

1. Retreat from universalism;
2. The evolving lending landscape; and
3. Regional solutions to global problems.

Not surprisingly in the first megatrend the issue of Brexit was overwhelmingly the winning topic to be covered. The panel indicated that no one really knows how this will play out and by the time the presentation was over what they said may have already been out of date. The comment was made that the situation in the UK was that there was now a dysfunctional Government without a majority and the opposition was tagged as an "opposition in hiding".

From an insolvency point of view, the concern around Brexit was the real risk that there would not be the same level of co-operation between the Courts and harmonisation will be lost. The comment was also made that other EU member states may not adopt the UNCITRAL Model Law on Cross-Border Insolvency. As a side note, the panel noted there had been a large number of London lawyers applying to become members of the Law Society of Ireland and that Brexit was certainly creating opportunities for Ireland in a number of areas.

The panel then turned to the second megatrend and this time the overwhelming choice was the rise of shadow banking. The panel noted that the rise was a direct result of the over regulation of banks, particularly from the US perspective. This theme of "over-regulation" was repeated by panel members from other jurisdictions outside of the US.

It was noted that hedge funds were stepping up to become lenders of record even where there was not a distress situation occurring.

In Australia, it was noted that the Royal Commission into the Banking, Super-annuation and Financial Service industry, whilst politically driven, has changed the financial landscape. In the insolvency space, banks in Australia have been relatively passive for some time and this left a gap in the financial markets. As a result, US and offshore funds have become active in the Australian market.

The panel also noted that in the UK the experience was the same as that in Australia – that is the banks were loath to take action. There were comments that if this was continued banks could lose their memory of how to lend.

All of the panel members noted that with hedge funds involved, this changes the landscape when it comes to enforcement – the funds' focus is different to that of a bank when it came to recovery. It was said that the funds were not so process-driven as banks but the downside was that funds can be unpredictable to deal with.

There was some concern that when the next wave of insolvencies occurs, it may be more about how many of the hedge funds will survive. A comment was made that there was comparatively little scrutiny within the funds as to the level of debt or loans being transacted by them.

For the last megatrend, the winning topic was around anti-corruption frameworks. There was a discussion around Operation Car Wash in Brazil and the impact it had had in practice. The comment was made that, with anti-corruption frameworks, penalties could be assessed on insolvent companies which in turn would punish creditors.

Workshops Round-up

Report by Geraint Kang
Tan Kok Quan Partnership, Singapore

Leanne Kemp, Everledger
Lee Pascoe, *Fellow, INSOL International*,
Norton Rose Fulbright
Stephen Rutenberg, Polsinelli
Harriet Territt, Jones Day

The penultimate panel of the conference was a recap of the individual breakout sessions, with representatives from each of the three workshops taking the stage to share the key takeaways from their individual sessions.

First, in *"Blockchain – Where are the Opportunities?"*, Harriet Territt recounted that the panellists had opted to go for a Dragon's Den style session, where they made four separate pitches for blockchain to the audience (in respect of finance, supply chain, cryptocurrency, and government services). Audience members were given the opportunity to vote for their favorite idea both before and after the panelists were given a chance to make their pitch. Interestingly, while the uses of blockchain for finance and

supply chain purposes remained the clear favorites, government services (such as using blockchain to secure digital identity and voting) saw the largest growth in supporters. It also seems that the panellists did a convincing job of convincing the audience that blockchain may be the way forward – although 15% of the audience initially felt that blockchain had no practical use, this dropped to 4% at the end of the workshop.

Next, in *"What are 'Smart Contracts' and how might they utilize blockchain technology to revolutionise the finance section?"* Stephen Rutenberg focused on the potential of smart contracts on a blockchain – the example given was a simple if/when contract: if a person does not pay according the terms of his hire purchase, he immediately loses title. However, this system, Mr Rutenberg pointed out, seemed to be in direct conflict of most insolvency codes. Whereas most insolvency regimes give debtors a safe space to negotiate, the use of smart contracts and automation would mean that most debtors would lose title to their property immediately. Ultimately, the big takeaway from the discussion is that lawyers and other insolvency practitioners would need to find a way to balance these two aspects, and to maintain a sense of human justice and fairness whilst finding a way to take advantage of automation and technology.

Finally, in *"Dealing with Cryptocurrency Assets in Insolvency"*, Lee Pascoe summarised how her panel had guided the audience through the practical aspects of handling and securing cryptocurrency assets in an insolvency scenario, addressing key concepts such as locating and securing assets, gaining possession of a hot or cold wallet and private keys, as well as other steps for an insolvency practitioner to take on day one. The panel also considered the ways blockchain made tracing assets both easier in some ways, yet more challenging in others. Finally, the panel also tackled the challenges in valuing cryptocurrency, and dealing with the expectations of creditors (such as whether crypto-currency holders have a shareholder or proprietary interest in a currency exchange, or whether they should be entitled to prove for a debt in cryptocurrency instead of a fiat currency).

The panellists were then asked if the industry was ready to tackle the challenges of blockchain. Lee agreed that while parts of the industry was ready, others would soon need to get themselves ready. Harriet added that while the basic procedures were the same – identifying, collecting, and distributing assets – the introduction of blockchain meant that there was a whole new lexicon that insolvency practitioners would need to familiarize themselves with. To this end, she recommended that firms try to develop a protocol on how to deal with cryptocurrencies, and suggested that practitioners work closely with law enforcement and other local authorities to formulate a roadmap on dealing with such assets.

The panellists were also invited to comment on whether they received any awkward questions during the workshops. Mr. Rutenberg noted that one of the questions his panel was asked was if whether smart contracts was even dependent on blockchain technology. But ultimately, Mr. Rutenberg felt that it didn't matter – contracts would eventually move towards greater automation, and it did not matter whether it was through blockchain or some other technology. At the end of the day, lawyers would need to think about and understand their role in this changing landscape, and decide how the law should embrace or restrict such transactions.

The panellist were then asked about the greatest contribution INSOL could make towards these new developments. Harriet commented that it was imperative for build a common standard on an international basis, and that this could only be done if the issue was taken out of individual firm silos. There was also the risk of individual Judges making uninformed decisions that would have a significant impact on the law, especially in the early days of the technology. It was thus important for organizations like INSOL to act as a global platform to educate and advocate how these standards should be developed.

Finally, the panellists were asked if they felt the information they had was sufficient for them to tackle the challenges ahead. Lee disagreed, pointing out that as technology moved at such a quick pace, continuous education was vital in keeping up with the times. Lawyers would need to be educated in their own fields, but had to also keep in mind that decision on cryptocurrency in one jurisdiction may not be identical to that in another jurisdiction – this would require lawyers to be familiar with both their own jurisdictions, as well foreign jurisdictions one would not ordinarily look at.

Stephen added that a lot these developments would be multi-national, which meant that every lawyer would need to know that laws in their own country and how they would interact with other jurisdictions. Every lawyer would also need a basic level of programming and technical knowledge, but perhaps even more critically, they would need to engage in more philosophy, ethics, and moral discourse, so as to better decide how to tackle an increasingly automated world.

Harriet also echoed the same sentiments, stressing that with the advent of tech, every lawyer was now a tech lawyer – while that might not require every lawyer to engage in the nuts of bolts of tech, it was imperative that they understood the basics.

Exciting Times: Predicting Developments in the Global Economy

Facilitator: Rico Hizon, International News Journalist
Simon Freakley, AlixPartners LLP
Dr Detlef Hass, Hogan Lovell International LLP
Julie Hertzberg, Alvarez & Marsal
Sopnendu Mohanty, Monetary Authority of Singapore
Ai Ai Wong, Baker McKenzie

This session involved a dynamic discussion by market experts from around the world on cutting edge issues facing insolvency and restructuring professionals.

INSOL Academics' Colloquium

Report by Kathleen van der Linde
University of Johannesburg, South Africa

The stage was set for high-level interaction when over 70 delegates convened in Singapore for the two days of the INSOL Academic Colloquium on 1 and 2 April 2019.

The first two papers dealt with the "great divide" between reorganising a company and rescuing only its business. Sarah Paterson (UK) argued that while the distinction between reorganising a company and rescuing its business is immaterial to financial creditors, it matters to creditors who are embedded in a business suffering operational difficulty. Anneli Loubser (South Africa) cautioned that unless rescue proceedings are accessed early enough, even the divide between rescue and liquidation could disappear. Tuomas Hupli (Finland) spoke on the optimal design of an automatic stay, while Anne Mennens (The Netherlands) considered whether the absolute or relative priority rule should apply to cross-class cramdowns in preventive restructurings. Aurelio Gurrea-Martínez (Singapore) enlightened us on the new enhanced scheme of arrangement in Singapore and warned against duplication between *de facto* Chapter 11 models and formal reorganization procedures. Tronel Joubert and Monray Botha (South Africa) considered how distinguishing features of the South African labour market and politics might explain the different approach to employee participation in rescue proceedings compared to Australia and the UK.

In the session on theoretical and historical perspectives, Chris Symes explained that "Aussies love statutes" and thus they have little need for US-style theories of insolvency. Juanitta Calitz (South Africa) traced the lack of clear policy on state regulation of insolvency in South Africa back to "at least 1828" (but her paper looked back as far as 1674). Virginia Torrie (Canada) gave a fascinating account of the reasons behind special debt relief legislation for farmers in Saskatchewan in the 1930's. Lezelle Jacobs and Peter Walton (UK) shared results of their INSOL-funded empirical study on the link between ethical behaviour and remuneration of IPs and proposed their own "enlightened creditor value" approach.

Starting day 2, WAN Wai Yee (Singapore) and Casey Watters (China) reported on the first phase of an extended empirical study (with Gerard McCormack, UK) into schemes in Singapore. WEE Meng Seng (Singapore) and JIN Chun (Japan) explored the link between the management or supervision structure during corporate insolvency procedures and the role of the creditor committee. Akshaya Kalmanath (Australia) spoke on how the 2016 Indian legislation is being implemented by dedicated IPs often faced with resistance from either the company or its creditors, depending on who appointed them.

Janis Sarra (Canada) introduced the session on intersections of insolvency law and other disciplines. She highlighted the implications of climate change for financing, restructuring and liquidation. Reghard Brits (South Africa) explained that insolvency systems amount to state interference with property rights and analysed the constitutionality of the discharge under the proposed new debt intervention system in South Africa. Zingapi Mabe (South Africa) argued that a South African provision that vests the assets of a solvent spouse in the IP of the insolvent spouse (to be released upon proof of title) will not withstand constitutional scrutiny under the equality clause because it is limited to monogamous marriages and thus discriminates on the basis of marital regime.

Turning to cross-border insolvency, Marjolaine Jakob (Switzerland) outlined the rather limited options open to foreign insolvency administrators on Swiss territory. In contrast with Switzerland's passive territorialism, almost

everyone is welcome to do a Chapter 11 in the USA which adopts "COMI-neutral universalism", Ray Warner (USA) explained.

The penultimate session dealt with "fishing and funding". Trish Keeper (New Zealand) investigated the liquidator's ability to procure documents on the personal finances of directors with a view to pursuing an action for recovery while Sulette Lombard (Australia) dealt with the questions raised by the Australian Law Reform Commission's January 2019 report on the regulation of third-party litigation funding.

All good things must come to an end, so the two papers on empirical studies regarding IPs concluded a fruitful colloquium. Jessie Pool (The Netherlands) reported on that the preliminary results of her study reveal that confusion and unintentional biases on the part of trustees result in a mismatch between enforcement decisions and director misconduct. Catherine Robinson's (Australia) survey of IPs indicate that they regard recent changes to the regulatory regime as having had little impact on them and on public perceptions of the industry.

In the course of the colloquium we were also updated on projects. Scott Atkins and Paul Heath spoke on initiatives regarding the INSOL Mediation Panel, while Jennifer Gant introduced the Judicial Co-Operation supporting Economic Recovery in Europe project and Paul Omar the ABLI-III Asian Principles of Business Restructuring project.

As always, academic findings were interspersed with serious discussions, thoughtful questions, complaints about insufficient research time and general inter-jurisdictional banter covering everything from Harry Potter's dementors to the trolley problem.

My main impression was that while diverse jurisdictions often grapple with the same problems, solutions are sensitive to the unique circumstances of different times and places. But when it comes to conducting research, academics everywhere have much in common. For this reason, we were grateful for the opportunity to convene at the National University of Singapore the day after the colloquium for an afternoon Workshop on Researching Insolvency. We were treated to lunch, followed by reflections on doctrinal, comparative and empirical research methodologies and the holy grail of externally funded research. No doubt some of the papers at next year's colloquium in Cape Town will have been inspired by the Singapore events!

INSOL Academic Steering Committee 2019/2020

The Academic Group acts as a special interest group within the broader INSOL International framework and provides a platform for meeting, deliberating and networking between those within academia and those from the general membership of INSOL International. Our annual colloquia also provide an excellent opportunity to listen to and interact with leading peers from different legal traditions and a wide range of jurisdictions. Through this forum, colleagues worldwide are able to interact with the aim of exchanging theoretical insights and practical observations.

Our key objectives are:

- To expand and grow the regions from which academics attend and to continue promoting and encouraging knowledge exchange and collaborations within these regions. This aim supports INSOL International's vision: 'INSOL with its Member Associations will take the leadership role in international turnaround, insolvency and related credit issues; facilitate the exchange of information and ideas, encourage greater international co-operation and communication amongst the insolvency profession, credit community and related constituencies' and also aligns with our goal as academics to be at the cutting edge amid disruptive changes within the insolvency and restructuring environment.
- To develop and support early career academics and we have recently established an early career academic focus group.
- Through an active deliberation process, to identify projects and ventures within the broader organization with the aim of responding and contributing through our experience and expertise.

On the 1st April 2019, Prof Juanitta Calitz succeeded Prof Rosalind Mason as Chair of the Academic Group. She is ably assisted by the Academic Steering Committee, whose members are currently:

Juanitta Calitz, University of Johannesburg, South Africa (Chairperson)

Farid Assaf SC, *Fellow, INSOL International*, Banco Chambers, Australia

David Burdette, INSOL International, UK

Sajeve Deora, Integrated Capital Services Limited, India

Rosalind Mason, Queensland University of Technology, Australia

Mahesh Uttamchandani, The World Bank Group

Eugenio Vaccari, University of Essex, UK

Michael Veder, Radboud University Nijmegen / RESOR, The Netherlands

Ray Warner, St John's University, School of Law, USA

Ian Fletcher International Insolvency Law Moot 2019

Report by Professor Rosalind Mason
Queensland University of Technology, Australia
Moot Coordinator

On 29 March 2019, 12 teams of law students with their coaches gathered from around the globe gathered in Singapore to compete in the third Ian Fletcher International Insolvency Law Moot. The competition is named in honour of the late Emeritus Professor Ian Fletcher QC (hc), a world-renowned scholar in international insolvency law and Foundation Chair of the INSOL International Academics Group. The 2019 Moot was co-sponsored by the host university, Singapore Management University, as well as the foundation sponsors INSOL International, the International Insolvency Institute and Queensland University of Technology Faculty of Law.

To qualify for the oral rounds, teams must register for the competition and then file written submissions for both Appellants and Respondents in a hypothetical case that requires application of the UNCITRAL Model Law on Cross-border Insolvency (Model Law). A record number of 21 teams initially registered representing a record 15 jurisdictions from across Asia, Europe, North and South America, and Oceania, and then from among those who filed written submissions, the teams selected hailed from Australia, Canada; China; France, India, the Netherlands, Serbia, Singapore and the United States of America.

The moot problem for 2019 was created by Justice Aedit Abdullah of the Singapore Supreme Court with input from judges, lawyers, an insolvency professional and academics from across both civil law and common law countries. It was used in all rounds of the competition, enabling students to improve their advocacy and arguments as they progressed through.

The case scenario involved a services business that was operated by a company incorporated in the Cayman Islands and they carried on its business across three hypothetical countries, Xylia, Yin and Zeeland. Following a rapid expansion met by vigorous competition, the company decided to initiate a restructuring when suppliers threatened to wind it up in Xylia, where it began its operations. The company also decided to initiate a parallel restructuring in Yin to make use of the latter's speedier restructuring processes and less onerous legal requirements. It commenced a redomiciliation process to move its registration from the Cayman Islands to Yin, along with moving the venue of its board meetings, senior management offices, and most back-end work, while still maintaining various connections to Xylia.

The Yin restructuring scheme and the appointment of insolvency office-holders received Yin court approval. These orders were then recognised as the foreign main proceedings in Xylia under the Model Law as locally enacted. When the Yin office-holders then sought recognition in Zeeland with a view to the stay of local proceedings, the application was opposed by a local creditor. That creditor had bought the company's distressed debts, all of which were governed by English law, and wished to proceed to recover monies owing by the company. In the first instance, the court refused to grant recognition and assistance and it was against this decision that the teams had to prepare their submissions. When granting leave to appeal, the Appeal Court limited the grounds to a public policy issue arising from court-to-court communications during the parallel restructuring proceedings; and to issues concerning the company's redomiciliation; its 'centre of main interests'; and the possible impact of the *Gibbs* rule.

As with all moot competitions, the teams were assessed on their knowledge of the law and their advocacy skills, rather than the moot bench arising at any substantive decision on the hypothetical case. On Friday evening and Saturday morning, the teams mooted three times, in the process arguing at least once each for the Appellants and for the Respondents. This resulted in the following 8 teams progressing to the knock-out rounds: National University of Singapore; University of British Columbia, Canada; Jindal Global University, India; Singapore Management University; National Law Institute University, Bhopal, India; Queensland University of Technology, Australia; Leiden University, The Netherlands; and Dr. Ram Manohar Lohia National Law University, India.

The three person moot benches in the Oral Rounds comprised practising and academic lawyers who likewise represented a range of jurisdictions: Australia, Brazil, China; England, New Zealand, Singapore, South Africa, and the United States of America. Dr Sulette Lombard, Flinders University Australia summed up the feelings of many of the moot judges: "It was amazing to see the students in action and I was very impressed with the high standard of their work. I also really appreciated the opportunity to be on a panel with very eminent practitioners from across the globe and learned so much by being able to see their 'practical' perspectives on these issues coming out in the mooting rounds."

Some students were also fortunate to appear before judicial officers who were attending the INSOL/UNCITRAL/World Bank Judicial Colloquium. Justice Daniel Carnio Costa, Brazil, presided on a Quarter Final bench on Saturday evening and the semi-final benches on Sunday morning comprised Senior Judge Geoffrey Morawetz, Canada; Madam Justice Nicoleta Nastasie, Romania; Hon Paul Heath QC, New Zealand; Justice Alastair Norris, England & Wales; Justice Brigitte Markovic, Australia; and Justice Piet Neijt, The Netherlands. The judicial officers were impressed by the very high quality of the students and as Justice Markovic, Australia, commented: "their enthusiasm was infectious".

In the closely-fought semi-finals, University of British Columbia defeated National University of Singapore and National Law Institute University, Bhopal, India won against Singapore Management University. Then on the afternoon of Sunday 31 March, the final two teams battled it out before Judge of Appeal Steven Chong, Supreme Court, Singapore;

Chief Judge Cecelia Morris, Bankruptcy Court (Southern District of New York), USA; and Justice (Rtd) Arjan K Sikri, Supreme Court of India. Following an impressive display of advocacy by both teams, the Grand Final winners were the National Law Institute University, Bhopal and the best individual mooter was their junior counsel, Ms Kuhoo Mishra.

The Fletcher Moot is a great example of cross-border collaboration. It encourages our best and brightest students from around the globe to learn about international insolvency and restructuring law and international commercial litigation. It is dedicated to raising the profile of insolvency and restructuring within the university curriculum and provide students with the opportunity to engage with their peers, judges and members of key international insolvency bodies.

Clearly, the Fletcher Moot is achieving one of its key goals which is to provide an avenue for academics, judges and a diverse range of insolvency experts to collaborate in mentoring the next generation of lawyers.

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Thirteenth Joint INSOL / UNCITRAL / World Bank Group Multinational Judicial Colloquium on Insolvency

Report by Neil Cooper
Past President, INSOL International

The 13th joint UNCITRAL/INSOL International /World Bank Group Multinational Judicial Colloquium was held in Singapore on 1st and 2nd April 2019. About 110 judges and government officials attended from over 40 States, from a wide range of nations of diverse legal systems, cultures and states of economic development. Moreover, the attendees had widely diverging levels of practical experience, particularly with respect to cross-border insolvency. This colloquium also had a significant number of first time participants and more delegations from nations that had not attended previous colloquia.

The first morning was devoted to foundation sessions, covering the bases of determining insolvency and objectives of modern insolvency and restructuring processes. All legal systems have similar features; who is to suffer; how do we commence an insolvency process; the need for judges to provide speedy answers. This is not always easy and sharing experience enables judges to fulfil the needs of the public.

Parties need to appreciate that restructuring is not a "right" of every troubled debtor: insolvency "patients' may be terminally doomed or capable of financial resuscitation. Restructuring has the possibility of added value but the judge may need the views of a professional that the objectives of a restructuring stand a reasonable prospect of achievement. In the cross-border context, the benefits of keeping a business going are the same but with the additional question of who shares in what pot of assets.

The judges considered the bases of allowing an application for recognition; the timescale within which it would be appropriate to grant relief; the options in jurisdictions with and without the MLCBI and whether the relief should be constrained by domestic law or the law of the applicant for relief.

There is no automatic relief available to office holder in common law absent the MLCBI; specific relief including access to information needs to be sought; and following the decision in Singularis, that can be granted providing that relief could have been sought in the originating jurisdiction. Civil law is similar, although a greater emphasis is sometimes placed on the jurisdiction where debtor is incorporated.

The full meeting discussed the new UNCITRAL models. The Commission adopted the Model Law on Recognition of Insolvency Related Judgments in July 2018. It extends the scope of cross-border recognition while maintaining extensive safeguards for affected parties. The Model Law and the Guide to Enactment are available on the UNCITRAL website. The Model Law on Enterprise Groups is expected to complete its process in 2019. It determines the ways in which courts become involved with the restructuring of enterprise groups, including the new concept of synthetic proceedings aimed at reducing the costs and delays involved in multi-court proceedings.

The session on Restructuring Enterprise Groups - Theory and Practice considered the extent to which two recent cross border cases, Nortel and Agrokor, would have been altered had the above Model Laws been applicable. It was concluded that the new Model Laws would have been of considerable benefit in Nortel enabling a group solution to be proposed and in promoting communications and cooperation. On the other hand, it was unclear whether they would have helped Agrokor.

Court to court communications is a perennial topic. An increasing number of judges are now required as opposed to being given permission to cooperate with other courts. The problem that remains is the uncertainty as to manner of communication. These uncertainties are reduced for judges in the growing number of jurisdictions that have adopted the Joint Insolvency Network (JIN) Guidelines. The fact that many of the senior judges know each other provides a firm foundation of use of protocols – supporting the value of meetings such as this colloquium. Lack of investor meant combined hearings were never tested.

Reciprocity frequently encountered in legislation but most cases relate to judgements rather than insolvency. The question is whether reciprocity has any place in comity. Reciprocity irrelevant in the MLCBI and a nonissue in the EU when dealing with other EU states. In some states, it would be one of a number of matters that would be considered by a judge hearing an application for recognition.

It is widely accepted that there is a shortage of appropriate training available for judges hearing insolvency matters in most jurisdictions. To meet this need, the Judicial Training College was set up by the INSOL International and the World Bank Group. The meeting heard from judges who had been involved in delivering the training and from judges who had been trained by the Judicial Training College.

Mediation / ADR is encouraged because alternatives are more expensive and time-consuming. Courts may direct the appointment of a mediator or provide a list of trained mediators from which the parties can select. Some countries have officials who promote mediation; sometimes another judge will act as mediator. The meeting was advised of the developments in the INSOL Mediation project, details of which are available on the INSOL website.

The judges then considered the increasing frequency of

parties in Schemes of Arrangement using pressure on courts to comply with dead-lines and the need for "light-touch" provisional liquidators with limited powers, enabling the boards of directors to remain with the provisional liquidator having authority to oversee a scheme.

Cross-border is inherent in shipping, with special rights to seize or arrest ships prior to judgement. Maritime lawyers have typically dealt with shipping problems but as shipping companies have grown larger, the MLCBI has proved to be invaluable.

INSOL International Legislative and Regulatory Colloquium

Report by Juanitta Calitz
University of Johannesburg, South Africa

On 4 April 2019, INSOL held the second Legislative and Regulatory Colloquium, hosted at the Insolvency and Public Trustee's Office in Singapore. The Colloquia are attended by legislators, regulators and other involved in the drafting of insolvency legislation and enable in-depth discussion of what is on the regulatory and legislative agenda across the globe. The event was truly global as 43 delegates from 27 countries attended both online and in person.

Tan Boon Heng, Singapore's Official Assignee, Official Receiver, Public Trustee, Registrar of Moneylenders and Registrar of Pawnbrokers, welcomed the delegates to their offices. The meeting commenced with a welcome address from INSOL Vice-President and Fellow, Scott Atkins. In his opening remarks, he reaffirmed the importance of this Colloquium, bearing in mind how complex the global regulatory environment has become as well as the need across jurisdictions for more integrated restructuring and insolvency policies and laws.

The opening session started with a keynote address from Mahesh Uttamchandani, Practice Manager for Financial Inclusion, Infrastructure & Access in the Finance, Competitiveness, and Innovation Global Practice at the World Bank Group. Mahesh outlined the priorities of the World Bank and stressed the necessity of a well-functioning insolvency system in order to promote financial stability and access to credit. The key take-away from his address was that the World Bank provides assistance in reforming, designing and implementing insolvency systems and delivers technical assistance in both legal and institutional aspects related to debt resolution and insolvency.

This was followed by a presentation by José Garrido, Senior Consulting Counsel in the IMF's Legal Department, on the significance and importance of the collection and interpretation of data for the design of insolvency laws and the supervision of the insolvency system. He proposed that countries should develop more advanced data collection systems to develop better insolvency policies. He acknowledged the high cost of such a venture, but pointed out that the cost of not having these systems in place might be even higher.

Miha Zebre, Legal and Policy Officer at the European Commission, spoke about the main features of the forthcoming Restructuring Directive which is about to enter into force at the end of June 2019 and the 2-year transposition / implementation process that will follow the adoption. On an international level, Miha announced the European Union Proposal on the harmonization of applicable law in insolvency proceedings, which would remedy a perceived gap in the three UNCITRAL Model Laws relating to cross-order insolvency. He also discussed other projects under the EU Insolvency Regulation, namely the EU cross-border court-to-court cooperation guidelines and the interconnection of all national insolvency registers.

The diverse group of delegates made for interesting conversation topics throughout the afternoon. The wide range of topics covered included a discussion highlighting the need for training by creating an environment of learning through sharing experiences, study tours as well as more formalised training options. Delegates also proposed future topics for discussion, which included certain aspects of the World Bank's ease of doing business index, the introduction of complaints mechanisms and the regulation of fees. At the end of an extremely stimulating afternoon's discussions, the group took the view that the way forward would be to develop a mission statement to ensure that the colloquium remains relevant and develop a distinct organizational identity.

We look forward to the next Colloquium to be held in conjunction with the INSOL International Conference in Cape Town, in March 2020.

INSOL Offshore Ancillary Meeting

Report by Todd McGuffin
Babbé LLP, Channel Islands

As one might expect a humid and sunny day greeted the eager attendees on this third iteration of the Offshore Ancillary meeting of the annual INSOL conference. Like the learned line up of panel speakers, the attendees represented a wide scope of both offshore and onshore jurisdictions, who were looking forward to focus on important developments in the Asian restructuring and asset recovery sphere.

After the welcome and opening remarks by Robert Foote, Offshore Chair, Walkers, Singapore and Adam Harris, President, INSOL International, Bowmans Law,South Africa, the day kicked off with the keynote address by Dr Guy Wolf, Marex Spectron, Singapore on the **Opportunity or Obsolescence: What do the rise of protectionism and mechanisation of financial services mean for the industry?**. The global financial system has evolved and is evolving within an environment of increased globalisation. The talk looked at the to which that trend is under threat and what the associated implications are. The talk considered what the far-reaching implications of change are in terms of opportunity and obsolescence and how the future might look as a consequence.

Dr Wolf considered whether it is crisis, as opposed to stability and prosperity, that promotes social and geopolitical change. From a historical viewpoint, it was apparent that democracies were born from revolutions and wars including, for example, the establishment of the UN, the IMF and the World Bank. The rise in populism is also causing major changes and the talk looked at whether those changes were short-term in nature of created more of a structural shift. In an insolvency context the talk looked at whether globalisation had led or would lead to a structural vulnerability in the insolvency process.

Dr Wolf then looked at the evolution of industries involved in cross-border investments in natural resources and how they had evolved from being almost exclusively state-owned to being dominated by multi-nationals. Finally, he considered whether capital controls and exchange controls typically go hand in hand and the extent to which these considerations provided excuses for offshore asset-light shell companies to be used as corporate vehicles.

The meeting continued with the sessions **Driving the exit from investments in South East Asia and China Mid-shore and Offshore**. These sessions examined difficulties with investment exit strategies in the region and it became clear that investors were increasing looking at the more jurisprudential developed "mid-offshore" jurisdictions of Singapore and Hong Kong for exit mechanisms or more favourable creditor workouts options especially in relation to the China and Indonesian based assets. A large focus of the sessions was on the 2016 introduction of the Indian Bankruptcy Code and a lively debate ensured as to whether this Modi reform was the perfect panacea for the lengthy and litigation process experienced in India. All in all, it was agreed by the panel and attendees that the IBC was a very positive step but teething problems remain especially in relation to the potential to exclude management from the restructuring process and the ease of frustrating the process by securing a too easily available moratorium in alterative jurisdictions. An enthusiastic Q&A session followed with the panel being challenged as to whether could India do more in this area and the effect of the IBC on cramming down on equity holders.

After a delicious networking lunch of South Asian fare, the attendees were treated to an esteemed judicial panel for the next session, **Perspective from the Bench – Why Geography Matters.** After some opening (and at times very humours) salvos between the panellists as to the apparent "better" jurisdictions in which stakeholders should look to for the most favourable restructuring outcomes, a significant debate revolved around whether it was the substance of law that mattered as opposed to location of the process. With this in mind the attendees were treated (from a fly on the wall perspective) to numerous interesting judicial insights on the scope and flexibility of the Gibbs judgment especially in response to COMI based pre-insolvency restricting regimes. Tantalisingly one panellist suggested attendees should "watch this space" with respect to the scope of Gibbs with the UK Supreme Court likely to revisit it in the near future. Interestingly the panel raised potential issues with the recently substance requirement legislation enacted in many offshore jurisdictions and how such may impact on the recognition and enforcement of foreign judgment. The Q&A session ran well over time given the amount of questions during which the panel raised concerns about the level of disclosure provided to both creditors and the courts with respect to restructuring proposals and the need for more judicial intervention and the application of equitable principles in unsecured creditor cram down situations.

Justice Kannan Ramesh, Justice Jonathan Harris, Justice Ian Kawaley, Hon. Martin Glenn and Justice Richard Snowden

At this point a coffee break was well earned (and needed for those of us still suffering from jetlag) after which we were treated to the final session, **CEO Corner – Seeing and seizing opportunities for your business**. The highly experienced panel gave significant insights with respect to the differing attitudes of major financial stakeholders in restructuring processes. In the experience one panellist, banks have a tendency to take a back seat given potential reputational risks (notably in Australia with respect to appointing receivers over agricultural assets). Other panellists indicated they had experienced a wide range of differing attitudes from banks and that it can be difficult at time to formulate a plan to accommodate such competing

approaches and views. An example given was that of a bank creditor "disappearing overnight" could be replaced by an export credit agency who demanded an outcome inconsistent with the creditor it replaced. The debate then turned to the emergence of CLOs which tend to be agreeable to taking equity where hedge funds and government agencies are usually against taking any long term position and desire quicker outcomes even if such meant lower recovery. In the end, the panel agreed that there was no textbook way to deal with such differing attitudes. In response to the chair questioning what was keeping the panel members up at night, a number of themes emerged including identifying distress cycles in sectors where bank lending had tightened and legislative developments in the US with proposed changes to the Chapter 15 regime. The effect of globalisation sparked a number of questions from the floor with the common view expressed that the UNCITRAL model was merely a starting point and struggled to deal with global entities.

In closing a hope was expressed that the desired level of international cooperation in insolvency matters might be achieved by the next generation and therefore it declared that such would be "laid at the feet of the millennials!"

Having experienced many conferences focusing on offshore matters over the years, I must confess that I considered this to be one the very best conference days I have experienced, and I know that view was shared with a significant number of attendees. I wish to thank and congratulate the panel members, the organising committee, sponsors and the INSOL team for such an interesting and enriching day.

Main sponsors:	**Carey Olsen | LX Legal**
Breakfast sponsor:	**Higgs & Johnson**
Coffee Break sponsor:	**KRyS Global**
Lunch sponsor:	**Walkers**

INSOL Member Associations' Roundtable

Report by Nikki Kruger
RITANZ CEO, New Zealand

In what is becoming an extremely valuable and highly anticipated add on to the INSOL Annual Conference, another Member Associations' Roundtable was held at this year's INSOL International Annual Regional Conference in Singapore.

These sessions continue to grow every year and the session in Singapore was attended by over 35 participants from MA's all over the world, coming together to share insights, strengthen network and support systems and learn from one another. Remarkably, when this was introduced 3 years ago, we had 8 participants, last year over 20 and this year there wasn't an empty seat in the room, which is a real testament to the work that INSOL has put into this group.

The organising committee, made up of CEO's and COO's from our Member Associations, prepared discussion topics on 3 extremely relevant challenges MA's are facing or will be exposed to at some stage in their growth cycle. The objective, as always, being to learn from one another and to gain valuable insights on strategies and ideas that have either worked or have been less than ideal for other Associations.

Members were encouraged to speak candidly and to interact wherever possible in terms of the impact these issues have on our regions and MA's.

We were also very fortunate to have the INSOL Executive address the MA's – Adam Harris, Julie Hertzberg with Paul Casey and Scott Atkins all expressed their commitment and support to the MA's and highlighted strategic goals in place to continue to deliver value to MA's.

Our first session of the day kicked off with a very robust and frank discussion on how to respond to the financial challenge of a declining market, declining attendance at events and new competitors. It was noted that the level of contraction in the insolvency profession in some countries is problematic and is impacting significantly on their financial viability. A key strategy to address this has been to diversify revenue streams from those traditional relied upon and the importance of reacting quickly and proactively to these challenges was strongly echoed around the room.

The message that was heard loud and clear is that the focus has largely shifted from formal insolvencies to restructuring and turnaround, and that, for Associations to remain relevant and continue to grow, our education delivery and value proposition to members needs to be adjusted to accommodate this changing face of insolvency.

In our second session, the topic of lobbying, communication and interaction with stakeholders – regulators, governments, legislators and other groups was discussed.

In many countries, lobbying by the Member Associations is not possible or even required, be it as a result of the geographical diversity of its members or the nature and structure of the Association. In other countries, lobbying on behalf of the members and the industry, takes a very active and often highly influential role in forming policies and legislative framework on insolvency issues.

Whatever our different lobbying styles or needs, it is obvious that Thought Leadership is key for our MA's and the need to educate creditors, the media and the profession remains constant.

In our final session of the morning, members around the table discussed the topic of Corporate Governance and shared how their organisations are structured from a governance perspective. Again a lively and engaging discussion ensued and MA's around the table debated their differences, common challenges, as well shared experiences and as the session all to quickly drew to a close, what is obvious is that our Member Associations continue to be strengthened and enhanced by the opportunity to gather at the INSOL Conferences and build these fantastic networks and support systems.

A massive thanks goes to the INSOL Executive Committee and all its hardworking staff for creating this opportunity for those of us who are spread so far and wide across the globe, and for the continued dedication to add value to our Associations. Looking forward to 2020 and an even greater level of participation from our fellow MA's in the future!

INSOL Fellows Forum

Report by Lucas Kortmann
Fellow, INSOL International, RESOR, The Netherlands
and
Allan Nackan
Fellow, INSOL International, Farber Financial, Canada

On 2 April 2019 the 5th Fellows Forum took place, on the opening day of the INSOL International Singapore annual regional conference 2019. The Fellows Forum is an annually recurring half day programme, for and by INSOL Fellows only, during which the Fellows exchange knowledge and experiences from their diverse practices. With the Fellows being from jurisdictions spread out across the globe, the programme each year provides a valuable addition to the INSOL Global Practice Course that each Fellow has graduated from. The Forum, sponsored by Schiebe und Collegen, was chaired by INSOL Fellows Allan Nackan (Farber Financial) and Lucas Kortmann (RESOR).

Andres Martinez (The World Bank Group) started the morning by explaining the role of the World Bank assisting countries around the globe in developing their insolvency regimes. He stressed the relevance of well-developed insolvency laws for the economic system and attractiveness of a country. Andres also provided an interesting overview of the reasons why countries change their law and the challenges these countries face. Shaun Langhorne (Hogan Lovells) then zoomed in on Singapore as one of the countries that has recently amended their insolvency regime, with the goal to create an ecosystem attractive for foreign parties to come to Singapore to do restructurings. He explained the key characteristics of the new law, which neatly combines features of US Chapter 11 and UK Schemes of Arrangements.

In the second session, Roger Bischof (Bonnard Lawson) and Geoff Simms (AJCapital Advisory) shared their on-the-ground knowledge and experiences from China (including Hong Kong) and Indonesia respectively. Roger ran the audience through the legislative developments in both China and Hong Kong, where cross-border insolvency elements are being introduced and improved. Geoff focused on the NPL market in Indonesia, which he views is a key driver for the cleaning up of bank files, more so than developments on the legislative level. Using data review, Geoff took the audience through the NPL developments in the region, focusing not only on Indonesia but also comparing it to the other countries in the region, identifying common problems that exist throughout the region.

After the coffee break, two case studies were presented. Stephen Packman (Archer & Greiner) was involved in the US Chapter 15 recognition proceedings of Manley Toys, providing some fascinating insights into the rather contentious process that took over three years, despite the fact that the US Bankruptcy Code provides that recognition should be granted at the first available opportunity. Christiaan Zijderveld (Houthoff) elaborated on the very recent and truly novel restructuring of Croatian agrifood retail company Agrokor, the restructuring of which only became effective on April 1st (no April Fools' joke!), i.e. one day prior to the Fellows Forum taking place. As Agrokor represented 15% of the Croatian national GDP, the country legislator had to introduce the "Lex Agrokor" to allow for an orderly restructuring rather than a liquidation of the group.

The final session of the Fellows Forum introduced a new concept, FED talks (loosely inspired by TED Talks): a Fellow making a 5 minute presentation to make a point, then opening up to the floor for a 10 minutes discussion. Allan Nackan (Farber) kicked off on the use of social media being an integral part of business development, allowing for a lively discussion on the advantages and disadvantages of using LinkedIn and other social media platforms.

Following Allan, Nico Tollenaar (RESOR) eloquently took the audience on a lively trip down the Relative Priority Rule, recently introduced in the EU directive, explaining why the European legislator fundamentally misunderstood the concept introduced in US literature and thus creating a new piece of legislation that may create more problems than it aims to solve.

To round off the morning, Sonya van de Graaff (Morrison & Foerster) explained the English rule of Gibbs and why it effectively goes against the idea of recognition of foreign insolvency proceedings, followed by another interactive debate on how the Model Law on recognition and enforcement of Insolvency Related Judgment could do away with the rule of Gibbs.

As always, the Fellows Forum was followed by a session during which the Fellows discussed how to keep developing the Fellowship as well as the role of the Fellows within INSOL International and how the Fellows, as global ambassadors of INSOL International, can contribute to the continued development and role of INSOL within the global insolvency practice.

As organizers we, Allan Nackan and Lucas Kortmann, reflect on another interesting, successful and entertaining Fellows Forum, which again showed that Fellows not only possess in-depth knowledge and practical experiences from around the globe but also from a strong bond of friendship, always ready to assist and help each other.

Informative Small Practice Meeting

Report by John S. Mairo
Fellow, INSOL International,
Porzio, Bromberg & Newman, P.C., USA

INSOL Singapore 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.

Mr. Levenstein then introduced the first speaker, Mary Hall, for her presentation entitled "Marketing Strategy: Get Yourself Noticed!" Ms. Hall is a trained lawyer who now serves as Director of Oracle Blockchain Product Marketing. Ms. Hall led a lively discussion about social media websites and shared her vast knowledge about what practitioners should be aware of with the major platforms, i.e., LinkedIn, Facebook, Instagram and Twitter. Ms. Hall shared data about the percentage of adults who use each of the major platforms, the breakdown of men versus women using the platforms, and the age ranges of the most frequent users of those platforms. Ms. Hall also shared helpful insights about when is the best time to post to get maximum recognition on the platforms, e.g., for LinkedIn, studies have shown during the week around noon is best, as compared to weekend posts in the early morning or late evening; whereas for Facebook, weekend postings have proven to be more recognized. As part of her presentation, Ms. Hall explained how certain platforms are perceived as more professional/business oriented (LinkedIn), whereas other platforms are viewed as more of a social tool (Facebook). By the end, Ms. Hall had effectively educated the audience about the major platforms and about how practitioners can utilize the platforms to better get "noticed".

Mr. Levenstein then introduced a panel discussion chaired by Robert Hanel (Anchor Rechtsanwalte, Germany) entitled "This Land Is My Land… Realization Of Real Estate Abroad." Joining Mr. Hanel on the panel were: John Baird (*Fellow, INSOL International*, Windeyer Chambers, Australia); Luis Fernando Palomino Bernal (Peña Palomino Abogados, Mexico); Xavier Pareja (Xavier Pareja Abogados, Spain). The panel addressed the issues faced by an insolvency practitioner (IP) when selling real estate located in the jurisdictions represented by the panel. The panel conducted an interactive discussion about practical considerations faced by an IP as well as some of the technical requirements, such as whether the IP needs court approval for a real estate sale transaction. In the end, the following checklist of key issues for real estate abroad was provided by the panel: (1) recognition requirements/costs; (2) local toolbox/constraints; (3) local legal responsibility; (4) land register; (5) third party rights; (6) tenant rights/rents; (7) insurance; and (8) taxes/payment obligations. In the end, the panel concluded by noting the importance of involving a local IP and/or local real estate professional to assist in the process.

In sum, the Small Practice Issues Open Meeting at INSOL Singapore was successful in providing an entertaining format for learning about topics of interest for practitioners. The use of a guest speaker (Ms. Hall) to speak about a timely topic (social media platforms) was well received and beneficial to practitioners. The panel discussion about real estate transactions in various jurisdictions was similarly well received and useful in providing IPs with practical guidance.

In addition to the formal meeting, Small Practice Issues reception was held the following day to facilitate further networking in a more relaxed atmosphere overlooking the Marina Bay.

INSOL Singapore Younger Members Reception

Report by Brendan O'Neill
Goodmans LLP, Canada
Chair, Younger Members' Committee

As Chair of the Younger Members Committee, I'm pleased to report that this year's annual conference in Singapore was very well attended by many of INSOL's younger members from around the globe, including many of the growing number of INSOL Fellows. On the Tuesday night, younger members, Fellows and the members of the Younger Members Committee gathered at the Younger Members Committee Cocktail Reception sponsored by Goodmans LLP in the Bayview Foyer overlooking the Marina Bay with its spectacular light and water show and city skyline. The reception was a great networking opportunity for younger members and it was a definite benefit to have the reception held at the beginning of the conference so that the younger members could meet upfront and then continue to see each other over the conference days that followed. Of particular note at this year's conference was the significant number of new younger members from India and Asia who were keen to meet and mingle with other practitioners from around the world and to grow their own networks. Well done new younger members!

Whether it is at one our cocktail receptions or through one of our programmes, we encourage all younger members of INSOL to reach out and get in touch with the Younger Members Committee – we want to hear from you, we are here to serve you and we have a number of tools and tips for you, along with a few free drinks to enjoy and a few new INSOL friends to meet.

In Memorium: Gabriel Moss QC

Gabriel Moss QC was a titan of the insolvency and restructuring world. He was a member of INSOL International, a member and Director of III and a supporter of many other professional bodies, generously sharing his knowledge with professionals young and not so young.

Born in Hungary, he spent his early years there, until the Hungarian Uprising in 1956 saw his family take refuge in the UK. He attended St Catherine's College, Oxford University, from which he graduated with First Class Honours in 1971, followed by a BCL in 1972. He was called to the bar in 1974, having been awarded numerous scholarships. He took Silk in 1989, sat as a Deputy Judge in the High Court (Chancery Division) from 2001, and was elected as a Bencher of Lincoln's Inn in 2003.

Gabriel built his reputation tackling the most significant insolvency cases, instructed not only for his understanding of all facets of insolvency law, which was second to none, but also for his creativity and imagination, and acting as Counsel in almost every major Supreme Court and Privy Council case involving insolvency, banking and commercial chancery matters.

As a true European, he was involved in many of the major cross-border insolvency cases across the EU including as counsel to the Italian special administrator of Parmalat subsidiary Eurofood and in many other EU cases. He also provided expert evidence for cases in multiple jurisdictions.

In a great many of these cases Gabriel led other barristers at South Square. In this way, and many others, he played a vital role in the development of South Square as the preeminent set for insolvency. He was unfailingly supportive of all those in Chambers, from the most junior to the most senior. For many of those he worked with, he made their careers. Other notable appointments included the Insolvency Committee of Justice, the British section of the International Commission of Jurists, the Association of Fellows and Legal Scholars of the Center for International Legal Studies (Salzburg), the Insolvency Law Sub-Committee of the Consumer and Commercial Law Committee of the Law Society and a fellowship of the Society for Advanced Legal Studies at the Institute of Advanced Legal Studies. In 2011 he was appointed to the PRIME panel of financial experts.

Gabriel also wrote extensively, including the seminal text on the EC Insolvency Regulation – Moss, Fletcher and Isaacs on the EU Regulation on Insolvency Proceedings. He sat on the editorial boards of International Insolvency Review, The Receivers Administrators and Liquidators Quarterly and Insolvency Intelligence, chairing the board since 1994.

Gabriel was a natural and generous-spirited teacher. Over the years he was appointed as a part-time lecturer and tutor at St Edmund Hall, a lecturer in law at the University of Connecticut Law School and a Visiting Fellow at St Catherine's College, Oxford. In 2011 he was appointed Visiting Professor in Corporate Insolvency Law at Oxford University.

Gabriel was as prized for his friendship as for his intellect. He was supremely approachable and humble, kind and thoughtful (as well as having a dry, and occasionally subversive sense of humour). Away from his intellectual pursuits, Gabriel's interests included tennis, theatre, cinema and travel and, of course, his family, who meant the world to him. He leaves a wonderful legacy.

[1] By South Square, London, UK

Conference Diary

July 2019				
24-25	ARITA National Conference	Melbourne, Australia	ARITA	www.arita.com.au
August 2019				
13-15	CAIRP Annual Conference	Quebec City, QC	CAIRP	www.cairp.ca
September 2019				
25-27	TMA Annual Conference	Cleveland, OH	TMA	www.turnaround.org
26-29	INSOL Europe Annual Congress	Copenhagen, Denmark	INSOL Europe	www.insol-europe.org
October 2019				
14	INSOL International Beijing One Day Seminar	Beijing PRC	INSOL International	www.insol.org
16	INSOL International Shanghai One Day Seminar	Shanghai, PRC	INSOL International	www.insol.org
17-18	NAFER Annual Conference	Scottsdale, AZ	NAFER	www.nafer.org
18	INSOL International Hong Kong One Day Seminar	Hong Kong	INSOL International	www.insol.org
November2019				
7	INSOL International Tokyo One Day Seminar	Tokyo, Japan	INSOL International	www.insol.org
14-15	SARIPA Annual Conference	KwaZulu-Natal, SA	SARIPA	www.saripa.co.za
22	INSOL International / World Bank Group Africa Round Table Open Forum	Swakopmund, Namibia	INSOL International	www.insol.org
December 2019				
5	INSOL International / RISA Offshore One Day Joint Seminar	The Bahamas	INSOL International	www.insol.org
March 2020				
15-18	INSOL International Annual Regional Conference	Cape Town, SA	INSOL International	www.insol.org
March 2021				
14-17	INSOL International World Quadrennial Congress	San Diego, CA	INSOL International	www.insol.org

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

Business Recovery Professionals (Mauritius) Ltd

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 Advisors

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

Instituto Iberoamericano de Derecho Concursal – Capitulo Colombiano

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 Receivers

NIVD – Neue Insolvenzverwaltervereinigung Deutschlands e.V.

Recovery and Insolvency Specialists Association (BVI) Ltd

Recovery and Insolvency Specialists Association (Cayman) Ltd

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

Restructuring and Insolvency Specialists Association (Bahamas)

Restructuring and Insolvency Specialists Association of Bermuda

Restructuring Insolvency & Turnaround Association of New Zealand

South African Restructuring and Insolvency Practitioners Association

Turnaround Management Association (INSOL Special Interest Group)

Turnaround Management Association Brasil (TMA Brasil)

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- Abraham Lincoln

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