Ep.76 The INSOL ERA Round Up

Intro Music: INSOL international, in conjunction with the Early Researcher Academics Committee, presents INSOL talks.

Shuai Guo (SG) (00.23): Welcome back to the final episode of INSOL talks in 2025. My name is Shuai Guo, associate professor at China University of Political Science and Law and chairperson of INSOL Early Research. Academics, ERA. Today, I have the great pleasure of moderating a panel of my distinguished ERA Board colleagues who will reflect on our activities, achievements, and adventures over the past year.

This year, we welcome two brilliant new members, Sabrina Becue and Jaime Vasquez. While with some regret, we said farewell to our former chair, Ilya Kokorin and former board member Beth Streten. Following our tradition, we hosted our flagship event, the annual ERA Workshop in May in Barcelona alongside the INSOL Academic Colloquium. The workshop brought together over 40 participants from around the world, ranging from our early researcher to senior scholars. Across the 15 presentations and six poster sessions, we covered an impressive spectrum of topics from European insolvency law and comparative jurisdiction issues to technology and dispute resolution, and the role of different stakeholders in insolvency.

It was genuinely inspiring to witness the growing academic energy and enthusiasm within the INSOL ERA community. We also organised a highly successful INSOL TAG panel in November, moderated by Jaime and Defne Tasman, on cross-border recognition and enforcement of restructuring plans, which attracted more than 70 participants worldwide. Meanwhile, our podcast series, INSOL Talks, has been busier than ever, with 15 episodes released so far this year on hottest topics insolvency law. Our flagship product has now surpassed 28,000 downloads. A fantastic milestone for us and a big thank you to both our team and our listeners.

Now it's time to hear from our colleagues. Let's begin on the western side of the Atlantic. I'm delighted to introduce our newest board member, also our first representative from Brazil and indeed our first from Latin America. Sabrina, please take the floor.

Sabrina Becue (02.35): Thank you, Shuai. I will start by introducing myself. I am a postdoctoral researcher at the University of Sao Paulo, and I have just spent two months as an independent researcher at UNIDROIT. I am also an insolvency lawyer in Brazil. It is truly an honour to serve on the INSOL ERA board as the first representative from Latin America.

This year was especially meaningful for me because the first episode of INSOL Talks focused on the evolution of Brazilian restructuring and insolvency law. In that episode, we heard from three remarkable women Sheila Neder Cerezetti, Isabel Picot and Ana Elisa Laquimia, who discussed not only the legal framework but also the broader economic context that shapes insolvency practice in Brazil.

Five years have now passed since Brazil enacted the UNCITRAL Model Law on Cross-Border insolvency. Although the number of cases remains relatively small, the cases we do have are highly complex and often quite unique. They will provide rich material for Future INSOL ERA projects, both as case studies and as illustrations of how emerging economies engage with global insolvency standards.

At the regional level, Latin America has also seen important developments this year. One of the most significant is Colombia's recent reform establishing simplified proceedings for personal

bankruptcy and for small entrepreneurs. As we know, designing effective insolvency regimes for SMEs and addressing personal over indebtedness remains an immense global challenge. INSOL Talks has already explored this issue from the perspective of other regions, and Colombia's reform will certainly be on our radar.

It will be interesting to observe how these new provisions operate in practice, especially when compared with Chile's experience. Chile implemented similar mechanisms two years ago and has since reported a significant increase in SMEs and individual insolvency filings. These reforms offer valuable insights into access to justice, procedural efficiency and the evolving social perception of insolvency as a tool for economic rehabilitation. Brazil, for its part, has a legal mechanism dedicated to addressing personal over indebtedness, but we continue to face difficulties in designing a comprehensive insolvency framework tailored to SMEs. A gap that remains especially relevant for our region's economic reality.

Now we move to Europe. I will invite Defne from Belgium and Jaime from Spain to start with the developing developments in continental Europe. Defne, the floor is yours.

Defne Tasman (06.04): Thanks, Sabrina. Now, if we look at how Europe has moved in 2025, a clear pattern comes into view. Europe has entered a new phase in its insolvency landscape. The Preventive Restructuring Directive, adopted in 2019, is now a functioning part of national laws across the European Union. It set a common procedural baseline for preventive restructuring, including early access before formal insolvency, a time limited stay on enforcement, class-based voting with cross-class cramdown, protections for new and interim finance and discharge rules for honest entrepreneurs.

Today, all 27 member states have fully transposed the directive, but it only sets a minimum level of harmonisation. Member states must respect certain core features, but they remain free to design the rest. What we now see is a mosaic of 27 different frameworks. They all pursue similar goals, but each is shaped by its own legal culture, economic structure, and political priorities. And that mosaic has in turn inspired a broader discussion around what some call the 28th insolvency regime, or more generally, *lex concursus europaea*.

The idea starts with a simple but far-reaching question if minimum harmonisation can only take us so far, and if divergences inevitably reappear after national transposition, what would happen if companies could choose a uniform European regime instead. What is now being explored is an optional European insolvency framework that would exist alongside national systems. Member states would keep their domestic systems, while cross-border companies could opt into one single framework that applies wherever they operate in the single market. In its 2025 Competitiveness Compass, the European Commission even described such an instrument as a potential game changer for innovative firms navigating 27 different restructuring and insolvency regimes.

Now, of course, this immediately raises complex legal and political questions. How such a regime would co-exist with the European Insolvency Regulation of 2015 and with the Preventive Restructuring Directive. How it would interact with domestic procedural autonomy, and what its implications would be for group insolvencies and rescue culture more broadly. For now, it remains a thought experiment, but it clearly points to the next horizon of European integration. In Episode 74 of INSOL Talks together with Doctor Ilya Kokorin. I had the pleasure of exploring these tensions with Professor Emeritus Christoph Paulus and Professor Francisco Garciamartin. It was a rich and generous discussion. So to our listeners, be sure to check it out.

Now, beyond these ambitious ideas, the European Union has also been moving forward with a more traditional instrument, the proposed Harmonisation Directive on certain aspects of insolvency law. Now, when the Commission published its proposal in late 2022, many still questioned whether the union should harmonise substantive insolvency law at all. At the same time, there was a growing recognition that divergent insolvency outcomes remain. One of the reasons why capital doesn't flow freely across the single market. Over time, that debate evolved. The question shifted from whether harmonization should happen at all to how far it should go, and on which issues convergence matters most for a functioning capital markets union.

And just last month (November 2025), the council and the European Parliament reached provisional agreement on a common set of rules that would, for the first time, bring coherence to several core areas of insolvency law. It begins with the insolvency estate by introducing common minimum standards for avoidance actions, and by improving cross-border access to bank account and ownership information, which strengthens asset tracing. It then turns to governance. By aligning key elements of directors' duties and by making creditor committees a regular feature of proceedings. It also tackles transparency, as every member state will publish a fact sheet setting out the essentials of its domestic insolvency regime. And importantly, all member states will introduce a pre-pack regime.

The Pre-pack element has understandably sparked debate. Some academics and practitioners warn that pre-packs, if misused, may allow insiders to extract valuable assets at a discount while leaving creditors and workers behind. Others caution against weakening the worker protections developed by the Court of Justice of the European Union in cases such as small steps and high. The current compromise aims to speed up sales and preserve value while still protecting core social safeguards. So overall, the directive marks a shift from a Europe that once only dipped its toes into harmonization to Europe that is now shaping the substantive core of insolvency law itself. And many of these questions were at the heart of this year's INSOL ERA workshop in Barcelona.

To me, this is precisely where ERA adds value. It connects national debates and ongoing research and transforms them into a comparative learning opportunity. Once again, I had the pleasure of moderating the European Insolvency Panel, and there we explored secured creditor rights and business rescue, the treatment of tax claims, confidentiality and restructuring, COMI issues, and the growing convergence between banking and corporate crisis regimes. And indeed, Jaime was one of our panellists in Barcelona sharing his insights on confidentiality in restructuring, which remains a central and contested theme in Europe's debates. Jaime. Perhaps you can pick it up from here.

Jaime Vasquez (12.40): Um, sure. Thank you so much, Defne. So, uh, my name is Jamie Vasquez, and I'm a conflict of laws PhD candidate at the Autonomous University of Madrid. Ah, there I am researching only private international law rules of restructuring proceedings. And as my colleagues have kindly mentioned, I am, along with Sabrina, the newest addition to the INSOL ERA Board.

We indeed had a wonderful panel on EU insolvency law, and I had the pleasure of speaking about a particularly hot topic in Europe the rise of confidential proceedings, also known as non-public proceedings. So far, there's no uniform definition, at least not here in Europe. But after some research, I found that all these proceedings share one common feature, which is that the opening decision is not published in the corresponding National Insolvency Register. And this, of course, means that some creditors may not even be aware of their existence. Precisely for this

reason, the EU legislator has been rather reluctant to embrace them. The legislature believes that the lack of publicity creates significant information as symmetries among creditors, and as a result, these proceedings cannot be included within the scope of the European Insolvency Regulation, commonly known as the EIR.

The EIR, for our non-EU listeners, is an instrument that sets out uniform conflict of laws rules for cross-border insolvency and restructuring within the EU. Among other things, it provides for the automatic recognition and enforcement of decisions issued in insolvency proceedings when they are opened in another member state, provided, of course, that certain conditions are met. Thus, it fosters legal certainty and facilitates cross-border transactions within the EU.

However, since confidential proceedings fall outside its scope, the decisions issued in such proceedings face significant uncertainty. There is an ongoing debate as to whether they may fall under other EU regulations, or alternatively under domestic rules, as with decisions coming from non-member states. The latter option adds even more uncertainty, since member states have highly divergent rules, and in some jurisdictions it is not even clear which set of rules applies or how. In fact, our recent TAG panel on Cross-border Recognition and Enforcement of Restructuring plans, which will soon be available as an INSOL Talks podcast, tackled this very issue and it and it established an excellent example of how prominent academics approach the cross-border recognition issue from different perspectives in Europe and beyond.

In that discussion, we looked at a recent decision from a Frankfurt Court concerning the recognition of an English restructuring plan. In the case at hand, the Court examined three possible legal routes for recognition and ultimately decided not to grant it in Germany, with the great uncertainty that this entailed. We were very fortunate to have leading experts from both jurisdictions involved. Um, so Professor Madaus, Professor Mokal and Professor Dominik Skauradszun sharing their insights with us. So if any listener is interested in this topic, make sure to check it out once the episode is released, which will happen sometime in early 2026.

Now, last but not least, the implementation of confidential proceedings in several jurisdictions, such as Germany and the Netherlands, has provided the perfect opportunity to further reflect on the EIR. Confidential proceedings are actually default rule in some of these jurisdictions, and several experts have recently suggested that they were introduced precisely to avoid applying the EIR, despite the uncertainty this entails. So this debate is particularly timely because the EIR will be up for review soon. The European Commission must by June 2027 present a report on the functioning of the regulation, accompanied with proposals for reform. So we've already seen momentum building this year with numerous events and discussions on possible amendments.

While it's hard to predict what the eventual changes will be, some key topics are almost certain to feature prominently in the debate. We've got group insolvencies, the adequacy of existing rules for preventive restructuring frameworks that Defne just kindly mentioned. And other hot topics such as the definition of insolvency related actions. One thing is certain though, 2026 is shaping up to be a very busy year for insolvency law. And with that, now we turn to our neighbours. Charles Mak and Kenneth Ghartey, both based in the UK, a global restructuring hub. Over to you guys.

Charles Mak (17.11): Thank you so much, Jamie. I'm Doctor Charles Mak, a lecturer in law at the University of Bristol. Before I turn to those legislative updates in the United Kingdom, I want to take a moment to reflect on our ERA activities. For me, the standout moment of 2025 was the opportunity to contribute to the INSOL Talks by interviewing Professor Anna Gelpern from Georgetown University. Our episode #PublicDebtIsPublic, shifts the lens from technicalities of

corporate rescue to the macro level of challenges of sovereign debt. We didn't just discuss theory, we explored the launch of the #PublicDebtIsPublic initiative and its pilot platform, at the DebtCon 8. So Anna shared the general frustration that researchers and citizens faced simply trying to locate the government debt contract and that are supposedly public, but are often buried and inaccessible.

For me, as a member of the ERA community, these conversations encapsulated exactly what we try to achieve, bridging the gap between early career research and the real world projects shaping global transparency. If you haven't turned to that episode yet, I highly recommend it. It is a stark reminder that the principle of accountability applied just as critically to nations as they do to companies.

So turning now to the domestic landscape in 2025 has been a year of balancing efficiency with empathy. So at the UK wide level, the corporate focus has been based on streamlining the tools that we already have. The new practice statement from the Chancellor of the High Court, introduced earlier this year in respect to the scheme of arrangement and restructuring plans under the Companies Act, 2006, has been a game changer for the mid-market. Historically, those issues were criticised as being a preserve of large, capped companies with deep pockets. However, by mandating specific 'listing notes' and enhancing the judicial oversight early in the process, we are finally seeing the transition cost reduced. We are now seeing vital rescue mechanisms becoming accessible to medium sized businesses that were previously priced out of this restructuring market.

In addition, I have particular interest in Scotland since I have used to live and work there and that is where we have seen most distinct divergence this year through the full implementation of the Bankruptcy and Diligence Scotland Act 2024. While often mirrored in principle, Scotland is taking the bold steps on social policy, most notably, June 2025 saw the introduction of the Mental Health Memorandum. So this will be the landmark protections empowering Scottish ministers to pass that enforcement for individuals suffering from serious mental health crisis. It acknowledged the fundamental truth that industry has debated for years that financial recovery is often impossible without mental recovery. By creating this breathing space, Scotland is setting a standard that I suspect the rest of the UK will be watching closely. So we have also seen the practical shift in the Scottish diligence.

Since January this year, the requirements for protected trust deed have tightened significantly. The new Mandatory Trust Deed information document ensured debtors that are not just signing up to solution, but generally understanding the consequences. On a lighter, more niche note, we even saw modernising tricks to maritime law, finally allowing the arrestment of ships on Sundays. A practical update that our maritime sectors in Aberdeen and Glasgow has welcomed.

Finally, looking at the personal insolvency across England and Wales to 2025 IVA protocols has reshaped the landscape since April this year by disregarding equity under £10,000 and solidifying the protection for the family home. The regime has become far more humane. It recognised that stripping assets from low-income debtors often causes more societal harm than the financial returns to creditors justifies. So in conclusion, 2025 in the UK has not just been about managing failure, whether it is through the sophisticated restructuring of a distressed company in London, the protection of vulnerable debtors in Glasgow, or indeed the macro discussions on sovereign debt we host in our podcast, the industry is moving towards a system that is faster, fairer and fit for modern economy. So now I will now pass the floor to Kenneth, a Ghanaian National, now based in London, to share his perspective.

Kenneth Ghartey (22.00) Thank you Charles. It's been another good year on the committee, and especially with the welcome added energy of our two new enthusiastic colleagues. While I currently live in the UK because of my doctoral studies, I'm also a qualified lawyer and insolvency practitioner in Ghana. I would therefore like to focus on some developments in the Africa region over the last year.

As a background, in the last five years, the World Bank Group has been actively promoting insolvency law reform across the Africa region. Some countries like Ghana, which is my own country, and Lesotho, have adopted new insolvency legislation in 2020 and 2022 respectively. In Ghana, through my work, I became aware of the first example of the recognition of a Malaysian restructuring as a foreign proceeding under our 2020 Corporate Insolvency and Restructuring Act, which incorporates the UNCITRAL Model Law. So you see that before this law reform, which occurred in 2020, there was no option for recognising foreign insolvency proceedings. So the new law has reoriented the Ghanaian legal framework from one which was premised on a liquidation focus to allow corporate restructuring and rescue focus.

While the Lesotho legislation, which is the Insolvency Act of 2022, was passed three years ago and introduced a unified framework for corporate insolvency and personal insolvency. It came into force earlier this year in April 2025. It's a modest improvement on the previously fragmented set of laws dealing with insolvency. And so Lesotho joins other African countries like South Africa, Ghana, etc., who have modernised their insolvency legislation in the last few years.

One other thing which I think deserves mentioning is that in April of this year, the Johannesburg Division of the South African High Court launched a pilot dedicated insolvency court. This new insolvency court will be composed of a two-tier system. So it would have an insolvency motion Court which would hear insolvency motions on a strict four-week case cycle. And then there'd be an Insolvency Trial Court, which would now hear complex matters which require a hearing, oral evidence. This is an interesting, um, development which the rest of Africa will be looking at as to how that transition happens in, in, in South Africa. So you see that there's a recognition that there are currently fewer insolvency reforms across Africa than in any other region. Uh, when our colleagues spoke about Europe, there was there was a there were a lot of developments there until this dearth of insolvency reforms and the attempt to continue conversations about the need and type of insolvency law reform is why the Africa Roundtable was initiated, was instituted by the INSOL International and the World Bank Group.

So the objectives of the Africa Roundtable are threefold. It allows an opportunity to have high level dialogue with both private practitioners and public policy makers regarding insolvency law reform in Africa, thereby encouraging the reform experiences to be shared and challenges to be discussed in an open and frank forum. That's why it would be useful to see how the South African dedicated Insolvency Court proceeds. It also allows us to elevate insolvency reform on the African policy agenda. And lastly, to encourage insolvency policy makers and professionals to establish an annual forum to stimulate discourse and learning across the region.

So this year, 2025 marks ten years since the ART was established at a meeting organised by INSOL International in Dubai in February 2010. So fifteen years hence, my apologies. So this year ERT was held in Cape Town, South Africa from the 20-21 November. Uh, the theme for the two-day event was “Turning market challenges into opportunities”. And one of the key discussions there was on how insolvency systems can be used to support good jobs and economic growth. It is my hope that we can get a panel on INSOL Talks that would address one of the topics at the

ART this year. So that's about it for the Africa region. We now turn to Asia. I would first like to invite Ishana Tripathi from India to share her perspective.

Ishana Tripathi (27.00): Thank you so much, Kenneth. Moving across the pond to India, of course from EU, Latin America, Africa and the UK not so far away. It isn't much of a distance specifically, I suppose, when it comes to bankruptcy law development, since the frameworks have found a mirrored approach that makes great comparatives. As we're witnessing in this year's wrap podcast as well.

Now, India has had a unique trajectory over the past decade, which is the arc of its legal development in the insolvency and bankruptcy space. In fact, as we record this podcast today (8 December 2025), new developments are underway to introduce former predator led workout group procedures, along with further updates to the existing legislation, which is the Insolvency and Bankruptcy Code 2016. So exciting times for academics, upcoming PhD researchers, practitioners, regulators, lawmakers all around in India in the bankruptcy space at the moment.

It was also fantastic to be able to review the scope of governance as a landscape in various Asian jurisdictions, or what are popularly coined as emerging markets at the INSOL ERA workshop this year, especially in the context of small business and individual bankruptcies. That is the focus point also of upcoming reforms in India, and does have some conversations in a large amount of the emerging world today, especially in the bankruptcy space. In fact, our most latest episode on indigenous bankruptcies shows the need of the hour to focus in the area. In many jurisdictions with formal structures such as Australia, thematically, removing the stigma of bankruptcy has also been a central conversation in the developing research landscape in the international and local bankruptcy space. INSOL Talks has covered this topic in one of its early episodes, and the issue of human rights and insolvency. For listeners of this podcast, go back to Episode 40.

On a different note, the past three years that I've been with INSOL ERA have been a curve in assessing various tools of information dissemination and teaching. This podcast, INSOL Talks, has come unexpectedly very handy for many young practitioners to seasoned judges, to seasoned practitioners. The back-to-basics podcast with Ilya Kokorin, the outgoing ERA chair, was surprisingly a favourite episode. Specifically because the talk broke down the complexities of coordination and cross-border bankruptcies, and this, if you made it to this part of the podcast, is in Episode 58.

Another such episode was Episode 66 on the use and implementation of cross border protocols, demonstrative of how it is informative to have a podcast format of conversation around topical issues of bankruptcy and insolvency. This is, of course, a hot topic in India right now, as new amendments to implement the model law are presently being debated by the legislature. On that note of many things, I will give the floor back to Shuai, representing China, but also working globally in the past years.

Shuai Guo (30.38): Thanks a lot. Ishana. Just as Ishana described, like the rest of the world, Asia has been undergoing a lot of insolvency and restructuring law reforms in the past year. In my home country, China, in September, we just published a new draft amendment to our 2006 Enterprise Bankruptcy Law, which not only substantially updated the previous three pillar proceedings, namely reorganization, compromise and liquidation, but also added four special chapters. bankruptcy of micro, small and medium sized enterprises, group insolvency and substantive consolidation. Special regimes for financial institutions and cross-border insolvency. This marks a new and updated version of Chinese insolvency law.

Across the region, we have also seen major airline structuring incident cases using cross-border protocols in recent years, demonstrating increasing need of insolvency, legal framework and cross-border cooperation. In addition, jurisdictions like Japan have been experimenting innovative approaches such as out-of-court structuring and alternative dispute resolution mechanisms. Asia is undoubtedly becoming one of the most dynamic restructuring markets in the world, and global attention is following closely.

Another work I have been doing in past years is working for the International Institute of the Unification of Application Private Law (UNIDROIT) on its Bank Insolvency working group. I'm delighted to share that earlier this year in May, the Governing Council of UNIDROIT formally approved the Legislative Guide on Bank liquidation, which supplemented the previous international standards and addressed failing financial institutions, especially on non-systematic ones. I was also very pleased to hear that Sabrina joined the UNIDROIT team earlier this year.

This work aligns with ERAs mission to promote young scholars in international insolvency community. Defne, one of our members, was the first international intern at the World Bank, contributing to the digitalization and alternative dispute resolution in insolvency field. We have also been working with UNCITRAL thanks to Ishana and Kenneth, as well as the Asian Development Bank, to understand the formulation of international standards and regional development.

These international collaborations, enrich our understanding of insolvency law and enhance ERA's role in shaping global convergence. We will continue striving to build a dynamic, collaborative and accessible platform for young researchers across the world.

Closing our discussion today, 2025 marks the seventh year since the INSOL ERA was founded in 2019. I would like to express my sincere gratitude to all my colleagues present here today. It was my first year of taking on the role of chairperson, and has been a real joy to work with all of you and learning from you both academically and personally. A very special thank you also goes to Ms Hatty Norman, who has supported every single ERA activity, including today's recording, often behind the scenes yet always invaluable. And finally, on behalf of the entire team, I would like to thank all our listeners as well as INSOL ERA members and non-members alike. None of our achievements will be possible without your support. Thank you once again for tuning in and we look forward to seeing you all in 2026.

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