



INSOL INTERNATIONAL NEWS UPDATE

May 2018

Issue No. 5

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Editor's Note



This edition of the news update arrives after INSOL's Annual Regional Conference held in New York between 29 April and 1 May 2018. The conference was a great success and extremely well attended, with over 875 delegates from 48 different countries. There was an excellent forward looking and stimulating educational programme which prompted in depth debate on a variety of trends and hot topics in international and cross-border insolvency.

It is not surprising that cross-border cases continue to take centre stage in international discourse in insolvency law. Insolvency

practitioners continue to grapple with a myriad of issues arising from the interaction of foreign law and domestic law. The complexities of such issues are exemplified in the articles in this issue of the newsletter.

Singapore saw its first reported decision (*Re Zetta Jet*) on the application of the recognition procedures under the UNCITRAL Model Law on Cross-Border Insolvency. We saw another first in the US - the first reported decision (*In re Avanti Communications*) on the recognition of a UK scheme of arrangement sanctioned under UK law which provided for the release of third party non-debtor guarantees. On a separate note, the US Bankruptcy Court recently held (*In re CIL Limited*) that avoidance provisions in the US Bankruptcy Code were not intended to have extra-territorial effect, bringing into focus conflicting decisions which would

require clarification by the US Supreme Court in time to come

The interaction between insolvency law and other substantive laws often brings about vexing questions, and one sees that illustrated by the *Amerind* Appeal in Victoria, Australia, where the Federal Court discussed the application of trust assets in the winding up of a trust company. Another interesting development in Australia was the legislative amendments in September 2017 which introduced the stay on enforcement of *ipso facto* clauses. There is now a consultation process in Australia on whether certain types of contracts and rights should be excluded from the stay.

To address the demands of an increasingly complex insolvency law practice, legal reform continues to gather pace in other jurisdictions – for example, in the UAE, the formation of the Financial Restructuring Committee, and in the European Union, the proposal to introduce pre-insolvency restructuring procedures.

The importance of keeping abreast with developments in other jurisdictions cannot be over emphasised and I am grateful to all the contributors of the articles to this issue. I highly commend the articles to you.

Sim Kwan Kiat
Partner

Highlight Article

Recognition of Foreign Insolvency Representatives under the UNCITRAL Model Law – the Public Policy Exception in Singapore

Since Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency (Model Law) in May 2017, the Singapore legal community has eagerly awaited the first local reported court decision on an application for recognition of foreign insolvency proceedings under the amended Companies Act. That came about in *Re Zetta Jet Pte Ltd and others* [2018] SGHC 16, a decision of the Honourable Justice Aedit Abdullah.

On 15 September 2017, Zetta Singapore and Zetta US filed voluntary Chapter 11 bankruptcy proceedings in the US. Shortly after, AAH (and another shareholder) commenced legal proceedings in Singapore against Zetta Singapore and its other shareholders for commencing the US Chapter 11 proceedings and obtained an injunction order issued by the Singapore High Court prohibiting further steps in and relating to the US bankruptcy proceedings of the Zetta entities. The US bankruptcy proceedings continued in breach of the Singapore injunction. Subsequently, the US Chapter 11 proceedings were converted to US Chapter 7 proceedings, and the US Chapter 7 trustee of the Zetta entities applied for recognition of the US Chapter 7 proceedings in Singapore under the Model Law. The Model Law allows the court to refuse recognition if it would be “contrary” to the public policy of Singapore. The Model Law as adopted by Singapore is different from the Model Law in its original form, which allows the domestic court to refuse recognition if it would be “manifestly contrary” to public policy.

The decision in *Re Zetta Jet* is significant as it is the first time that the Singapore court has analysed the public policy exception under the Model Law: whether it would be contrary to the public policy of Singapore (under Article 6 of the Model Law) to grant recognition of the Chapter 7 Trustee in the face of the breach of the injunction granted by the Singapore Court by the pursuit of the US bankruptcy proceedings.

By

Sim Kwan Kiat
Partner

Rajah & Tann, Singapore

[To read the full article please click here](#)

[For the case decision please click here](#)

Cases

USA

(i) New York Court Welcomes Foreign Judgment Creditors: Russian Money Judgments are Recognised, Despite the Debtor's Pending Insolvency Proceeding in Russia

VTB Bank v. Mavlyanov, Index No. 650245/2017

A recent decision of the Supreme Court of the State of New York provides foreign judgment creditors with a roadmap to collection. The court granted recognition of two foreign money-judgments obtained by a Russian bank against an individual debtor while the debtor's Russian bankruptcy proceedings remained pending. The ruling offers key lessons for judgment creditors to enforce their rights in the U.S. against a foreign adversary and illustrates both New York courts' willingness to recognise foreign money-judgments and the importance of foreign representatives' obtaining recognition of foreign insolvency proceedings in the U.S.

[For a case note by D. Farrington Yates, George V. Utlik, Darryl G. Stein, Stephanie Hauser and Daniel J. Saval, Kobre & Kim, 10 May 2018 please click here](#)

[For the case decision please click here](#)

(ii) U.S. Bankruptcy Court Recognises a Foreign Plan of Reorganisation and Enforces Third-Party Releases in the Chapter 15 Context

In re Avanti Communications Group PLC, 582 B.R. 603, 2018 WL 1725544 (Bankr. S.D.N.Y. Apr. 9, 2018)

In this case, Avanti Communications Group PLC's (Avanti) sought recognition under Chapter 15 from the United States Bankruptcy Court for the Southern District of New York of its UK court sanctioned scheme of arrangement and the enforcement of the guarantee releases provided by Avanti's affiliates on certain debt.

Although there have been many unpublished decisions that have preceded the Avanti opinion on the subject of UK schemes of arrangement, this is the first reported decision by a United States Bankruptcy Court recognising a UK scheme of arrangement and therefore an important legal precedent for the Chapter 15 practitioner.

[For a case note by George P. Angelich and Annie Y. Stoops, Arent Fox, May 2018 please click here](#)

[For the case decision please click here](#)

Articles

Canada

The Canadian Steel Industry – Forging a Future on Shifting Sands

Despite the fact that Canadian steel companies continue to avail themselves of Canada's insolvency statutes, principally the Companies' Creditors Arrangement Act, Canada's answer to chapter 11, the fortunes and misfortunes of the Canadian steel industry continue to ebb and flow. For those distressed investors with the transactional creativity and intestinal fortitude necessary to ride those ups and downs and to establish mechanisms to

limit the impact of such volatility on a target company's future, the Canadian steel industry still presents substantial profit and growth opportunities.

This article takes a close look at the potential impact of the creative structure used in Bedrock Industries' recent acquisition of US Steel Canada a transaction that can, on the one hand substantially protect the new owners from the unpredictable legacy pension, OPEB and environmental liabilities, and on the other hand provide stakeholders with an incentive to see the new business become efficient and profitable.

[For the full article please see DLA Piper Restructuring Global Insight, 9 May 2018](#)

USA

Debate Intensifies as to Whether the Bankruptcy Code's Avoidance Provisions Apply Extraterritorially

The ability of a trustee or chapter 11 debtor-in-possession to avoid fraudulent or preferential transfers is a fundamental part of U.S. bankruptcy law. However, when a transfer by a U.S. entity takes place outside the U.S. to a non-U.S. transferee – as is increasingly common in the global economy – courts disagree as to whether the Bankruptcy Code's avoidance provisions apply extraterritorially to avoid the transfer and recover the transferred assets. This article looks at how several bankruptcy courts have addressed this issue in recent years, with inconsistent results.

[For the full article please see Jones Day Business Restructuring Review, March / April 2018](#)

Asia Pacific

Cases

Australia

Trustee Insolvency – the Full Federal Court Weighs in to the Debate

Jones (Liquidator) v Matrix Partners Pty Ltd, in the matter of Killarnee Civil & Concrete Contractors Pty Ltd (in liq) [2018] FCAFC 40

Below are links to two articles, the first examined the implications of a Victorian Court of Appeal decision on trustee insolvency in the *Amerind* Appeal and the second refers to the Full Federal Court's recently released decision on similar issues in the *Killarnee* case. The Full Federal Court came to a similar position to the Victorian court in deciding that trust assets should be applied first in paying employees and other statutory preferred creditors (though for varied reasons). But it came to the opposite position in holding that trust assets could only go to trust creditors, not non-trust creditors. That finding will cheer lenders and others dealing with trusts, but leaves a confused landscape.

[For the Amerind case note please see Allens Publications, 13 March 2018](#)

[For the Killarnee case note please see Allens Publications, 29 March 2018](#)

[For the Amerind case decision please click here](#)

[For the Killarnee case decision please click here](#)

Legislation

Australia

Consultation Process on *Ipsa Facto* Insolvency Regulations Begins

In September 2017, the Australian government introduced the most significant reforms to Australia's insolvency regime for the past 30 years with the enactment of the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 (Cth). A key part of the reforms includes a stay on the enforcement of certain contractual rights (known as *ipso facto* clauses) when a contractual counterparty enters into an administration, a scheme of arrangement or compromise, or a receivership over the whole or substantially the whole of its assets. Because of the potentially wide-ranging impact of the reforms, certain types of contracts and certain types of rights were to be excluded from the operation of the stay by regulation and declaration. The long-awaited draft regulations and declaration have now been released. This alert highlights some of the key exceptions and the potential impact on certain types of counterparties and transactions.

[For the full article please see K&L Gates Restructuring & Insolvency Alert, 20 April 2018](#)

Europe, Africa and Middle East

Cases

UK

Banks' Liability for Fraudulent Withdrawals by Authorised Individuals

Singularis Holdings Limited (In Official Liquidation) v Daiwa Capital Markets Europe Limited [2018] EWCA Civ 84

The UK Court of Appeal has recently handed down judgment in this case, upholding a bank's liability in negligence for authorising fraudulent payments out of a company's account. In *Singularis* the payments were requested and the fraud committed by the Company's sole shareholder, who also served on its board of directors, so the case grapples with a number of interesting questions: when is a bank negligent for following the instructions of a fraudulent individual who is nonetheless authorised to give instructions in relation to a company bank account? When will the knowledge of an owner or controller of a company be attributed to that company, and so make the company privy to that owner or controller's fraud?

[For a case note please see South Square Digest, p. 60, March 2018](#)

[For the case decision please click here](#)

Legislation

United Arab Emirates

Financial Restructuring Committee Established in the UAE

The UAE has taken a further step forward in the reform of its insolvency regime through the establishment of the Financial Restructuring Committee (the FRC). The FRC will primarily be responsible for:

- overseeing the implementation of the federal UAE bankruptcy law and managing the various registers contemplated under that law; and
- supervising out-of-court restructuring processes for licensed financial institutions.

This briefing note details the role of the FRC and how it is expected to function, and analyses the benefits to UAE restructuring practices .

[For the full article please see Clifford Chance Client Briefing, April 2018](#)

Articles

Germany

The EU's Preventative Restructuring Framework: a Cross-jurisdictional Comparison

The EU draft directive of 22 November 2016 seeks to implement a so-called preventive restructuring framework for European member states. Negotiations are well along, and the directive is envisaged to be finalised and adopted before the European Parliament election of 2019. The preventive restructuring framework aims to help companies which are experiencing financial difficulties to implement a restructuring at an early stage, thereby avoiding insolvency and maximizing returns for creditors. The UK and Singapore scheme of arrangement procedure and the US Bankruptcy Code's chapter 11 proceedings serve as a benchmark. This article briefly examines each of the three measures proposed to facilitate the pre-insolvency restructuring procedure and successful implementation of the plan.

This article was first published in the March/April edition of Germany's Finance magazine.

[For the full article please see DLA Piper Restructuring Global Insight, Issue 24, May 2018](#)

Lithuania

IP Appointment Lottery: Experiences in Lithuania, Slovakia and Hungary with Random IP Selection Systems

Three years ago, Lithuania introduced a new random selection system for the appointment of insolvency practitioners ('IP') in certain insolvency proceedings. This article reviews the strengths and weaknesses of the new system and compares it to similar random selection systems in Slovakia and Hungary. Experience in all three countries shows that randomised IP selection might further transparency and impartiality of the IP selection process and thus strengthen the general trust in this profession and in the functioning of the insolvency system as a whole. However, the impartiality and transparency of such lottery systems come at a price: potentially eliminating or severely restricting the possibility of finding a tailored solution for a particular case.

[For the full article please see Eurofenix p. 18, Spring 2018](#)

Publications & News

INSOL International Technical Paper Series - The New Insolvency & Bankruptcy Code in India: Impact on the Distressed Debt Market

April 2018

The Insolvency and Bankruptcy Code, 2016 (IBC 2016) was introduced in India on 1 December 2016. It is seen as one of the most significant economic reforms in the history of the country, with the objective of consolidating and amending the laws relating to re-organisation; ensuring insolvency resolution in a timely manner for the maximisation of the value of assets; promoting both entrepreneurship and the availability of credit; and balancing the interests of all stakeholders.

This informative paper examines the key developments that have taken place since the implementation of the IBC 2016 including: the lessons learned from the resolution plans approved so far; the contentious issues raised before the tribunals; and the progress in the 12 large non-performing loan cases directed by the Reserve Bank of India to be placed into the corporate insolvency resolution process of the IBC 2016. It also looks at what the IBC 2016 means for foreign creditors and examines the opportunities in the Indian distressed debt market for investors currently and looking forward to the next 2-3 years.

INSOL International sincerely thanks Vikram Bajaj, Renaissance Capital Advisors, India for this analysis and for writing this excellent technical paper.

[To view the technical paper click here](#)

INSOL Singapore 2 - 4 April 2019

Save the date for the INSOL International Asia Pacific Annual Regional Conference taking place in Singapore at the Sands Expo and Convention Centre, Marina Bay Sands. This will be a superb opportunity to meet colleagues from around the world in the vibrant city of Singapore. The Main Organising Committee and Technical Committee will be starting to plan next year's conference programme shortly.

If you would like to suggest any topics for consideration to include in the technical programme please email your suggestions to Sonali Abeyratne, Technical Director at sonali@insol.ision.co.uk by 25 May 2018.

Registration will open from 1 October 2018.

For further information and sponsorship details please contact Tina McGorman at tina@insol.ision.co.uk

INSOL International / INSOL Europe / FILA Helsinki One Day Joint Seminar Wednesday 13 June 2018 Hilton Helsinki Strand, Helsinki, Finland

FINAL BOOKING DEADLINE: 28 May 2018

[Register online here](#)

The booking deadline for our first Nordic-Baltic region seminar is fast approaching, [register now](#) to secure your place or [download the registration brochure](#) with full details of the programme and speaker line up.

We are delighted to have secured excellent speakers from the region and further afield to participate in this programme which will cover topics such as:

- The new EU Directive and Nordic-Baltic recommendations
- In depth analysis of a restructuring case study
- Multinational groups of companies: cross-border restructuring and insolvency issues
- A round up of the current issues of relevance to the Nordic-Baltic region

We would like to thank the following for their generous support of this seminar:

Platinum Sponsor: DLA Piper

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Dinner Sponsor: Finnish Insolvency Law Association | Magnusson Law

For further information and details of sponsorship opportunities please contact Penny Robertson, INSOL International at penny@insol.ision.co.uk

INSOL International Channel Islands One Day Seminar Tuesday 3 July 2018 Radisson Blu Waterfront Hotel, St Helier, Jersey

The fifth annual Channel Islands one day seminar is taking place in St. Helier, Jersey this year. The seminar is organised in association with ARIES, the Channel Islands INSOL

member association, and with the support of restructuring professionals from Jersey and Guernsey.

[Download](#) a copy of the registration brochure and to register [click here](#)

We are delighted to announce the session speakers for our one day seminar.

Session 1: Evolution or revolution – Is insolvency in a state of transition?

Chair: Jamie Toynton, Grant Thornton
Nigel Sanders, Ogier
Hon Elizabeth Stong, East District of New York
John Verrill, Norton Rose Fulbright

Session 2: Locking the stable door, before the horse has bolted

Chair: Tom Smith QC, South Square
Roy Bailey, EY
Alasdair Davidson, Bedell Cristin
Elizabeth Elliott, Stephenson Harwood LLP

Brexit keynote speaker:

Rear Admiral Chris Parry

Session 3: Where does Brexit take us?

Howard Morris, Morrison & Foerster
Barry Cahir, Beauchamps

Session 4: Understanding tomorrow's building blocks

Chair: Charlotte Møller, Reed Smith LLP
Ben Jones, BLP
James Willmott, Carey Olsen

Session 5: Is regulation on the front foot?

Chair: Rebecca Stubbs QC, Maitland Chambers
Alex Adam, Deloitte
Simon Gould, Mourant
Todd McGuffin, Babbé

We would like to thank the following sponsors for their generous support of the INSOL Channel Islands Seminar:

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Lunch Sponsor: Ogier

Dinner Sponsors: BDO | Carey Olsen

For further information and details of sponsorship opportunities, please contact Sarah Smith, INSOL International sarah@insol.ision.co.uk

INSOL International Academics' Colloquium

11-13 July 2018

BMA House, Tavistock Square, London, WC1V 9JP

EARLY BOOKING DEADLINE: Monday 21 May 2018

[Register online here](#)

**INSOL International Jakarta One Day Seminar
Thursday 13 September 2018
Fairmont Hotel, Jakarta, Indonesia**

INSOL International will be running a one-day seminar in Jakarta on Thursday 13 September 2018. The Main Organising Committee are preparing a stimulating and relevant programme. Further information will be released shortly.

Thank you to the following sponsors for their generous support of the INSOL Jakarta Seminar:

Platinum Sponsor: AJ Capital Advisory

For further information and details of sponsorship opportunities please contact Susannah Drummond Moray, INSOL International at susannah@insol.ision.co.uk

**INSOL International Hong Kong One Day Seminar
Wednesday 7 November 2018
Four Seasons Hotel, Hong Kong**

INSOL International will be running its first seminar in Hong Kong on **Wednesday 7th November 2018**. The Main Organising Committee have prepared an interesting and relevant technical programme. Full details of the programme can be found [on our website](#).

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

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

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For further information and details of sponsorship opportunities please contact Susannah Drummond Moray, INSOL International at susannah@insol.ision.co.uk

Contact INSOL

If you would like to send an article for inclusion in one of our forthcoming issues please contact our Technical Officer, Louise Jennings at louise@insol.ision.co.uk

If you would like to introduce a new member to INSOL International please contact our Database Manager, Tony Ashton, at tony@insol.ision.co.uk

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Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law
Business Recovery and Insolvency Practitioners Association of Nigeria
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Canadian Association of Insolvency and Restructuring Professionals
Canadian Bar Association (Bankruptcy and Insolvency Section)
Commercial Law League of America (Bankruptcy and Insolvency Section)
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National Association of Federal Equity Receivers
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Recovery and Insolvency Specialists Association (Cayman) Ltd
Restructuring and Insolvency Specialists Association of Bahamas
Restructuring and Insolvency Specialists Association of Bermuda
REFOR–CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
Restructuring Insolvency & Turnaround Association of New Zealand
Russian Union of Self-Regulated Organizations of Arbitration Managers
Society of Insolvency Practitioners of India
South African Restructuring and Insolvency Practitioners Association
Turnaround Management Association do Brasil
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INSOL INTERNATIONAL

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