



ANNUAL CONGRESS

26-29 September 2019

COPENHAGEN

(UN)NECESSARY PREVENTIVE
RESTRUCTURING FRAMEWORKS:
Where are the limits?



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Details on how to obtain our discounted hotel corporate rates will be advertised in our registration brochure (due to be mailed in March 2019).

Details will also be available on our website: www.insol-europe.org

Further information may also be obtained from:

Caroline Taylor
Director of Administration
INSOL Europe
P O Box 7149
Clifton
Nottingham
NG11 6WD
United Kingdom

Tel/Fax:
+44 (0) 115
878 0584

Email:
carolinetaylor@insol-europe.org

Welcome from the President

Dear All

It is with great pleasure that I invite you to attend our next and 38th Annual Congress in the very modern city of Copenhagen (Denmark) from 26 to 29 September 2019!

The city is located at the most important approach to the Baltic Sea on the eastern side of Denmark and is now connected to Malmo in Sweden by way of the spectacular Oresund Bridge. The bridge is also part tunnel and takes trains as well and this innovative approach is certainly something which the Danes are renowned for.

The country is also known for the development of existentialism, fairy tales, Lego and probably the best lager in the world (if you believe the advertising) – although not necessarily in that order.

We will be using the philosophical theme and title “(Un)necessary preventive restructuring frameworks: Where are the limits?” for our Congress and this is a reference to the proposals which are being implemented by the EU – proposals which are designed to avoid insolvency. We hope they will be used appropriately and not where saving the business is just not possible, there will always be a place for liquidation.

We have had suggestions from many people in relation to the content, for which thank you, and the programme will be wide and diverse with many topics covered - we believe they will be interesting and stimulate discussion and debate.

These events don't organise themselves so a huge thank you to our dedicated Congress Technical Committee, who are preparing a fabulous Technical Programme under the supervision of the Co-Chairs Florian Bruder (DLA) and Michala Roepstorff (Plesner).

We will of course have time for meeting with people and network during the conference and once finished there will be time to see the Little Mermaid, visit the Tivoli Gardens or the picturesque Nyhavn area – and the traditional pickled herring dishes absolutely should be on the bucket list.

I look forward to seeing you all in Copenhagen!

Sponsorship Opportunities

Please contact Hannah Denney: hannahdenney@insol-europe.org for information about any of the available opportunities.

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Technical Programme 2019



“...together we shall see what is in this great kingdom of Denmark, and on this journey, you will put from you all the sufferings of recent years and regain your joy in the world.” Rose Tremain

We are delighted to warmly invite you to the wonderful Copenhagen for the Annual Congress of INSOL Europe which will be held between 26 and 29 September 2019.

Copenhagen is the cultural, economic and governmental centre of Denmark and is one of the major financial centres of Northern Europe with the Copenhagen Stock Exchange. Copenhagen's economy has seen rapid developments in the service sector, especially through initiatives in information technology, pharmaceuticals and clean technology. Overlooking the Øresund strait with Sweden just minutes away, it is a cultural and geographic link between mainland Europe and Scandinavia. But Copenhagen is not only the capital of Denmark but also the happiest city of the world according to the past 40 years' happiness surveys. There is certainly inspiration to be found in Denmark which seems to have found an exceptionally successful combination of a dynamic economy and social security and our Congress could not take place under better auspices.

The main theme of our 2019 Annual Congress will be **“(Un)necessary preventive restructuring frameworks: where are the limits?”**.

Indeed, the eagerly awaited Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU is expected to be adopted by then.

The European Directive will be the first instrument designed to harmonise the early intervention mechanisms in the European Union, for the purposes of continuing and improving a viable business, preserving jobs, maximising value and appropriately allocating returns to all stakeholders. The harmonisation of preventive proceedings is also meant to reduce the number of unnecessary liquidations of viable businesses and avoid unnecessary job losses.

Inspired by the US Chapter 11 model, these preventive proceedings are based on the principle of an agreement concluded between the - at least - “likely insolvent” debtor and its main creditors which is binding on dissenting creditors upon (cross-class) cram-down. The framework further foresees a stay to allow the time to come to such an agreement. The stay, the formation of creditor's classes and the cross-class cram-down mechanism which will be included in the directive will have important practical consequences and will be discussed, amongst others, during our Congress in depth.

Member States will have to transpose the directive in their own jurisdictions and although the idea of harmonisation of a rescue culture in the European Union can be praised, there will necessarily be differences amongst the jurisdictions. This phenomenon will be strengthened by the Member States who already anticipated the final text of the directive and have implemented preventive mechanisms in their own legislation. Our Congress will be the opportunity to explore the different approaches and the issues of regulatory competition.

In this regard, a panel will be devoted to the use of pre-packs - these are agreements for the sale of all or part of the debtor's business or assets which is fully negotiated before the commencement of formal insolvency proceedings and completed immediately post-commencement - and their positive impact on employees.

The main theme of our Congress will also be the question of the scope of application of our (pre-) insolvency system and to find ways of strengthening it. The question arises as to whether preventive proceedings should actually be used

in all scenarios or whether there are alternative options available (other than liquidation). Our Congress will be the opportunity to cover these issues in depth.

Indeed, we are entering a new economic era where industries are disappearing due to technological innovations, a phenomenon which will undoubtedly increase. We must question whether liquidating is the only solution when businesses are dead or whether it is possible to maximise the value for creditors by proposing a transformation of the business (for example from paper to digital) and a way to finance this change.

As our world is becoming a more digital world, unquestionably insolvency practice is perpetually challenged with the question of how to protect and recover digital assets. A panel will therefore be devoted to this issue.

Topical sectoral insolvencies, for example health care, retail and aviation, will also be considered as these industries demand innovation from those who work in insolvency.

Litigation funding is taking on a bigger role in the cross-border legal industry and a panel will examine this phenomenon and its opportunities - how it works, who provides it and why it can benefit the creditors.

As the Congress will be held in the kingdom of Denmark which is a Member State of the European Union which has opt-outs from certain parts of the areas of freedom, security and justice e.g. in the adoption of the European Insolvency Regulation, our Congress will be the occasion of presenting the biggest cross-border bankruptcy estate in Danish recent insolvency history: the OW Bunker group. It has a Danish parent company, two Danish top group companies and a large number of foreign subsidiaries all carrying out business related to marine fuel bunker supplies. The top two group companies have challenged the securities (mostly receivables) provided by those companies in favour of a number of syndicated banks that have granted the OW Bunker group a credit facility in the amount of USD 700 million. The challenge is among other reasons based upon cases of bankruptcy and under Danish law, the choice of foreign law agreed upon pre-bankruptcy is not applicable in respect of the validity of such securities. The issues related to international recognition will be presented in this case study, and the third-party effects on assignments of claims will be discussed as well.

Another kingdom - the United Kingdom - will inevitably be the subject of discussions as it is currently expected that it will cease to be a Member State of the European Union from 29 March 2019. The European Insolvency Regulation, which is important for cross-border recognition, will continue to apply to insolvency proceedings commenced before the end of any transition period according to the latest draft Withdrawal Agreement, but international recognition issues in any scenario will sooner or later arise and need to be dealt with.

We trust that you will enthusiastically join us to discuss the rich insights of our panels and speakers in Copenhagen where you will have the opportunity to network and share unforgettable moments with friends old and new. You should ensure to allow you some time to see for yourself the essence of Danish happiness: stroll in the Royal Danish Horticultural Garden (Denmark's oldest garden), ride across the bridges, visit the National Museum, go to jazz clubs, taste the Danish gastronomy and experience the Copenhagen nightlife till the sun comes up (but only after the Congress has finished!).

We look forward to seeing you all in Copenhagen in September 2019 for what will be a truly memorable conference!

**Michala Roepstorff (Plesner, Denmark)
& Florian Bruder (DLA Piper, Germany)**
Co-chairs of the 2019 Copenhagen
Congress Technical Committee

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Finchley, London N12 8LY
Telephone 020 8343 5900
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