



The Academic Forum

Annual Report 2019

The Board of INSOL Europe's Academic Forum hereby presents a brief report to the INSOL EUROPE Council on the Academic Forum's activities in the year 2019.

1. PAST PROJECTS/EVENTS

1.1 The Copenhagen Annual Conference 2019

The Academic Forum conference in Copenhagen on Wednesday 25 - Thursday 26 September 2019 was a resounding success, attracting approx. 70 delegates from over a dozen jurisdiction, near the highest numbers in the history of our academic conferences. The theme of this conference was “Harmonisation of Insolvency and Restructuring Laws in the EU”.

The first conference day started with a session on the Preventive Restructuring Directive, opened by an excellent presentation by Lydia Tsioli (Kings College London) on the viability test, specifically focusing on the functional differences between financial and economic distress. Following this, Professor Ray Warner (St John’s University New York) and Michael Veder (Radboud University, The Netherlands) considered how the Dutch plan procedures, conceived prior to the adoption of the EU Preventive Restructuring Directive 2019/1023 (“PRD”), might be a suitable vehicle for realising the purpose of the text along with perspectives on the US Chapter 11 proceeding. Concluding the panel, Aurelio Gurrea-Martinez (Singapore Management University) discussed the impact of the shift in emphasis to pre-insolvency, as seen recently in Singapore and the EU, on classic reorganisation mechanisms. The second session covered the themes of director’s liability and the role of the debtor-in-possession (“DIP”). Based on a comparative study of British, Dutch and German regulation on director’s liability, Michelle van Haren (Radboud University) explained how existing regulation in those Member States, such as the duty to file in German Law, corresponds to the content and purpose of the PRD. Gert-Jan Boon (Leiden University) posed some cogent questions on the purpose and role of the DIP in EU Law, looking at both the EIR and the PRD. The first conference day ended with the Edwin Coe Lecture renamed this year as “The Gabriel Moss Memorial Lecture.” It was given by Professor Ignacio Tirado (General Secretary of UNIDROIT), who gave a thought-provoking presentation on the alternative priority rules available within the framework of the PRD.

The second conference day kicked off with the Young Academics’ Network in Insolvency Law session. Ilya Kokorin (Leiden University) discussed intra-group financial support in insolvency with the aim of finding the balance between group interests and the protection of creditors’ rights, while Minke Reijneveld (Radboud University) gave a presentation on the impact and effects of obligations under the GDPR on insolvency practitioners who have to handle personal

data. During the following session the theme of affecting and protecting creditors was discussed. Giulia Ballerini (Bocconi University, Italy) offered a perspective on how the cross-class cram-down in the PRD requires the application of a fairness standard and discussed if APR or RPR should be the default rule. Judge Flavius-Iancu Motu (Cluj, Romania) presented a joint paper by him and Andreea Deli-Diaconescu (National Institute for Insolvency Practitioner Training, Romania) on new and interim financing under the PRD and the utility of trade credit.

The post-lunch session opened with Professor Reinout Vriesendorp and Gert-Jan Boon (Leiden University) exploring the role of mediation within the international insolvency law framework followed by a presentation by Surbhi Kapur and Animesh Khandelwal (Insolvency and Bankruptcy Board of India) on Financial Distress Resolution and the Role of Insolvency Practitioners and ended with a presentation on the judicial role in restructuring and insolvency matters revealed by the JCOERE Project coordinated by Professor Irene Lynch-Fannon and Jen Gant (UC Cork).

The Academic Forum conference ended with the Edwin Coe Practitioners Forum. The stay as proposed in the PRD was the theme. Vincent van Hoof (Radboud University) outlined the scope of the stay in the context of the PRD, its effect on debtors and their contracting partners, appropriate safeguards for essential supplies and other contractual relationships and, especially, the impact on the secured creditor. Responding to the outline, Simeon Gilchrist (Edwin Coe LLP) and Tomáš Richter (Charles University; Clifford Chance LLP, Prague) pointed out issues of concern in how the PRD approached the stay framework.

1.2 The YANIL Conference

Prior to the annual Academic Conference, the YANIL (Younger Academics Network of Insolvency Law) board had organised a one-day seminar for PhD students across Europe. The conference was held at the offices of DLA Piper Denmark. The PhD Students presented their current work in progress and the day ended with a round table discussion on methodology in Insolvency Law, which was kicked off with three short presentations from more experienced members of YANIL.

1.3 The ERA conference: Restructuring and Insolvency within the EU (Trier, Thursday 7 November and Friday 8 November 2019)

This event was organised by Europäische Rechtsakademie Trier (ERA) in cooperation with the Academic Forum of INSOL Europe. Several active members of the Academic Forum presented during this conference amongst others Stefania Bariatti (University of Milan and Chiomenti Studio Legale, Italy), Stephan Madaus (University of Halle-Wittenberg, Germany), Paul Omar (Gray's Inn and De Montfort University, UK) and Tomáš Richter (Clifford Chance and the Charles University, Czech Republic).

2. ON-GOING MATTERS

2.1 Annual Conference (Sorrento, Wednesday 30 September to Thursday 1 October, 2020)

The Academic Forum will be staging its 16th Annual Conference in Sorrento, Italy. The overall theme for this conference has been determined as: "The Emerging New Landscape of European Restructuring and Insolvency". The IEAF Board is currently undertaking a

number of workstreams in relation to the Sorrento conference, including the preparation of the call for papers (to be published at the end of January 2020), a review and up-dating of the terms of the travel grants, a review and enhancement of the distribution channels for the call for papers, including an up-date of the mailing list kept for those purposes, and the selection of the speaker to be invited to present the 2020 Gabriel Moss Memorial Lecture.

2.2 Conference on “global” harmonisation of applicable law in the field of insolvency

This upcoming conference is to be organised in cooperation with the EU Commission and the University of Zagreb in Zagreb on 28-29 March 2020. The rationale for such a joint event is the anticipated upcoming work of UNCITRAL Working Group V (Insolvency Law) on applicable law which is to be kicked-off in May 2020 at the Working Group’s meeting in New York. INSOL Europe is an observer at the Working Group V. The IEF Board is involved in the preparations and several active members of the Academic Forum are planning to participate and present at the conference along with experts on insolvency law from almost all EU member states and from abroad.

2.3 Book Projects/Conference Reports

The INSOL Europe Academic Forum Annual Conference in Copenhagen also saw the launch of the publication of a volume of conference papers from the INSOL Europe Academic Forum Annual Conference held in Athens, Greece in 2018. This booklet included contributions from 11 different contributors from 9 different jurisdictions at the conference in Athens.

The Technical Papers series will in due course be joined by one volume representing the contributions at the Copenhagen conference. The offer of paper publication has also been extended to the presenters at the Inaugural YANIL PhD Conference, which has been met with great enthusiasm from the younger insolvency academics who presented there. Jennifer Gant as main editor of the Technical Series is handling the collation and editing of all the texts. It is intended that this will be launched at the 2020 Annual Congress in Sorrento.

3. GOVERNANCE

3.1 Changes at the IEF Board

At the Copenhagen conference, Tomáš Richter and Line Langkjaer (Aarhus University, Denmark) joined the Board. Tomáš took over as chair from Michael Veder, and Line as secretary from Anthon Verweij. During the year prior to the Copenhagen event, Tomáš and Line already participated in the Board calls and correspondence in order to achieve as smooth as transition as possible. The Board intends to establish this as good practice for the purposes of further hand-overs in the future.

Gert-Jan Boon also joined the Board at the Copenhagen conference and he took over as Chair of YANIL from Jenny Gant.

Florian Bruder communicated to the Board his intention to resign in Copenhagen, however, he has agreed to wait until a replacement is identified.

Following the Copenhagen conference, Tomáš Richter has approached Prof. Francisco Garcimartín of the Universidad Autónoma de Madrid and Linklaters LLP, who has agreed to join the Board. The Board unanimously approved this on 10 December, 2019. On that date, Florian Bruder's resignation has been thankfully accepted by the rest of the Board with effect as of 31 December, 2019, with Prof. Garcimartín joining the Board as of 1 January, 2020.

As of 1 January, 2020, the IEAF Board's is thus composed of the following members (in the alphabetical order): Gert-Jan Boon (The Netherlands, serving since 2019), Prof. Rolef De Weijjs (The Netherlands, serving since 2015), Jennifer Gant (UK/USA & Ireland, serving since 2015), Prof. Francisco Garcimartín (Spain, serving since 2020), Luigi Lai (Italy and Poland, serving since 2018), Line Langkjaer (Secretary, Denmark, serving since 2019), Tomáš Richter (Chair, The Czech Republic, serving since 2019), Prof. Jessica Schmidt (Germany, serving since 2009).

Dated 31 December 2019

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