

## Thanks go to our 2024 Annual Congress Sponsors

Congress Main Sponsor



Congress General Sponsors

**ADVANT**

**HOWDEN**

**KROLL**



**RESOR**

Event Sponsors



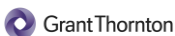
**AlixPartners**



**HOCHE  
A V O C A T S**



**SCHIEBE UND COLLEGEN**  
COMPANIES RECOVERY | INSOLVENCY | RESTRUCTURED



Congress Supporters:



## Technical Session Sponsors

**AlixPartners**



**DENTONS**

**HOICHE**  
A V O C A T S

**LUMON**  
CORPORATE

# Opening remarks of the Annual Congress

Joint Facilitators, President and Technical Committee Co-Chairs



**Andri Antoniou**  
CRI Group, Cyprus /  
INSOL Europe Country  
Coordinator



**Incoronata Cruciano**  
Schiebe und Collegen,  
Germany / INSOL Europe  
Council member &  
Country Coordinator



**Giorgio Corno**  
Studio Corno  
Avvocati, Italy /  
INSOL Europe  
President



**Rita Gismondi**  
Gianni & Origoni,  
Italy / INSOL Europe  
Country Coordinator



**Bart De Moor**  
Strelia, Belgium /  
INSOL Europe Council  
member & Country  
Coordinator



**Keynote Speaker:**

**Prof. Stefania Bariatti**  
**Professor of International Law,**  
**University of Milan, Italy**



**Keynote Speaker:**  
**Massimo Comparini**  
**Managing Director, Leonardo**  
**Space**



# When sustainability meets restructuring and insolvency law



**Panel leader:**  
**Prof. Patrizia Riva**  
Piemonte Orientale  
University, Italy / INSOL  
Europe Council member



**Jean Baron**  
CBF Associés, France /  
INSOL Europe Council  
member & Country  
Coordinator



**Jan Bech**  
Horten Law Firm,  
Denmark



**Judge Catherine  
Burton**  
Insolvency and  
Companies Court, UK



**Prof. Alessandro  
Danovi**  
University of  
Bergamo, Italy

# When sustainability meets restructuring and insolvency law



**Panel leader:**

**Prof. Patrizia Riva**

Piemonte Orientale

University, Italy / INSOL

Europe Council member

## **PANEL LEADER - PROF. PATRIZIA RIVA**

*PHD, EASTERN PIEDMONT UNIVERSITY, RIVA & Co. IPS, INSOL EUROPE COUNCIL MEMBER, CERIL CONFEREE, ITALY*

- 1) WHY TO TALK ABOUT ... Sustainability (ESG) and crisis forecasting for early warning**
- 2) EU-Directive on Corporate Social Responsibility CSRD**
  - A. The CSRD has established the need to issue specific European standards to regulate the drafting of sustainability information. European Sustainability Reporting Standards (ESRS) issued by the European Financial Reporting Advisory Group (EFRAG) were therefore drawn up.
- 3) The first application period is expected in 2024. The companies in the EU that prepare the report will increase from 11,700 to around 49,000 but there will also be an impact on smaller companies.**
- 4) CSRD can be an opportunity or a risk for companies ... but also for practitioners and in particular for IPs.**
  - A. Companies that will be able to take advantage of the opportunity will start improving and mapping: their governance (G), their relationships with stakeholders (S) and the impact of their activity on the natural environment (E). Acting virtuously they will be able to better understand and, as required by the Directive, to better report in the notes accompanying the financial statements, essential aspects for the survival of the company and for the identification of potential future risks that could have an impact on business viability. This helps in crisis preventing and early warning.
  - B. Less structured and less attentive companies, on the one hand, risk losing this opportunity for improvement and, on the other hand, risk being marginalized and even excluded from the supply chains of companies (larger ones listed and unlisted) compulsorily required to sustainability reporting and as a consequence required to verify the ESG compliance of the subjects with whom they interact and from whom they buy goods and services.



# When sustainability meets restructuring and insolvency law



**Prof. Alessandro  
Danovi**  
University of  
Bergamo, Italy

**PANELLIST - PROF. ALESSANDRO DANOVI,**  
*UNIVERSITY OF BERGAMO, ITALY*

**ESG & EARLY WARNING: Literature Review and Theoretical Considerations**

**1) The relationship between ESG Scores and Default Probability (causality or spurious correlation?)**

- 1) Consistent negative relationship between ESG scores and default risk
- 2) Higher ESG ratings/disclosure associated with lower default risk

**2) The effect of including ESG scores in Early Warning Models**

- 1) Including ESG information improves prediction accuracy. There are, however, Practical limitations
- 2) Need for standardization in ESG reporting and scoring

# When sustainability meets restructuring and insolvency law



**Jean Baron**  
CBF Associés, France /  
INSOL Europe Council  
member & Country  
Coordinator

## **PANELLIST - JEAN BARON**

*CBF ASSOCIÉS, INSOL EUROPE COUNCIL MEMBER, FRANCE*

### **What is the scope of ESG criteria ?**

- Environmental
- Social
- Governance

### **Two main restructuring routes :**

- Internal restructuring : changes to the structure of a company or Group
- External restructuring: by means of a sale plan

### **Issue : Determine the impact of applying ESG criteria in our professional practice ; IPs, lawyers, courts, auditors**

*Sources : Regulation (EU) 2019/2088 on sustainability disclosure in the financial services sector (SFDR)*

*The EU Taxonomy (Regulation (EU) 2020/852)*

*Directive 2014/95/EU on the publication of non-financial information (NFRD) rather « sustainability information »*

## I) ESG and internal restructuring

### **Purpose of the restructuring:**

- Rebalancing an economic and financial situation , not only a balance sheet restructuring
- Positive social impact widening in Europe

### **How ?**

- IPs and restructuring specialists at several levels, courts
- Strategy and action, emergency auditing

### **Integrating the ESG model into practice**

- Why & How. sustainability audit and timeframe of the restructuring

## II) ESG and sale plan

### **Outline of a business transfer.**

- Continuation of business
- Settlement of liabilities
- Employment protection: a huge impact

### **Integrating ESG criteria into the choice of buyer: meeting legal criteria**

- ESG candidate: sustainable candidate for the business
- ESG practices: guaranteeing that jobs are maintained in good conditions

### **Impact of the CSRD directive on the implementation of ESG criteria**

- Increased reporting by candidates on ESG criteria

*Sources : Articles L642-1 and following of french commercial code*

*Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on the publication of sustainability information by companies*

*Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023, implementing Directives 2013/34 and 2022/2464, requiring companies to disclose sustainability information in their annual reports*



# When sustainability meets restructuring and insolvency law



**Jan Bech**  
Horten Law Firm,  
Denmark

## **PANELLIST - JAN BECH**

*HORTEN LAW FIRM, DENMARK*

### **AGENDA - ESG & INSOLVENCY**

- New EU directives to promote sustainable financial growth – the Corporate Sustainability Reporting Directive and the Taxonomy Regulation
- ESG and insolvency

## **PANELLIST - JAN BECH**

*HORTEN LAW FIRM, DENMARK*

### **ESG & INSOLVENCY**

- Private capital is necessary for the EU reaching its climate goals
- Government funding and support schemes can not stand alone
- The Corporate Sustainability Reporting Directive
- The Taxonomy Regulation.

**PANELLIST - JAN BECH***HORTEN LAW FIRM, DENMARK***The Taxonomy Regulation and the CSRD**

Aims to provide clear guidelines

Criteria are not met = activities are not sustainable

Introduces new obligations for companies

The purpose of the CSRD: strengthening the framework for companies' sustainability reporting

The CSRD and the Taxonomy Regulation have a certain interplay. Being part of a bigger plan, their purpose is to funnel funding and investments towards truly sustainable companies and projects

## **PANELLIST - JAN BECH**

*HORTEN LAW FIRM, DENMARK*

### **ESG and insolvency ?**

- Direct and indirect effects
- The bigger scale – subcontractors and business partners
- Companies directly affected have an increased responsibility to oversee the sustainability of their entire value chain
- Examples of sustainability parameters are environmental and climate impacts, working conditions of suppliers, impact on local communities or activities carried out by a third party

## **PANELLIST - JAN BECH**

*HORTEN LAW FIRM, DENMARK*

### **ESG and insolvency ?**

- The purpose of the aforementioned directives: to define sustainability and funnel funding and investment towards truly sustainable companies
- The entire value chain must be taken into account
- Companies may be cut adrift from future partnerships
- Exposes companies to a potential risk of bankruptcy



# When sustainability meets restructuring and insolvency law



**Judge Catherine  
Burton**  
Insolvency and  
Companies Court, UK

## **PANELIST – JUDGE CATHERINE BURTON**

*INSOLVENCY AND COMPANIES COURT, UK*

### **1) Court's role in different jurisdictions:**

- **Insolvency – Stakeholder disputes, Guidance and Supervision of Office Holders, Pari Passu Treatment of Creditors under the Law**
- **Restructuring – No Creditor Worse Off (Art 74 Restructuring Directive)**

### **2) Early Warning - Reporting provides a new window into company performance, ESG Scoring, Lender reporting and ESG covenants**

### **3) Restructuring – Identifying the issues can help to unlock new funding and labour**

### **4) Insolvency – Priority of ESG-related liabilities is key, Personal liability for Directors / Office Holder? Voice of the 'victims'**

## **PANELIST – JUDGE CATHERINE BURTON**

*INSOLVENCY AND COMPANIES COURT, UK*

### **Environmental Liability: Polluter Pays Principle**

1. England – *Official Receiver v Environment Agency*
2. Ireland – *Wicklow County Council v Fenton and Others*
3. Canada – *Orphan Well Association v Grant Thornton Ltd* ('Redwater')

### **Lender Liability: *United States v Fleet Factors Corp***

**Director Disqualification and Compensation – «Conduct fallen below appropriate standards of probity and competence»**

## Coffee Break

Kindly Sponsored By

**bnt** attorneys  
in CEE