



INSOL INTERNATIONAL

INSOL International

Member Association Report

2013 Six Month Report

To: The Member Associations of INSOL International

INSOL International is pleased to provide a review of INSOL's activities for the first six months of 2013.

New Member Associations

The INSOL International Board has approved the application of two new member associations in the last six months. We warmly welcome the members of the Finnish Insolvency Law Association (FLA) and the Instituto Brasileiro De Estudos De Recuperacao De Empresas (IBR) to INSOL.

Member Benefits

Members have received the following communications, products and e-mail alerts informing them of new publications available on the website.

Monthly Membership News E-mails

News of INSOL International events and Member Association activities was sent out at the start of each month.

Electronic Newsletter (ENL)

The electronic newsletters for January to June covered case decisions and new and pending legislation and contained journal articles and recent news.

The January issue highlights a decision from the Supreme Court of Canada released in the final weeks of 2012. The Supreme Court of Canada, in considering the effects of insolvency proceedings on environmental regulatory orders, took the opportunity to provide guidance on what constitutes a 'contingent claim' under Canadian insolvency law. This judgment will impact a number of active matters before the Canadian Courts.

The February issue main article focused on the proposed amendments to the European Insolvency Regulation ("EIR") published on 12 December 2012. The EIR has been in force since 31 May 2002 and has been reviewed after ten years in operation. The amendments encompass a number of major and minor amendments to the legislation. They are intended to eliminate a number of problem areas in cross-border insolvencies within the EU Member States. There is also an intention to bring certain common themes closer in effect to the UNCITRAL Model Law.

The highlight of the March issue was an article considering the most recent case on claims to "client money" in formal insolvencies in the UK. Grey areas have been identified in the Regulations that govern treatment of claims to such monies held by investment firms and recent cases have been addressing these. The *MF Global* case considers whether regard can be had to the "hindsight" principle in valuing claims in respect of positions that were open at the time of the primary pooling event.

The main article in the May ENL focussed on the specific issues which arise in a trading insolvency of a retail business in the UK. Particular areas highlighted included claims to physical stock by suppliers.

The June issue highlighted a recent district court decision in the United States, *CompuCredit Holdings Corp. v. Akanthos Capital Management*, which held that collective action by investors to maximize recoveries, including the forming of negotiating blocks to advance a common interest, does not violate U.S. antitrust laws. This decision is consistent with 2011 legislative enactments rebuffing attempts to prevent collective action by creditors in U.S. bankruptcy proceedings. The court's decision in *CompuCredit* and the recent amendment of Bankruptcy Rule 2019 should assure debt investors that acting in concert with similarly-situated creditors to negotiate with a debtor for repayment of debts owed will not violate U.S. antitrust laws and will not require potentially prejudicial disclosure. Rather, investors' ability to join together and advocate common interests with one voice is preserved and should continue to help simplify the negotiation process with borrowers seeking to restructure their debts. Taken together, this recent court decision and legislation should provide substantial comfort to debt investors that the U.S. legal system is committed to a common-sense approach to regulating the negotiation process between debt holders and the borrower.

Issues of the ENL are hosted on the INSOL website for reference purposes. The newsletters were kindly sponsored by David Rubin & Partners LLP.

Technical Series 2013

The 25th paper in the technical series was posted on the INSOL website in January 2013 and is entitled "*Necessity Trumps Law: Lessons from Emerging Markets for Stressed Developed Markets*". It was written by Tim DeSieno and Katherine Dobson of Bingham McCutchen LLP, USA.

In the paper the authors examine the financial crisis experienced by the East Asian countries in the 1990s and also the sovereign debt crisis faced by Argentina in early 2000s and how the respective governments reacted. On a more global scale, leading international organisations responded to these crises by developing best practices for debt restructuring which were widely adopted in many countries and these are highlighted in the paper.

Several years later the world saw another financial crisis in 2008 and the paper covers the struggles in Europe of over-leveraged sovereign debtors such as Ireland, Greece, Spain and Iceland. In the concluding part, the authors look at the short and long term policy ramifications.

Our thanks go to the authors Tim DeSieno and Katherine Dobson for taking the time to write this excellent paper.

Smaller Practices Technical Papers

A ninth paper in the Smaller Practices Technical Papers series was posted on the website in February 2013 and is entitled "*Smaller Practices and Consumer Debt Issues in Singapore*". This paper was written by Mr. Edwin Tong of Allen and Gledhill LLP, Singapore. INSOL International sincerely thanks Mr. Tong for writing his very useful paper.

INSOL World

The first and second quarters' editions of INSOL World for 2013 have been mailed to all members. The first quarter's focus was the Americas. The second quarter's focus was Europe. In addition, a highlight of the first quarter's edition was an article reviewing the U.K. Supreme Court's decision in the *Rubin* case and its impact on the enforcement of foreign insolvency judgments.

INSOL World is available on the website and the second quarter's issue was also distributed to all delegates at INSOL 2013.

International Insolvency Review - A Special Collection Celebrating 21 Years

To celebrate 21 years of the International Insolvency Review under the Editorship of Professor Ian Fletcher and kindly published by Wiley Blackwell, INSOL has printed a collection of the most notable articles written for the Review over the years. This special edition has a foreword by The Right Hon. Lord Hoffmann of Chedworth. All members were mailed a copy in May after the launch of the publication at INSOL 2013. A copy of this special edition has also been sent to each Member Association as a reference copy.

International Activities

Hong Kong Institute of Certified Public Accountants, Restructuring and Insolvency Faculty (RIF) Lunch Seminar, 29 January 2013

The President Gordon Stewart and Mark Robinson, Treasurer of INSOL International, were invited to make a presentation to members of RIF whilst in Hong Kong to attend a Group of Thirty-Six meeting.

The presentation was entitled "*Current challenges for insolvency practitioners across the world (including a comparative look at liquidators' remuneration)*". The speakers reviewed the developing role of insolvency practitioners in different parts of the world and in particular the current issues affecting liquidators' remuneration.

Over 100 members of RIF attended the seminar and the presentations were well received.

Whilst in Hong Kong, members of the Executive Committee also met with members of the lending community and INSOL looks forward to working with them more closely in the future.

R3: 23rd Annual Conference, 24-26 April, Cannes, France

The President of INSOL attended R3's Annual Conference in Cannes and gave an update to the delegates on INSOL's recent activities.

UNCITRAL, Working Group V (Insolvency Law) 15-19 April 2013

INSOL was represented by Neil Cooper and Sijmen de Ranitz, Past Presidents of INSOL International. A full report of the meeting can be found on the UNCITRAL website.

Educational Programmes

INSOL 2013

The Ninth World Congress of INSOL International took place on 19-22 May 2013 at The Hague in The Netherlands.

667 delegates attended with 66 accompanying persons. In all, 51 countries were represented. The keynote speaker was Paul Tucker, Deputy Governor, Financial Stability, Bank of England. His presentation was entitled "*Too big to fail and the reform of the international financial system*". The speech and the accompanying press release were picked up by the UK press, including the Financial Times and the Daily Telegraph, referencing that the speech had been made at the INSOL Congress.

With a technical programme that was well received across the board, it seems invidious to single out a specific session or sessions. However, particularly in view of its novel formula and dramatic presentational style, mention must be made of the case study: “*A tale of two businesses, one good...one bad...*” which dominated Day Three.

The case study and connected technical presentations were based on a film, scripted by Ken Baird of Freshfields Bruckhaus Deringer, co-chair of the Technical Committee, and performed by professional actors and actresses. Our thanks go to Ken and to his colleague Katharina Crinson, for their prodigious efforts in making this all happen. The film, which was kindly sponsored by Alvarez & Marsal and Skadden, Arps, Slate, Meagher & Flom LLP, made for a fascinating and engaging technical programme on Day Three. Nick Ross, a journalist and broadcaster, facilitated the day's events and did an outstanding job in the role of facilitator. Jack Butler of Skadden, Arps helped put together and led a working lunch which both enabled delegates to network with those on their table and involved them in discussing and then voting via keypads on a list of questions on key issues thrown up by the day's presentations. The results were shown to delegates in real time and they will be summarised and reviewed in the next edition of INSOL World.

There was a full Ancillary Programme held over the weekend before the start of the Congress proper. There was an Insurance Meeting on 19 May. It was attended by 40 delegates and was kindly sponsored by Clifford Chance and PwC. There was a two-day Academics Colloquium on 18 and 19 May attended by over 60 delegates and, on the same days, the Tenth Multinational Judicial Colloquium was held with 80 members of the judiciary from around the world in attendance. All the Ancillary Programmes were a great success and much appreciated by the participants.

We provided an App for the main congress for the first time and over 260 delegates downloaded the App. The majority of feedback was that this was a great step forward. We are developing the App taking into account delegate comment, for use at INSOL Hong Kong.

Our thanks go to our Sponsors.

Main Sponsors: BMC Group, Begbies Traynor, Deloitte, RSM

Welcome Dinner Sponsor: BDO

Gala Dinner Sponsor: AlixPartners

Sponsors of *A tale of two businesses one good... one bad...*: Alvarez & Marsal and Skadden, Arps, Slate, Meagher & Flom LLP

General Sponsors: Company Watch, De Brauw Blackstone Westbroek, DLA Piper, Financial Times, Hermann, Houthoff Buruma, hww wienberg wilhelm, Lipman Karas, McDermott Will & Emery, Norton Rose, Ogier, Oxford University Press, PwC, RESOR, South Square

INSOL Scroll of Honour

A particular highlight of INSOL 2013 took place at the Gala Dinner when the President of INSOL International had the honour of presenting the eighth Scroll of Honour to Professor Ian Fletcher.

Professor Fletcher has worked closely with INSOL for over twenty years. His roles have included the Editorship of the International Insolvency Review and Chairmanship of the INSOL Academics Group to mention just two. But we are also deeply indebted to him for, and particularly value, his brilliant work in helping design and teaching on the INSOL Fellowship course with which he has been involved since its inception.

His role in academia in the field of insolvency is unsurpassed. He has been a Professor of Law at the University of Aberystwyth and a Visiting Professor at the University of Texas at Austin and at Tulane University. He was instrumental in developing the insolvency faculty at Queen Mary and Westfield College, University of London (**QMWC**) after becoming Professor of Law and Head of the Insolvency Law Unit, Centre for Commercial Law Studies at QMWC in 1991. He also became Director of the Centre in 1994. He is now Professor of International Commercial Law at the University of London.

He has written numerous books and articles on insolvency. His 1990 publication, *The Law of Insolvency*, is now in its fourth edition and is regularly cited by the Courts, most recently by the UK Supreme Court in the leading case of *Eurosail* [2013] UKSC, 28. Earlier this year he was awarded Queen's Counsel Honoris Causa.

It was and is a great honour for us that Professor Fletcher accepted the Scroll of Honour.

INSOL International Sao Paulo One Day Seminar, 13 June 2013

114 delegates attended the one-day seminar held in Sao Paulo, kindly hosted by Pinheiro Neto Advogados. Attendees came from Argentina, Brazil, Canada, Colombia, Mexico, Uruguay and USA.

The seminar covered issues pertinent to the region such as *Perils for Directors of Insolvent Companies; How is Equity Treated in an Insolvency?; Trading in Distressed Debt; Buying and Selling Troubled Companies and Restructuring Challenges in Brazil – a Comparative View*.

The seminar was kindly sponsored by the following:

Platinum Sponsors: Chadbourne & Parke LLP, Deloitte, Pinheiro Neto Advogados

Gold Sponsor: Campos Mello Advogados

Global Insolvency Practice Course - Class 2013

On this year's course we have 15 participants from the following countries: Australia, Bermuda, BVI, Cayman Islands, Germany, Hungary, Nigeria, Spain, The Netherlands and USA.

Module A took place prior to INSOL 2013. The participants then attended the INSOL 2013 Congress. The Class of 2012 were presented with their certificates at the Gala Dinner.

GlobalINSOLvency Website

This is a joint venture by the ABI and INSOL International for the members of INSOL and the wider professional community with an interest in insolvency and turnaround. The site provides a global source of information. There is also the opportunity to sign up and receive daily global alerts by email. We recommend members make it one of their favourite sites: www.globalinsolvency.com.

Group of Thirty-Six

G36 Reception, Hong Kong, 28 January 2013

Davis Polk & Wardwell kindly hosted our first ever G36 reception in Hong Kong. 51 members of the G36 attended the reception. Our guest speaker was Jake Williams, Deputy Group Chief Restructuring Officer, Standard Chartered Bank. Jake gave a stimulating talk on "*What has changed since the Asian crisis*". Delegates had many questions for him following his presentation.

G36 reception, New York, 7 March 2013

Jones Day kindly hosted the New York G36 reception on what was a very cold and snowy night. We were delighted that over 60 members of G36 braved the snowstorm to attend the event. Our guest speaker was Louis J. Freeh, Pepper Hamilton LLP. Mr Freeh gave an interesting and detailed presentation on Financial Institutions and Cyber Terrorism. Which was well received by the attendees.

G36 Breakfast Reception, 21st May, 2013, The Hague, The Netherlands

The breakfast was held at the World Forum in The Hague on 21 May prior to the start of the third day of the INSOL 2013 Technical Programme. 60 members of the G36 attended.

The guest speaker was Nils Melngailis, Managing Director of Alvarez & Marsal. We were very grateful to Nils for flying in from Cyprus to give us an update on the banking crisis in Cyprus and how its outcome may affect the banking landscape across the EU going forward. Reflecting the engagement of the audience, delegates asked many questions at the end of the presentation.

INSOL Board of Directors

It was with sadness that we record the retirement as President of INSOL of Gordon Stewart of Allen & Overy LLP on 24 May 2013. Gordon has been a truly great leader of INSOL and members will have kept up with some of his activities through his column in INSOL World. With the support of his firm, Allen & Overy, he has committed a huge amount of time and effort to INSOL activities and to furthering its strategic goals and I am sure all the members would wish to pass on their thanks to him as he stands down as President.

Additionally we had one other retirement from the board, that of Howard Seife of Chadbourne & Parke LLP. Howard has championed our development into Latin America over the last five years and membership has steadily increased in the region in no small part as a result of his and his colleagues' efforts. Howard will continue to work with us in this region and our thanks go to him and his firm for their unstinting support of the work of INSOL.

We welcome our new President with great enthusiasm and congratulate James H.M. Sprayregen of Kirkland & Ellis on his appointment as President. We also congratulate Mark Robinson of PPB Advisory on his appointment as Vice-President. Mark is the nominee of the Australian IPA and is also the current Treasurer of INSOL. Adam Harris of Bowman Gilfillan was appointed to the Executive Committee as Director at Large and Julie Hertzberg of Alvarez & Marsal was appointed to the board as a Nominated Director.