**INSOL Helsinki Joint One Day Seminar 2018**

**Wednesday 13th June 2018**

**Dr. Myriam Mailly**

The INSOL Helsinki Joint One Day Seminar 2018 took place at the Hilton Helsinki Strand on Wednesday 13th June and was jointly organised by INSOL International, INSOL Europe and the Finnish Insolvency Law Association (FILA).

The congress started with a welcome and opening remarks from Nina Aganimov (FILA Vice President), Nick Edwards (INSOL International Board Director) and Radu Lotrean (INSOL Europe President) in the presence of 100 registered delegates representing 10 different jurisdictions: Finland, Sweden, Denmark, Norway, France, the UK, the US, Romania, Germany and Hungary.

The first session began with a summary of the main features of the EU Directive proposal on restructuring, insolvency and second chance (‘the Directive proposal’). It was the occasion for Tuomas Hupli to open the debate on whether this text was supposed to ensure efficient and effective laws on business restructuring while securing at the same time decent level of legal protection between conflicting interests. Erik Selander then expressed the view that, if harmonisation of national insolvency laws was certainly desirable, the method to reach it did matter so as to convince national legislators to initiate insolvency reforms in their own jurisdiction. In that context, Mari Aalto called for more flexibility, pointing out that if the general objectives of the Directive proposal can be supported by the Finnish Ministry of Justice, the detailed rules may create challenges for national legislators and even some incompatibilities or uncertainties, in particular in its relation to the European Insolvency Regulation 2015/848 (“Recast EIR”) as far as the Directive proposal did not give its support for an automatic appointment of an insolvency practitioner in the restructuring process. Thomas Heering finally underlined the need for harmonisation and informed the audience that the Danish insolvency legislation already complied with some of the provisions of the Directive proposal, even if some differences remained. Emphasis was also put on the importance of timing considerations with regard to the different challenges that the insolvency actors had to overcome to reach a successful restructuring. The first session was then followed by a discussion between the audience and the panellists in relation to the rationale of the Directive proposal on the stay and the risk that it could be (too) easily granted at the expense of creditors.

The second session was the occasion for Masse Ervasti and Antti Rönkkö to inform the audience on the Finnish restructuring success story of the NANSO Group Oy. Thanks to an important operational restructuring, the Nanso Group continued its business (sale of women clothes). This process implied the Group being divested of three business units, the sale of two properties, the renewal of the brand image as well as the making of important changes to the supply chain. The session was also the occasion to highlight the key lessons experienced during the Nanso restructuring process. In particular, the emphasis was put on the need for external experts with knowledge in the company’s particular business sector as well as qualified lawyers specialised in insolvency to help the management deal with the restructuring process and notably to divide the roles of each actor in the process as early as possible and to determine the objectives to be reached. The audience also made the case for public communication of such successful restructurings, so as to make directors of any companies aware of the availability of restructuring mechanisms in Finland.

The seminar continued in the afternoon with the third session addressing recent developments on cross-border issues involving groups of companies in financial distress. Irit Mevorach briefly reminded the audience of the issues that arose when the European Insolvency Regulation 1346/2000 applied *per se* to groups of companies. Friedrich von Kalterborn-Stachau then underlined the practical difficulties following the ‘*ad hoc’* application of the EIR to corporate groups with concrete examples from Germany. The panel then explored in greater detail how the Recast EIR intended to solve these issues by requiring in-depth cooperation and communication between the different actors involved in proceedings listed in Annex A. In particular, the panellists discussed whether the mechanism put in place through the ‘*group coordination proceedings’* could lead (or not) to successful group restructurings in the EU. On that point, Irit Mevorach doubted the efficiency of such a mechanism which contained from her point of view too many restrictions, while Friedrich von Kalterborn-Stachau demonstrated with the Nikki case that the COMI issue was still a problem even under the Recast EIR. The final part of the panel focused on a more global perspective by referring to the current work of UNCITRAL Working Group V. Irit Mevorach compared the EU system with what was being currently discussed within UNCITRAL, namely putting into place a ‘*planning proceeding’* aimed at the development of a group insolvency solution for all or part of a group of companies and cross-border recognition and implementation of that solution in different States. Friedrich von Kalterborn-Stachau rightly observed that, although Germany had not adopted the UNCITRAL Model Law on cross-border insolvencies, the current work in progress on multinational enterprise groups which would lead to a Model Law, would have helped German practitioners in the Nikki case. The session ended with a description by Myriam Mailly of the keys for a successful global financing restructuring plan, which was the result of coordinated restructuring proceedings in France and the US and more precisely between a French holding company under safeguard proceedings (preceded by an *ad hoc mandate*) and its 14 affiliated Chapter 11 USBC debtors.

The seminar ended with a focus on two topical issues in the Nordic region: environmental liabilities in bankruptcy proceedings and debt-equity swaps. On the first issue, Tuomas Hupli first reminded the audience that this subject was particularly important in Finland, as there was a legislative initiative pending in the Ministry of Justice on the revision of the Bankruptcy Act proposing that environmental liability would be allocated to the bankruptcy estate subject to the danger in the environment. Then it was for Jenny Hilden to describe the remedies applicable in Sweden and, in particular, the fact that the official receiver receives remuneration for fee and costs in regards to the elimination of environmental problems, even if the act brought no value for a bankruptcy estate which may be held responsible for environmental damage. Then Siv Sandvik presented the proposals on the new legislation on debt-equity swaps based on the fact that there was no regulation regarding debt to equity swaps in the composition regime of the Bankruptcy Act. The proposed solutions were outlined through different scenarios under the Companies Act or the Bankruptcy Act with a different voting process taking place according to whether the debtor was under voluntary or compulsory restructuring arrangements.

The session ended with a description of the debt to equity conversion in Denmark by Lars Skanvig, in which conversion of debt was considered as a legitimate way to establish new equity shares under the Danish Companies Act as it may contribute to a positive continuation of the company. As a consequence of the conversion, the creditor did not have any claim in the insolvent estate, though the creditor could exercise shareholders’ rights and influence the company’s future operations.

Nick Edwards closed the seminar with a wrap up and closing remarks underlining that the main challenge for all insolvency practitioners, as was highlighted throughout this one-day seminar, was to achieve a successful turnaround out of insolvency keeping alive the business vehicle.