



INSOL INTERNATIONAL

News Update

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EDITOR'S NOTE



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*"Hold firm.
Take care.
Come home
together."*

The task of writing this piece was assigned some time ago but preparing it in the middle of this global pandemic I was apprehensive that I would struggle to find the appropriate words to introduce this edition.

The quote above is taken from a poem by Michael D. Higgins, President of Ireland, which he published on the 22nd of March 2020. The message is clear and I have been heartened to see (I never doubted it) that the INSOL International community are rising to the challenge admirably.

This COVID-19 focused edition of the News Update brings us insolvency and restructuring related news from around the globe.

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Under the influence of INSOL International members all over the world, various jurisdictions have recognised quickly that the extraordinary measures needed to stabilise businesses in the teeth of this public health crisis include insolvency-specific provisions.

The proposed and in some cases already implemented measures range from relaxing insolvent trading laws for six months ([Australia](#)), the temporary suspension of wrongful trading provisions ([United Kingdom](#)), relaxing or suspending directors' duty to file for insolvency ([Czech Republic](#)), a business debt hibernation scheme ([New Zealand](#)), a general stay of enforcement proceedings ([Switzerland](#)), increasing the monetary and temporal thresholds for filing for insolvency proceedings ([Singapore](#)) and suspending enforcement actions ([Brazil](#)). Whilst in [Japan](#), the creation of new guidelines for rescheduling existing loan payments for SMEs aims to rescue affected companies.

It is also clear to most that a chaotic insolvency pandemic after the public health pandemic is not desirable. To that end, and applying the invocation to "Come home together", I would encourage you all to consider anew the [INSOL International Statement of Principles for](#)

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[a Global Approach to Multi-Creditor Workouts II.](#)

These are well grounded and longstanding principles of strong provenance and should guide us all, whether your jurisdiction has highly evolved insolvency laws, or none.

I wish you all the very best.

Barry Cahir
Fellow, INSOL International
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Ireland

If you would like to send an article for inclusion in one of our forthcoming issues please contact our Technical Officer, [Louise Jennings](#)

If you would like to introduce a new member to INSOL International please contact our Database Manager, [Tony Ashton](#)

HIGHLIGHT ARTICLE

Ireland - COVID-19 Supports and Solutions

The Irish government has thus far announced a range of financial, legal and social measures which are aimed at addressing the crisis. In terms of insolvency measures there have been no specific changes announced as yet, although it is understood that the Government is considering specific measures. For companies that can see a light at the end of the tunnel this article details two existing highly effective tools, namely Examinership Schemes and Companies Act Schemes (Schemes). Examinership was introduced in 1990 in direct response to a financial crisis in the beef processing sector. It is available to ailing but potentially viable companies that are insolvent or about to become insolvent (unable to pay their debts). As an alternative to Examinership, a Scheme is a time-efficient and nimble tool that companies can use, subject to court approval, to implement an insolvent restructuring. Irish reinsurance SPV Ballantyne Re plc recently underwent a successful complex international restructuring. Some \$1.65 billion of senior New York law-governed debt was restructured through a Scheme and highlighted the speed at which the process can operate.

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[Highlight Article >](#)

LEGISLATION

Bahamas

COVID-19 – Bahamas Response and Impact on Bahamian Insolvency Law

In response to the COVID-19 pandemic, the Government of The Bahamas, like many other governments, has declared a state of public emergency. In addition, in an effort to ease the negative economic impact of COVID-19, the Government has implemented or facilitated several legislative and other initiatives. This article examines how, in spite of this, many individuals and businesses will continue to be at risk of bankruptcy or insolvency proceedings, as the regime relating to such proceedings remains unchanged.

[Tara Cooper Burnside, Fellow, INSOL International, Partner, Higgs & Johnson, 11 April 2020 >](#)

Brazil

Emergency Coronavirus Relief Bill Amending the Brazilian Bankruptcy Law is introduced to the House of Representatives

On 1 April 2020, Congressman Hugo Leal (PSD/RJ) introduced Bill No. 1,397/2020 to the House of Representatives to amend the Brazilian Bankruptcy Law, including new emergency relief measures in response to the COVID-19 pandemic. The purpose of the Bill is to provide a framework for companies hurt by the pandemic to continue their activities without the need to file for judicial reorganisation or pre-packaged reorganisation and to provide further flexibility to companies that opt to file for judicial reorganisation or pre-packaged reorganisation.

[Mattos Filho, Coronavirus - Legal Issues in Brazil, 3 April 2020 >](#)

Canada

Covid-19 Update - Economic Response in Canada

To address the unprecedented economic impact of COVID-19 on the Canadian economy, the federal, provincial and territorial governments have announced a number of economic stimulus and other initiatives to support Canadian businesses and individuals. Many of these initiatives have only been announced recently and in most cases the details (including eligibility criteria and application processes) are pending. There have not been any changes announced as yet to Canada's insolvency legislation in the face of the COVID-19 pandemic. This summary focuses on some of the key economic measures that have been announced by the federal, provincial and territorial governments.

[Gavin Finlayson, Fellow, INSOL International, Bennett Jones, 9 April 2020 >](#)

USA

United States: Access to Bankruptcy Courts and Federal Stimulus in the Wake of COVID-19

United States bankruptcy courts are perhaps uniquely positioned to adapt to the exigencies of the COVID-19 crisis. Courts readily accommodated remote appearances and electronic filings before the pandemic, making them well equipped to transition quickly to implement additional tools and strategies to ensure continued, though remote, judicial access. In late March 2020, Congress enacted the historic Coronavirus Aid, Relief, and Economic Security Act, which as detailed in this article includes a broad lending programme for small businesses, and targeted relief for hard-hit industries. Although bankruptcy-specific measures remain uncertain, active negotiations are underway with respect to legislation to vest bankruptcy courts with the power to extend certain deadlines beyond existing statutory limits and to permit them to grant related relief.

[Julia Frost-Davies, Partner, Andrew T. Budreika, Partner, Jason R. Alderson, Of Counsel, Benjamin W. Stango, Associate, Morgan, Lewis & Bockius LLP, 13 April 2020 >](#)

ARTICLES

Canada

Coronavirus: Harbinger of a New (Old) Approach to Restructuring in Canada?

In the wake of the 2008 global financial crisis, restructurings in Canada shifted to more organised and deliberate affairs. Armed with new tools set out in the 2009 amendments to the CCAA, businesses now largely arrive before a CCAA judge with a “pre-packaged” restructuring plan or a proposed sales process in hand, with most of the planning, thinking, stakeholder negotiation and vote-securing having been completed well in advance of the filing date. This article examines how, as a result of depressed valuations and uncertainty caused by the COVID-19 pandemic, businesses may now deliberately elect to file under the CCAA without a restructuring plan or proposed sale process and, for an extended period, simply shelter under the stay of proceedings until financial gravity re-engages and the full impact of the pandemic is clearer.

[McMillan, Restructuring, Bankruptcy and Insolvency Bulletin, 20 March 2020 >](#)

ASIA PACIFIC

LEGISLATION

Australia

COVID-19: Will All Businesses Get Through This? How? –The Australian Edition

The Coronavirus Economic Response Package Omnibus Act 2020 (Cth) (Response Act) that included a number of amendments to the Corporations Act 2001 (Cth) (CA) as well as the Bankruptcy Act 1966 (Cth) (BA) as part of its assistance package, was passed on 23 March 2020. This article considers the temporary changes to the insolvent trading regime in Australia, as well as considering the relief available to borrowers from the banking sector and to tenants in respect of their obligations to commercial landlords.

[Ian Dorey, Alex Smith and James Thompson, K&L Gates, 10 April 2020 >](#)

Hong Kong

COVID-19 Implications - Hong Kong

As detailed in this article, Hong Kong has reacted relatively swiftly in relation to monetary measures, coming off the back of the public protest disruptions that preceded the COVID-19 impact, and lending and commercial activities are being supported. It may have to continue to rely on its venerable insolvency legislation and the pragmatic and flexible approach of its courts, as it has successfully done in the past, to address the significant credit issues that will require resolution. Hong Kong has had several failed attempts to introduce a “provisional supervision” corporate rescue regime. COVID-19 concerns may provide the impetus required for the Hong Kong government to succeed.

[Tom Pugh, Partner, Mayer Brown, 15 April 2020 >](#)

New Zealand

Significant Changes to New Zealand Company Law Announced

On 3 April 2020, the Government of New Zealand announced significant insolvency law changes in response to the likely economic impact of COVID-19 and the current lockdown. The Government will amend the Companies Act 1993 to provide additional comfort to directors of companies during the next six months and will also introduce "Covid-19 Business Debt Hibernation" as an option to help businesses survive the deterioration in the business environment. The proposed legislation to give effect to the changes has not yet been made public.

[Martelli McKegg Blog, 5 April 2020 >](#)

Japan

Japan's Economic Response to the Coronavirus

To fight the coronavirus outbreak, Prime Minister Shinzo Abe announced a state of emergency for Tokyo, Osaka and five other prefectures on April 7, 2020. Abe also then declared the adoption of a \$990 billion economic stimulus package, in an effort to protect employment and ordinary life "by all means." The stimulus package includes \$55 billion (6 trillion yen) for cash handouts to households and small and medium-sized businesses, special tax measures, including deferrals on tax and social security fees of \$238 billion (26 trillion yen), as well as various enhanced schemes to provide businesses with bailout loans and employment subsidies.

[Naoki Kondo, Partner, Oh-Ebashi LPC & Partners, 13 April 2020 >](#)

Singapore

Singapore's Response to Covid-19: An Economic and Legal Noah's Ark

This article looks at the economic and legal measures that Singapore has implemented, so that viable businesses are not permanently destroyed, but are able to preserve their capabilities for recovery. In particular, Singapore has passed a new law that gives temporary respite for individuals and businesses in financial distress by temporarily i) for individuals: increasing the monetary threshold for bankruptcy from \$15,000 to \$60,000 and increasing the time period to satisfy or set aside a statutory demand from 21 days to 6 months and ii) for companies: increasing the monetary threshold for insolvency from \$10,000 to \$100,000 and increasing the time period to satisfy or set aside a statutory demand from 21 days to 6 months.

[Debby Lim, Fellow, INSOL International, Director, BlackOak LLC, 12 April 2020 >](#)

CASES

United Kingdom

Treatment of Furloughed Employees in Administration Proceedings — the First English High Court Judgment

In the first ruling of its kind, the English court ruled on 13 April 2020 that the UK's Coronavirus Job Retention Scheme in respect of furloughed employees is available to a company in administration and provided related directions as to the variation and adoption of affected employment contracts. The judgment also includes a welcome statement that *"wherever possible, the courts should work constructively together with the insolvency profession to implement the government's unprecedented response to the crisis in [an] innovative manner"*.

[Kirkland & Ellis Alert, 14 April 2020 >](#)

[Case decision >](#)

LEGISLATION

Czech Republic

Extraordinary Changes to the Insolvency Act and Lex Covid and Related Acts as a Main Helping Hand in a Time of Crisis

The Chamber of Deputies of the Czech Republic has recently approved a new bill "Lex Covid" and related Acts which propose a number of significant changes to insolvency proceedings in this current time of crisis. As detailed in this article, these changes include the introduction of an Extraordinary Moratorium to provide temporary protection to undertakings that were not bankrupt before the state of emergency was imposed; the temporary suspension of the debtor's obligation to file an insolvency petition due to bankruptcy; and a temporary limitation on creditors' rights to file an insolvency petition.

[Petr Sprinz, Partner, Jiří Rahm, Senior Associate, Havel & Partners, 10 April 2020 >](#)

Netherlands

Corona: Directors' Duties and Restructuring Options in the BeNeLuCh

Certain governments have taken (extensive) measures to help businesses and their employees. This leads to an entirely new and unprecedented market situation and may result in unprecedented legal issues that require swift but thorough assessment, both from a national and cross-border perspective. This overview on Belgium, the Netherlands, Luxembourg and Switzerland provides some general guidelines on (i) the points of attention for and liability risks of directors (ii) the room for companies to (temporarily) hold off their creditors, (iii) the measures by different governments to support companies that are affected by the coronavirus and (iv) formal insolvency proceedings.

[Loyens & Loeff News, 26 March 2020 >](#)

South Africa

South Africa – Covid-19 Measures and the Impact on Business Rescue and Insolvency Proceedings

In response to the worldwide COVID-19 pandemic, measures have been introduced in South Africa to assist companies, specifically distressed small- and medium-sized enterprises. Although no specific interventions have been put in place to deal with insolvency and related concerns, certain measures have a clear impact on insolvency proceedings, restructurings and the rights of creditors generally. This impact (as it pertains to business rescue and insolvency proceedings) is examined in this article.

[Widaad Ebrahim \(Counsel\), Nina Braude \(Associate\) and Jodie Muller \(Candidate Attorney\), Allen & Overy \(South Africa\) LLP, 10 April 2020 >](#)

Switzerland

Switzerland as a Role Model for COVID-19 Restructuring / Insolvency Legislation

A recently published statement of European insolvency experts declared the emergency measures in the non-EU country Switzerland as a role model for European insolvency legislators. In order to prevent unnecessary bankruptcies, the report calls upon EU and European national legislators to take immediate action to adapt insolvency laws. This article sheds some light on the emergency measures recently enacted by the Swiss Federal Government as well as on the further reforms which are currently being contemplated and are intended to be introduced soon after the Easter break.

[Roger Bischof, Fellow, INSOL International, Partner, Bonnard Lawson, 8 April 2020 >](#)

United Kingdom

Covid-19 Governance: Proposed Changes to Insolvency Law in Response to the Crisis Announced by UK Government

The Department for Business, Energy and Industrial Strategy has announced a number of proposed changes to UK insolvency law in response to the COVID-19 crisis. While draft legislation has not yet been published, the BEIS announcement cross-refers to previously announced plans to introduce insolvency law reforms which were the subject of a Consultation which concluded in August 2018. This article looks at what this new legislation might provide, why some of the Consultation's proposals will need to be changed under emergency legislation and the importance of striking the right balance between protection of the company and the rights of creditors to avoid, so far as possible, unintended consequences.

[Herbert Smith Freehills Legal Briefings, 31 March 2020 >](#)

ARTICLES

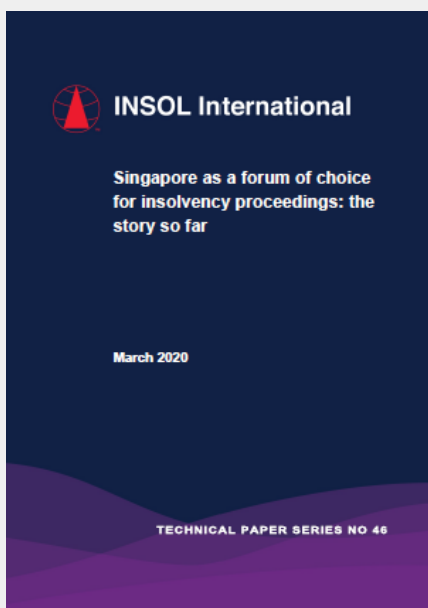
United Kingdom

The Rescue Administration Consent Protocol

The UK administration regime is an essential tool to assist in the rescue of otherwise viable enterprises and is sufficiently flexible to allow a bespoke administration process that is specifically designed to promote the rescue of viable businesses whilst simultaneously addressing the volume and scale of the difficulties resulting from the COVID-19 crisis. In consultation with numerous solicitors and Insolvency Practitioners, the authors have developed a 'Consent Protocol' to provide a framework to allow the directors to manage the day to day business of the company under the administrator's supervision where the primary objective of an administration is to rescue the company as a going concern.

[Mark Phillips QC, Stephen Robins and William Willson, South Square Chambers,](#)
[8 April 2020 >](#)

PUBLICATIONS



INSOL International is delighted to present the 46th Technical Paper under its Technical Papers Series titled 'Singapore as a forum of choice for insolvency proceedings: the story so far' by Mei Yen Tan, Partner, Oon & Bazul LLP.

Since 2013, Singapore has taken clear steps to promote itself as a hub for cross-border insolvency and as a forum of choice for insolvency proceedings. This paper sets out these efforts and explores the reform of Singapore's legislative regime in relation to corporate insolvencies as it seeks to strengthen its viability as a forum of choice for insolvency proceedings. Concurrently with shifting its policy to attain that objective, it has adopted a positive attitude to legitimate forum shopping.

The paper reviews recent case law and provides a useful update and guidance for insolvency and restructuring practitioners who may consider shifting a debtor's COMI to Singapore and thereafter seek recognition of the Singapore insolvency proceedings as foreign main proceedings in other jurisdictions. It sets out the respective stances (or likely stance) of the courts in Australia, Hong Kong, the United Kingdom and the United States on the recognition of the Singaporean restructuring regime.

INSOL International sincerely thanks Mei Yen Tan for this detailed examination of recent legislative developments and case law in this area and for providing our members with this excellent technical paper.

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