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From the Chair

By **Stephan Madaus**
III Chair

This issue of The DIIGEST marks the first time that the design of III's new leadership structure becomes visible as Mark Bloom hands over his position as Chair to the President while a new President, D.J. Miller, is elected to continue the cycle. I am deeply grateful to Mark for his leadership, enthusiasm and example. I could not have benefited more from his experience and team spirit. His initiatives to actively involve our members in the work of our organization have energized the Institute and will certainly have a lasting effect. Today, I am very much looking forward to working with our new President in our common effort to maintain the unique position of our Institute as the leading global professional organization in our field.

We look back with pride at our Annual Conference in Montreal in June. As you can explore by reading detailed reports in this issue, the technical content of the conference covered the "hot topics" of the moment with excellent, knowledgeable speakers and illuminating debates. From LMEs to the judges' views on potential limits of cross-border recognition, leading practitioners, judges and academics shared experiences and perspectives from a wide variety of jurisdictions. It was impossible to miss a single panel. In fact, the conference started with excellent academic programs and a joint academic-judicial panel featuring a lively debate about the limitations of cooperation between courts. Recent first-hand experiences in the restructuring of Brazilian conglomerates

were shared and evaluated. What a great experience!

The conference in Montreal also marked the 15th anniversary of our NextGen program. It invites younger professionals to attend a special education program in coordination with our Annual Conference. Even more, each new Class of NextGen becomes an integrated part of a network of young high potentials from all over the world. Lasting connections have been formed here. After 15 years, many NextGen have contributed significantly to the work of the III, from recording podcasts to providing content to The DIIGEST, from assisting in the organization of the Fletcher Moot Court to participating in the III Prize Jury. Active NextGen participation is integral for the continued success of the III.

One of the many issues we discussed alongside the meeting in Montreal is the transformation of our "Thought Leadership Projects", which currently include a critical review of the Gibbs principle, cramdowns, or the dissemination of UNCITRAL model laws. These "projects" were designed to produce a specific outcome, for instance a report reflecting the debate amongst interested III members. Some have delivered tangibles outcomes, like the [videos] covering the UNCITRAL Model Laws, others are in the process of finalizing a draft report. The narrow focus on project outcomes will be broadened when "Thought Leadership Projects" become "Thought Leadership Working Groups". The new brand reflects the more permanent nature of these structures where we collect and coordinate members who are actively interested in specific topics like the "Limits of cross-border recognition of restructurings (e.g. Gibbs)" or the "Fairness of Debt Restructurings" or "Promoting UNCITRAL Model Laws".

Participation in the Groups does not only signal a member's interest in getting involved. It also allows us to identify members when III receives ad-hoc requests for panels at conferences organized by fellow global or regional organizations, for assistance in law reform projects or for feedback on policy papers.

"Thought Leadership Working Groups" will form an essential part of the structure that shall allow us to better manage our expertise, as represented by our members and their debates, and to make it available where cooperation is requested. The concept is open for additional topics. If you have an idea for a new "Thought Leadership Working Group" or if you see an opportunity to connect the III with regional or local professional organizations, reach out to us!

Recent global developments made cross-continental travel more difficult for members, especially those from emerging countries. We are aware of these developments and consider such constraints when selecting venues for the upcoming annual conferences. These venues continue to move from continent to continent. After Sao Paolo in 2025 and Montreal in 2026, we will meet in Dublin in 2027 before convening in Tokyo in 2028. We announce venue and dates early in order to allow for timely travel arrangements including longer timelines for visa procedures. Let me also remind academic and judicial members of our travel stipend policy, which aims at enabling your active participation. At the same time, regional conferences become more relevant as affordable meeting options.

Please check our event calendar for regional events in your region. If you are interested in hosting such an event in your city or country, do not hesitate and reach out! We will support such initiatives. ■

President's Column

By D.J. Miller
III President

It was a tremendous honour to be elected President at our 26th Annual Conference in Montreal. I am grateful for the confidence of the membership and look forward to serving alongside our new Chair, Stephan Madaus, the Executive Committee, Board of Directors, Committee Co-Chairs and III's members as we continue to advance the work of the International Insolvency Institute.

The updated Chair/President leadership structure (approved in 2024) was an important step in ensuring both progression and continuity in leadership year over year. Immediate Past-Chair Mark Bloom and Immediate Past-President Stephan Madaus have demonstrated the value of the revised model through their seamless transition this year. Participating in leadership discussions and strategic planning over the past year has allowed me to "hit the ground running" in my new role. Like many of you, III has enriched my professional life through friendships, collaboration and a deeper international perspective. It is a privilege to give back by serving as President of III.

Our Annual Conference in Montreal was a wonderful reminder of what III does best: bringing together leading insolvency professionals from around the world to exchange ideas, debate emerging issues and strengthen the close relationships that make this organization so unique. The Conference Planning Committee, led by Dan T. Moss, Lisa Laukitis and Mahesh Uttamchandani, successfully navigated the

logistical challenges when the conference was moved from Washington to Montreal, and delivered an exceptional program and memorable experience.

The Legendary Dinner at the St. James Theatre was a particular highlight. It provided a beautiful setting to celebrate Steven T. Kargman as the recipient of the Founders Award and the Honourable Geoffrey B. Morawetz as the recipient of the Outstanding Contribution Award. The thoughtful tributes celebrated their accomplishments and reminded us of the lasting impact that dedicated III members can have in the advancement of international insolvency.

III has always been distinguished by the quality and engagement of its membership. Our members do more than discuss important issues. They are instrumental in shaping the ongoing development of international insolvency and restructuring law, policy and practices around the world. For that reason, although the membership cap increased from 450 to 600 in 2024, our commitment to the highest standards for admission remains unchanged. As a Co-Chair of the Membership Committee

for several years, I have seen firsthand the care devoted to identifying exceptional prospective nominees and helping them become active members in the Institute.

Building on that strong membership base, one of my principal priorities as President will be to increase member engagement and ensure that every member, regardless of geography or length of membership, finds meaningful opportunities to contribute throughout the year. Members can contribute by serving on committees, attending conferences, supporting publications and podcasts, and identifying outstanding individuals to nominate for membership. III's continued success as the preeminent forum for advancing international insolvency and restructuring depends on members' willingness to share their expertise, ideas and time.

Supporting this work requires a solid financial foundation, and III is fortunate to pursue its mission from a position of financial stability. This reflects the considerable time spent by our Treasurer, **Sharon Hamilton**, the oversight of the Chair and Executive Committee and the success of our Annual Conferences. That stability supports both new projects, and the existing programs that define our organization. One initiative to be launched this year is III's formal sponsorship program, which will further strengthen our long-term financial position and expand the impact of our core mission.

Investing in III's future also means providing opportunities for the next generation of international insolvency scholars, judges and practitioners. This year marks the fifteenth anniversary of III's NextGen Program. We were delighted to welcome the newest cohort of fifteen participants in Montreal. As Executive Committee Liaison to the NextGen leadership team during the past year, I witnessed their energy, creativity and commitment. Their contributions to our communications, conference programming, podcasts and other initiatives continue to enrich III in many ways.

Taken together, these priorities underscore the importance of always looking ahead. Strategic planning is an ongoing process, and III's future will continue to be shaped by the ideas and active engagement of its members. I encourage each of you to participate in our committees and programs, attend regional and annual conferences, contribute your expertise, and help identify outstanding prospective members and future leaders.

As we look to the year ahead, serving as your President is a privilege. I am grateful for the opportunity, optimistic about what lies ahead, and excited to work alongside all of you as we continue to strengthen III's role as the leading international organization dedicated to insolvency and restructuring. I look forward to seeing many of you at our regional events and conferences over the coming year. ■

Welcome New III Members

Derek Abbott

Morris, Nichols, Arsht & Tunnell, LLP

USA

Derek Abbott is a partner in Morris Nichol's Bankruptcy and Restructuring Practice. He represents Fortune 1000, local, international and other organizations as lead or Delaware counsel in bankruptcy proceedings and litigation on behalf of debtors, creditors, official and ad hoc committees and transactional case constituents. His recent client representations include the Boy Scouts of America, John Varvatos Enterprises, Grupo AeroMexico, Papa Gino's, AT&T Inc., BP Energy, Novan Pharmaceuticals, Nortel Networks, Pride Group and Transformco.

He has also served as Chapter 11 Trustee and Chapter 7 Trustee of Tough Mudder. Derek is a graduate of the US Military Academy at West Point. He has received the Delaware State Bar Association's Access to Justice Commitment Award, recognizing his commitment to pro bono work throughout his career, and the Caleb R. Layton III Service Award.

Pedro Arregui

University of Comillas (ICADE) & University of Burgos

Spain

Pedro Arregui is a Professor at Universidad Pontificia de Comillas (ICADE) and Universidad de Burgos, Spain. He was an insolvency/restructuring practitioner for more than 30 years, and now teaches Corporate Law at ICADE and Restructuring and Insolvency Law at the Universidad de Burgos. He is senior vice-chair of the Insolvency Section of the International Bar Association and a member of the World Bank Insolvency & Creditor/Debtor Regimes (ICR) Task Force. He holds a particular interest in issues relating to cross-border insolvency and restructuring law, with a focus on the relationship between EU and non-EU countries, and the implementation of European Parliament directives.

John Baird

New South Wales Bar

Australia

John Baird practises as a barrister from 8th Floor Wind-eyer Chambers in Sydney, focusing on commercial litigation including corporate insolvency and cross-border insolvency matters. Before joining the Bar in 2008, he spent 22 years as a litigation partner at Kemp Strang, where he was an accredited specialist in commercial litigation. He is an accredited mediator and a member of INSOL International's Small Practices Sub-Committee.

Rodrigo Callejas Aquino

Carrillo & Asociados

Guatemala

Rodrigo Callejas Aquino is a partner at Carrillo & Asociados, a Guatemala-based law firm with a regional practice across Central and South America. He focuses on international insolvency, restructuring, distressed M&A and complex cross-border disputes, advising creditors, debtors, shareholders, investors and other stakeholders on financial distress, insolvency proceedings, debt restructurings and distressed acquisitions. His experience spans multi-jurisdictional restructurings, creditor negotiations, enforcement strategies, and acquisitions and disposals of distressed companies and assets. Rodrigo is an INSOL Fellow and a member of the International Insolvency Institute (III), GRIP and FraudNet.

Sharon Chong Tze Ying

Skrine

Malaysia

Sharon Chong Tze Ying is a Partner in the Dispute Resolution practice of Skrine, Malaysia. She has a broad disputes practice spanning restructuring and insolvency, international arbitration, aviation, complex commercial disputes, fraud and asset recovery, and cross-border enforcement, including acting for creditors in the restructuring of AirAsia X Berhad, the first scheme proceedings involving an airline business in Malaysia. Sharon also acts as counsel in international arbitrations and regularly sits as arbitrator in institutional and ad hoc proceedings. She is a past President of the Malaysian Institute of Arbitrators, serves as a Director on the International Board of the International Women's Insolvency & Restructuring Confederation (IWIRC), and is a founding member and former Co-Chair of IWIRC Malaysia.

Marta Flores

Universidad Autonoma de Madrid

Spain

Marta Flores is a full-time Professor (profesora titular) of Commercial Law at the Universidad Autónoma de Madrid. Since 2019, she combines her teaching and research activities with a position as Of Counsel at the law firm Baker McKenzie, in the litigation, arbitration, insolvency and restructuring department.

Jason Harris

University of Sydney

Australia

Jason Harris is Professor of Corporate Law at the University of Sydney Law School, where he teaches and researches corporate and insolvency law. His research focuses on the regulation of financially distressed companies, including debt restructuring, voluntary administration and directors' duties, and has been cited by courts including the High Court of Australia. He is co-author of Keay's Insolvency and a former President of the Corporate Law Teachers' Association.

Jose A. Jimenez Chocano

Rebaza, Alcazar & De las Casas

Peru

Jose A. Jimenez Chocano is a senior partner at Rebaza, Alcázar & De Las Casas in Lima, where he co-leads the bankruptcy and restructuring practice. With more than two decades of experience, he advises on private restructurings, insolvency and liquidation proceedings, and corporate reorganisations, and has taught bankruptcy law at the Pontificia Universidad Católica del Perú. He holds an LLM from the University of Toronto and is ranked Band 1 for Bankruptcy/Restructuring by Chambers Latin America.

Christopher Kennedy

Alvarez & Marsal

Cayman Islands

Christopher Kennedy is a Managing Director with Alvarez & Marsal Restructuring, heading the firm's Cayman Islands office. With more than 17 years of experience, he specialises in corporate advisory, restructuring and insolvency, with a particular focus on multi-jurisdictional fraud investigations and asset recovery, and has served as liquidator, receiver and director across numerous distressed engagements, including funds linked to the Madoff fraud. He is a chartered accountant (Ireland) and a CIMA-registered director.

Derek Lai

Ernst & Young Transactions Limited

Hong Kong

Derek Lai is a veteran restructuring and insolvency expert with more than three decades of experience, currently Senior Partner at EY Transactions Limited and the Turnaround & Restructuring Leader for Asia Pacific and Greater China. Previously, he spent 36 years at another big four firm, helping build its restructuring practice in Greater China and has overseen complex cross border matters for listed and multinational groups.

David Mizrachi

MDU Legal

Panama

David M. Mizrachi Fidanque is the founder of MDU Legal, a law firm based in Panama, Republic of Panama. His professional practice focuses on complex cross border disputes and business transactions with an emphasis on asset recovery, arbitration, and insolvency. He is licensed to practice law in Panama and the United States (Florida). In 2018, his firm obtained the first recognition of a foreign insolvency proceeding under Panama's new Insolvency Law. He frequently serves as Panamanian law expert in foreign courts. He is a graduate of the University of Pennsylvania (B.A. with Departmental Honours), Tulane University Law School (J.D. cum laude), and Columbia University Law School (LL.M. in Global Business Law).

Peter K. Newman

Skadden, Arps, Slate, Meagher & Flom LLP

United Kingdom

Peter K Newman is a partner and head of Skadden's European corporate restructuring practice in London. He advises companies, boards, sponsors, creditors and other stakeholders on complex restructurings, liability management exercises and cross-border insolvencies, and is an adjunct professor at New York University School of Law, where he teaches cross-border restructuring. He is recognised as a leading restructuring practitioner by Chambers, Legal 500 and Best Lawyers.

Eddee Ng

TKQP Law LLP

Singapore

Eddee Ng is Joint Managing Partner of TKQP Law LLP and co-head of its Dispute Resolution practice, where he also leads the Insolvency, Restructuring and Investigations team. Qualified in Singapore in 1997, he has acted as litigator on many of the country's most significant cross-border insolvency and restructuring matters, including the Hyflux Group restructuring. He is ranked for Restructuring/Insolvency by Chambers Asia-Pacific and sits on the Law Society of Singapore's Insolvency Practice Committee.

Fidelis Oditah KC, SAN

Fidelis Oditah & Co.

Nigeria & UK

Fidelis Oditah KC, SAN is a barrister practising at South Square in London and at Fidelis Oditah & Co in Lagos, and is a former Professor of Law at the University of Oxford. Called to the Nigerian Bar in 1985 and the English Bar in 1992, he is a recognised authority on insolvency law and has acted or advised on many of the UK's major corporate insolvencies over the past two decades, alongside an active Nigerian practice in energy, projects and commercial law. He is the author of several books on insolvency and secured transactions.

Georgina Sarah Peters
South Square
UK

Georgina Sarah Peters is a barrister at South Square specialising in insolvency and restructuring, banking and finance, and company law. Called to the Bar in 2005, she has appeared as counsel on numerous high-value UK schemes of arrangement and restructuring plans, including matters involving Thames Water, Hertz and EnQuest, and has argued cases before the Court of Appeal and Supreme Court. She is ranked Band 1 for Restructuring/Insolvency by both Chambers and Legal 500.

Flavia Pezzetta
Natixis Corporate & Investment Banking
France

Flavia Pezzetta is a Restructuring Manager at Natixis, the global leading corporate and investment bank of BPCE Group. Based in Paris, Flavia has extensive experience in both domestic and international financial restructurings. Her expertise spans major banking business lines, focusing on complex, high-profile market transactions. In addition to her corporate role, she actively represents the banking sector as a member of the Insolvency working groups of the French Banking Federation (FBF) and the European Banking Federation (EBF). Flavia is also co-chair of IWIRC Europe and co-chair of the Financiers group of INSOL Europe.

Joseph Reynaud
Stikeman Elliott LLP
Canada

Joseph Reynaud is a partner in Stikeman Elliott's Litigation & Dispute Resolution Group in Montréal, where his practice focuses on restructuring, insolvency and commercial litigation. He regularly advises debtors, secured lenders, court-appointed officers and purchasers in proceedings under Canada's Companies' Creditors Arrangement Act and Bankruptcy and Insolvency Act, and has appeared before all levels of Canadian courts, including the Supreme Court of Canada. He serves as Québec Regional Representative of the Insolvency Institute of Canada.

Bernhard Richter
Richter Attorneys
South Africa

Bernhard Richter is the founder and team leader of Richters, a specialist corporate and insolvency law firm based in Johannesburg. With more than 25 years of post-admission experience as an attorney of the High Court of South Africa, he focuses on complex forensic investigations, insolvency, business rescue and restructuring, both domestically and across the African continent. He is an accredited member of SARIPA and INSOL International.

Lee Shih
LCWP Lim Chee Wee Partnership
Malaysia

Lee Shih is Managing Partner of Lim Chee Wee Partnership in Kuala Lumpur, with 20 years' experience in dispute resolution, contentious restructuring and insolvency, and fraud and asset recovery. He has acted as lead counsel in numerous cross-border restructurings involving more than RM1 billion in debt, and co-authored a leading textbook on Malaysia's Companies Act 2016. He is the sole Malaysian member of ICC FraudNet.

UPCOMING III EVENTS

III LATAM Regional Seminar
September 21, 2026
Mexico City, Mexico

III & NextGen Gathering
October 2026
Copenhagen, Denmark

Virtual Members Meeting:
UNCITRAL Applicable Law Project
October 21 at 8:30 am EST/1:30 pm UK

ACB & III International Program
November 5-6, 2026
London, United Kingdom

III Asia Pacific Regional Seminar
November 20, 2026
Guangzhou City, China

UCC Regional Program
January 13-14, 2027
New York, NY, USA

SAVE THE DATE

2027 Annual Conference
June 13-15, 2027
Dublin, Ireland

EMEA Regional Committee Update

The III EMEA Committee is looking forward to an exclusive hosted event for III members and NextGen members attending the IBA Annual Conference in Copenhagen this October. HortenDahl will be hosting an informal gathering — a chance to connect with fellow insolvency practitioners, enjoy Copenhagen's hospitality, and make the most of our shared time in the city. When the full IBA programme and delegate numbers are confirmed, we will be in touch with the venue, date, and time. In the meantime, we would love to know if you are interested in attending so we can plan accordingly. If you would like to attend, please click here and fill in your details.

Looking ahead, the EMEA Committee is also excited to welcome III to Dublin for the Annual Conference in 2027. ■

EMEA Regional Breakout

At the 2026 III Conference in Montreal, EMEA members gathered for an "around the table" conversation on important trends and new developments in the region, as well as updates on main events and market trends within insolvency in EMEA.

The First Case of a Chinese Court Recognizing and Enforcing a British Virgin Islands (BVI) Court Bankruptcy Order

By Jingtao Liu[1]

Preamble

Cross-border insolvency cooperation remains a formidable challenge in contemporary international judicial practice, particularly within the framework of China's development of the foreign-related rule of law. Driven by the endogenous requirements of this legal evolution, Chinese courts have, over the past several years, actively advocated for a judicial philosophy of proactive comity and have advanced pilot programs for cross-border insolvency judicial practice in cooperation with the Hong Kong Special Administrative Region. Under this background, in 2025, a court in Shandong Province of China, for the first time recognized the legal validity of an insolvency order issued by the BVI Commercial Court and provided judicial assistance for its enforcement. This milestone case is poised to exert a profound influence on the mutual recognition and enforcement of judgments between offshore jurisdictions and the Chinese judiciary in the field of cross-border insolvency.

I. Basic Facts of the Case

On 25 March 2021, the shareholders of Bintan Mining Corporation (hereinafter "Company B"), a company incorporated in the British Virgin Islands (BVI), resolved by written resolution to wind up the company. Y was appointed as liquidator of Company B, and such appointment was approved at a meeting of the company's creditors. On 11 May 2021, upon application by liquidator Y, the BVI Commercial Court issued an order recognizing Y as the company's liquidator and authorizing Y to take corresponding measures, including the preservation, investigation, inquiry, and collection of the company's assets in the Hong Kong Special Administrative Region (or in any place outside the BVI where necessary). On 31 May 2021, the Court of First Instance of the High Court of Hong Kong issued an order recognizing both the winding-up resolution of Company B and the appointment of liquidator Y. Subsequently, liquidator Y applied to a court in Shandong Province for recognition and enforcement of the aforementioned orders issued by the BVI court, pursuant to Article 5 of the Enterprise Bankruptcy Law of the People's Republic of China and Articles 281 and 282 of the then-applicable Civil Procedure Law of the People's Republic of China.

II. Judicial Reasoning

This case concerns an application by liquidator Y for the recognition and enforcement of a bankruptcy order issued by the court of the British Virgin Islands (BVI), and is in essence a matter of judicial assistance involving the recognition and enforcement of a final judgment rendered by a foreign court. The review process adheres to the principle of formal examination, whereby the court scrutinizes only the relevant procedural requirements without conducting a substantive re-examination of the bankruptcy order issued by the BVI court. The core legal basis for the court's review of this case is found in Articles 298 and 299 of the Civil Procedure

[1] Partner of Zhong Lun Law Firm LLP, Insolvency & Restructuring Group, a member of III (International Insolvency Institute).

Law[2]. In light of the particular nature of the bankruptcy order at issue, the court also applies the special provisions of Article 5, Paragraph 2 of the Enterprise Bankruptcy Law[3], conducting its review in accordance with the rule of "treaty primacy, with the principle of reciprocity applying in the absence of a treaty." Given that no bilateral or multilateral international treaty on cross-border insolvency exists between China and the BVI, thus the reciprocity approach shall apply. The court's review focuses on four core requirements:

A. Whether the BVI Commercial Court Has Jurisdiction over the Insolvency Proceedings of Company B

The court held that Company B, as the subject of the proceedings, was incorporated in the British Virgin Islands, with its principal place of business and other relevant connections likewise situated in the BVI. As the court of the jurisdiction in which the debtor's centre of main interests is located, the BVI court possesses lawful jurisdiction over the winding-up of the company. Accordingly, the jurisdictional basis upon which the BVI Commercial Court issued the insolvency order in question is legitimate and valid, and this requirement is satisfied for the purposes of recognition.

B. Whether the Bankruptcy Order Issued by the BVI Commercial Court Constitutes a Legally Effective Judicial Instrument

Based on the established facts, the bankruptcy order issued by the BVI court in the present case constitutes a judicial instrument under the local Civil Procedure Rules, being an order of a procedural nature that takes legal effect and becomes enforceable immediately upon issuance. It therefore falls within the scope of "legally effective judgments and rulings rendered by foreign courts" as provided under Article 5, Paragraph 2 of the Enterprise Bankruptcy Law of the People's Republic of China. This element likewise satisfies the requisite examination.

C. Whether there are any international treaties jointly concluded or acceded to by China and the BVI, or whether there are de facto or de jure reciprocal relationships

There are no international treaties or bilateral mutual legal assistance agreements jointly concluded or acceded to by China and the BVI in the field of cross-border insolvency; there-

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[2] Article 298 of the Civil Procedure Law of the People's Republic of China: Where a legally effective judgment or ruling rendered by a foreign court requires recognition and enforcement by a people's court, a party may directly apply to the competent intermediate people's court for recognition and enforcement, or the foreign court may request the people's court to recognize and enforce such judgment or ruling in accordance with the provisions of an international treaty concluded or acceded to by both the foreign state and the People's Republic of China, or on the basis of the principle of reciprocity.
Article 299: Where a people's court, upon reviewing a legally effective judgment or ruling rendered by a foreign court for which recognition and enforcement has been applied or requested—pursuant to an international treaty concluded or acceded to by the People's Republic of China, or on the basis of the principle of reciprocity—determines that such judgment or ruling does not violate the basic principles of the law of the People's Republic of China and does not prejudice State sovereignty, national security, or social public interests, the court shall render a ruling recognizing its legal effect; where enforcement is required, an order of enforcement shall be issued and execution shall proceed in accordance with the relevant provisions of this Law.

[3] Article 5, Paragraph 2 of the Enterprise Bankruptcy Law of the People's Republic of China: Where a legally effective judgment or ruling rendered by a foreign court in a bankruptcy case involves the debtor's property located within the territory of the People's Republic of China, and an application or request is made to a people's court for recognition and enforcement, the people's court shall conduct a review in accordance with international treaties concluded or acceded to by the People's Republic of China, or on the basis of the principle of reciprocity. Where the people's court determines that such recognition and enforcement does not violate the basic principles of the laws of the People's Republic of China, does not impair state sovereignty, security, or the public interest of society, and does not prejudice the lawful rights and interests of creditors within the territory of the People's Republic of China, it shall render a ruling granting recognition and enforcement.

The Singapore - Indonesia Insolvency MOU: A Model for Future China - Singapore Insolvency Cooperation?

By **Prof. & Dr. Jingxia Shi**

I. Introduction

On 30 March 2026, the Supreme Court of Singapore and the Supreme Court of Indonesia signed a Memorandum of Understanding (MOU) on judicial cooperation in cross-border insolvency proceedings. While the MOU is not legally binding and does not create substantive rights or obligations, it nevertheless represents an important development in the evolution of cross-border insolvency cooperation in Asia. More significantly, it provides a useful lens through which to examine the future trajectory of regional insolvency cooperation in a region characterized by diverse legal traditions, differing levels of economic development, and uneven adoption of international insolvency norms.

For more than two decades, international discussions on cross-border insolvency have largely revolved around legislative harmonization, particularly through the 1997 UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation on Insolvency Proceedings. The Model Law has become the leading international framework for recognition of foreign proceedings, assistance to foreign representatives, and cooperation among courts. Yet its adoption remains far from universal in Asia. While Singapore, Japan, South Korea, and Malaysia have adopted the Model Law, several major Asian economies - including China, Indonesia, Vietnam, and Thailand - have not. Against this backdrop, the Singapore - Indonesia MOU suggests an alternative pathway. Rather than waiting for legislative convergence, courts may develop practical mechanisms for communication, coordination, and mutual assistance despite differences in domestic insolvency laws. This development raises an important question for the region: can the Singapore - Indonesia MOU serve as a model for future China - Singapore judicial cooperation in cross-border insolvency matters?

This commentary holds that the MOU reflects a broader shift in Asia from legislative harmonization toward pragmatic judicial cooperation. It further suggests that China and Singapore may be particularly well positioned to develop a similar framework, drawing on existing judicial practice, increasing economic integration, and valuable lessons from the Mainland China - Hong Kong cross-border insolvency cooperation mechanism.

II. Beyond the Model Law: A New Trend in Asia

The UNCITRAL Model Law remains one of the most successful instruments in the field of international insolvency. It has facilitated judicial cooperation across dozens of jurisdictions and contributed significantly to legal certainty in multinational restructurings and insolvencies. Singapore's adoption of the Model Law in 2017 was a major milestone in its development as a leading restructuring and insolvency hub. Nevertheless, the Asian experience demonstrates the limits of relying exclusively on legislative harmonization. Unlike Europe, which benefits from the European Insolvency Regulation (EIR) and a relatively integrated legal framework, Asia is characterized by substantial legal diversity. Different legal traditions, varying levels of economic development, and distinct policy priorities make region-wide harmonization difficult to achieve.

As a result, judicial cooperation is increasingly emerging as a complementary pathway. Courts have become more willing to communicate directly, coordinate proceedings, and recognize commercial realities even in the absence of uniform legislation. This trend is reflected not only in formal arrangements but also in the growing influence of international soft-law initiatives, including the Judicial Insolvency Network (JIN) Guidelines for Court-to-Court Communications in Cross-Border Insolvency Matters. Significantly, Singapore played a leading role in the development of the JIN Guidelines, which have become an important reference point for judicial cooperation globally. The emergence of such initiatives reflects a fundamental insight: effective cross-border insolvency cooperation does not always require identical legislation. Instead, it often depends on practical mechanisms that enable courts to communicate, coordinate, and build mutual confidence. In this sense, judicial cooperation may increasingly precede legislative harmonization rather than follow it.

III. The Significance of the Singapore - Indonesia MOU

The importance of the Singapore - Indonesia MOU lies less in its legal form than in its practical and symbolic significance. Singapore and Indonesia represent two different approaches to cross-border insolvency regulation. Singapore has adopted the Model Law and actively promotes international restructuring practice. Indonesia has not adopted the Model Law and continues to operate within a distinct domestic framework. Conventional wisdom might suggest that meaningful cooperation between such jurisdictions would be difficult. The MOU demonstrates otherwise.

The MOU establishes channels for communication, information exchange, and judicial dialogue in insolvency matters. Although it does not alter substantive law, it seeks to facilitate cooperation within existing legal frameworks. In doing so, it lowers institutional barriers that often impede effective administration of multinational insolvencies. Perhaps most importantly, the MOU contributes to the development of judicial trust. Cross-border insolvency proceedings frequently involve urgent decisions regarding asset preservation, restructuring negotiations, recognition of insolvency representatives, and coordination of parallel proceedings. Formal legal rules alone cannot guarantee effective cooperation. Mutual confidence among courts remains indispensable.

Viewed from this perspective, the MOU is part of a broader movement toward institution-building in Asia. Rather than waiting for comprehensive legislative convergence, courts are developing practical tools to manage increasingly interconnected commercial realities. Such an approach may prove particularly valuable in Asia, where diversity is likely to remain a defining feature of the legal landscape for the foreseeable future.

IV. Could a China - Singapore Insolvency MOU Work?

The possibility of a China–Singapore insolvency cooperation framework deserves consideration. First, economic realities strongly support closer cooperation. Singapore has become a major financial and restructuring center for Asia and serves as a key platform for international financing involving Chinese enterprises. Many Chinese companies maintain substantial assets, financing arrangements, or debt instruments connected to Singapore. Singapore's capital markets continue to play an important role in facilitating regional investment and restructuring transactions involving Chinese businesses. Second, there has been a developing body of cross-border insolvency prac-

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Venezuela Debt Restructuring Prospects Post-Maduro: An Interview with Steven T. Kargman

For this edition of The DIIIGEST, Diana Rivera Andrade, co-chair of the III Latin America Regional Committee, interviews Steven T. Kargman, a founding member of the III and this year's recipient of the III Founder's Award. Steven has published extensively and spoken widely on Venezuelan debt restructuring issues in recent years.

The removal of former Venezuelan leader Nicolás Maduro from power earlier this year by US military forces has raised expectations in some quarters that a debt restructuring for Venezuela may finally be on the horizon. But as Steven T. Kargman discusses in this interview by Diana Rivera conducted in July, a future Venezuelan debt restructuring will hardly be a straightforward or easy process.

Q: You have argued that Venezuela's sovereign debt restructuring cannot be viewed in isolation. Why is that?

A: In my view, Venezuela's debt restructuring cannot be treated as a narrow standalone financial exercise. The country is confronting four interlocking crises: a humanitarian crisis, a profound economic collapse, an unsustainable external debt burden estimated at more than $150 billion (and possibly approaching $240 billion, according to a recent *Financial Times* report), and a crisis of political legitimacy. These crises reinforce one another, and none can be resolved on its own.

Debt restructuring must therefore be understood as one part of a broader national recovery strategy in which debt sustainability and economic reconstruction are inextricably linked. Venezuela cannot rebuild its economy while carrying a debt burden that, given Venezuela's heavy ongoing debt-service obligations, severely constrains the fiscal space available to the government. Moreover, Venezuela's long-standing debt defaults block the country's access to capital markets at a time when foreign capital will be important to the country's economic reconstruction. At the same time, no restructuring will remain viable over time unless the Venezuelan economy can generate the resources needed to service restructured debt obligations.

Addressing Venezuela's profound humanitarian challenges is equally important as part of a national recovery strategy. A country cannot restore its productive capacity if, as is the case in Venezuela today, there exists widespread poverty, a dysfunctional healthcare system, severe shortages of medicines, and chronic malnutrition. This challenge is compounded by the loss of an estimated eight million Venezuelans who have sought refuge abroad. Without confronting these problems, Venezuela will lack the human capital needed for long-term growth.

Restoring the political legitimacy of Venezuela's government is also an indispensable element of a national recovery strategy. It's fair to say that Venezuela does not currently have a government that is broadly regarded as legitimate and credible, but such a government will be essential for earning the confidence of both the Venezuelan people and the international community. Public support will be needed for the sacrifices that may be required in any restructuring and economic transition, and international support will be necessary to mobilize the financial, technical, and humanitarian assistance required for national recovery. In short, a legitimate and credible Venezuelan government is crucial to both a debt restructuring and the broader recovery effort.

Q: Why will a Venezuelan debt restructuring be so difficult and so challenging?

A: A Venezuelan restructuring will be exceptionally difficult because it combines a massive debt burden with a fragmented creditor body, a dual-obligor structure, severe macroeconomic uncertainty, geopolitical complexity, and significant litigation and enforcement risks.

Venezuela's creditor body is unusually diverse: bondholders of the Republic and its state-owned oil company PDVSA, trade creditors, arbitration award holders, multilaterals, bilateral creditors such as China and Russia, and other claimants. These groups have different legal rights and divergent interests, creating substantial potential for intercreditor conflict. Furthermore, the sheer size and diversity of the creditor body could also complicate creditor coordination and efforts by creditors to achieve consensus on key issues.

Venezuela must restructure substantial liabilities of both the Republic and PDVSA, creating a dual obligor structure unlike most recent sovereign debt restructurings where there is only one obligor. The dual obligor structure raises difficult questions about sequencing the respective Republic and PDVSA restructurings and determining the relative treatment that will be accorded to both Republic and PDVSA creditors.

Macroeconomic uncertainty will also complicate the debt sustainability analysis for Venezuela that will underpin any debt restructuring plan. Venezuela has suffered years of economic contraction, extraordinarily high inflation, and a collapse in oil production from roughly three million barrels per day in the early 2000s to about one million barrels in recent months. Forecasting growth and production in the near- to medium-term, much less over a multi-year restructuring, will be extremely difficult, and the inherent volatility of global oil prices adds another layer of uncertainty to the picture.

Geopolitics may further complicate negotiations. As Venezuela's largest bilateral creditors, China and Russia may pursue objectives extending beyond purely financial considerations, such as advancing strategic interests or ensuring access to natural resources. In addition, broader tensions between the US on one side and China and Russia on the other could spill over into the restructuring process if the United States seeks to influence Venezuela's positions in the restructuring negotiations in post-Maduro Venezuela.

Finally, ongoing enforcement actions and litigation, including proceedings involving Citgo and PDVSA, could materially affect the pool of assets available to support a debt restructuring. Any significant diminution in that pool of assets could further heighten intercreditor conflict.

Q: What innovative features might be included in a Venezuelan debt restructuring?

A: Traditional restructuring tools (such as principal reductions, maturity extensions, coupon reductions, grace periods, and debt reprofiling) may play a part in any Venezuelan restructuring. But Venezuela's circumstances may also warrant innovative techniques designed not only to reduce debt but to support investment, reconstruction, and long-term growth in Venezuela.

One possibility is a modernized version of the debt-for-equity swaps used during the Brady Plan era of the late 1980s into the 1990s. Those transactions relied heavily on local-currency conversions in the exchange of debt of the sovereign for shares in a privatized company, but that model would not work today given the severe devaluation of Venezuela's domestic currency. Any modernized swap would need to address this problem.

A broader approach would give wider scope to the equity component of the debt-for-equity swap so that it includes development rights in Venezuela's abundant oil and gas reserves and its diverse array of mineral resources. Given the political sensitivities surrounding the transfer of potentially valuable development rights, any Venezuelan government considering such swaps would need broad public support. It would also want to rely upon independent, third-party valuations conducted

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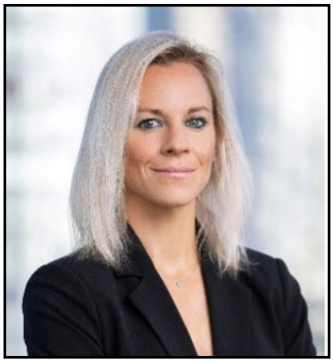
The Application of the U.S. Chapter 15 "Public Policy Exception" Continues to be Exceptional

By Maja Zerjal Fink[1]



Section 1506 of the United States Bankruptcy Code provides a public policy exception authorizing a court to refuse to grant chapter 15 recognition or other relief that would be "manifestly contrary to the public policy of the United States."[2] Since chapter 15's adoption, courts have construed this exception narrowly and absent a clear and serious conflict with foundational U.S. policies, have routinely granted comity to foreign proceedings and orders even where stakeholder rights, procedures, or remedies differ from U.S. practice. But as restructuring regimes around the world have become increasingly sophisticated and U.S. companies consider using alternatives to chapter 11 that can be implemented in the U.S. through chapter 15, the public policy exception and its reach are coming into renewed focus.

Section 1506 Has Been Narrowly Construed and Rarely Applied

The public policy exception has been applied rarely. If the underlying proceeding is procedurally fair and extension of comity would not "severely impinge" a core U.S. statutory or constitutional right, courts will generally not deny recognition based on public policy alone,[3] even when a foreign proceeding would yield a different result than in a U.S. plenary proceeding. For example, courts have recognized foreign proceedings that do not afford creditors the right to a jury trial or the benefits of the absolute priority rule.[4]

Since chapter 15's enactment in 2005, the public policy exception has been applied only in a handful of cases. For example, in *In re Toft*[5], the court denied enforcement of a German court order that would have compelled two U.S. internet service providers to disclose a debtor's emails to a German insolvency administrator. The court found that the requested relief would have violated the U.S. federal laws and "directly compromise privacy rights. . . built on constitutional safeguards incorporated in the Fourth Amendment."[6]

The court in *In re Gold & Honey, Ltd.* denied recognition of an Israeli insolvency proceeding initiated against a chapter 11 debtor after the chapter 11 petition had been filed because it would reward and legitimize violations of the automatic stay.[7]

A court also denied recognition of a Brazilian *ex parte* preliminary asset freeze order

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[1]The author thanks Arden Shapiro, Summer Law Clerk at Clifford Chance US LLP, for her invaluable contributions to the preparation of this article.

[2]11 U.S.C. § 1506.

[3]*See*, e.g., *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 677 B.R. 192, 205 (D. Del. 2026) [hereinafter *Crédito Real II*] ("[S]ection 1506 only applies 'where the procedural fairness of the foreign proceeding is in doubt or cannot be cured . . .' or where recognition 'would impinge severely a US constitutional or statutory right.'") (quoting *In re ABC Learning Centres Ltd.*, 728 F.3d 301, 309 (3d Cir. 2013)).

[4]*See In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 337 (S.D.N.Y. 2006) (recognizing Canadian insolvency order even though it overrode a defendant's constitutional right to a civil jury trial *In re Rede Energia S.A.*, 515 B.R. 69, 100 (recognizing and enforcing Brazilian plan that consolidated debtors' assets and authorized distributions inconsistent with the U.S. Bankruptcy Code).

[5]*See In re Toft*, 453 B.R. 186 (Bankr. S.D.N.Y. 2011).

[6]*Id.* at 197–99.

[7]*In re Gold & Honey, Ltd.*, 410 B.R. 357, 372 (Bankr. E.D.N.Y. 2009).

affecting U.S. persons where the foreign court had made no factual determination of whether it had personal jurisdiction over such persons, among other things.[8]

Section 1506 Remains Narrowly Applied in the Wake of *Purdue Pharma*

In *Harrington v. Purdue Pharma L.P.*[9], the U.S. Supreme Court ruled that chapter 11 plans may not release non-debtor third parties from creditors' claims without those creditors' consent. Would that mean that foreign plans with non-consensual third-party releases could not be enforced in the U.S. through chapter 15 based on the public policy exception? Two courts denied such interpretation.

In re Crédito Real involved the recognition of a Mexican Concurso plan containing nonconsensual third-party releases approved by a Mexican court.[10] An objection argued, among other things, that recognition of nonconsensual third-party releases would be "manifestly contrary" to U.S. public policy.[11] The Delaware Bankruptcy Court disagreed, finding the Mexican proceeding to be fundamentally fair,[12] and that enforcement of such releases would not contravene a fundamental U.S. policy because Congress specifically authorized nonconsensual third-party releases in asbestos-related bankruptcies through section 524(g) of the Bankruptcy Code.[13]

A similar result was reached in *In re Odebrecht* by the Bankruptcy Court for the Southern District of New York, which recognized and enforced a *recuperação judicial* plan (a Brazilian judicial reorganization proceeding) approved by a Brazilian court over the U.S. Trustee's objection that it contained impermissible third-party releases.[14] The court adopted the *Crédito Real* reasoning and also emphasized that parties may lose rights in chapter 15 that they would otherwise have under the Bankruptcy Code or U.S. law.[15]

Other Developments

Recent decisions further confirm that courts will not invoke the public policy exception to deny recognition simply because the foreign proceeding implicates U.S. federal law concerns or lacks equivalent U.S. statutory protections. *In re Asbestos Corp. Ltd.* [16] involved a public policy exception challenge to the recognition of a Canadian proceeding of an asbestos mining company. Asbestos claimants objected on the basis that Canada lacks the protections provided by Bankruptcy Code section 524(g), which provides specific protections for present and future claimants in asbestos-related bankruptcies. While leaving open the issue of plan recognition and enforcement, the court granted recognition of the Canadian proceeding and extended the automatic stay, holding that the absence of comparable protections under Canadian law "fails to meet the public policy exception."[17] Meanwhile, a recent decision granted recognition to a cannabis company's foreign proceeding despite the ongoing U.S. federal prohibition of cannabis and the inability to restructure such businesses under plenary proceedings of the U.S. Bankruptcy Code.[18]

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[8]*See In re Nexgenesis Holdings Ltda.*, 662 B.R. 406 (Bankr. S.D. Fla. 2024).
[9]*See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024).
[10]*In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH), 2025 WL 977967, at *156 (Bankr. D. Del. Apr. 1, 2025), *aff'd*, No. 25-371-CFC (D. Del. Mar. 31, 2026).
[11]*Id.* at 160.
[12]*Id.* at 171–72 (noting that Mexican rulings generally are recognized by U.S. courts).
[13]*Id.* at 173 (citing *Purdue*, 603 U.S. at 222); *see also* 11 U.S.C. § 524(g).
[14]*In re Odebrecht Engenharia e Construcao S.A. - Em Recuperacao Jud.*, 669 B.R. 457, 477 (Bankr. S.D.N.Y. 2025).
[15]*Id.* at 474.
[16]*See In re Asbestos Corp. Ltd.*, 674 B.R. 855, 866 (Bankr. S.D.N.Y. 2025).
[17]*Id.* at 877.
[18]*In re The Cannabist Co. Holdings Inc.*, No. 26-10426 (BLS), Docket No. 82, Order Granting Recognition of Foreign Main Proceeding and Request for Certain Related Relief (Bankr. D. Del. May 9, 2026) (granting recognition to Canadian insolvency proceeding

Building the Labyrinth: Drafting the Ian Fletcher International Insolvency Law Moot

By Ishana Tripathi

As we inch towards the tenth year of establishment of the 'Fletcher Moot', a look back at the origins of the only cross-border and international insolvency moot is a good start. The moot was established in 2017 as the first-ever of its kind, by INSOL International and the International Insolvency Institute, and named to honour Professor Ian Fletcher, Q.C., of University College London.

Every year, since its establishment in 2017, law students around the world team up to dissect, engage and immerse themselves in detangling a hypothetical case with contractual and legal complexities that, have with the adoption and case use of the Model Law on Cross Border Insolvency 1997 (Model Law), have seen consistent change. The legal framework that has evolved over the years since has also required an upskilling of minds that put the problem to solve on paper for the next generation of insolvency lawyers that have cross-jurisdictional and international insolvency at the centre of legal practice. The legal framework today is dynamic, and over time drafting the problem for the Fletcher Moot is less like writing a legal brief and has become more like designing an escape room: every clue must be discoverable, every door must open onto a genuine question of law, and no issue can be a dead end.

The Laws, The System and The Cases at Nuzilia

Here, the evolving landscape of the moot problem is also a testament to the scope of the law. The inaugural problem was comparatively narrow in scope: a dispute in the fictional jurisdiction of "Nuzilia" turning on recognition of a foreign main versus non-main proceeding, drawn entirely from the Model Law, which was at that time the only general-purpose insolvency Model Law in existence. That narrowness was a product of the law itself, not a lack of ambition.

The Model Law, at the time, was built to answer a single-debtor question: how should a court in one country treat an insolvency proceeding opened in another? It had no specific mechanism for what happens when an entire corporate group collapses across borders at once — a gap exposed by the 2008 Lehman Brothers failure, which involved more than 100 affiliated entities filing insolvency proceedings in over 16 jurisdictions, coordinated only through an improvised, non-binding protocol among administrators. The drafters of the Model Law spent the following decade closing that gap: a Model Law on Recognition and Enforcement of Insolvency-Related Judgments followed in 2018, and then, in 2019, the Model Law on Enterprise Group Insolvency (MLEGI), which codified and built on the cooperation principles improvised in the Lehman protocol. Over time, the drafters of the moot problem absorbed each addition into the competition almost as soon as it existed. Within a few years of the 2019 text, the standard Fletcher Moot fact pattern had shifted from a single insolvent company to a fictional jurisdiction that had adopted both the Model Law and the MLEGI—with recent editions that expected to draw on both texts together, along with their respective guides to enactment. That shift changed the shape of problem drafting itself. Where the early moot tested a single, contained recognition question, drafters now have to design in real time, futuristically and contemporaneously. One example is that of a group of affiliated entities distressed simultaneously across two or three jurisdictions, so that both single-debtor recognition issues and group-coordination issues arise naturally from one fact pattern. It's a noticeably harder drafting task: the MLEGI introduces its own vocabulary — "enterprise group," "group representative," "planning proceeding" — and a competent problem now has to test whether teams can navigate the interaction between the two Model Laws, not just one of them in isolation.

The Craft, Refined by the Law's Own Growth

Since 2024, the Academic Committee of the International Insolvency Institute has constituted a committee of drafters that rotates problem drafting and test runs the problem with issues and ideas. Because the Model Laws are "soft law" texts adopted differently in different countries, a fictional jurisdiction lets the drafter pose questions that remain genuinely open in the real world — centre of main interests disputes, recognition of foreign proceedings, cross-border cooperation between courts, groups of companies collapsing across borders — without the story colliding with an actual precedent that would resolve the case in one line. However, given the developments in jurisdictions, the craft lies in balance in structuring the problem.

A good problem needs two or three tightly connected legal issues on a live case or issues at hand, not a scattergun of them: enough for both sides to build a coherent, evenly matched written and oral case. Facts have to be built so that each issue arises naturally from the story rather than being bolted on. A drafter typically starts not with the law but with a plausible commercial collapse — a group of companies with entities and assets in two or three fictional states, a restructuring or liquidation triggering event, and a cast of stakeholders (creditors, insolvency representatives, courts) whose interests genuinely conflict. Only once that skeleton exists does the drafter layer in the specific Model Law provisions the problem is meant to test, checking that the facts support arguments on both sides in roughly equal strength. Today, the problem drafting committee reviews drafts to make sure both sides have a fair shot and that no issue can be resolved by a single, dispositive authority. This evolution has also made the drafting committee itself more institutional. What began as a single problem authored for one inaugural competition is now produced annually by a standing committee of academics, while keeping pace with the law — a live reminder that the moot was designed to grow exactly as unsettled as the law it teaches.

Because the moot draws roughly twenty to thirty teams from across dozens of jurisdictions each year, the problem also has to travel well culturally and doctrinally — free of assumptions specific to any one national insolvency system, since it should reward familiarity with the Model Laws themselves, not with any single country's case law. At the heart of its design is enhanced student advocacy and generating knowledge and awareness in preparation of the current landscapes and potential evolutions, which have continued to lend prestige to the shape and dimensions of contribution of the moot.

Should you wish to be involved with the International Insolvency Law Moot Committee, please contact CC Schnapp: ccschnapp@iii-global.org. Volunteers for the 2027 problem are welcome. ■

III Awards

In Montreal, III celebrated the 2026 Founder's Award Honoree, Steven T. Kargman, and the 2026 Outstanding Contributions Award Honoree, the Honourable Geoffrey B. Morawetz.

Outstanding Contributions Award Honoree, the Honourable Geoffrey B. Morawetz

The International Insolvency Institute is pleased to recognize the Honourable Geoffrey B. Morawetz, former Chief Justice of the Superior Court of Justice of Ontario, as the recipient of the 2026 III Outstanding Contributions Award. Over the course of a distinguished career spanning private practice and the judiciary, Mr. Morawetz has made extraordinary contributions to the development of restructuring and insolvency law in Canada and internationally.

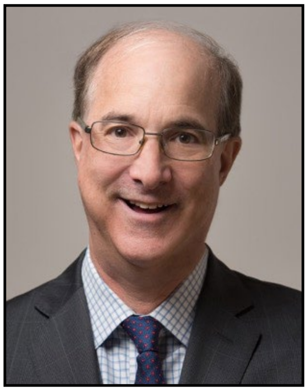
Mr. Morawetz retired on May 15, 2026 after serving as Chief Justice of the Ontario Superior Court Justice for almost seven years and after being a judge for over 21 years.

Before his judicial career, he practiced law for 25 years, specializing in insolvency and restructuring law. His expertise in these areas was consistently and widely recognized in both Canadian and international publications. He is a named author of Bankruptcy and Insolvency Law of Canada and editor of the Canadian Bankruptcy Reports. In addition to being a member of III, he is a fellow of both the Insolvency Institute of Canada (2005) and the American College of Bankruptcy (2010), and a member of INSOL International. Since 2008, he has been an advisor to the Canadian Delegation at the United Nations Commission on International Trade Law – Insolvency Law.

During his time on the bench, he was named three times in Canadian Lawyer magazine as one of the "Top 25 Most Influential Lawyers in Canada" for his work in the justice system. He also served as the current chair of the Judicial Insolvency Network, a network of judges from across the world, which serves as a platform to facilitate communications and cooperation amongst national courts in cross-border insolvency and restructuring matters.

Through his judicial leadership, scholarship, and commitment to the advancement of cross-border insolvency practice, Mr. Morawetz has had a lasting impact on the restructuring profession. The III is honored to recognize his outstanding contributions to the field.

Founder's Award Honoree, Steven T. Kargman



A longstanding member of the III since 2003, Steven Kargman has played an active role in the Institute's leadership and intellectual development for more than two decades. He served two terms on the III Board of Directors (2007–2013) and has contributed to a number of important institutional initiatives, including serving as Rapporteur for the III Special Task Force on Extraordinary Restructuring Solutions following the global financial crisis of 2008-2009 and as Rapporteur for the Board of Governors' strategic planning project. He also served as Vice-Chair of the Board's Corporate Governance Committee.

Steven has been particularly influential on emerging market and sovereign debt restructuring issues. He served as Co-Chair of the Sovereign Debt Committee, Project Director of the III project on the restructuring and privatization of state-owned enterprises in Greece during the Greek financial crisis, and Co-Chair of the Institute's Athens conference on that topic in 2011. He also co-authored an III-endorsed proposal for the establishment of a Sovereign Debt Tribunal and represented the Institute at meetings of a United Nations ad hoc committee on principles for sovereign debt restructuring.

Steven has also been a consistent presence at III Annual Conferences, as a frequent speaker as well as a moderator of panels in conference cities such as New York, Berlin, Rome, Paris, Naples, and Singapore. In addition, he has supported the growth of the Institute by sponsoring numerous candidates for membership and for the NextGen program, particularly from emerging markets and developing countries.

Through his leadership, scholarship, and sustained engagement with the III community, Steven Kargman has made a lasting contribution to the Institute and to the broader international restructuring field. The III is honored to recognize him with the 2026 Founders Award.

Read Leonard Gilbert's remarks for Steven T. Kargmann from the conference here. ■

III 2026 Prize in International Insolvency Studies Winners

The winners of the 2026 Prize in Insolvency Studies were recognized at III's 2026 International Insolvency Conference in Montreal. Summaries of each winning submission are provided below. To read the full articles, click on the linked title of each submission.

Gold Medal Winner
Guillem Gabriel-Pizarro, Fordham Law
From cannonballs to water pistols: The endogenous challenges in the treatment of IP licences in European insolvency proceedings and the need for further harmonisation notwithstanding the forthcoming 2026 Directive

The increasing reliance on intellectual property licensing within the knowledge-based economy has made the stability of such arrangements an issue of growing importance in insolvency law. In innovation-driven sectors, licences facilitate access to technology and support substantial investments by licensees. Where the licensor enters insolvency proceedings, however, termination may deprive the licensee of essential technology, undermine investments made in reliance upon the agreement and leave it with no more than an unsecured claim against the estate.

Directive (EU) 2026/799 is the first EU legislative instrument expressly to address this problem. The Commission's original proposal contemplated mandatory protection against the termination of IP licence agreements in pre-pack proceedings where the licensor was the debtor. The enacted Directive, however, leaves Member States free to decide whether such protection should be introduced. The EU legislature has recognised the fire, identified the extinguisher and permitted each Member State to decide whether to use it. The harmonising ambition has moved, in that respect, from cannonballs to water pistols.

This article examines what remains after enacting such facultative provision. It asks whether the European Insolvency Regulation can respond coherently to the divergent national policy choices governing the treatment of IP licences in insolvency. Its central argument is that the existing framework is fragmented, uneven and increasingly difficult to reconcile with the EU's ambitions for cross-border investment and innovation.

The analysis brings together insolvency law, intellectual property law and private international law. It shows that the resilience of a licence depends on more than just the treatment of executory contracts in insolvency. It also depends upon the legal nature of the licensed right itself. A purely contractual entitlement will ordinarily remain exposed to the lex loci concursus. A proprietary or quasi-proprietary right may bind third parties and resist the effects of the main insolvency proceedings. A functional comparative examination of Austria, France, Germany and Spain reveals significant divergence. These national differences acquire European consequences through the operation of the general rules together with the rights in rem exception of the European Insolvency Regulation.

The result is a threefold fragmentation. Licences over national IP rights may escape the lex loci concursus where the licensed right qualifies as a right in rem. Licences over EU trade marks and designs remain predominantly contractual. Licences over the European patent with unitary effect occupy a more uncertain position because their legal nature depends upon the national law governing the patent as an object of property, creating further fragmentation. The article identifies this final dynamic as an "intra-European Brussels effect paradox". A European framework intended to promote coherence may instead amplify particular national property-law choices or reproduce divergence within the treatment of a supposedly unitary European right.

The paper concludes that private international law alone is insufficient to secure coherence and legal certainty. Directive (EU) 2026/799 nevertheless represents a significant and welcome development, as it gives legislative form to the Commission's first express attempt to address IP licences in insolvency and recognise the vulnerability of licensees. Yet its limited scope and facultative character leave the central cross-border problem unresolved. Given the growing importance of the European Patent with unitary effect, further substantive harmonisation remains necessary to support cross-border innovation and investment in the internal market. ■

Gold Medal Winner Guillem Gabriel-Pizarro and Bronze Medal Winner Shuaidong Yan with Chair Stephan Madaus in Montreal.

Silver Medal Winner

Lakshita Khurana, National Law University, Delhi

The Sovereign Climate Mandate: Overriding Contractual Absolutism in International Debt Restructuring

The law of sovereign debt was written for a world in which default signalled mismanagement, not for one in which a single hurricane can erase much of a nation's economy in a matter of days. This paper confronts that mismatch. It argues that the reigning principle of the international financial order: contractual absolutism, the demand that a sovereign honour its *pari passu* obligations even as the physical foundation of its statehood is destroyed, is not merely unjust but economically irrational. By privileging the boilerplate of the bond over the survival of the borrower, the present system consumes the very asset base from which every creditor recovery must ultimately be drawn.

The paper's governing insight is that a nation, like a corporation, is a *going concern*: its capacity to generate revenue, and therefore to repay, depends on its continued physical existence. Creditor recovery is thus a function of debtor survival. *NML Capital v. Argentina* supplies the cautionary proof where a single holdout, wielding one contractual clause, paralysed the restructuring of an entire country and drove a solvent State into technical default. What corporate insolvency resolves through the cramdown, sovereign debt law leaves to the vulture.

Upon this foundation the paper builds a three-pillar cure, translating the settled logic of insolvency into the sovereign sphere. The first pillar, the *Priority Pivot*, reclassifies climate-adaptation spending as a super-priority administrative expense of the State, the sovereign analogue of DIP financing, interim finance, and priority moratorium debt on the principle that any estate must fund its own survival before it services legacy claims. The second pillar contractualises and doctrinally secures the resulting moratorium: *Climate-Resilient Debt Clauses (CRDCs)*, parametrically triggered and NPV-neutral, function as a private automatic stay, while the *Doctrine of Necessity* under Article 25 ARSIWA supplies the *ex post* public-law defence where no clause exists. The third pillar closes the institutional void with a *Sovereign Climate-Disaster Model Law (SCDML)*, modelled on UNCITRAL's Model Law on Cross-Border Insolvency, imposing a *Global Climate Stay* on holdout litigation and coordinating creditors through standing Climate-Debt Committees, reinforced by an *Arbitral Bridge* under the PCA Environmental Rules to value natural capital and climate-adjusted assets with scientific neutrality. The framework is not aspiration alone. Grenada's activation of its hurricane clause after Hurricane Beryl in 2024, the first live trigger of a CRDC, shows that orderly, rules-based climate deferral already works in practice, without litigation, arrears, or default. What the market has begun ad hoc, the paper renders systematic.

Its ultimate claim is addressed not to conscience but to arithmetic. A ruined nation repays nothing; a restored one repays in time. Every dollar of resilience spending is an investment in the sovereign's future capacity to pay. The paper therefore reorders, rather than abolishes, creditor rights aligning them with the internal logic of insolvency law itself.

In the language of that law: to save the creditor, one must first save the debtor. In the language of this paper: it speaks the language of money to solve the problem of nature. ■

Bronze Medal Winner

Shuaidong Yan, Renmin University China

Safeguards-in-Possession

Cross-border insolvency (CBI) is often explained through harmonisation instruments. These instruments remain essential, but they do not fully explain how cross-border coordination is produced in practice. While jurisdictions increasingly converge on the fundamental principles and values of insolvency law, they continue to diverge, and sometimes conflict, in how those principles are implemented and which objectives they prioritise. Controversies over debt discharge, third-party releases, and other issues still persist. Why do these controversies persist within an increasingly coordinated framework?

The paper suggests that part of the answer lies in the operation of safeguards. Mechanisms such as sufficient connection for jurisdiction, the Rule in Gibbs, public policy exceptions, and the no-worse-off test for third-party releases are traditionally understood as constraints or exceptions to CBI cooperation. Yet practitioners routinely invoke, negotiate, contest, and sometimes circumvent them. In practice, these mechanisms operate not merely as limits on coordination, but as governance devices that actively shape how coordination is structured and implemented.

Drawing on the historical development of CBI and more than 400 cases, the paper identifies a broader shift from a "distributional paradigm" to an "operational paradigm." As CBI increasingly focuses on preserving enterprise value and coordinating complex global restructurings, safeguards have become instruments of ongoing engagement rather than static legal boundaries.

To capture this dynamic, the paper introduces "Safeguards-in-Possession" (SIP). SIP focuses on how safeguards are deployed, interpreted, and contested by participants in CBI practice. In a single restructuring, for example, sufficient connection may support jurisdiction at the outset, the Rule in Gibbs may become relevant to the compromise of claims, and public policy may arise at the recognition stage. Different safeguards emerge at different points of the process and become available to different actors.

The SIP framework rests on two co-equal (protective and coordinative) functions of safeguards and identifies three intervention factors (structural, procedural, and factual) that shape how safeguards operate and with what effect. By organising these elements into a mapping structure, the framework provides a way to anticipate how safeguards may operate and where contestation is likely to emerge.

The paper's broader insight is that fragmentation and coordination need not be understood as opposites. Actors intervene, rules are tested, and outcomes are recalibrated. Through these interactions, an operational equilibrium may emerge. Modified universalism is therefore not displaced by safeguards; rather, it is continuously operationalised through their deployment and contestation, allowing the system to adapt to increasingly complex forms of CBI.

The paper thus reframes safeguards from passive limitations on cross-border cooperation into dynamic instruments through which coordination itself is negotiated and sustained. An increasingly important question in CBI is therefore not simply whether safeguards constrain cooperation, but who engages them, how they are engaged, and with what systemic consequences. ■

Global Perspectives Podcast

The III's Global Perspectives podcast continues to provide thought-provoking discussions on the most pressing issues in international insolvency and restructuring. Featuring leading practitioners, academics, and emerging voices from around the world, the podcast explores evolving legal frameworks, landmark cases, and innovative approaches shaping the future of cross-border restructuring.

Recent episodes have included discussions on insolvency frameworks for micro and small enterprises, complex cross-border case studies, and new publications from III members. Below is a recap of episodes released since March 2026.

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Published April 1, 2026

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Martha Wyrick of Haynes Boone and Dr. Eugenio Vaccari of Royal Holloway, University of London, analyze the *Protopapas* decision from both U.S. and English legal perspectives. Their discussion explores cross-border mass tort litigation, parent-company liability, jurisdictional considerations, and the differing legal approaches adopted by courts in each jurisdiction.

Case Study: *Fossil*
Published April 15, 2026

Listen

Andrew Kissner of Morrison Foerster and Kat Burke of Burke Legal examine the *Fossil* restructuring plan and its implications for cross-border insolvency practice. The discussion explores why English restructuring plans have become an attractive alternative for companies facing challenges under U.S. restructuring law, including the absolute priority rule and uncertainty surrounding third-party releases. The episode also considers the English courts' "sufficient connection" test, proposals for a new U.S. Chapter 16 procedure, and the role of public policy in the recognition of foreign restructuring proceedings.

Case Study: *Evergrande*
Published April 29, 2026

Listen

This episode explores the collapse of China Evergrande Group and the legal and economic issues surrounding one of the largest corporate failures in recent history. The discussion examines the speculative forces behind China's property market, the challenges of coordinating cross-border insolvency proceedings, and the Chinese government's focus on completing pre-sold housing projects. The conversation also considers what the case reveals about restructuring large multinational enterprise groups and the complexities of recognition and cooperation across jurisdictions.

Case Study: *Samarco*
Published May 13, 2026

Listen

Sabrina Becue of the University of São Paulo and Dr. Eugenio Vaccari of Royal Holloway, University of London, discuss the cross-border legal consequences of the Samarco dam collapse from both Brazilian and UK perspectives. The episode explores the intersection of environmental liabilities, corporate restructuring, and mass tort litigation, highlighting Brazil's innovative approach to addressing environmental claims alongside insolvency proceedings. The discussion also examines parallel litigation in England and evolving questions surrounding parent-company liability, jurisdiction, and access to justice.

Case Study: *Sapura*
Published May 27, 2026

Listen

Jo Tay of Allen & Gledhill discusses the *Sapura Fabrication* case and the evolving relationship between arbitration and cross-border insolvency. The conversation examines how Singapore's courts have balanced arbitration agreements with restructuring moratoriums and considers the broader implications for creditors and debtors navigating complex insolvency proceedings. The episode also introduces the Singapore International Arbitration Centre's new Restructuring and Insolvency Arbitration (RIA) Protocol, highlighting its potential to streamline dispute resolution in restructuring and insolvency matters.

Ideas in Print Series

Intra-Group Financing and Enterprise Group Insolvency
Published June 10, 2026

Listen

Launching the new *Ideas in Print* sub-series, Dr. Ilya Kokorin of the Dutch Authority for the Financial Markets discusses his recent book, *Intra-Group Financing and Enterprise Group Insolvency* (Edward Elgar Publishing, 2025). Dr. Kokorin explores the challenges of insolvency within multinational enterprise groups, arguing that existing legal frameworks should better recognize the economic realities of integrated corporate groups. The conversation examines topics including intra-group financing, third-party releases, cooperation among stakeholders, and practical approaches to maximizing value in complex cross-border restructurings.

Municipalities in Financial Distress: An Environmental, Social and Governance Critique
Published June 24, 2026

Listen

Professor Laura N. Coordes and Dr. Eugenio Vaccari discuss their recently published book, *Municipalities in Financial Distress: An Environmental, Social and Governance Critique*, offering a fresh perspective on municipal financial distress through an ESG lens. The conversation also explores recent developments in cross-border restructuring, including English case law, proposed reforms to U.S. restructuring law, and the recognition of foreign restructuring proceedings.

Viability in Corporate Debt Restructuring
Published July 8, 2026

Listen

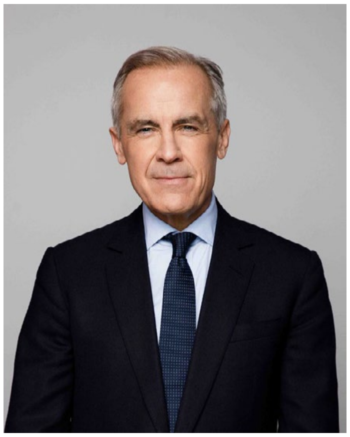
In the latest installment of the *Ideas in Print* sub-series, Dr. Lydia Tsioli discusses her book, *Viability in Corporate Debt Restructuring* (Edward Elgar Publishing, 2025). Dr. Tsioli examines viability as a foundational principle of corporate debt restructuring law, distinguishing between financial and economic viability while exploring how the concept should shape restructuring frameworks in the United States, the United Kingdom, and under the European Directive on restructuring and insolvency. The discussion also considers the role of courts and other restructuring participants, offering thoughtful perspectives that may help inform future legislative reforms and the continued evolution of restructuring law.

The III's Global Perspectives podcast continues to highlight the innovation, collaboration, and international expertise that define the Institute's membership. We invite members to explore these recent episodes and the full podcast archive for additional insights into the evolving landscape of insolvency and restructuring worldwide. ■

Letter from Canada's Prime Minister

In June 2026, III returned to Canada for its 26th Annual Conference. For this event, Canadian Prime Minister Mark Carney sent the following letter of welcome to attendees, praising the Institute's commitment to education and professional development in the insolvency field. ■

PRIME MINISTER · PREMIER MINISTRE



I would like to convey my warmest greetings to everyone attending the International Insolvency Institute's 26th Annual Conference.

This event brings together professionals from around the world to share their experiences and expertise. I am certain that delegates will benefit from the many educational workshops and presentations planned for this year's conference.

I would like to thank the organizers for putting together an informative program for everyone in attendance. You can take pride in your commitment to supporting education and professional development in the industry.

I wish you all a productive and enlightening conference.

The Right Honourable Mark Carney, P.C., O.C., M.P.
Prime Minister of Canada

Ottawa
2026

The III Judicial Committee Upcoming Initiatives

By Aidan Xu and Verónica Francisca Martínez

Following the Judicial Committee meeting held in Montreal immediately prior to the Institute's 26th Annual Conference, the Committee reaffirmed its commitment to developing practical resources to assist judges in addressing the challenges of cross-border insolvency. Building on the discussions held during that meeting, the Committee is pleased to share the following summary of the topics considered.

The Judicial Committee of the International Insolvency Institute has begun a new programme of work aimed at helping judges in dealing with live issues in international insolvency law. The work is distinct from other efforts as it is focused on sharing of practical knowledge and expertise, for immediate use and reference by judges. Many questions confronting the courts are often worked, under pressure of time, without the benefit of how they may have been dealt with elsewhere. The Judicial Committee's work aims to remedy that.

The importance of Distinct Judicial Perspective

The field of cross-border insolvency is already served by a number of established bodies, such as UNCITRAL, INSOL International and the Judicial Insolvency Network. The academic community, and the III's own Academic Committee, explores frontier issues in depth, assisting judges with exploration of novel areas.

Within that community, the III Judicial Committee is uniquely placed because of the membership of experienced and eminent judges from the leading insolvency jurisdictions around the world, allowing it to focus on assisting all judges by sharing that accumulated knowledge. Building on the previous work of the Judicial Committee, the current membership, co-chaired by Verónica Francisca Martínez (Argentina), and Aidan Xu (Singapore), aims to make a practical difference to the work of judges. The members of the committee are able to glean from the cases before them the patterns, tactics and common arguments that arise in practice, and to articulate the considerations that influence judicial decision-making. This enables the Committee to describe the practical realities of cross-border insolvency cases and to identify approaches that address their real-world implications.

The Committee is confident that this work will advance the III's overall objectives of improving international cooperation and to achieve greater coordination among nations in cross-border reorganisations and restructurings.

The aim is to produce a series of Judicial Issues Papers addressing questions of international insolvency. These papers will be concise, practical, and consultative, setting out questions that regularly come before judges, identifying recurring factual and legal patterns across cases, and exploring the considerations relevant to their resolution. Their purpose is to provide judges encountering such issues for the first time with insight into how other judges have approached and reasoned through them. The papers are not intended to prescribe rules, but rather to inform and support judicial reasoning.

The Inaugural Paper

For its first cycle of work the Committee has identified ***forum selection in group restructurings under the Model Law*** as an area of interest.

The UNCITRAL Model Law on Cross-Border

Insolvency (MLCBI) operates by reference to the individual debtor. Recognition turns on the location of the debtor's centre of main interests (COMI), and the Model Law presumes, in the absence of proof to the contrary, that the centre of main interests lies where the debtor has its registered office. This encapsulates an entity-by-entity approach, which may not align with the economic reality of the modern corporate group, typically managed as a single enterprise across multiple legal entities and jurisdictions. The UNCITRAL Model Law on Enterprise Group Insolvency (MLEGI) seeks to address these challenges by providing a framework for the coordinated treatment of enterprise groups. However, it may be some time before the MLEGI is widely adopted. In the meantime, developing a shared understanding of the challenges presented by enterprise group insolvencies remains a priority for judges.

The Judicial Committee's first paper will therefore explore the following issues:

(a) Letterbox or brass-plate incorporations, where the registered office reflects little or no genuine economic activity, thereby challenging the presumption that the place of registration and the centre of main interests coincide;

(b) Pre-filing changes or migration of the COMI, where management or head-office functions are relocated shortly before a filing in order to secure a particular forum, requiring the court to determine the weight to be given to arrangements of recent origin;

(c) The use of newly incorporated co-obligors, where a group introduces a new entity, often as the issuer or guarantor of group debt, in order to establish a sufficient connection to a chosen restructuring forum;

(d) divergent determinations across courts, where two or more courts reach different conclusions about the centre of main interests of related entities, giving rise to competing main proceedings and to problems of coordination; and

(e) The challenges presented by large and complex groups, where different creditor constituencies are located across multiple jurisdictions.

By setting out how courts have in fact approached these situations, the paper aims to identify the principles that can now be regarded as settled and to isolate the areas in which judicial approaches continue to diverge. Much of this analysis is likely, for the time being, to remain a matter for judicial consideration.

Work will begin with a preliminary survey across jurisdictions, which will inform the development of a report and the drafting of the paper in the coming months. All judicial committee members are encouraged to participate actively in this work. A questionnaire will be sent out shortly through the III Administrative Director to judicial committee members. ■

Academic Committee Update

On Sunday, June 14 in Montreal the Academic Committee began its proceedings with a joint program with the Judicial Committee. The Academics then met to discuss two papers:

- Andre Boraine and Ishana Tripathi, *Specialised Courts, Tribunals and Adjudicators: Insolvency Adjudication in BRICS Jurisdictions* (Comments by Anthony Casey)
- Shuai Guo, Defne Tasman and Alex Huang, *Confidentiality, Secrecy, and Privilege in Corporate Insolvency* (Comments by Ted Janger)

At the Committee's business meeting, new co-chairs were elected to a two-year term: Stephanie Ben-Ishai of Osgoode Hall Law School (Toronto, Ontario) and Stephen J. Lubben of Seton Hall University School of Law (Newark, New Jersey). New vice-chairs were elected as well: Anthony Casey of the University of Chicago Law School (Chicago, Illinois) and Michael Veder of Radboud University (Nijmegen, Netherlands). ■

The Next Generation Takes the Stage: Highlights from the III NextGen Day 2026

By **Gemma Bellfield**

On June 14, 2026, the International Insolvency Institute (III) opened its Annual Conference with the NextGen Day, a flagship program designed to spotlight the next generation of insolvency and restructuring practitioners from around the world. The day featured five dynamic panels and concluded with a celebration of the success of the NextGen Program over the last 15 years, and a toast to the future of the Program and the dynamic, engaged and enthusiastic individuals who make up its membership.

Comparative Analysis of Restructuring Proceedings

The day's opening panel brought together practitioners from five jurisdictions: the United States, Canada, the Netherlands, Brazil, and Japan, to examine how each system approaches restructuring. The discussion revealed that while every jurisdiction aspires to efficient rescue of viable businesses, the routes they take differ dramatically.

Rahman Connelly pushed back against the narrative that Chapter 11 is "old and expensive," noting the resurgence of liability management exercises (LMEs), out-of-court restructurings that have surged to the point where 2025 was dubbed "the year of the LME." Sebastiaan van den Berg offered the Netherlands' WHOA framework as a counterpoint: "young and cheap," just five years old, and already proving a nimble alternative. Midori Yamaguchi explained Japan's strict division between out-of-court workouts requiring unanimous consent and formal court restructuring, highlighting the recent Early Business Recovery Act aimed at bridging that gap. Caitlin McIntyre noted that Canadian prepacks remain rare, largely because the country's banks have historically resisted them, while Victoria Vaccari Villela Boacnin described Brazil's rapidly evolving landscape: higher approval thresholds, growing prepack use, and a DIP financing market dominated by a handful of players.

The panel found common ground on the challenge of DIP financing and adequate protection but diverged sharply on priorities in distribution, which is worth bearing in mind for practitioners who may have a choice of jurisdiction in which to restructure. In Brazil, panelists described flexibility in the order of payments as reorganization plans can set their own waterfall. The Netherlands' WHOA introduces a "20% catch-out rule," requiring that dissenting secured creditors receive at least 20% of what they would have received in a liquidation. Third-party releases drew perhaps the sharpest contrast: routine in Canada, virtually unknown in Japan (where personal guarantee obligations by management remain a cultural fixture), and

applied on an entity-by-entity basis under the WHOA.

AI Developments in Legal Practice

The second panel turned to artificial intelligence's growing footprint in insolvency and restructuring practice. Speakers from Singapore, China, Japan, Mexico, and Italy shared how AI is being adopted, and where it is being restrained, across their respective legal markets.

Keith Tnee described a careful, incremental adoption: AI generating chronologies and case summaries, but decision-making authority remaining firmly with human lawyers. He flagged three published cases in which Singapore lawyers were sanctioned with personal costs for citing AI-hallucinated cases, a powerful cautionary tale. Karla Silva highlighted AI's promise for the high-volume administrative tasks that typically slow Mexican insolvency proceedings, while Carlo Ghia introduced "Lexroom," a local Italian AI tool designed to augment rather than replace lawyers. Dr. Shuai Guo noted that AI has not yet been widely applied in China's legal sector, though internet courts represent an early frontier. Rikita Karakawa added a Japanese perspective on the technology's trajectory.

A lively exchange emerged around regulatory boundaries. Could restrictions on the unauthorized practice of law apply to AI platforms? Singapore's guidance places ultimate responsibility squarely on the lawyer, but other jurisdictions remain in early stages of rulemaking. The panel also tackled a lighter but telling point: the telltale stylistic tics of AI-generated drafting, including excessive em dashes, overuse of adverbs, repetitive sentence construction, and the emerging stigma these carry. The session concluded with a hotly contested interactive exercise pitting AI tools against human lawyers on case analysis, reinforcing the consensus that AI is a powerful assistant but not yet a substitute for professional judgment.

Restructuring and Insolvency in an Era of Tariffs, Trade Wars, and Sanctions

The third panel confronted what may be the defining macro challenge of 2025–2026: the return of aggressive U.S. tariff policy and its cascading global effects. The discussion traced a dramatic timeline: the initial imposition of at least 10% tariffs on all trading partners under IEEPA on April 2, 2025 ("Liberation Day"), the U.S. Supreme Court's February 2026 ruling shutting down the use of IEEPA for tariffs (by which point $166 billion had been collected), and the administration's swift reimposition under Section 122 of the Trade Act of 1974.

Dr. Christian Hilpert observed that Europe's direct economic exposure has been limited, but the uncertainty itself has become the main headwind—businesses are "pricing in uncertainty" rather than reacting to concrete tariff levels. He cited the Turnberry deal, which set a ceiling of 15% tax on the U.S. side with zero reciprocity, as a "price for certainty" for European businesses. Martha Wyrick noted that defining

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Panel: When Regulators Meet Restructuring: Roles, Risks and Realities

Summary by Reggie Sainvil – NextGen Class XV

Modern restructurings increasingly unfold alongside regulatory investigations, government intervention, and overlapping statutory regimes. The panel examined how those dynamics shape insolvency proceedings across various jurisdictions. Drawing on comparative examples and moderated by Joel Cohen, panelists Michelle Grant (Canada), Lucas Kortmann (the Netherlands), Stewart Maiden, K.C. (Australia), and Felicity Toube, K.C. (UK) explored how regulatory objectives can complement and complicate insolvency proceedings.

A recurring theme was the tension between the pace of insolvency proceedings and regulatory investigations. Regulators must protect investors, employees, and the wider public, but meaningful intervention often cannot occur until lengthy investigations are complete. The Canadian Bridging Finance receivership illustrated the dilemma. Following concerns over the misappropriation of investor funds, the Ontario Securities Commission sought the appointment of a receiver while its investigation continued, highlighting the balance regulators must strike between conducting a thorough investigation and intervening before further value is lost.

The panel explored the practical challenges created when multiple regulators pursue distinct statutory mandates in the same restructuring. The collapse of an Australian funeral insurance business serving Indigenous communities prompted parallel but uncoordinated responses from the financial services regulator and the agency responsible for Indigenous affairs. Company records were incomplete and the fund structure had failed: three of the four funds were empty, requiring judicial directions on the distribution of assets. In the Netherlands, legislation enacted to avert the insolvency of SNS authorized the State to disenfranchise subordinated debtholders without compensation, although the Dutch Supreme Court later preserved their right to seek damages. The panel noted differing views on the decision's continuing significance given the subsequent EU resolution framework.

Attention then shifted to the State's role as both regulator and creditor. In Australia, the Fair Entitlements Guarantee routinely makes the government the largest creditor, stepping into employees' shoes to pursue recovery. An-

other Australian example involved legislation that elevated the government's unsecured claim, enabling it to appoint a voluntary administrator before a subsequent statute invalidated a lease. The Yukon receivership of Victoria Gold Corp. further illustrated the State's dual role, as the government sought appointment of a receiver while also committing up to $220 million for remediation, underscoring its simultaneous roles as regulator and lender.

The panel observed that jurisdictions take markedly different approaches to public claims, reflecting differing conceptions of the government's role in restructurings. Australia affords no priority to tax claims, Canada grants super-priority to certain claims, and the United States accords priority to many government claims. Across Europe, approaches vary. In the United Kingdom, pension liabilities are generally treated as provable debts, making their ranking central to recoveries for other creditors.

Across jurisdictions, the practical guidance was consistent: identify the applicable regulatory regimes early, engage the appropriate regulators before key milestones, prepare a plan B, and expect proceedings to take longer than anticipated. The panel also encouraged engagement with regulators outside the pressure of individual matters, including through professional forums.

As regulatory considerations become increasingly central to modern restructurings, the panel concluded that success depends not only on understanding insolvency law, but also on anticipating the regulatory objectives that shape outcomes. ■

Panel: "Chapter 15 and Beyond: Recent Developments in Complex Cross-Border Cases"

Summary by **Nicole Raca Bromberg** - NextGen Class XV

The restructuring world is a chessboard, as capital structures move across borders in search of the most effective venue to solve their debt problems. This is how the panel kicked off its discussions, framed by the following leading question: Is forum shopping in cross-border restructuring necessarily a problem, or can it reflect healthy competition among legal systems? The discussion was moderated by Dan Moss (United States) and featured Lord David Richards (former Justice of the Supreme Court, United Kingdom), Judge Anna Elisabeth de Vos (judge at the District Court of Amsterdam, The Netherlands), Luciana Celidonio (Brazil), and Smitha Menon (Singapore).

Multinational companies are no longer limited to restructuring in their home countries. They may choose among increasingly sophisticated regimes and seek recognition elsewhere, including in the United States under Chapter 15. The panel examined whether that freedom promotes better outcomes or creates opportunistic forum selection through four different issues: (i) the effect of forum competition; (ii) third-party releases; (iii) the use of a "Super NewCo" to access a preferred forum; and (iv) the standards courts apply when recognizing a foreign restructuring.

The panel first addressed what makes competition among restructuring forums positive and appropriate. On one hand, Chapter 11 remains powerful, but it can be expensive, lengthy, and disruptive. On the other hand, English schemes and restructuring plans, Singapore schemes, and the Dutch WHOA may offer faster or more targeted alternatives. Choosing among these systems is not inherently abusive, as a company may legitimately select the forum that best preserves value, particularly where creditors support that choice and where there are due process safeguards. The dividing line is whether the selected forum solves a genuine commercial problem or merely avoids protections creditors would receive elsewhere.

The panel then turned to third-party releases, a topic that has continued to shake the international insolvency community after the United States Supreme Court's Purdue Pharma decision. These provisions protect non-debtors (such as affiliates, guarantors, directors, or shareholders) from claims connected to the restructuring. Purdue sharply limited nonconsensual releases in Chapter 11, but it did not necessarily prevent U.S. courts from recognizing foreign plans that contain them. The panelists noted that courts have continued recognizing foreign releases under Chapter 15, provided the debtor comes prepared with evidence that the releases were a legitimate, consented-to part of the foreign process. The approaches abroad differ. English and Singapore courts focus on whether the release is necessary and connected to the restructuring bargain. Brazil is more consent-oriented, binding only creditors who voted in favor or stayed silent, as there is a provision in the local bankruptcy law that excludes non-debtor guarantors from the release. In the Netherlands, third-party releases may be included in a plan, but their enforceability remains unsettled. Chapter 15 is therefore not an automatic workaround: a United States court will still expect proof that the release was validly granted, procedurally fair, and genuinely part of the foreign proceeding.

The discussion then moved to the "Super NewCo": an entity created or repurposed to establish a legal jurisdictional hook. For example, a group might create a company in England and make it an obligor under the debt so that it can propose a local plan. Courts there generally do not treat that artificial connection as automatically fatal. Instead, they ask whether it serves a legitimate, value-maximizing purpose and whether creditors support it, as opposed to a manipulative jurisdictional engineering aimed at prejudicing a class of creditors. Here, the panel paused to discuss the Brazilian system, which poses a structural contrast with the "Super NewCo" approach. Rather than creating an offshore entity to export a restructuring to a different jurisdiction, Brazilian debtors often pull foreign holding and financing companies into a Brazilian judicial reorganization when they are functionally part of the domestic business. However, the Latin American airline cases are major exceptions to the Brazilian "attraction" feature (Latam, Gol, and Azul), because Chapter 11 offered tools for aircraft leases and financing that Brazilian law did not provide.

Finally, the panel addressed recognition limits, addressing the question on whether courts should deny giving effect to a foreign restructuring proceeding. Recognition courts are generally cooperative, yet they are not rubber stamps. They may refuse relief where creditors lacked notice or a meaningful opportunity to participate, where there was a lack of procedural fairness, where the requested relief conflicts with fundamental domestic policy, or where the evidentiary record is inadequate. The flip side of the coin is the need for courts approving the original restructuring to consider whether their orders are likely to be recognized where the company's assets and creditors are located; otherwise, the restructuring may succeed on paper but fail in practice.

Ultimately, the debate turned on whether forum shopping is beneficial or harmful. Healthy forum shopping is defined less by where a case is filed than by why that forum was chosen, how creditors were treated, and whether other courts can confidently recognize the result. Selecting the most effective regime can reduce costs, preserve value, and encourage legal systems to improve. It becomes problematic when the jurisdictional connection is used to disenfranchise creditors, avoid due process, or obtain relief that cannot fairly be justified. ■

Panel: "Best Laid Plans: When Good Restructurings Go Bad"

Summary by Nicole Raca Bromberg - NextGen Class XV

The year 2024 was marked by a boom in liability management exercises (LMEs), but many of them ultimately unraveled into second, or even third, in-court proceedings. Out of a dataset of approximately one thousand borrowers spanning from 1976 to 2026, Moody's found that about 35% of companies that experienced a distressed exchange subsequently faced a repeat distressed credit event within the next 10 years. Of those, about 70% defaulted within two years. A similar pattern was identified with prepackaged bankruptcy proceedings, which were often followed by other in-court proceedings. Does that mean that LMEs and prepackaged restructurings are falling short of their intended objectives, despite their growing popularity in the United States, Canada, and Europe?

This panel undertook the challenge of addressing this pressing topic. The panel was moderated by Judith Elkin (United States), with panelists Luke Barefoot (United States), Steve Krause (United States), Robert Thornton (Canada), and Robert van Galen (the Netherlands).

The discussion opened with the observation that a "successful restructuring" is inherently perspective-dependent: a company may define success as preserving the business and jobs, a debtholder as maximizing its return, and a sponsor as preserving its equity or maximizing exit value. In this context, LMEs are one of the legal and financial tools designed to give companies additional runway by extending maturities, raising new money, or reallocating collateral outside of bankruptcy. Similarly, a prepackaged bankruptcy (or "prepack") is a restructuring plan approved by creditors before filing for bankruptcy. It acts as a rapid, consensual process to reduce debt—often confirmed in weeks rather than months.

Therefore, LMEs and some prepacks are designed to tackle balance-sheet restructurings, which focus on the company's capital structure (debt and equity) to reduce near-term financial obligations and improve liquidity. More recently, the panelists agreed that modern LMEs have evolved into sponsor-controlled exercises that pit creditor classes against one another, producing winners and losers within the same capital structure and ultimately layering new debt onto the balance sheet rather than reducing it.

By contrast, LMEs and prepacks do not focus on fixing a company's business operations, i.e., improving profitability, efficiency, and long-term competitiveness, which involves management, employees, customers, suppliers, and operational partners. That kind of restructuring takes time and typically requires an in-court proceeding with the right tools to implement such structural changes. As illustrated by the many case studies analyzed by the panel, financial engineering through LMEs and prepacks may temporarily improve liquidity, but companies with unsustainable business models ultimately require broader operational restructuring proceedings.

Because of the "creditor-on-creditor" violence they often generate, litigation also features prominently in the LME landscape. Recent U.S. decisions, including Serta and Mitel,

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Panel: "Who Holds the Cards? Examining the Evolving Role of Shareholder Interests in Bankruptcy"

Summary by Midori Yamaguchi – NextGen Class XIII

The panel "Who Holds the Cards? Examining the Evolving Role of Shareholder Interests in Bankruptcy" was moderated by Professor Anthony Casey and featured Cristina Okike (United States), Florian Bruder (Germany), Christopher Howard (United Kingdom), and Thiago Braga Junqueira (Brazil). The discussion explored the extent to which shareholders, particularly private equity sponsors, influence restructuring and insolvency outcomes across different jurisdictions, focusing on shareholder influence before a filing, during a restructuring process, and at the plan confirmation stage.

The central theme of the discussion was whether restructuring practice has shifted from traditional lender control toward greater sponsor and shareholder influence. While the answer varied significantly by jurisdiction, the panel demonstrated that shareholders often retain substantial leverage in the period leading up to a restructuring, even where creditors ultimately control economic outcomes.

The discussion began with the pre-filing stage. In the United States, sponsors frequently exert significant influence through their control of the board of directors, which determines whether and when a company files for bankruptcy. The flexibility afforded by the business judgment rule, together with the increasing use of liability management exercises, allows distressed companies to pursue a wide range of restructuring alternatives before resorting to Chapter 11. By contrast, German law imposes strict filing obligations once insolvency triggers are met, significantly limiting a shareholder's ability to delay proceedings. The United Kingdom occupies a middle ground, where directors' duties increasingly require consideration of creditor interests as insolvency approaches, although practical constraints on sponsors remain less severe than in Germany. Brazil was described as one of the more shareholder-friendly jurisdictions, where shareholders continue to exercise substantial influence over whether and when a judicial reorganization proceeding is commenced.

The panel also examined forum shopping and venue selection in cross-border restructurings. In the United States, the United Kingdom, and Germany, large multinational restructurings increasingly involve consideration of multiple jurisdictions, with stakeholders evaluating which forum is best suited to achieve a particular restructuring objective. The discussion highlighted how differences in restructuring tools and shareholder treatment can influence forum selection. In contrast, Brazil's venue rules are tied closely to the debtor's principal place of business, leaving comparatively less flexibility for international forum shopping.

The panel then turned to governance during the restructuring process. In the United States and the United Kingdom, the increasing use of independent directors and restructuring professionals reflects efforts to address conflicts of interest and strengthen oversight in distressed situations. In the United States, independent directors are often appointed to special committees responsible for evaluating

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Panel: "Sanctions, Geopolitics, and Insolvency: Managing Distressed Assets in a Fragmented World"

Summary by **Rikita Karakawa – NextGen Class XV**

The panel was moderated by Federica Pietrogrande and featured Steven T. Kargman (USA), Prof. Jingxia Shi (China), Frédéric Verhoeven (the Netherlands), and Ruairi Rynn (Ireland). The discussion explored the growing collision between collective insolvency law—which seeks to aggregate assets, preserve value, and distribute recoveries by legal priority—and sanctions law, which operates through exclusion, asset freezes, trade bans, and regulatory prohibitions. As a result, the modern distressed estate is no longer merely a pool of assets, but a "pool of permissions" where progress depends entirely on regulatory approvals.

Prof. Shi established three core concepts defining this shift: fragmentation (dividing unified estates into sanctioned and non-sanctioned silos), a public-law overlay (subordinating private-law priorities to foreign policy and national security objectives), and a challenge to universalism (replacing cross-border cooperation with territorial divergence). Under this framework, traditional *pari passu* principles survive in theory but are heavily constrained in practice by licensing requirements and blocked payment channels.

The panel examined cases where sanctions served as the direct trigger for operational or financial collapse. Ruairi Rynn highlighted *GTLK Europe*, an Irish leasing subsidiary whose operations halted due to EU, UK, and US asset freezes and trade bans following sanctions on its Russian parent, as grounded and unmaintained aircraft rapidly lost value, driving initial cash-flow distress into a multi-billion-dollar balance sheet insolvency. Frédéric Verhoeven presented *Amsterdam Trade Bank (ATB)*, where US sanctions against its parent caused service-provider withdrawal and operational paralysis, forcing the solvent bank into liquidation. At the sovereign level, Steven T. Kargman illustrated how US sanctions against Venezuela and state oil company PDVSA created an architecture of default by blocking debt trading, prohibiting essential inputs, and freezing its crown jewel asset, Citgo.

Turning to governance and asset sales, the speakers discussed how formal insolvency processes can unstick sanctioned structures. In *GTLK*, the Irish High Court ruled that the liquidators' appointment severed the Russian parent's control, lifting the EU asset freeze and restoring operational capability for creditors. Conversely, Frédéric Verhoeven explained how sanctioned equity holders in *Fortenova* and *Heesen Yachts* were disenfranchised from voting, causing severe market hesitation and litigation during asset sales. Similarly, Steven T. Kargman noted that even after court-supervised auctions for Citgo, final transfer remains subject to OFAC approval.

The panel concluded with a lightning round emphasizing that "policy is in command" in geopolitically impacted restructurings. Insolvency practitioners must adapt to becoming "permission managers" who use formal insolvency tools not only to navigate regulatory paralysis, but also to preserve and recover value in an increasingly fragmented global economy. ■

Panel: "Funding the Fight: The Role of Litigation Funding in International Restructurings"

Summary by **Pulkit Deora** – NextGen Class XV

This session explored the rise of third-party litigation funding in cross-border insolvencies, regulatory and ethical considerations, and its overall impact on estate value. The panel was moderated by Hon. Robert Mark (USA), and featured Prof. Charles Booth (University of Hawaii), Scott Butler (Australia), and Yuri Sugano (Japan). The discussion highlighted how different jurisdictions handle litigation funding legally, practically, and culturally.

Australia abolished the crimes of champerty, maintenance, and barratry (the repeated funding of claims) between the 1950s and 1970s. While public policy challenges remain, courts have determined that litigation funding is not contrary to policy because liquidators have the power to sell or assign assets. The largest litigation funder in Australia is actually the government, through the Fair Entitlements Guarantee (FEG) scheme. The government pays employee entitlements upfront, steps in as a creditor, and then funds the liquidator to bring claims to recover those funds. The FEG will sometimes even fund claims for academic pursuit to test the system and fulfil long-term objectives, even if the costs might outweigh the claim.

Contingency fees are generally prohibited, with the exception of class actions in the state of Victoria. Lawyers will more often charge a portion of their fee upfront and the rest upon success. In litigation, the loser generally pays 60-70% of the costs. Consequently, funders will typically purchase After the Event (ATE) insurance as part of their funding package to use as security for costs.

Practically all litigation funding agreements require court approval. Allocating a portion of future recoveries is viewed as a disposition of estate property, and liquidators must seek approval whenever an asset disposal falls outside the ordinary course of business.

In contrast to Australia, champerty and maintenance are still considered a tort and a crime in **Hong Kong**. However, there is a statutory exception for arbitration and mediation. While funding is currently not permitted in insolvency directly (though uplifts capped at 50% are allowed in arbitration), a 2007 case invoked common interest, access to justice, and insolvency regarding funding. Subsequent judgments in 2009 added a requirement to seek court approval. Due to conflicting judgments seeking formal approval remains a highly recommended practice.

Singapore has mirrored Hong Kong's loosening of restrictions. In 2015, the Singapore High Court confirmed that selling the fruits of a cause of action falls within a liquidator's powers and does not offend the doctrines of maintenance and champerty.

For smaller jurisdictions like Hong Kong and Singapore, debtors' assets are usually located abroad, often hidden in offshore structures. This makes funding highly problematic for proceedings concerning the adjudication of claims, as the true difficulty lies in the cross-border enforcement of the decrees, rather than obtaining the decree itself.

Japan faces strong cultural pressures against litigation and funding. Culturally, there is an

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Restructuring in Emerging Markets: Overcoming Legal and Practical Barriers

Summary by **Francisco Javier Garibay Guemez** - NextGen Class XV

For much of the modern era, the intellectual center of restructuring law resided in New York and London. That geography, however, is steadily changing. As global capital has flowed into emerging economies (and as higher interest rates, currency volatility, geopolitical realignment, and increasingly sophisticated financing structures have tested the borrowers that capital financed) some of the world's most significant restructurings are now unfolding in Mexico City, São Paulo, and Mumbai. Emerging markets are no longer merely importing restructuring concepts developed elsewhere; they are becoming important laboratories for the evolution of international restructuring practice. This panel moderated by Andrés Martínez and featuring Pooja Mahajan (India), Dario U. Oscos Coria (Mexico) and Guilherme Vaz Leal da Costa (Brazil) examined how sophisticated international capital interacts with insolvency systems that continue to evolve, using Mexico, Brazil, and India as its principal case studies.

Each jurisdiction has embraced, to varying degrees, the architecture of modern restructuring law. Mexico's *Ley de Concursos Mercantiles*, Brazil's corporate reorganization regime—substantially modernized through the 2020 reforms—and India's Insolvency and Bankruptcy Code of 2016 all reflect deliberate efforts to incorporate internationally recognized restructuring principles, including court-supervised reorganization, cram-down mechanisms, rescue financing, and, in the cases of Mexico and Brazil, the adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Yet the defining characteristic of restructuring in emerging markets remains the persistent gap between statutory design and practical implementation. Ambitious legislative frameworks often confront institutional limitations: judicial delays, uneven judicial specialization, underdeveloped rescue-financing markets, valuation uncertainty, volatile macroeconomic conditions, concentrated ownership structures, and the continuing influence of labor, tax authorities, regulators, and political actors.

The comparison is particularly illuminating because each jurisdiction reflects a distinct policy choice regarding the allocation of control during financial distress. Brazil has preserved a debtor-in-possession model while fostering an increasingly sophisticated restructuring culture that embraces mediation and out-of-court workouts. India, by contrast, deliberately shifted control to financial creditors, relying on creditor committees and strict statutory timelines to maximize discipline and predictability. Mexico continues to operate through a conciliator-driven judicial process whose protections arise only after a formal declaration of insolvency. Each model has generated its own strengths, limitations, and unintended consequences, offering valuable lessons not only for emerging economies but also for developed jurisdictions grappling with rising costs, procedural complexity, and growing demands on judicial capacity.

The panel also explored the increasingly international dimension of emerging-market restructurings. Companies in these jurisdictions routinely issue New York-law bonds, borrow from international lending syndicates, and restructure in the shadow of Chapter 15 proceedings and other cross-border recognition frameworks. Distressed-debt investors, private credit funds, development finance institutions, and multilateral organizations have likewise become central participants in local restructurings. Against this backdrop, the discussion examined the practical strategies employed by sophisticated market participants (including extensive pre-filing negotiations, offshore collateral and trust structures, dual-track proceedings, parallel recognition strategies, and the careful management of litigation, political, and enforcement risk) while asking whether these techniques represent durable institutional solutions or simply sophisticated responses to persistent structural constraints.

Understanding restructuring in emerging markets is no longer a niche specialty. As capital markets become increasingly interconnected and financial distress more readily transcends national borders, the future development of international restructuring law will depend as much on innovations emerging from Mexico, Brazil, and India as on those originating in more established restructuring jurisdictions. By examining both the promise and the limitations of these systems, this panel offered a comparative, practical, and forward-looking assessment of how restructuring frameworks can better balance legal certainty, commercial efficiency, and economic resilience in an increasingly global marketplace. ■

Panel: "Hot Topics & Current Trends: Views from the Bench"

Summary by Jasmine Cheung – NextGen Class XV

The final panel of the conference brought together a distinguished group of judges to examine key developments in international insolvency. Moderated by Lisa Laukitis (United States), the panel featured Hon. Andrea Galhardo Palma (Brazil), Chief Justice Geoffrey B. Morawetz (Canada), Hon. Martin Glenn (United States), and Justice Kannan Ramesh (Singapore).

The discussion opened with the ramifications of the US Supreme Court's ruling in *Purdue Pharma*, which held that the Bankruptcy Code did not authorise non-consensual third-party releases in Chapter 11 cases. **Judge Glenn** explored whether Chapter 15 might offer a pathway for recognising foreign plans that include such releases, citing recent cases such as the *Fossil Group* restructuring, where US courts recognised UK schemes containing such releases. The critical inquiry, he emphasised, is whether the process resulted in insider exploitation, manipulation, or the thwarting of third-party expectations. Further, he highlighted the underutilised potential of Section 1522 of the Bankruptcy Code, which requires the interests of creditors to be sufficiently protected before relief is granted. **Chief Justice Morawetz** offered the Canadian perspective, noting that Canadian courts have developed a framework for approving third-party releases which requires a substantial contribution by the released party, a clear connection to the insolvency, and the lack of a viable alternative. **Justice Ramesh** added that Singapore courts can grant third-party releases where a sufficient nexus exists between the release and the liabilities in question.

The panel later devoted considerable attention to the tension between arbitration and insolvency proceedings. **Judge Palma** highlighted that since a 2020 reform, Brazilian law permits arbitration to coexist with insolvency proceedings, but draws a firm line: matters relating to payment, set-off, and enforcement remain within the exclusive competence of the insolvency court. **Chief Justice Morawetz** noted that while the Supreme Court of Canada recognises the importance of party autonomy, it has held that arbitration may be set aside if it jeopardises the receiver's ability to maximise creditor recovery. **Justice Ramesh** discussed the Privy Council's decision in *Sian Participation*, and noted that Singapore's approach was aligned with the approach in Hong Kong cases such as *Lasmos* and *Guy Lam*, *i.e.* if a genuine dispute exists over a debt subject to an arbitration agreement, the winding-up petition should be stayed in favour of arbitration, unless the debtor's challenge amounts to an abuse of process.

The panel also touched on asset tracing and reverse vesting orders (RVOs**). Chief Justice Morawetz** mentioned a recent decision recognising an interim Mareva injunction, reflecting the practical need to freeze assets before they are dissipated across borders. Regarding RVOs, he cautioned that they were originally designed for situations where all parties benefited, but they have increasingly been deployed in circumstances that may prejudice certain creditors, thereby warranting appellate scrutiny.

Ultimately, the session underscored that as cross-border restructurings grow increasingly complex and fast-paced, global courts must adapt their judicial frameworks. Whether navigating third-party releases, managing jurisdictional tensions, or evaluating novel restructuring vehicles, courts worldwide remain focused on facilitating practical solutions that maximise estate value while ensuring the equitable protection of all stakeholders' rights. ■

Publications Corner

Celebrating Our Members' Latest Contributions to the Field

To Protect Their Interests: The Invention and Exploitation of Corporate Bankruptcy

by Stephen J. Lubben

How did large scale corporate restructuring (or bankruptcy) develop the way it did? Given the influence of America's chapter 11, studying its origins can provide important information about the development of reorganization worldwide.

In the United States, the standard answer to the opening question is that reorganization developed in the 1890s, as J.P. Morgan sought to protect the foreign bond investors he had previously convinced to lend to American railroads. That story fit well with the dominate law and economics trend of late twentieth century legal scholarship, inasmuch as it showed Morgan acting with the correct incentives, with little governmental encouragement.

But was it historically accurate? In my new book – *To Protect Their Interests: The Invention and Exploitation of Corporate Bankruptcy*, published earlier this year with Columbia University Press – I argue the answer is "no." I place the start of large-scale corporate reorganization about a decade earlier, and I am far less sanguine about the incentives of the founders.

That is, rather than start with the "Morganizations" of the 1890s, I look to the work of Jay Gould in the 1880s. Particularly, as explained in early Chapters, I view the Texas and Pacific's 1885 receivership as a moment when several already extant techniques came together to be used in the successful reorganization of a large railroad. This is less a genesis moment than simply a clear point of unity, in a context with economic significance. Jay Gould did not invent any new reorganization tools in 1885, he simply used existing tools in a coherent way in the case of a large railroad (the 1,500+ mile Texas and Pacific) for the first time.

I identify this case as the first truly big reorganization, and note that the primary goal was to protect Jay Gould's control of the railroad. I see a direct line between Gould and today's private equity sponsors.

The book also addresses the first big reorganization overseen by J.P. Morgan, in the 1890s, and the first statutory reorganization, the epic section 77 case of the Missouri Pacific, which ran from 1933 to 1956. The case studies conclude with the last big case under the Chandler Act: the failed 1975 reorganization of W.T. Grant. The remaining chapters cover the enactment of the 1978 Code, and more recent events like RSAs and third-party releases.

I also use this book to push against another Reagan Age chestnut, the confidence that regulatory systems work better when they solely rely on markets, rather than government, to address concerns. The current American Bankruptcy Code, enacted in 1978, is steeped in this mentality. And certainly, the New Deal corporate bankruptcy system that it replaced sometimes did not work very well. But did the Bankruptcy Code, and its chapter 11, go too

[1]***Harvey Washington Wiley Chair in Corporate Governance, Seton Hall University School of Law, Newark, New Jersey***

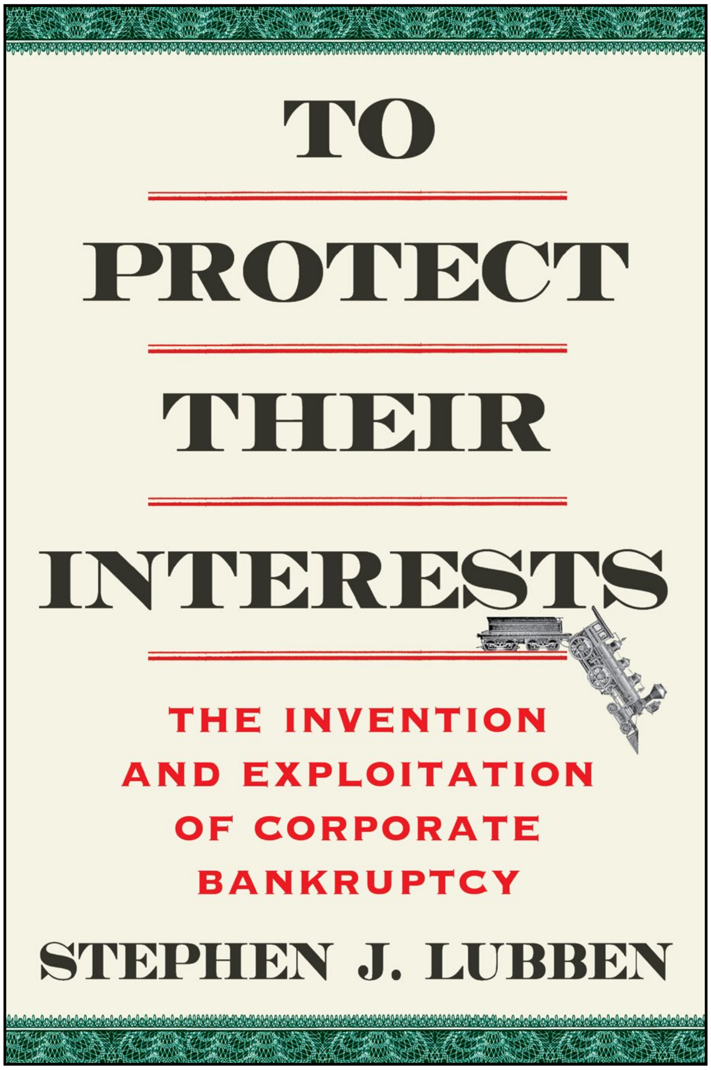
far in the deregulatory direction? That is, did the rush to trash the New Dealer's inelegant solutions reopen the door to the real problems that they had identified? I suggest the answer is "yes."

Chapter 11 has undoubtedly become extremely economically important. The chapter 11 cases of Lehman Brothers, Washington Mutual, J. Crew, Sears, Enron, Owens Corning, Pan Am, General Motors, Chrysler, United Airlines, Texaco, Neiman Marcus, and Pacific Gas & Electric (twice), all attest to the central role of corporate bankruptcy in modern America.

The predominate explanation for corporate bankruptcy is that chapter 11 exists to promote the efficiency of the American economy. By providing an agreeable structure for addressing overindebted companies, chapter 11 reduces the finance costs of all companies. At its best, the common wisdom is to view chapter 11 as a government provided framework for negotiation that protects the American economy from the failure of big firms. Chapter 11 is often painted as a kind of "win-win," in which everyone benefits from improved capital markets.

This understanding of business bankruptcy is also rooted in the prevailing popular history which (as noted) designates J. Pierpont Morgan as the craftsman of the modern system, rehearsing that in the 1890s the financier established the deal-based format that we still use today. The consensus view adopts Morgan's own framing of his firm's role as leading a noble effort to protect bondholders from the depravations of corporate insiders. The acceptance of this account has the practical effect of dismissing the reform efforts of New Dealers, who moved to replace the nineteenth century restructuring process with a new statute, while also legitimizing the current chapter 11 system (modeled on the nineteenth century form), which features judicial deference to insider negotiated deals.

In the book, I instead argue that corporate restructuring has always been about buying



consent from those who could stop you, and imposing your will on those who could not. That is, corporate bankruptcy is mostly about control. And while the New Dealers might have been misguided in their remedies, they correctly identified key problems with the roots of modern corporate restructuring that persist to this day. Only by understanding the history of corporate restructuring – stripped of the mythology of the magnanimous J.P. Morgan, putting down his cigar to rescue pitiful, oppressed English bondholders – can we understand the reasons for the defects of today's chapter 11, which recent commentators have deemed "lawless."

Corporate restructuring indeed evolved from a lawless origin. It was designed by Jay Gould not as the efficient bondholder protection

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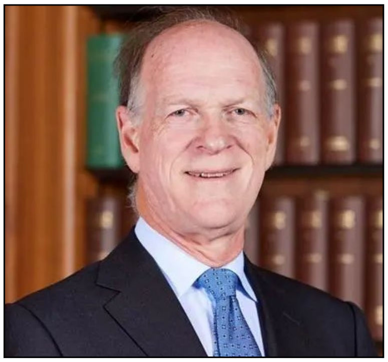
Interview Segment: UNFIIILTERED
Featuring Lord David Richards of Camberwell and former Justice Geoffrey B. Morawetz



We are pleased to present the fourth episode of UNFIIILTERED—a talk show in which our hosts, Dr. Robert Hänel and Steve Golden (NextGen Class X), interview a pre-eminent restructuring professional on both the professional and personal aspects of their life and career. We were honored to be joined by Lord David Richards and former Justice Geoffrey B. Morawetz.

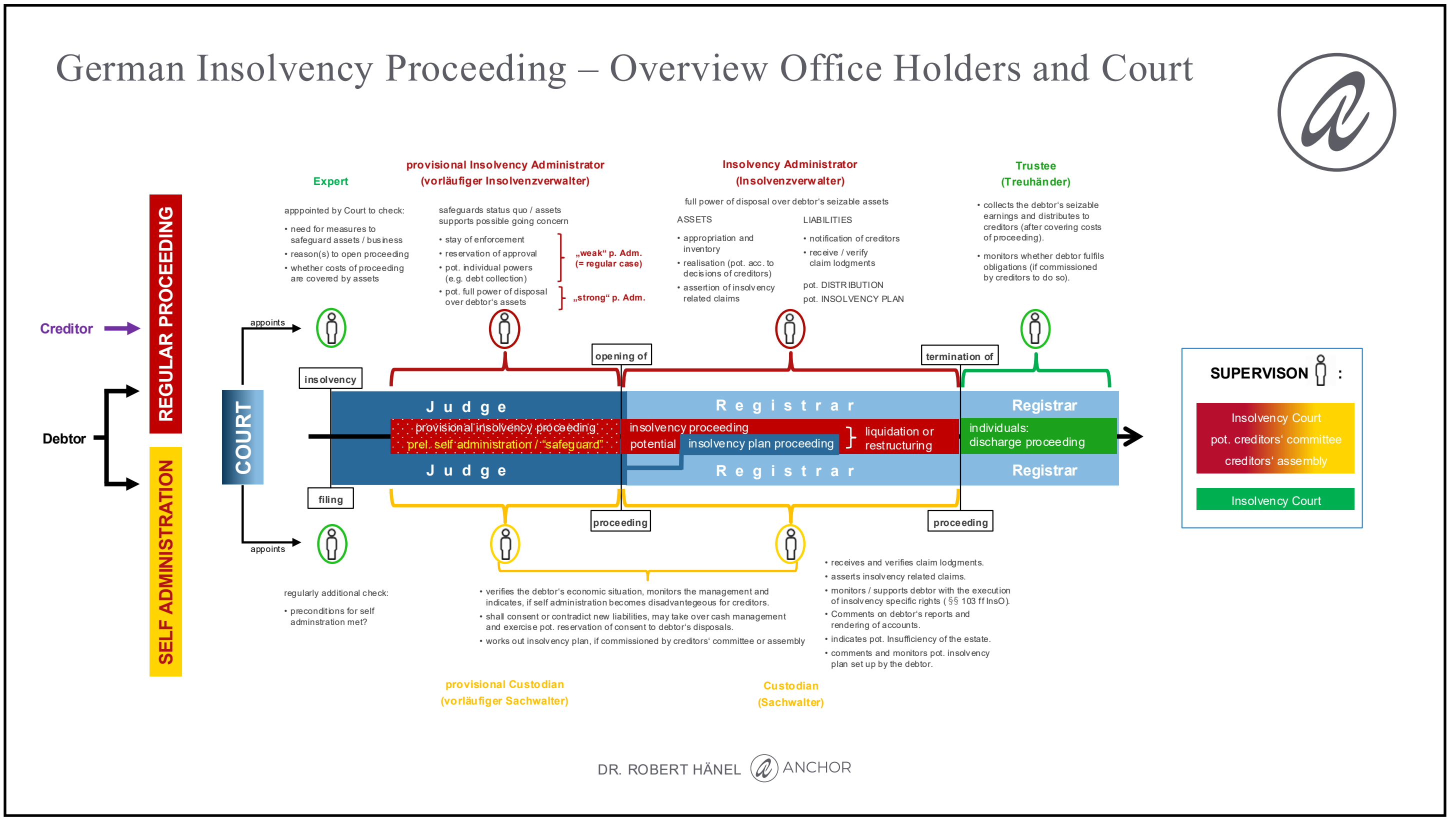
Lord David Richards is a highly respected jurist with over five decades of experience at the intersection of company law and corporate insolvency, first as a leading practitioner and later as one of the most influential insolvency judges in the United Kingdom. He served as a Justice of the Supreme Court of the United Kingdom from 2022 until his retirement in June 2026, capping a judicial career that began in 2001 and included appointments as a High Court Judge in the Chancery Division and, from 2015, as a Lord Justice of Appeal. Lord Richards has played a significant role in shaping international insolvency practice from the bench. He chaired the UK's Insolvency Rules Committee from 2005 to 2015 and served as co-chair of the International Insolvency Institute's Judicial Committee from 2012 to 2019, helping build cooperation among insolvency courts worldwide. In addition to his judicial work, he has been recognized throughout his career as a leading authority on cross-border restructuring and continues to be a sought-after voice on the evolution of insolvency law internationally.

The Honourable Geoff Morawetz is a restructuring authority with over two decades on the bench, following 25 years as a leading insolvency and restructuring lawyer in private practice. He served as Chief Justice of the Superior Court of Justice of Ontario from 2019 until his retirement in May 2026. Notable engagements include presiding over the insolvency proceedings of three major Canadian tobacco companies, which culminated in a landmark $32.5 billion settlement for creditors, among many other high-profile restructuring matters. He has advised the Canadian Delegation to UNCITRAL's Insolvency Law working group since 2008 and chairs the Judicial Insolvency Network, which fosters cooperation among courts around the world on cross-border insolvency and restructuring matters. He is a Fellow of the Insolvency Institute of Canada and the American College of Bankruptcy, and a named author of Bankruptcy and Insolvency Law of Canada and editor of the Canadian Bankruptcy Reports. ■

Watch the interview on Youtube

GRAPHIIIX

This segment is intended for graphical representations of insolvency related topics or overviews. The graphic below, prepared by [Dr. Robert Hänel](), provides overview of the responsibilities of the courts and office holders in German insolvency proceedings. This is an open segment. If you would like to contribute a graphic from any jurisdiction around the world for a future issue, please contact: ccschnapp@iiiglobal.org. ■



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View the interactive version of the graphic

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fore, the focus is on examining whether a reciprocal relationship exists. The BVI Bankruptcy Act explicitly stipulates that its courts shall provide full assistance to foreign bankruptcy proceedings, refusing assistance only where such assistance would be contrary to public policy. Furthermore, the BVI courts have confirmed in their request letters that, based on considerations of international comity and the promotion of the interests of private international law, they will actively accept equivalent requests from Chinese courts; Furthermore, although there is no precedent of the BVI courts recognizing Chinese bankruptcy judgments, there is also no record of them refusing to recognize Chinese civil, commercial, or bankruptcy rulings. Combined with the Supreme People's Court's current lenient stance on the application of the principle of reciprocity, the court has departed from the traditional strict requirement of factual reciprocity and presumed that a legal relationship of reciprocity exists between China and the BVI regarding the recognition of cross-border bankruptcy orders, thereby satisfying this requirement.

D. Whether the recognition and enforcement of the bankruptcy order at issue would violate the fundamental principles of Chinese law or undermine national sovereignty, security, and the public interest

Based on the facts of this case, the court determined that the proceedings in which the BVI court issued the bankruptcy order were lawful and fair, and that creditors within China were afforded equal opportunities to participate in the bankruptcy proceedings. The court concluded that recognizing the bankruptcy order would not undermine China's national sovereignty, security, or the public interest, nor would it violate the fundamental principles of Chinese law, and that no public policy exception applied. Furthermore, this case also involved the scope of Liquidator Y's duties within China. The court, referring to the provisions on the statutory duties of administrators under Article 25(1) of China's Enterprise Bankruptcy Law and in conjunction with the provisions on the powers of liquidators under relevant BVI laws, clearly defined the scope of Y's duties. Upon review, the scope of duties applied for by Y did not exceed the boundaries of the duties of administrators as prescribed by China's Enterprise Bankruptcy Law; therefore, it was granted in accordance with the law.

In summary, having determined that all four core requirements were met and having clearly defined the scope of the liquidator's duties, the court ruled to recognize the bankruptcy order issued by the BVI court in accordance with the law.

III. Typical Significance

In the absence of bilateral or multilateral treaties governing cross-border bankruptcy cooperation, this case draws upon the spirit of consensus regarding "presumed reciprocity" as articulated in Article 7 of the Nanning Statement. Specifically, where no precedent exists in the courts of a foreign jurisdiction for refusing to recognize and enforce a Chinese judgment on the grounds of a lack of reciprocity, a reciprocal relationship may be presumed within the scope permitted by domestic law. Through this presumption of legal reciprocity, mutual recognition of cross-border bankruptcy orders was achieved despite the absence of prior British Virgin Islands (BVI) precedents recognizing Chinese bankruptcy judgments. This provides a valuable practical model for handling cross-border bankruptcy matters involving offshore jurisdictions. It further demonstrates that, in the absence of a treaty basis, the focus of legal argumentation may be shifted toward whether the laws of the foreign jurisdiction reserve space for recognition, rather than passively awaiting prior recognition from the other side.

Furthermore, this case effectively opens a channel for bankruptcy assistance between the Mainland and offshore centers such as the BVI,

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extending cross-border judicial cooperation beyond the Mainland-Hong Kong framework to a broader range of offshore jurisdictions. By clarifying the legal status and the specific boundaries of the duties of foreign liquidators in the Mainland, the case overcomes a long-standing practical bottleneck where foreign administrators were unable to take over or dispose of assets within the Mainland. This reduces institutional friction and costs associated with cross-border liquidations and enhances the efficiency of global asset recovery and unified disposal. ■

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tice between the two jurisdictions. In Re Jiangsu Shunchuan Shipping Development Co Ltd [2020] SGHC 140, the Singapore High Court recognized bankruptcy proceedings opened by the Nanjing Intermediate People's Court in Jiangsu Province, marking the first recognition of a Mainland Chinese insolvency proceeding by a Singapore court. In 2021, the Xiamen Maritime Court recognized and assisted a Singapore insolvency proceeding in Re Xihe Holdings Pte Ltd, marking the first reported case in which a Chinese court recognized a foreign insolvency proceeding outside the framework of a treaty arrangement. Singaporean courts have shown a more openness toward insolvency proceedings commenced in Mainland China. On 11 April 2025, the Singapore High Court granted recognition and assistance to the restructuring proceedings of Jiangsu Delong Nickel Industry Co., Ltd., a major Chinese industrial group undergoing reorganization proceedings before the Xiangshui People's Court in Jiangsu Province. Although the number of reported cases remains limited, these decisions are highly significant. All three cases were decided in the absence of a bilateral insolvency treaty, a Model Law framework, or any formal judicial cooperation arrangement between China and Singapore.

The Singapore - Indonesia MOU provides a useful point of reference, but a China Singapore framework would require important modifications. China's judicial structure is considerably more centralized than those of many other jurisdictions. Any formal arrangement would likely require the involvement and support of the Supreme People's Court. As demonstrated by the Mainland China - Hong Kong mechanism, implementation through designated pilot courts could provide a manageable and effective model. Currently, Article 5 of China's Enterprise Bankruptcy Law (EBL) largely remains the principal statutory basis for recognition and assistance in cross-border insolvency matters. Under this Article, issues relating to public policy, judicial sovereignty, national security, and protection of domestic stakeholders would inevitably require careful consideration. Accordingly, a China - Singapore arrangement would likely contain more detailed safeguards and reservation clauses than some existing cooperation instruments.

A future China - Singapore MOU could draw valuable lessons from this experience. Potential elements might include designated courts, direct court-to-court communications, information-sharing protocols, recognition of insolvency officeholders, coordinated management of parallel proceedings, and procedural guidelines for complex restructuring cases. Such mechanisms would promote cooperation while respecting the legal and institutional characteristics of both jurisdictions.

V. Concluding Remarks

The Singapore - Indonesia Insolvency MOU is significant not merely because it establishes cooperation between two neighboring jurisdictions. Its broader importance lies in what it

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reveals about the future direction of cross-border insolvency cooperation in Asia. For China and Singapore, the implications are particularly noteworthy. Existing judicial engagement, growing economic interdependence, and a developing body of cross-border insolvency jurisprudence provide a solid foundation for deeper cooperation. Although institutional and legal differences would require careful accommodation, these challenges appear manageable, particularly in light of the experience gained through the Mainland China–Hong Kong insolvency cooperation mechanism.

The future of Asian cross-border insolvency cooperation will undoubtedly continue to be influenced by the UNCITRAL Model Law. Yet Asia's legal diversity suggests that legislative harmonization alone is unlikely to provide all the answers. Flexible, pragmatic, and institutionally sensitive forms of judicial cooperation will remain essential. In this respect, the Singapore - Indonesia Insolvency MOU may represent more than a bilateral experiment. It demonstrates how judicial cooperation can bridge differences in legal systems and facilitate practical solutions to increasingly complex cross-border insolvency challenges. For China and Singapore, whose economic ties continue to deepen and whose courts have already begun to engage with one another in insolvency matters, the MOU provides a valuable point of reference.

Whether a formal China - Singapore insolvency MOU ultimately emerges remains uncertain. What is clear, however, is that the region is entering a new phase in which judicial cooperation is becoming an increasingly important complement to legislative harmonization. The Singapore - Indonesia initiative may therefore offer not only lessons for China and Singapore, but also a glimpse of the future architecture of cross-border insolvency cooperation in Asia. ■

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More broadly, bankruptcy courts considering section 1506 challenges to recognition of foreign proceedings remain focused on the overall fairness of the foreign insolvency regime rather than the specific conduct underlying a 1506 objection.[19]

However, many of these decisions leave open whether courts consistently will recognize and enforce foreign plans that contravene other fundamental principles of the Bankruptcy Code.

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while preserving certain rights of the objecting party, the dispute was later settled); *but see* Docket No. 72, Objection to Motion for Recognition of Foreign Proceeding and Request for Certain Related Relief, 29–39 (arguing that monetization of cannabis-related assets would violate public policy); *see also, e.g., Arm Ventures, LLC*, 564 B.R. 77, 86 (Bankr. S.D. Fla. 2017) (holding that plan that proposed to rent space to a medical marijuana business violated Bankruptcy Code section 1129, requiring that a chapter 11 plan is “proposed in good faith and not by any means forbidden in the law").

[19] *See In re Prince Glob. Holdings Ltd.*, No. 26-10769 (MG), 2026 WL 1694259 (Bankr. S.D.N.Y. June 11, 2026) (overruling section 1506 objection to recognition of BVI proceedings because the objector failed to demonstrate that *ex parte* communications between the insolvency administrator and the BVI Attorney General “jeopardize[d] the fairness and impartiality” of the proceedings and conceded that the BVI Insolvency Act is generally fair); *see also Wincurza v. Scott* (*In re Canterbury Securities, Ltd.*), 675 B.R. 109, 121 (S.D.N.Y. 2025) (affirming recognition of Cayman Islands proceeding that was fair and afforded objectors due process despite section 1506 challenge based in fraud allegations that had been dismissed by the foreign court and noting that section 1506 is not intended as a vehicle by which creditors may collaterally attack foreign court rulings).

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Looking Ahead

Chapter 15 remains a valuable mechanism for multinational debtors seeking U.S. protection and implementation, as well as for those seeking to extend more potentially favorable foreign insolvency regimes to U.S.-based companies.[20] As such boundaries continue to be pushed, however, public policy considerations may continue to evolve. ■

[20]*See, e.g., In re Fossil Group, Inc.*, No. 25-90525 (Bankr. S.D. Tex. 2025) (recognizing a U.K. restructuring plan under chapter 15 to implement a targeted financial restructuring for a U.S. public company); *In re New Fortress Energy Inc.*, No. 26-11268 (MG) (Bankr. S.D.N.Y. June 2026) (granting chapter 15 recognition to a U.K. restructuring plan for companies with U.S.-based parent).

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under transparent procedures to ensure that Venezuela receives fair value for such development rights.

Venezuela could also consider debt-for-nature or climate swaps, which have been used in recent restructurings involving countries such as Barbados, Belize, and the Seychelles. These instruments could contribute both to debt reduction and environmental protection and may be particularly relevant given Venezuela's rich biodiversity and environmentally significant ecosystems. With many Venezuelan ecosystems under threat from illegal activities and weak enforcement, such swaps could be especially important today.

But debt-for-nature/climate swaps are complex, multi-step and multi-party transactions that can be difficult and costly to structure and execute, and therefore the parties to a Venezuelan restructuring would want to carefully weigh the costs and benefits of such swaps. Moreover, effective implementation of these swaps requires robust monitoring and governance systems to ensure the sovereign's compliance with conservation commitments and its proper use of funds earmarked for conservation. The parties to any Venezuelan debt-for-nature/climate swap would want these elements firmly in place at the time of implementation of these swaps.

Q: What role might value recovery instruments (VRIs) play in a Venezuelan debt restructuring?

A: Value recovery instruments (VRIs) provide creditors with additional payouts when a sovereign's economic performance exceeds baseline assumptions. Even if a sovereign adopts conservative projections to reduce the risk of a future default, creditors can share in the upside if the sovereign's actual performance is stronger than expected.

GDP-linked warrants are the most widely used form of VRIs and have appeared in several major restructurings, such as Greece in 2012 and Argentina in 2005 and 2010. Under these instruments, creditors receive supplemental payments if economic growth exceeds agreed benchmarks.

For Venezuela, GDP-linked warrants could play a role, but oil-linked warrants may be even more relevant given the central importance of the hydrocarbon sector to the Venezuelan economy. Traditional oil-linked warrants rely solely on global oil prices, but in the Venezuelan context price alone is an imperfect proxy for Venezuela's repayment capacity, especially given the collapse of the country's domestic oil production.

A more suitable trigger, in my view, would be total oil revenues—global oil prices multiplied by domestic production volumes—which would more closely reflect Venezuela's capacity to generate income and would better align creditor recoveries with Venezuela's ability to repay its debt.

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VRIs, however, have generated serious disputes over whether benchmarks have been met and how payouts under these instruments should be calculated. Successful implementation of oil-linked warrants in a Venezuelan restructuring would require several prerequisites, including credible data, transparent reporting, and clear calculation procedures

Q: Venezuela's debt restructuring is often compared to the Iraqi restructuring of the mid-2000s. Is that a valid comparison?

A: The Iraqi restructuring offers useful points of comparison, but it should not be treated as a blueprint for Venezuela. While there are similarities between the two situations, the differences may ultimately prove more significant.

Both Iraq and Venezuela are oil-producing, middle-income economies that experienced profound economic collapse, Iraq as the result of a war and Venezuela as the result of an economic crisis. In the Iraqi situation, the US government and its allies saw debt relief as part of a broader effort to stabilize Iraq's finances and support its recovery. In my view, Venezuela and the relevant stakeholders will also need to recognize the linkage between debt restructuring and economic reconstruction, and in Venezuela's case, these two processes should proceed in parallel.

As Iraq entered its restructuring in 2004, it faced significant uncertainty regarding the future price of oil, which would directly affect its projections regarding future total oil revenues. Venezuela faces similar uncertainties today.

Iraq had a creditor body that included thousands of commercial creditors, many of whom were believed to have weak documentation supporting their claims. In the Iraqi restructuring, the parties established a comprehensive debt reconciliation process overseen by a Big Four accounting firm. In light of questions about the validity and amount of certain categories of Venezuela's debt, Venezuela will likely need a similarly robust debt reconciliation process.

Yet there are major differences between the Iraqi and Venezuelan situations. In the first place, the Paris Club played a central role in Iraq's restructuring, enabling the US government under the George W. Bush administration to secure a Paris Club agreement that provided an incredibly steep haircut of approximately ninety percent on an NPV basis. The US then used the Paris Club deal as a template for negotiations with commercial and non-Paris Club bilateral creditors, such as the major Gulf countries. By contrast, Venezuela's major bilateral creditors are China and Russia. China is not a Paris Club member, and Russia, although a Paris Club member, has previously managed its Venezuela claims through bilateral arrangements outside the Paris Club framework. As a result, a Paris Club-driven strategy would not be a realistic option in a Venezuelan restructuring.

A second difference concerns a UN Security Council resolution adopted at the time of the Iraqi restructuring that protected Iraq's oil- and gas-related assets and the revenues generated by oil and gas sales from creditor enforcement actions such as attachment. This deprived potential holdouts of meaningful leverage and in effect left them with few realistic options other than accepting a deal with deep haircuts that they otherwise might have rejected.

In view of heightened US tensions with China and Russia, those two countries, as Venezuela's largest bilateral creditors as well as permanent members of the Security Council, would almost certainly exercise their right to veto any comparable resolution designed to protect Venezuelan oil- and gas-related assets from creditor enforcement. That outcome would be even more likely if the resolution were proposed by the US. ■

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device of myth, but instead as a way for those in power to manipulate the legal system to retain power. Morgan embraced Gould's system and popularized it with good "spin." We see the same basic form at work in today's private equity-backed chapter 11 cases. Continuing to attribute the goals of chapter 11 to Morgan and his supposed good intentions represents little more than a blind acceptance of his skillful public relations.

I thus offer a critical look at the DNA of a system of vital economic importance. This widely accepted story of corporate bankruptcy allows a sheen of "for the good of the people" to be applied to reorganization. In fact, the actual origin story exposes that it was developed as a way for power to maintain power. Only by acknowledging the true roots of the system can we understand its problems and how it might be fixed.

Too often blind faith, an outgrowth of the Morgan myth, is weaponized to dispel criticism aimed at the corporate bankruptcy system we have. When critical judgment raised against the current system is scorned as "populist," scholars and practitioners adopt a dangerous myopic stance. By understanding that today's embrace of "deals" has its roots in Jay Gould's quest to retain control, we can see the need for more judicial skepticism about the deals that are presented to them – even those with marvelous ostensible support – and more understanding of what is really going on.

Indeed, one large policy question looming over the entire field is whether it makes sense to provide public support (through courts and the power of law) to maintain what amounts to a dueling ground. We may be largely indifferent to the question of "who wins" as between Hedge Fund A and Private Equity Fund B, but why should taxpayers pay for the arena for such clashes? And who precisely gets hurt in these clashes? The historical approach I adopt in this book helps make these questions – and their answers – plain. ■

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a "tariff case" is nearly impossible when tariff pressures coincide with interest rate stress and other distress drivers. Guilherme França pointed to Brazil's agribusiness and chemical sectors—Raízen's distress was not caused by tariffs, but the overlay made it harder to navigate. Sayuri Tago described Japanese automotive and export-dependent companies struggling with unpredictability down the supply chain, with some, like Mitsubishi, expanding sales channels outside the U.S. while sake makers and confectionery companies move production stateside.

Panelists agreed that the persistent uncertainty ("even once a deal is reached, is it still a deal?") is reshaping corporate strategy. Companies are second- and third-sourcing, stop-gapping with private credit, and investing in "friend-sourcing." Data from Octus showed only 12 companies explicitly citing tariffs in restructuring filings this year, but panelists cautioned the real number may be far higher when indirect effects are counted.

State-Owned Enterprises in Distress

The fourth panel tackled a niche but increasingly important topic: the restructuring of state-owned enterprises (SOEs), which collectively hold an estimated $45 trillion in assets under management globally. As panelists noted, SOEs occupy an awkward space, not quite sovereign, not quite private, and their distress rarely fits the standard insolvency playbook.

Andrew Kissner discussed Puerto Rico's PREPA restructuring under the PROMESA law, highlighting how the absence of an insolvency backstop deprived the process of a credible inflection point. Without the threat of formal

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insolvency, stakeholders lacked the usual incentive to compromise. Liam Faulkner and Dr. Oriana Casasola examined how the governing law of an SOE's debt shapes the tools available, including whether choosing foreign governing law can be strategically advantageous. Francesca Burigo explored the European state aid dimension: SOE rescue packages must avoid constituting prohibited state aid, constraining governments' ability to simply bail out distressed entities.

Erik Torjusen offered his own set of principles for SOE restructuring, emphasizing that governments should stay out of both the operation and rescue of SOEs to safeguard against political influence, though the panel debated whether this is genuinely achievable outside a handful of wealthy nations. The discussion also addressed the "expectation gap": creditors often assume an SOE will never be allowed to fail, which distorts pricing and risk assessment. Ukraine's state road agency, which successfully persuaded creditors to accept a haircut, and national airline carriers were cited as illustrative examples.

Battle of the Brilliant Ideas

The technical component of the day closed on a lighter note with the "Battle of the Brilliant Ideas", in which each panelist championed a single proposed reform to their jurisdiction's insolvency framework, with the audience voting for the most persuasive pitch.

Nienke Lillington proposed reforming certain liquidator powers so that they are challenged ex post rather than requiring prospective court sanction, in order to keep costs down and drive efficiency. Richard Woodsworth delivered an incisive critique of Hong Kong's scheme process for assessing the "relevant alternative." He argued that the current system, in which the debtor appoints the independent valuer, produces reports of limited utility at best and "a recipe for litigation" at worst. His fix was elegantly simple: have the court appoint the

valuer at a preliminary step, ensuring genuine independence, allowing creditor consultation, and front-loading any disputes.

Jason Hufendick championed "funded-debt-only restructurings" as a way to manage Chapter 11 costs, arguing that the lack of such a mechanism has driven the rise of LMEs, in which companies "contort themselves" to restructure capital structures outside of court. This sparked a lively debate about whether removing court oversight might be dangerous, particularly from an emerging-markets perspective. Rachel Nicholson made the case for introducing cross-class cram downs to Canada's CCAA, noting that the mechanism already exists in U.S. Chapter 11 and the UK's Part 26A. She argued it would reduce companies' reliance on reverse vesting orders while retaining safeguards through valuation and court scrutiny.

The audience voted enthusiastically, and Jason Hufendick's suggestion of "funded-debt-only restructurings" won the most votes though, of course, the restructuring and insolvency industry was the real winner on the day!

Looking Ahead

The day concluded with the induction of the 2026 NextGen Class, who were presented with their certificates by III Chair **Mark Bloom** and III President **Professor Stephan Madaus**, followed by a champagne toast, generously sponsored by Cooley LLP, to commemorate 15 years of the III NextGen Program. Indeed, the

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2026 NextGen Day illustrated the spirit of the NextGen Program: practitioners navigating cross-border restructuring and insolvency in uncertain times, proposing creative solutions, and engaging in the kind of cross-jurisdictional dialogue that makes the III's NextGen Program a vital incubator for the profession's future leaders. ■

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demonstrate that outcomes often depend on the precise drafting of credit agreements rather than broad equitable principles. The panel noted that courts continue to scrutinize concepts such as "open market purchases," sacred rights, and non-pro rata exchanges, while disputes surrounding cooperation agreements, antitrust theories, and lender good-faith duties continue to expand. Canada generally places significant emphasis on the contractual bargain reflected in the loan documents, while the Netherlands imposes additional scrutiny through avoidance principles and potential management liability. Thus, although LMEs are frequently marketed as a cheaper alternative to Chapter 11, subsequent litigation can significantly erode any anticipated cost savings.

Even so, the panel cautioned against concluding that these characteristics necessarily render LMEs ineffective. The absence of operational restructuring and extensive litigation do not necessarily mean that LMEs and prepacks should always be viewed as failures. While the common perception of LMEs is that they serve as a mere precursor to a formal, in-court restructuring process, they can be highly effective in certain circumstances, and many transactions are intentionally designed to position stakeholders for a subsequent Chapter 11 or comparable restructuring.

Indeed, the paradigmatic "good" LME is a transaction that gives a debtor breathing space to manage short-term financial insolvency in response to macroeconomic or industry events, or even prepare for an orderly restructuring or wind-down. They can also attract investors who are more interested in the debtor's performance and willing to provide new money in the future. For participating lenders, LMEs almost invariably have strong upsides by providing short-term economics and longer-term leverage for future distress situations. Nevertheless, the speakers agreed that these tools are most effective when they provide meaningful time to implement operational reforms rather than merely postpone financial distress. Successful restructurings ultimately require addressing both the balance sheet and the underlying business, while carefully managing litigation risk and preserving fairness among competing creditor constituencies. ■

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bankruptcy filings and other conflicted transactions. Germany was described as taking a more fragmented approach, with authority divided among management, insolvency administrators, creditors, and courts depending on the procedure employed. Under a traditional insolvency proceeding, control shifts significantly away from shareholders, while debtor-in-possession and preventive restructuring proceedings allow management to retain a greater role. Historically, Brazilian debtors have enjoyed substantial procedural control, although recent reforms have begun to increase creditor participation through mechanisms such as creditor-sponsored competing plans.

The next discussion focused on plan confirmation and shareholder treatment. The United States continues to apply the absolute priority rule, under which shareholders generally cannot retain value unless creditors are paid in full or equity contributes new value. Germany has largely adopted a similar approach, while permitting limited exceptions within its preventive restructuring framework. The United Kingdom's restructuring plan regime does not incorporate a strict absolute priority rule, a feature that continues to play an important role in shaping negotiations between shareholders and creditors. In Brazil, recent reforms have introduced greater opportunities for creditors to influence restructuring outcomes, reducing the leverage historically enjoyed by shareholders.

The panel concluded that shareholder influence is often strongest before formal proceedings commence, but that control tends to shift as restructuring progresses. The extent and durability of shareholder power ultimately depend on the design of the applicable restructuring regime, including filing obligations, governance rules, and plan confirmation requirements. As cross-border restructurings continue to evolve, understanding these differences remains essential for practitioners navigating increasingly complex international restructurings. ■

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aversion to litigation itself, with a strong preference for parties to resolve disputes privately. Litigation is often viewed as greedy and unethical. Because of confidentiality and lack of market data, it is difficult to comprehensively assess the funding market. There is no specific legal prohibition on champerty in Japanese law; however, the Attorneys Act prohibits the assignment of claims and prevents non-lawyers from providing legal services. Furthermore, parties typically pay their own fees, and there are usually no cost orders. The most prominent publicly confirmed example of litigation funding in Japan is the Toshiba case, where a European funder supported the legal costs of an institutional investor group in a damages suit arising from a 2017 accounting fraud.

It is also unique in that there are no restrictions on contingency fees and lawyers can operate on a 100% success-based model, though it is not widely popular as court approval is expected similarly to the other regions discussed.

Whereas the ethical considerations surrounding litigation funding was not the subject for debate at this panel, it was nevertheless clear from the discourse how truly difficult it is to balance the interests in civil and commercial proceedings. Insolvency, being a proceeding *in rem*, is considered an exception, and the Courts have the enviable task of determining whether and in which cases funding ought to be permitted. In summary, litigation funding exists on a broad spectrum across the Asia-Pacific region. From Australia's proactive government involvement to Japan's cultural aversion and the cautious liberalisation in Hong Kong and Singapore, navigating this space requires a nuanced understanding of both local laws and entrenched cultural norms. ■

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Communications Committee

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Learn more about the Communications Committee here.

Submissions for the next newsletter should be made online via form and are due January 31, 2027.

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