THE DIIIGEST

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INTERNATIONAL
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INSTITUTE

INSIDE THIS ISSUE

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From the Chair

By **Mark D. Bloom**
III Chair

With great excitement I offer my first column as Chair of III. Excitement over the challenges and opportunities that await us as an organization. Excitement over the prospect of working closely with my good friend and our President **Stephan Madaus** and the rest of the Executive Committee and Board. Excitement over building and advancing on the solid foundation and strategic plan set out for us by my esteemed predecessor and friend **Mr. Justice Kannan Ramesh** and the strong and visionary leaders who preceded him. But mostly excitement over the excitement – the unmistakable enthusiasm at all levels of III coming off our outstanding Annual Meeting and Legendary Dinner in São Paulo, and the active engagement of our leadership at the combined meeting of the outgoing and incoming Boards of Directors on the day following its conclusion.

If there is a single objective for my term as Chair it is to establish and ingrain the identity of III – so as to distinguish and differentiate us from the many other fine organizations in the global and regional insolvency worlds as an active member organization; to continue and expand our meaningful contributions to the thought leadership of our profession worldwide; to harness the energy so many of us shared in São Paulo to engage and exploit (in a good way!) the talent and diversity of our elite membership; to promote our "brand" and visibility in both developed and developing countries around the globe; to communicate with and provide opportunity for our members and NextGens to contribute to the activities of the organization; and to establish our unique value proposition as a means of providing a solid financial foundation from which to realize these many objectives.

I am privileged to serve for one year as Chair at what I see as the high point of activism and enthusiasm over the 25-year history of III. We have an exceptional and engaged leadership team, the most distinguished global membership of any organization in the legal and business profession, a dynamic and highly engaged cohort of NextGen members, and an unparallelled opportunity for growth in our numbers, profile, financial standing and influence around the world. I look to all of you for support of and contribution to our exciting mission as an active member organization – one whose members and NextGens don't just join but to which they devote their time and considerable talents for the good of our profession and the global communities we serve.

And finally, to end this column on the saddest of notes. Elsewhere in this issue of The DIIIGEST you will find a tribute to our long-time member **Patrick Ang** of Singapore, who passed away at the young age of 61 just as many of us were returning home from São Paulo. Patrick was a dear friend of III, and to me and so many of our other members – one of the most admired, best-loved and instantly recognizable figures in the global insolvency world. As his countless professional accomplishments have been chronicled in the many news items reporting his passing, I'll focus briefly here on the personal qualities that were at the foundation of his relationships with me and so many others who are so deeply affected by his passing.

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President's Column

By **Stephan Madaus**
III President

The reader of this DIIIGEST might notice that it features columns from both the Chair and the President. It reflects a modification in the leadership structure of our III, which was introduced with the revised bylaws at our annual meeting in São Paulo. Under this structure, the leadership of our Institute consists of the Chair and the President, who serve for one year in these roles before the President becomes the new Chair and a new President is elected. This shared leadership structure enables us to share responsibilities and expertise in close cooperation from generation to generation while maintaining a leadership term of two years. I am truly honored and very much looking forward to working with my good friend and our Chair **Mark Bloom** when serving as the President of our unique institute in the coming year. And I am truly grateful to our predecessors, notably our friend **Justice Kannan Ramesh**, for their visions and reforms of the past years.

Electing a full-time academic to a leadership role in a global professional organization is unique and special in our field. It proves that our III is more than an organization that collects the leaders in our field globally. It is a community bringing together academics, judges, practitioners, government officials, and regulators to interact as experts on equal terms in order to learn from each other and to assist in the further development of law and practice. Becoming a member of the III is more than just a recognition of excellence awarded by peers. It is an invitation to participate in relevant debates across regions and the globe, across professions and generations. And it provides the opportunity to spark change and make a difference.

To foster such debate, III will organize more regional meetings in the coming months. In the UCC area, the annual regional conference is scheduled to take place in Miami on January 20-21, 2026. The UCC Committee is also exploring the possibility of organizing an event in Toronto in conjunction with the IBA's annual meeting in November. The Latin American Regional Committee will likely hold its next meeting in Mexico City. In the Asia Pacific region, a meeting is envisioned in Kuala Lumpur, tentatively set for September, and the committee is considering additional regional meetings. The EMEA Committee is working on a program set for early December in Madrid. If you are inspired and would like III to come to your region, please reach out to us.

The ambition to enable our members to be more involved and better informed also motivates the initiative to hold quarterly Zoom meetings in the future. The first will soon be announced for September and will highlight current projects of the World Bank, most notably on climate and environmental challenges in developing countries. The subsequent meeting is planned for December and will report on the UNCITRAL Working Group V meeting held in Vienna earlier that month. Invites will be sent directly to your inbox. Don't miss them.

If you are a member or a NextGen and you want to get involved in our organization even more, join in the work of our committees! You may find a number of them listed on our website. Regional committees may be the perfect starting point.

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Welcome New III Members

Majed Abdulrahman Alrasheed
Majed Al-Rasheed Law Firm, *Saudi Arabia*
He has practised for 22 years. Specialized in commercial law, Islamic banking, and organizational development across the Kingdom of Saudi Arabia. Expert in legal and financial systems, with a focus on Bankruptcy, Arbitration, and Financial Reorganization.

Jasper Berkenbosch
Partner, Jones Day,
Amsterdam, the Netherlands
Recent restructuring cases involve Selecta, Diebold Nixdorf, Mercon, and Vroon shipping. Jasper is also regularly appointed by the court as bankruptcy trustee, e.g. in Blokker, Scotch & Soda, Intertoys and Oi. Further, he is member of the expert group international insolvency law drafting a new proposal for recognition procedures in the Netherlands. Fellow and former board member of INSOL International.

Peter Bowden
Partner and co-head of Gilbert + Tobin,
Melbourne, Australia
He has significant experience advising hedge funds, financiers, banks (traditional and investment banks), insolvency practitioners, creditors and debtors on restructuring, distressed debt transactions, workouts, insolvency, distressed M&A and stressed banking transactions and international experience, including acting on numerous high-profile cross-border transactions. INSOL Fellow.

Thiago Braga Junqueira
Partner, Pinheiro Neto Advogados,
São Paulo, Brazil
He earned his bachelor of laws degree from Pontifícia Universidade Católica de São Paulo (2008), a post-graduate diploma in banking and financial markets from Insper (2015) and an LL.M. degree from The University of Chicago Law School (2017).
He is also a member of the Turnaround Management Association, Instituto Brasileiro de Estudos de Recuperação de Empresas and International Association of Restructuring, Insolvency & Bankruptcy Professionals.

Kathlene Burke
Of Counsel, Maples and Calder LLP,
Dublin, Ireland
Special situations lawyer focusing on complex, cross-border matters across Ireland, the US, the UK, and key offshore jurisdictions. Prior to relocating to Ireland, she practiced for many years in England and the United States.
She also serves as Chair of the Conference of European Insolvency and Restructuring Law (CERIL) delegation to the United Nations UNCITRAL Working Group V (Insolvency) and as Co-Chair and Director of the European Network of IWIRC (International Women's Insolvency and Restructuring Confederation).

Scott Butler
Partner, Hall & Wilcox Lawyers
Brisbane, Australia
He has practised in the restructuring and insolvency area for close to 30 years.
He is a member, and former chair, of the Insolvency and Restructuring Committee of the Law Council of Australia, a Fellow of the Australian Restructuring Insolvency and Turnaround Association and a Fellow of INSOL International.

Tony Casey
Donald M. Ephraim Professor of Law and Economics at the University of Chicago Law School
Chicago, USA
He is also the Faculty Director of the Law School's Center on Law and Finance. His research examines the intersection of finance and law, with a focus on insolvency law.
Before entering academics, Professor Casey was a partner at Kirkland & Ellis LLP.

Kwun Yee Cheung
Global Head, Baker McKenzie's Restructuring & Insolvency group and Head of the Dispute Resolution Practice Group at the China and Hong Kong offices, *Hong Kong*
Focusing on company insolvency and commercial litigation. Based in Hong Kong, her practice includes litigation and advisory work representing insolvency practitioners, corporate clients and banks on a wide range of complex disputes and insolvency and restructuring matters, including compulsory and voluntary liquidations, receiverships, corporate restructuring and schemes of arrangement. She also focuses on company law and commercial disputes, regularly advising corporate clients, shareholders and directors in relation to matters including shareholders' rights and remedies, directors' duties, joint venture disputes and unfair prejudice petitions.

Joanne Collett
Partner, Ogier's Dispute Resolution team, *Hong Kong*
With more than 23 years' experience specialising in insolvency and restructuring matters (including 13 years in Hong Kong), she regularly represents debtors, secured and unsecured creditors, shareholders, investors, directors, fund managers and insolvency practitioners regarding Cayman Islands and British Virgin Islands law with respect to a broad range of issues arising in relation to offshore entities and structures.

Tara Cooper Burnside, K.C.
Partner, Higgs & Johnson,
New Providence, Bahamas
Chair of Higgs & Johnson's Insolvency & Corporate Restructuring practice Group and Deputy Chair of the Financial Services Law & Regulation practice group.
Appointed as King's Counsel in 2023 and recognized as one of the country's leading female litigators with specialist expertise in Insolvency & Restructuring. She is consistently ranked as a leading lawyer by Chambers Global and Legal 500 Caribbean.
She has detailed knowledge of the Bahamian insolvency regime, representing clients in complex, cross-border insolvencies, and restructurings. She is also a well-established litigation lawyer, frequently involved in large commercial disputes often including a multi-jurisdictional element.
She was invited to serve as an Acting Supreme Court Judge from December 2020 to June 2021.

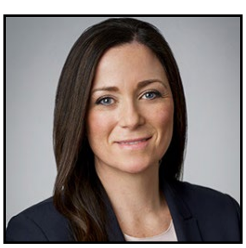
Prof. Jasnica Garašić, Ph.D.
Full professor with a tenure at the Faculty of Law of the University of Zagreb,
Croatia

She earned her doctorate with summa cum laude at the University of Hamburg (Germany) with the dissertation titled: “Recognition of Foreign Insolvency Proceedings: a Comparison of Croatian, German, and Swiss law as well as the European Insolvency Regulation, the Istanbul Convention, and the UNCITRAL Model Law on Cross-Border Insolvency” (Part I and II, Petar Lang Verlag, Frankfurt am Main, 2005).

She teaches civil procedural law, insolvency law, and arbitration law. She has been involved in the development of insolvency law in Republic of Croatia for more than thirty years and she has represented Republic of Croatia in the UNCITRAL Working Group on Insolvency Law since 2004.

Pedro de Rojas
Partner, Latham & Watkins,
Madrid, Spain
Head of the Spanish Restructuring & Special Situations practice

He leverages his deep knowledge of the evolving insolvency landscape to help client design and implement restructuring plans using the most efficient financial instruments. A recognized thought leader, he regularly speaks on insolvency topics at industry events. He is also a visiting professor at a number of Spanish universities.



Kelly DiBlasi
Partner, Weil’s Restructuring Department,
New York, USA

Her practice focuses on debtors, creditors, equity interest holders, and other parties in all areas of domestic and international restructurings and crisis management, both in and out of court. Her expertise spans a broad range of industries, including aviation, insurance, financial services, retail/consumer goods, oil & gas, and renewable energy. She has led numerous high-profile mega-cases, such as Scandinavian Airlines, Air Methods, Casino, Guichard-Perrachon S.A., Essar Steel Algoma, Waypoint Holdings, and CHC Group.

Neil Golding
Partner, Freshfields LLP,
London, UK

His work is frequently contentious in nature and often involves jurisdictions other than England, including Hong Kong, Singapore, Bermuda, the Cayman Islands, Trinidad, Barbados, British Virgin Islands and the Isle of Man.

His work regularly brings him into contact with a variety of regulators, including the FCA, PRA, ICAEW, the Financial Stability Board, The Pensions Regulator, the Insolvency Service, the Financial Services Compensation Scheme, the Financial Ombudsman Scheme, the Premier League and the Rugby Football Union.

Ferdinand Hengst
Partner, De Brauw Blackstone Westbroek,
Amsterdam, the Netherlands

He heads the firm's restructuring & insolvency team, specializing in international debt restructuring, restructuring litigation, bankruptcy proceedings, corporate recovery and emergency funding. He has extensive expertise in the areas of corporate governance, fiduciary duties and liability considerations around funding and scenario planning.

He is also consistently Chambers ranked, a Fellow of INSOL International and head of its Technical Research Committee. He is a frequent lecturer at several universities, and writer on insolvency-related topics.

Rafael Klotz
Principal at The Brattle Group, *Boston, USA*

He serves as a testifying and consulting expert in bankruptcy, restructuring, distressed M&A, and intellectual property disputes. He brings over two decades of global experience across legal practice, distressed investing and lending, and asset dispositions, having led transactions and restructurings in more than 40 countries. Prior to joining Brattle, he was a senior executive at a global distressed investment firm, where he helped pioneer valuation models now widely used in IP-backed financing and specialty lending markets.

Audrey Naa Dei Kotey
Managing Partner of Audrey Grey, *Ghana*

Leading expert in corporate and commercial law in Ghana, with a strong focus on insolvency and corporate restructuring.
She has played a pivotal role in drafting and implementing key legislation, including the Companies Act, 2019 (Act 992), the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) and its legislative instrument, and currently consults for the International Finance Corporation (IFC)on insolvency reforms.
She is also a Chartered Accountant and a Fellow of ACCA UK, contributing her expertise to organizations like Chartered Institute of Restructuring and Insolvency Practitioners (CIRIP), the Office of the Registrar and the Association of Chartered Certified Accountants (ACCA).

Luis Fernando López Roca
Partner, Lopez Montealegre Asociados Abogados,
Bogotá, Colombia

Lawyer and Doctor of Laws (JD, LLM, and Ph.D in Law), graduated Cum Laude with honors from Universidad Externado de Colombia. He specializes in public economic law, commercial law, and financial law. He has served as an advisor to the Inter-American Development Bank (IDB) on banking and securities reforms throughout Central and South America. He previously held the positions of Deputy Superintendent of Banks and Chairman of the Colombian Securities and Exchange Commission (now the Financial Superintendency of Colombia). He currently serves as Director of the Department, the LLM program, and the specializations in Financial and Securities Law and Fintech Law. He holds the title of Professor Emeritus at Universidad Externado de Colombia.
He has served as an ad hoc Judge of the Third Section of the Colombian Council of State and of the Constitutional Court. He acts as arbitrator for the Bogotá Chamber of Commerce, the Business Recovery Mechanism of the same institution, and the Arbitration and Conciliation Center of the Superintendence of Companies. He has also been appointed as a court-designated promoter in multiple corporate restructuring proceedings. He participated as an Honorary Member of the Commission for the Implementation of the Secured Transactions Reform Project in Colombia. He is currently a member of the Banking Commission of the International Chamber of Commerce (ICC) in Colombia.

Hon. Justice Verónica F. Martínez
Appellate Judge,
Córdoba, Argentina

She serves as a judge with special jurisdiction in corporate governance and bankruptcy law. With over three decades of experience as a judge, academic, and commercial law practitioner, she is also a member of INSOL International and actively engaged in cross-border insolvency discussions.

Renata Martins de Oliveira Amado
Partner, Machado Meyer, *Brazil*
Specialist in the prevention and resolution of conflicts before the Judiciary, public agencies and renowned national and international Arbitration Centers, and in restructuring and recovery of credits and companies.

Evelyn Meltzer
Partner, Troutman Pepper Locke
Wilmington, Delaware, USA
She focuses her practice on out-of-court restructurings, distressed M&A, assignments for the benefit of creditors, governance of financially distressed entities, and complex bankruptcy and insolvency proceedings in the U.S. and internationally. Her clients also include both plaintiffs and defendants in bankruptcy-related litigation matters.

Will Paterson
Senior Financial Sector Specialist, Insolvency and Debt Resolution Team, World Bank, *Washington, D.C., USA*
Has assisted over 40 countries strengthen their insolvency frameworks. He has published widely on corporate insolvency reform and has a special interest in the intersection of fintech with insolvency. Prior to joining the World Bank, Will was Principal Legal Counsel at the European Bank for Reconstruction and Development. He began his career as an Associate at Clifford Chance LLP in London. He is also an INSOL International Fellow (conferred with honours).

Prof. Dr. Omar Salah
Partner, Norton Rose Fulbright
Amsterdam, the Netherlands
He heads the Restructuring & Insolvency practice. He has worked on many leading cross-border restructuring and insolvency cases, including parallel restructuring proceedings across various jurisdictions. In addition to his practice, he is an endowed professor at Tilburg University where he holds the academic chair on Global Finance & Restructuring Law. He has authored one of the leading textbooks on the Dutch WHOA.

Yuri Sugano
Partner, Nishimura & Asahi, *Tokyo, Japan*
She currently leads their cross-border insolvency/restructuring practice, as well as serving as a co-leading partner in its Labor Law Group. She has plenty of cross-border insolvency/restructuring experience as she has been involved in cases across 15 different jurisdictions.
Along with membership in III, she is actively involved in INSOL international as a member of the Asian Advisory Council.

Ashley Taylor
Partner, Stikeman Elliott LLP, *Ontario, Canada*

He is a partner in the Litigation & Dispute Resolution Group and practices exclusively in the area of insolvency law and represents debtors, court-appointed officers, secured lenders and purchasers. He has frequently appeared in Commercial List matters before the Ontario Superior Court of Justice and the Ontario Court of Appeal, focusing on Companies' Creditors Arrangement Act (CCAA) proceedings, court-appointed receiverships and bankruptcies.
He has been recognized by Chambers Global, Chambers Canada and Benchmark Litigation Canda.

Guilherme Vaz Leal da Costa
Partner, Pinheiro Guimarães Advogados and Co-head of Restructuring, Insolvency & Complex Litigation Practice, *Río de Janeiro, Brazil*

Pontifical Catholic University of Rio de Janeiro, RJ (LLB, 2009); Pontifical Catholic University of Rio de Janeiro, RJ (Specialization in Civil Procedure Law, 2011); Université Sorbonne and Cornell Law School, Paris (International Comparative Law Joint Program, 2011); New York University School of Law, New York (LLM, 2016; Outstanding Leadership Award).
His practice focuses on cross-border restructuring and bankruptcy, commercial arbitration and complex litigation.
He is a member of the Brazilian Bar Association and the New York Bar.

Igal Wizman
Partner, EY-Parthenon, *Nassau, Bahamas*

Leader for the EY region of The Bahamas, Bermuda, British Virgin Islands and Cayman Islands, with extensive experience in complex cross-border restructuring, corporate finance, performance improvement and distressed M&A experience.
He is a Licensed Insolvency Trustee, a Chartered Insolvency and Restructuring Professional, and has worked on engagements in several jurisdictions including The Bahamas, Bermuda, the Cayman Islands, the British Virgin Islands, the Netherlands, Switzerland, Brazil, Canada, the United States, Hong Kong and other countries.
He was one of the founding directors of the Restructuring and Insolvency Specialist Association in the Bahamas and participates in numerous panels at industry conferences.

Welcome NextGen Class XIV

Yazeed Al Khorayef
University of Tabuk, Tabuk, Saudi Arabia, *Saudi Arabia*

Victoria Boacnin
Felsberg Advogados, *Brazil*

Estela Josefina Condrac
Provincial Bankruptcy Court of Tucuman, *Argentina*

Trevor Courtis
McCarthy Tétrault LLP, *Canada*

Gustavo Lacerda Franco
Neder Cerezetti Advocacia, *Brazil*

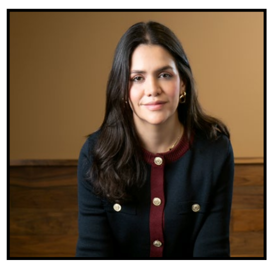
Verónica Noemí Gorrasi
Austral University, *Argentina*

Lizanne Havenga
Teneo (BVI) Limited, *British Virgin Islands*

Jason Hufendick
Sidley Austin LLP, *United States*

Caitlin McIntyre
Blake, Cassels and Graydon LLP, *Canada*

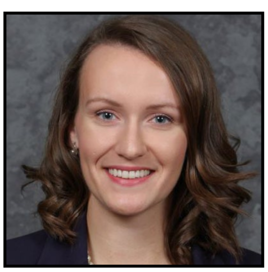
William Reily
Paul Hastings LLP, *United States*



Karla Silva
Galicia Abogados, S.C., *Mexico*

Sayuri Tago
Anderson Mori & Tomotsune, *Japan*

Keith Tnee
Tan Kok Quan Partnership, *Singapore*



Martha Wyrick
Haynes and Boone, LLP, *United States*

Renan Zing
Lefosse, *Brazil*

In Memory of Patrick Ang

The International Insolvency Institute mourns the passing of Patrick Ang, a towering figure in the development of insolvency law in Singapore and across the region. Patrick served as a Director of the International Insolvency Institute from 2020 to 2024. As the former Managing Partner of Rajah & Tann Singapore and Vice-Chairman of Rajah & Tann Asia, Patrick played a pivotal role in shaping the legal landscape of corporate restructuring and insolvency over his 30-year career. His brilliance in corporate restructuring and insolvency, unwavering integrity, and deep care for people made him a respected leader and a beloved mentor to generations of young lawyers, many of whom now hold leadership roles within the firm.

Recognised as one of Singapore's foremost legal minds, Patrick advised on numerous landmark restructuring cases. His counsel was sought in landmark cases such as Nortel Networks, Lehman Brothers, and Swiber, and his expertise helped guide financial institutions and corporations through complex cross-border insolvency proceedings.

Patrick's contributions extended beyond the courtroom. He was a dedicated member of the International Insolvency Institute, where he served as a Director from 2020 to 2024 and actively promoted collaboration and thought leadership in global insolvency reform. During the COVID-19 pandemic, he also played a key role in shaping Singapore's legal response as part of the committee that drafted the COVID-19 (Temporary Measures) Bill. For his contributions, he was awarded the Public Service Star (COVID-19) by the Prime Minister's Office.

His induction as a Fellow of the American College of Bankruptcy, being the only Singaporean and one of only a few Asian lawyers to receive this honour, underscored his international stature and commitment to excellence. Patrick also received the Emeritus Fellowship from India's Insolvency Law Academy, recognising his distinguished leadership and public service.

We speak to some members of the International Insolvency Institute who remember fondly of Patrick:

"*Patrick opened Singapore's restructuring and insolvency door to our global community. He did that through his genuine interest in helping others, armed with his signature smile and thoughtfulness. Patrick did so for me (and dozens more) and it has shaped and centred my enduring relationship with Singapore. Generous in heart and spirit, collegiate without bounds, in turn, Patrick took Singapore to the rest of the world, forging friendships and professional affiliations that have influenced the advancement of restructuring and insolvency in myriad ways. Just like his beloved kaleidoscopes, Patrick brought focus to endless possibilities for us all, and especially his beloved family and friends. Patrick Ang was truly one of a kind and our wonderful memories of Patrick as a person will long endure.*"

—**Scott Atkins** (Global Head of Restructuring, Head of Risk Advisory, Norton Rose Fulbright), Australia

"*To me, Patrick was, above all, a friend with whom I shared a deep bond. Whenever we met, we seldom spoke of work—instead, we shared reflections on life, bonded over our eccentric hobbies as collectors of peculiar things, and talked about our duty to give back to society. During my last visit to Singapore, Patrick suggested we meet at a quiet café, tucked away in an alley, far from the city's bustling streets. He had just finished the last leg of his treatment and looked in good shape. Only when he began to speak did I understand why he had chosen such a secluded spot—he knew he wouldn't be able to contain his emotions as he spoke of his illness; he didn't want to be seen in that fragile moment. Yet, even then, not once did he pity himself. His thoughts were only for his wife Marina and his daughters. He longed to step back from work, to savor the rest of his life with them. His last words still echo in my heart: Brother, this illness has taught me just one thing—there is nothing in life more precious than time spent with family. In him, Singapore has lost a legal luminary, and I have lost a dear friend.*"

—Sumant Batra, India

"*Patrick's contributions to the law and practice of insolvency and restructuring in Singapore and worldwide over 30 years of his career are truly indelible and enduring. Not only was he one of the most skilled and respected practitioners in the area, he dedicated much of his time, expertise and efforts towards building the community and the strong network of organisations and relationships we see around us today. I am absolutely privileged to have served alongside him in Rajah & Tann and to have been a beneficiary of his generous sharing, guidance and friendship.*"

—Lee Eng Beng, SC (Senior Partner, Chair, Rajah & Tann Asia), Singapore

"*Patrick was one of the first lawyers I worked with at the beginning of my Restructuring & Insolvency journey during the Asian Financial Crisis, and he fortuitously became an integral part of my professional life. Whether serving as our legal advisor or representing the opposing side, Patrick's exceptional legal acumen and commerciality consistently led us to win-win solutions. His ability to foster consensus allowed all parties to find common ground.*

He carried himself with professionalism and integrity, always wearing a ready smile. Despite being a stalwart in the legal profession, Patrick remained unassuming and was always willing to lend a helping hand. Amidst his extremely heavy workload, he still made time to support our events, from the EY Entrepreneur Of The Year awards Ernst & Young Entrepreneur of the Year to simple team gatherings. Just this past April, when approached to extend his directorship in another insolvency organization, he graciously agreed, recognizing the importance of his contribution while laying the groundwork for a smooth transition.

Beyond work, Patrick was also a friend. Our conversations over the years often turned to reminiscing about significant cases, life, family, friendships, and his numerous hobbies. His untimely departure has left a deep void in the Singapore R&I community, and I, along with many others, will sadly miss his friendship and wise counsel.

May you rest in peace, Pat."

—Angela Ee (Partner, Turnaround & Restructuring Strategy, Ernst & Young), Singapore

"*Patrick Ang was more than a valued colleague—he was a dear friend and one of the first persons I sought out in Singapore when I would travel there for business. I always enjoyed spending time with him both on a personal and a professional level. His wisdom, warmth, and unwavering dedication to the restructuring practice generally, and the International Insolvency Institute in particular, left an indelible mark on all of us. He will be deeply missed.*"

—Debra Grassgreen (Pachulski Stang Ziehl & Jones), USA ■

UPCOMING EVENTS

III Malaysia Forum
1 October 2025 from 5:00 - 8:00 p.m.

Registration opens | 4:30 p.m.
Panel session | 5:00-7:00 p.m.m
Refreshments and Networking | 7:00-8:00 p.m.

Register

III Vienna Dinner in Conjunction with UNCITRAL WG V Meeting
10 December 2025 at 7:30 p.m.

III Members and NextGen attending the UNCITRAL WG V meeting in Vienna, Austria are invited to enjoy an authentic Viennese meal at Zwölf Apostelkeller.

Register

SAVE THE DATES

UCC Regional Conference: January 20-21, 2026, Miami, Florida

2026 Annual Conference: June 14-16, 2026

2027 Annual Conference: June 13-15, 2027

25th Annual Conference

The International Insolvency Institute convened its 25th Annual Conference in São Paulo, Brazil on June 8-10, 2025. Judicial and Academic Committee Meetings, Class XIV NextGen Program, and NextGen members and the opening reception were held on Sunday, June 8th, followed by two days of exceptional programming and a Legendary Dinner at the spectacular Palácio Tangará. The Annual Conference is the premier international insolvency conference for practitioners, academics, and members of the judiciary. This year was particularly special as 2025 marks the Institute's 25th Anniversary. We commemorated this exciting event with a special 25th Anniversary retrospective panel, in which esteemed practitioners and judges reflected on the most significant decisions and changes to the insolvency and restructuring practice over the past 25 years, and a moving video tribute (see page 14 for more on the 25th anniversary video). Conference materials may be found on the III website here. Many thanks to the **Annual Conference Planning Committee** for their efforts and to our generous conference sponsors for making this event a success.

25th Anniversary Video Introductory Remarks

By **Leonard H. Gilbert**

Justice Ramesh and I decided early on how best to recognize the 25th Anniversary Conference. He invited **Judge Chuck Case** to join the project and we had several meetings. Thanks to CC we were able to do a series of videos which you will see shortly.

The story of the International Insolvency Institute is in fact the story of **E. Bruce Leonard**. Bruce started the Institute and for all intents and purposes, really operated the organization for many, many years. Bruce was a well-known practitioner in Canada, had served as Chair of the Insolvency Section of the International Bar Association (Committee J to many), and was active in that group for many years. He was also active in the Business Bankruptcy Committee of the American Bar Association and chaired it's early International Insolvency Committee. It was there that I met Bruce and got to know him very well. He arranged for me to present at the annual IBA in Strasbourg. **Hans Luer** was in charge of that and **John Barrett** was chair.

When this organization was formed, I believe it was to be originally limited to 150 members, 75 from North America and 75 from the rest of the world. It's estimated growth was to be 200 or 250. It was not to be North American centric but enjoy a wide membership distribution. Referring to the eligibility criteria for membership: the nominee must be a senior and experienced practitioner, academic, regulator or judge with substantial interest and experience in a corporate or other role satisfying the following criteria: 1) excellence in the candidate's local market; 2) recognition as a leading practitioner, academic, judge or other professional in the local market and internationally and 3) depth of experience in the insolvency field, there being a strong presumption that to qualify for a nomination the candidate must have no fewer than 15 years of actual practice in the field. Additionally, significant contribution to the insolvency field and community. For example, through scholarship, advocacy and international work, and finally, demonstrated international insolvency credentials.

A candidate must also be of excellent character and willing to actively participate and make a substantial contribution as a member of the Institute. Bruce had some flexibility in having a candidate meet that criteria because the Institute sought great geographic diversity, aiming for membership in unrepresented or underrepresented regions and countries. For example, when there was someone from a jurisdiction where there were very few cross-border insolvency matters or where there was limited insolvency work so that insolvency could only be a part of the practice, an exception might be made.

III had no problem in locating representatives except in certain obvious areas. There Bruce and others on the Board, active in membership, often sought out the only insolvency practitioner in the area and nominated them for membership.

Early on, in the history of the organization, we had members from not only the obvious countries, Canada, Great Britain, the United States, France, Germany and Italy but also Japan, Croatia, Australia, New Zealand, Finland, Sweden, Denmark, the Czech Republic, Spain, Hong Kong, and Mexico. Other countries followed so that at this point in time we have approximately 65 countries represented among our membership.

When I think about the countries that we tried to have as early members of the Institute I can't help but think about the representatives of each of those countries. At the risk of leaving someone out, and surely I will, I can't help but think about **Gabriel Moss, Nick Segal, Mark Mayrand, Dick Gitlin, Eberhard Braun, John Barrett, Evelyn Biery, Robert van Galen, Pekka Jaatinen, Christoph Staubli, Steve Kargman, Bob Wessels, Joel Ohlgren, Tom Felsberg, Robin Phelan, Jonathan Rushworth, Dario Oscos, Carlos Sanchez-Mejorada, Paul Heath, Justice Zulman, Gabriel Nadal, Roser Rafos, Odd Swarting, Dan Glosband, Gerald Smith, Ian Congdon, Lewis Kruger, Rich Levin, David Ward, Hans Luer, Bob Rosenberg, Judge Sid Brooks, Judge Garrity** as well as those who you will see on the videotape in just a few moments as well as those who will appear on the screen after the tape.

For many years the regular, and may I say “fabulous” annual meetings of III, were in New York City, first at Fordham Law School and later at Columbia University Law School. We were fortunate to have **Lord Hoffman** attend one of those. However, the pressure was on to meet in other places. Bruce was always concerned about the cost and whether or not people from one area would travel to another area because of the expense. However, we began to have annual conferences outside of North America every other year and they proved to be quite successful. For one thing, it allowed members who lived in the area to travel at less cost and to take part in the conference. The conferences turned out to be well attended and of course each time a conference was held so was there a Legendary Dinner, a term coined by Bruce. I have to say from personal experience each and every one of them was in fact quite legendary and last night was no exception.

The organization took on various projects but Bruce was careful in the selection of those projects to be sure that III would be recognized in each of them and that we had interested manpower to take part in each of the projects. **Evelyn Biery** and I chaired the first projects committee. Some of you in the room were beneficiaries of grants. The prime example was the participation of III in the UNCITRAL group 5 on insolvency. III always had a strong delegation and Gerald Herrmann, the Secretary General of UNCITRAL at the time, recognized the participation of the III representatives and the strength of the delegation. That is not to say that there were not other strong delegations from NGO's because there were.

I provide you with this background because the people you are going to see on the videotape, which I will present in a few moments, represent different parts of III by their own participation. **Judge Chuck Case** and I tried to draw from a crosssection of the III membership, lawyers who represented III in various projects as well as their consistent participation in the organization. Each one of them in their own way made a substantial contribution to the organization which helped bring us to this 25th anniversary. Of course, we are missing the obvious ones: **Dr. Takagi** to name one of the obvious international leaders in insolvency and who never missed a meeting, as well as Bruce himself. I would be remiss if I didn’t acknowledge the leadership that followed Bruce: **Jim Peck, Don Bernstein, Debra Grassgreen, John Martin and Justice Ramesh.**

Before we start, one idea. There was no way in the time and cost allotted, where we could cover everyone and everything. So we ask that each of you interested in presenting your recollection and views of III do so by submitting a paper of 2,500 words or less by September 30 to CC directly. Depending on the number we receive we will either -or both- post on our III website and assemble and distribute the papers if we find a sponsor to cover the cost.

Enough of that from me, let us now roll the tape and hear from some 9 or 10 of the leaders of this organization. ■

Watch the Video!

Panel: 25th Anniversary Retrospective: Reflecting on the Most Significant Decisions and Changes to the Insolvency and Restructuring Practice Over the Past 25 Years

Summary by **Dr. Charles Ho Wang Mak – NextGen Class 2024**

The 25th Anniversary Retrospective brought together distinguished panellists, including Daniel S. Glosband, Corinne Ball, Daniel Carnio Costa, Mr. Chief Justice Geoffrey B. Morawetz, and Lord Justice Antony Zacaroli, to discuss the most significant developments in insolvency and restructuring practice over the past quarter-century. Moderated by **Daniel S. Glosband**, the discussion painted a vivid picture of a global legal landscape moving steadily from jurisdictional uncertainty towards greater international cooperation and harmonisation.

The panellists explored the profound impact of the UNCITRAL Model Law on Cross-Border Insolvency as a catalyst for this change. **Corinne Ball** recalled the era of the landmark Maxwell case, emphasizing a key takeaway from the U.S. perspective: the importance of the bar and judiciary working together practically and efficiently to achieve ideal, cost-effective results.

The international nature of this evolution was a central theme. **Daniel Carnio Costa** detailed Brazil's journey, noting its first major insolvency law update in 2005, influenced by the U.S. Chapter 11. He described the "second revolution" in 2020, a great reform that formally adopted the UNCITRAL Model Law and established tools for direct communication between courts in cross-border cases. Similarly, Mr. Chief Justice **Geoffrey B. Morawetz** described how Canada moved from a period of confusion and uncertainty to a more predictable and respectful system after adopting the Model Law.

From a U.K. perspective, Lord Justice **Antony Zacaroli** reflected on the fundamental shift in power dynamics away from the absolute rule of secured creditors towards the use of arrangements, a concept he described as extremely broad. He underscored the remarkable growth in cooperation between courts across different jurisdictions.

The consensus from the panel was clear: the last 25 years have been defined by a transformative shift towards a more collaborative and standardised global insolvency framework. ■

Panel: Mass Torts, Dischargeability, and Consent: the Availability of Third-Party Releases in Different Jurisdictions

Summary by **Dr. Charles Ho Wang Mak – NextGen Class 2024**

The session, "Mass Torts, Dischargeability, and Consent: the Availability of Third-Party Releases in Different Jurisdictions", gathered an esteemed panel to navigate the contentious global landscape of third-party releases. Moderated by Hon. Lisa Beckerman, the discussion featured insights from Chad J. Husnick, Giuliano Colombo, and Ashley Taylor, who explored the divergent legal standards and the profound implications of the recent U.S. Supreme Court decision in Purdue Pharma.

Chad J. Husnick framed the debate by outlining the U.S. perspective. He explained how third-party releases became an integral, albeit controversial, tool in Chapter 11 cases, designed to provide the certainty and finality needed to resolve complex mass tort litigation. Husnick detailed how the landmark Purdue Pharma ruling dramatically altered this practice by finding that the Bankruptcy Code does not authorize non-consensual releases of non-debtor third parties, thereby compelling a re-evaluation of how large-scale resolutions can be structured.

Providing comparative viewpoints, **Ashley Taylor** described the more cautious Canadian approach. He noted that under the Companies' Creditors Arrangement Act (CCAA), Canadian courts grant third-party releases only in exceptional circumstances where they are proven to be fair and essential to the restructuring plan. In contrast, **Giuliano Colombo** explained that the concept is largely unavailable in Brazil, as its legal framework requires the explicit consent of every affected creditor, making non-consensual releases fundamentally incompatible with Brazilian law.

In conclusion, the panellists agreed that while third-party releases have been a crucial mechanism for achieving global settlements in mass tort cases, their future is uncertain. The discussion highlighted a fundamental tension between the desire for comprehensive resolution and the protection of due process. The panel stressed that the path forward demands greater international coordination and clearer statutory frameworks to address the growing inconsistencies across jurisdictions. ■

Panel: "Is Your Model Law Like My Model Law? Key Variations Among Jurisdictions Adopting the UNCITRAL Model Law"

Summary by **Gustavo Lacerda Franco – NextGen Class 2025**

The panel "Is Your Model Law Like My Model Law? Key Variations Among Jurisdictions Adopting the UNCITRAL Model Law" assembled leading restructuring and insolvency professionals with broad experience in the field, Prof. Juan Luis Goldenberg Serrano (Chile), Stacy Lutkus (USA), Prof. Michael Veder (The Netherlands) and Lord Justice Antony Zacaroli (England), to discuss the most relevant variations among the local versions of the UNCITRAL Model Law on Cross-Border Insolvency, adopted by more than 60 jurisdictions.

For starters, Prof. **Michael Veder** highlighted the Model Law's flexibility, which enables the use of different variations. The debtor's centre of main interests (COMI) and how distinct jurisdictions manage to overcome the challenge of assessing it correctly in each cross-border insolvency case was a central topic of debate among the panelists. Prof. **Juan Luis Goldenberg Serrano**, for instance, mentioned the lack of extensive case law regarding the matter in Latin America and the difficulties faced when determining the COMI of enterprise groups. According to him, Brazil's version of the Model Law features a legal provision with the purpose of preventing manipulation of COMI that has not been commonly adopted by other jurisdictions.

The panelists also addressed situations in which some types of local creditors would not be reached by the effects of recognition of foreign proceedings. In this sense, **Stacy Lutkus** referred to an American reorganization case in which the debtors, even after recognition was granted by a Brazilian Court, still had to deal with some local creditors regardless of the confirmed plan's provisions.

How each jurisdiction understands the public policy exception was another point of discussion. Lord **Justice Zacaroli**, for example, stated that, generally, the public policy exception should be read restrictively. Some jurisdictions, however, have chosen a different path. The Chilean version of the Model Law, as Prof. **Goldenberg Serrano** pointed out, establishes that the court can refuse to take an action if it would be "contrary to the public policy", instead of adopting the wording "manifestly contrary to the public policy".

During the panel, other issues were addressed as well, including whether recognition necessarily triggers a moratorium, whether the court can grant relief that would otherwise be unavailable under domestic law, and the mandatory opening of ancillary proceedings because of recognition of the main insolvency proceedings abroad. ■

Panel: “Worldwide Venue Shopping”

Summary by **Sabrina Becue – NextGen Class 2024**

The panel “Worldwide Venue Shopping” brought together leading insolvency practitioners from diverse jurisdictions to explore the growing relevance of forum selection (FS) in cross-border restructuring and insolvency proceedings. Panelists included Jasper Berkenbosch (The Netherlands), Ian De Witt (Hong Kong), Andy Dietderich (United States), and Fabiana Solano (Brazil), each of whom offered jurisdiction-specific insights into how debtors select the most advantageous venue, as well as the strengths and limitations of their respective insolvency regimes.

A central theme of the discussion was the increasing flexibility shown by courts toward FS and the corresponding decline in the significance of the centre of main interests (COMI), particularly in voluntary proceedings. As emphasized by **Dietderich**, we are witnessing the "golden age" of forum selection, in which courts in jurisdictions such as the United States and the United Kingdom are willing to entertain proceedings even when the debtor’s COMI is located elsewhere. Voluntary restructurings—such as those under Chapter 11 or the UK restructuring plan—enable corporate management to deliberately choose the forum, often for legitimate reasons such as cost reduction or access to more effective legal tools.

The panel also addressed the delicate balance between proper and improper motives behind FS. While forum selection may represent a legitimate strategic decision consistent with directors' fiduciary duties under applicable domestic laws, it also raises concerns regarding potential misuse.

Illustrative examples from recent Latin American restructurings were cited to show that COMI is not always determinative—particularly where recognition in the home jurisdiction is unnecessary or when the debtor's obligations are primarily owed to foreign creditors. In such cases, FS may serve not only as a pragmatic solution but also as a catalyst for legal reform, encouraging jurisdictions to modernize and enhance the attractiveness of their insolvency frameworks.

Ultimately, the panel concluded that modern FS is not an all-or-nothing approach. Rather, debtors are increasingly able to tailor proceedings by selecting favorable elements from multiple legal systems, reflecting the practical and strategic dimensions of venue shopping in global insolvency practice. ■

Panel: "Filer Beware: Lurking Priority Issues That Can Affect Reorganization Cases"

Summary by **Jason L. Hufendick** - NextGen Class 2025

The 25th Annual International Insolvency Conference hosted in São Paulo featured a distinguished panel of insolvency experts to explore lurking priority issues that can affect reorganization cases. The panel provided a comparative analysis of creditor priorities, statutory protections, and the practical challenges that arise in complex cross-border restructurings, including the United States, Canada, Brazil, and Norway. The panelist were Stine Dalenhag Snertingdalen (Kvale Advokatfirma), Kelly DiBlasi (Weil, Gotshal & Manges LLP), Fabio Rosas (Lefosse), and Lance Williams (McCarthy Tetrault LLP).

The panelists discussed various situations where a creditor may be entitled to priority over other creditors. In many cases, the priority can arise by statute or local law. In other cases, the priority is ordered by the court supervising the insolvency proceeding as a means to stabilize the debtor's operations and incentivize key stakeholders to remain engaged throughout the restructuring process.

For example, insolvencies in Canada and the United States must contend with statutory protections for employee wages. Brazil, on the other hand, does not provide such priority (although wage claims in Brazil are entitled to being treated in a separate class in connection with a plan).

The most common area of court-ordered priority is through post-bankruptcy financing or "DIP Financing." In the United States and Canada, the DIP financing can (and customarily does) benefit from priority over all other creditors for funds advanced in connection with the proceeding. Other examples of claims entitled to priority often arise in connection with environmental damages, pensions, critical suppliers, and unpaid taxes.

The discussion highlighted the need for engaging professionals experienced in the applicable jurisdiction in connection with insolvencies that touch multiple jurisdictions. The priority of claims may not be obvious in all cases and can vary across jurisdictions. ■

Panel: "Hot Topics in Cross Border Restructuring and Insolvency: Challenges and Development re Data Protection and Artificial Intelligence"

Summary by **William Reily** - NextGen Class 2025

Artificial intelligence (AI) is increasingly applied to solve problems and perform administrative tasks for lawyers, including in the field of insolvency. Panelists Hon. Justice Peter J. Osborne of the Ontario Superior Court of Justice (Canada), Sam Aguirre (Brazil) and Angela Barkhouse (Cayman Islands) engaged in a discussion of these applications moderated by Scott Atkins (Australia). Topics included the application of AI to resolve small dollar disputes in administrative courts in certain jurisdictions and the training of AI algorithms using the pleadings, written opinions and transcripts publicly available on court dockets. While some courts are early adopters of AI, it remains to be seen whether other foreign courts will recognize rulings generated by or reliant on the use of AI in some respects. In legal practice, attorneys are adopting AI for pattern recognition in investigations and other data analysis but typically reviewing the AI generated reports for accuracy. However, authenticating AI generated reports continues to present evidentiary challenges for courts under evidentiary rules that do not easily adapt to AI authorship. For example, an AI chatbot or notetaking program cannot testify to the accuracy of the minutes taken at a board meeting, while an officer of the company could. To track developments in the cross-border issues arising from AI adoption within the legal profession, follow III's coverage of this topic. ■

Panel: "That's a Wrap: Out of Court Restructurings and Prepack Reorganizations"

Summary by **Victoria Boacnin – NextGen Class 2025**

Thomas Benes Felsberg – Brazil

Mr. Felsberg emphasized the importance of negotiation in restructuring processes. He argued that formal court proceedings are often unnecessary, as agreements can frequently be reached with a small number of key creditors. In his view, restructuring is fundamentally about "counting votes" and finding solutions without escalating to legal conflict. He asserted that very few cases justify filing in court when consensual alternatives exist.

Later, he also highlighted the significant role of cultural factors in restructuring. Even if legal frameworks are similar, outcomes may differ across jurisdictions due to cultural variations in negotiation styles and stakeholder behavior.

Mylène Boché-Robinet – France

Mrs. Boché-Robinet described the French restructuring regime as strongly debtor-friendly, with a longstanding emphasis on preserving businesses and employment over enforcing creditor rights. Since the 1980s, France has had a legal infrastructure supporting early and preventive restructuring efforts. She detailed two amicable procedures—mandat ad hoc and conciliation—which are highly consensual, confidential, and successful in approximately 80% of cases.

These procedures involve minimal court intervention, mainly limited to the appointment of an independent mediator. Once an agreement is reached, court approval may follow, but this does not impose terms on dissenting creditors—it merely validates the deal and grants participating creditors preferential treatment in subsequent insolvency proceedings. She also discussed the French version of a prepack, where conciliation is followed by an accelerated safeguard to formally approve pre-negotiated agreements.

William Q. Derrough – United States

Mr. Derrough provided a historical overview of restructuring practices in the U.S., noting an initial preference for out-of-court liability management—particularly bond exchanges—as an alternative to Chapter 11 filings. These strategies allowed issuers to restructure debt when majority consent under bond indentures was unattainable. However, over time, particularly during the COVID-19 crisis, Chapter 11 gained prominence again due to the prohibitively high cost of bank financing and increasing familiarity of funds with complex exchanges.

He referenced the 2015 innovation by Moelis involving asset "drop-downs" and emphasized that modern liability management often leverages voting mechanics within bond indentures to restructure debt. Mr. Derrough acknowledged concerns raised about "lender-on-lender violence," stating that while some deals may benefit exclusive participants, Moelis does not engage in such practices. He also stressed that Chapter 11 remains extremely costly and is therefore used only when absolutely necessary.

Edward Middleton – Hong Kong

Mr. Middleton opened by stating that prepackaged reorganizations (prepacks) are virtually nonexistent in Hong Kong. He noted greater interest in these mechanisms in Singapore and mainland China, although uptake remains limited. Singapore, he explained, allows for out-of-court liability management exercises followed by court approval of a scheme of arrangement. He cited a noteworthy case before Judge Peck in which bond restructuring was successfully conducted in the Singapore International Court.

In contrast, mainland China lacks a clear legal basis for prepacks and generally discourages Chapter 11-style proceedings. In Hong Kong, courts remain skeptical of schemes negotiated outside the courtroom, often criticizing debtors for lacking transparency. He mentioned two specific cases where courts refused to confirm schemes despite majority approval—one due to heterogeneity among creditor groups and the other due to insufficient disclosure to dissenting creditors. Middleton concluded that while prepacks could theoretically be useful for pre-negotiated asset sales, the current legal and commercial environment in Hong Kong makes consensual outcomes extremely difficult.

Hon. James M. Peck – Commentary on Novaland Case

Judge Peck provided insights into a landmark case involving Novaland, marking the first instance of a Vietnamese company using the Singapore court system to confirm a prepackaged restructuring. Novaland negotiated the terms with its creditors and obtained judicial approval within 15 days. The legitimacy of using Singapore courts was based on a dispute resolution clause within the bonds, providing sufficient jurisdictional connection. Judge Peck noted that this case demonstrated how prepacks can improve efficiency by eliminating the need for creditor meetings, though he also observed that the solution was only a temporary fix for the company. He added that legal professionals must obtain a special registration to appear before Singapore courts. ■

Panel: "Arbitration, Mediation, and Adjudication in Insolvency Proceedings"

Summary by **Karla Gabriela Silva Rodriguez** - NextGen Class 2025

This panel offered an in-depth look at mediation in insolvency proceedings across several jurisdictions, with each expert shedding light on their respective legal frameworks. The discussion began with a foundational overview of the regulatory landscape for mediation in insolvency within each country represented.

Reinhard Dammann provided valuable insights into a significant trend developing in France: out-of-court semi-collective proceedings. He explained that this approach involves the debtor engaging in direct negotiations with a selection of creditors before formally filing for insolvency. The goal is to reach a comprehensive settlement agreement prior to the official filing, an agreement that is subsequently validated by a judge. This method aims to streamline the resolution process and avoid the full complexities of court-supervised insolvency.

Both Sharon S. Hamilton and Marcelo Carpenter highlighted the prevalent use of mediation within insolvency proceedings in Canada and Brazil. They pointed out that it's a common practice, and notably, judges in these jurisdictions even have the authority to direct parties to mediation. This judicial referral to mediation is a key differentiator, as it's a practice not observed in the formal insolvency processes of Mexico or France.

Rosa María Rojas Vértiz Contreras detailed how Mexico's formal insolvency proceedings incorporate a distinct conciliation stage. This stage is facilitated by conciliators, who are private professionals carefully selected by the *Instituto de Federal de Especialistas en Concursos Mercantiles* and formally appointed by the court. Their primary objective is to guide the parties toward an agreed-upon plan for exiting the proceeding. However, Prof. **Vértiz Contreras** also noted that these conciliators carry a broad range of other duties, including admitting and classifying claims and comprehensive reporting. These additional responsibilities, while crucial, can sometimes limit the extent of their direct mediation role within the proceeding. She also elaborated on the specific functions of parties and financial advisors in out-of-court proceedings in Mexico.

Sharon S. Hamilton further enriched the discussion by explaining the vital role of the monitor in Canadian insolvency proceedings. She presented numerous practical examples of how mediations are successfully integrated into insolvency cases throughout Canada, showcasing the practical application and benefits of this approach.

The panel concluded with an engaging segment where all panelists shared compelling examples of successful mediations from their respective jurisdictions, offering concrete illustrations of how mediation has led to positive outcomes in complex insolvency situations. ■

Moss-Fletcher Lecture in São Paulo, Brazil

By **Dr. Janis Sarra**

III and South Square, London co-sponsored the 2025 Moss-Fletcher lecture in São Paulo, Brazil on June 6, 2025. The Moss-Fletcher lecture series is a tribute to the late Gabriel Moss QC and Ian Fletcher QC, both extraordinary leaders in international insolvency law who made significant and lasting contributions to the advancement of insolvency law frameworks around the world. The inaugural lectures were delivered by **Sir Roy Goode KC** in 2021 and **Professor Westbrook** in 2023.

This year the lecture was given by Dr. Janis Sarra, a leading scholar in international and comparative insolvency law, with special focus on financial institutions. She is Professor of Law Emerita and former Presidential Distinguished Professor, University of British Columbia, Canada, Principal Co-Investigator of the Canada Climate Law Initiative, a former board member of III, and a member of the Canadian Delegation to UNCITRAL WG V.

Dr. Sarra's lecture, titled Green Swans and Blue Skies: Climate Change and Insolvency Risk for Financial Institutions, A Lecture in Honour of Gabriel Moss and Ian Fletcher, reflected on strategies being used to manage systemic climate-related financial risk and support opportunities for the financial sector going forward, using examples from the United Kingdom, Brazil, and Canada. The physical impacts of climate change, both acute and chronic, are crystallizing everywhere. For example, in Brazil one year ago, atmospheric rivers dumped 700 millimetres of rain in less than four days in the Rio Grande do Sul. The flooding submerged entire cities, affecting 2 million people, including 184 deaths and over 81,000 people made homeless. Increasing frequency and intensity of acute events and escalating chronic changes can increase credit risk through damage to and loss of value of collateral for bank loans. There is increased probability of default on loans and loss given default (LGD) due to stranded assets in carbon intensive investment portfolios. These losses create risks for financial market stability, in turn affecting macro-economic stability.

Prudential regulators and central banks recognize that the systemic nature of climate-related financial risk makes it an emerging vulnerability relevant to cross-border insolvency resolution. Dr Sarra explored how to reduce the risk of insolvency by using both hard law and soft law tools to enhance the role of the financial system in managing risks and mobilizing capital for sustainable development. Integrating climate-related risk analysis into financial stability monitoring and prudential supervision is challenging because climate-related physical and transition risks interact with complex, far-reaching, nonlinear, chain reaction effects.

The lecture was followed by a reception hosted by Pinheiro Neto and IWIRC. Particular thanks to hosts in Brazil, **Professor Francisco Satiro de Souza** and **Professor Sheila Neder Cerezetti,** Universidade de São Paulo. The second part of the lecture series will be held Thursday October 23 at the London School of Economics, same title, with new insights drawn from Dr. Sarra's meetings with policymakers, judges, and practitioners during her residency in Brazil. Please contact Professor Sarah Paterson at The London School of Economics and Political Science for more information. ■

RBI'S 2025 Market-Driven Securitisation Framework: A New Era For Resolution Of Stressed Assets In India

By **Nilang Desai**[1]

The Reserve Bank of India ("**RBI**"), India's financial sector regulator has been exploring various strategies to address the challenges associated with the recovery and resolution of non-performing assets (**"NPAs"**) and identify paths to deepen the stressed asset ecosystem. In a substantial shift towards democratizing this market, the RBI, on April 9, 2025, released a draft framework introducing a market-based mechanism for the securitisation of stressed assets. [2] The Draft RBI (Securitisation of Stressed Assets) Directions, 2025 ("**SSAF 2025**") is intended to supplement the existing routes that are available for transfer of stressed assets, i.e. through asset reconstruction company ("**ARC**") route set up under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**").

The SSAF 2025, draws on recommendations from its 'Task Force on Development of Secondary Market for Corporate Loans' and subsequent discussion papers, [3] to foster a more dynamic and transparent secondary market for stressed assets by providing banks with an effective tool to manage and reduce their NPA burden by enabling the transfer of stressed assets to a special purpose entity.

A. Applicability and Regulatory Scope

The draft framework is applicable to all scheduled commercial banks (excluding regional rural banks), All India Financial Institutions (NABARD, NHB, EXIM Bank, SIDBI and NaBFID) ("**AIFIs**"), small finance banks, non-banking financial companies ("**NBFCs**"), housing finance companies ("**HFCs**"), and overseas branches of Indian banks (collectively referred to as the "**Eligible Sellers**").

B. Concentration and Homogenisation

The SSAF 2025 at the outset lets Eligible Sellers to securitise a pool of stressed assets i.e. loans where there is a payment default. It sets out specific concentration norms to ensure that pool does not suffer from risks associated with one asset. In addition to concertation norms the SSAF requires, at least 90% of the total outstanding amount in the underlying pool must be classified as NPAs (i.e. loans wherein more than 90 days have passed since occurrence of a payment default) for the stressed pool to undergo securitization.

To ensure homogeneity and manage risk, the framework requires that underlying loans in each pool be of a similar nature. To elaborate, loans to micro enterprises and personal or business loans to individuals not exceeding INR 50 crores (approximately USD 5,900,000) ("**Para 6(a) Loans**") must be grouped separately from other loan types. Additionally, the stressed pool may include a limited proportion (up to 10%) of standard assets, subject to standard securitisation norms for that portion.

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[1] With thanks to Avinash Subramanian (Partner, AZB & Partners), Saloni Thakkar (Partner, AZB & Partners) and Aashirwa Baburaj (Associate, AZB & Partners) for their assistance with this piece.

[2] Available at: Draft Reserve Bank of India (Securitisation of Stressed Assets) Directions, 2025- RBI

[3] Available at: Reserve Bank of India - Reports, RBI releases Discussion Paper on Securitisation of Stressed Assets Framework (SSAF) - RBI

C. Resolution Managers

The SSAF 2025 introduces the role of Resolution Manager ("**ReM**"), which is tasked with administering the resolution and recovery of the underlying stressed exposures. While for transactions involving Para 6(a) Loans, the ReM is required to be an RBI-regulated entity (such as a scheduled commercial bank, ARC, or NBFC), in a significant leg up to the insolvency professional ecosystem, the RBI has proposed to permit insolvency professionals and insolvency professional entities to act as ReMs for other loans.

D. Risk Retention

The SSAF 2025 allows the Eligible Sellers to retain a maximum risk retention of 20% of the total securitisation exposure with any exposure above 10% (and up to 20%) being recognized as a first loss piece for prudential purposes. Where the originator also acts as the ReM, a minimum risk retention requirement is also imposed to align interests and ensure accountability. Accordingly, in case the originating bank is acting as ReM for exposures it has transferred, it is required to retain at least 5% of the total securitisation notes.

E. Permitted Investors

Apart from disqualifications attracted due to Section 29A of the Insolvency and Bankruptcy Code, 2016 (i.e. connected to entities that have *inter alia* defaulted on loan repayments) there are no eligibility criteria prescribed to who can be an investor. This is a substantial difference from the requirements set out under SARFAESI which has strict eligibility norms for those that can invest in the securitization trusts set up by ARC.

F. Transaction Mechanics

The sale of assets is required to be conducted on a cash basis. Unlike sale to ARCs which permit issuance of security receipts of upto 87% as consideration for transfer of stressed loans, the requirement to pay only cash would mean that substantial inflow of upfront cash can be seen by originating banks.

G. Capital Treatment and Credit Enhancement

Capital requirements for securitisation notes are to be determined based on risk weights assigned by credit rating agencies. The framework permits supporting facilities such as credit enhancement, liquidity, and servicing facilities, subject to the provisions of the Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021. Notably, credit enhancement (other than contractual risk retention or permissible first loss default guarantee) is restricted to losses on the senior tranche only, thereby limiting systemic risk.

H. Conclusion

RBI's initiative with the SSAF 2025 represents a significant shift in India's legal and regulatory landscape for distressed asset resolution. By facilitating market-driven pricing, expanding the investor base, and supplementing the ARC route under the SARFAESI mechanism, the SSAF 2025 is poised to deliver more efficient, transparent, and effective resolution pathways for the Indian banking sector. This is a long-awaited measure which will widen investment routes by foreign investors into non-performing loans beyond the erstwhile ARC/ security receipts route, enable differential risk allocation, and provide pricing flexibility. Whilst the sole ARC route created for some international investors a bottlenecked conduit to distressed assets, diluting the regulatory monopoly of ARCs via this alternative route may bring in competition that keeps the good ARCs involved and the investors with options – all towards creating more efficiency and productivity in the distressed asset resolution space. ■

Adopting the UNCITRAL Model Law: A Turning Point for Indonesia's Insolvency Landscape

By **Chrisandya Sinurat**[1] - NextGen Class of 2024

Indonesia's long-standing intention to adopt the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") appears to be progressing. Recently, a discussion involving INSOL, the Asian Development Bank (ADB), the Indonesian Receivers and Administrators Association (AKPI), and Indonesia Jentera School of Law ("**Discussion**") was held to enhance understanding of the Model Law and to assess the potential implications of its adoption. This initiative aligns with broader legislative reforms aimed at making Indonesia more attractive to foreign investment.

Historical Overview of Indonesia's Bankruptcy Regime

Indonesia follows a civil law legal system influenced by Continental Europe, particularly the Netherlands. To date, Indonesia's bankruptcy law has undergone two major reforms. The original bankruptcy framework was established in 1906 through the Bankruptcy Ordinance (*Faillissements-verordening*) under the former Netherlands Indies legislation. This ordinance was later adopted as Indonesian law following the country's independence.

In the aftermath of the 1998 Asian financial crisis, the Indonesian government amended the ordinance by enacting Government Regulation in Lieu of Law No. 1 of 1998, which was later ratified as Law No. 4 of 1998. This reform was carried out in accordance with conditionalities imposed by the International Monetary Fund (IMF). The most recent amendment came with the promulgation of Law No. 37 of 2004 ("**Indonesian Bankruptcy Law**")[2].

Current Framework: Domestic Insolvency Proceedings

Under the current law, two forms of court-sanctioned proceedings are available to debtors:

Bankruptcy proceedings, which are aimed at liquidation; and

Suspension of Payments (*Penundaan Kewajiban Pembayaran Utang* or "**PKPU**") proceedings, which are designed to allow debt restructuring and business continuity.

Although these two forms are procedurally distinct, they are often intertwined; restructuring efforts may arise out of a bankruptcy proceeding, and a PKPU process may lead to liquidation if the restructuring fails.

Limited Provisions on Cross-Border Insolvency

Despite the progress in domestic insolvency law, Indonesia's legal regime remains underdeveloped in its treatment of cross-border insolvency. The current Bankruptcy Law contains only three provisions that specifically addressing cross-border situations. These provisions generally prohibit unsecured creditors from enforcing claims against a debtor's

[1] The author would like to extend its gratitude to Kevin Omar Sidharta for his valuable insights, which significantly contributed to the preparation of this article.

[2] The author uses the term "Indonesian Bankruptcy Law" deliberately, as the term "insolvency" under this law carries a different meaning than in many other legal systems. In Indonesia, insolvency does not serve as a test or requirement for the declaration of bankruptcy. Instead, it refers to a specific legal condition—"the state of being insolvent at law"—which arises once bankruptcy or PKPU proceedings have commenced.

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A New Chapter on the Bench: The Elevation of Sushil Nair

By **Blossom Hing**

The legal community in Singapore marks a significant development with the appointment of **Sushil Nair** as a Judicial Commissioner of the Supreme Court. Sushil brings with him over three decades of experience in restructuring and insolvency, after his long-standing and illustrious career at Drew & Napier. Sushil also served on the III Regional Committee Asia and was the conference co-chair for the III Annual Conference 2024.

Prior to his elevation to the judiciary, Sushil was the Deputy CEO of Drew & Napier LLC and also the Co-head of its Corporate Restructuring and Workouts practice. Over this time, the practice grew into one of the leading dedicated restructuring teams in Singapore, known for handling complex cross- border matters and achieving strong commercial outcomes for clients. Sushil led and advised on some of the region's most complex and high profile restructurings including the US$16 billion restructuring of

Asia Pulp & Paper, the US$2.6 billion restructuring exercise of PT Berlian Laju Tanker as well as the US$3.5 billion restructuring of Pacific International Lines where he represented Heliconia Capital, a subsidiary of Temasek Holdings.

Sushil's contributions have not gone unnoticed – he has received numerous accolades including being ranked in Band 1 by Chambers Asia-Pacific for 18 consecutive years, inducted into the Legal 500 Hall of Fame and identified as a Global Elite Thought Leader by Who's Who Legal.

Sushil has been instrumental in developing the R&I ecosystem in Singapore. Apart from

serving on the Insolvency Law Review Committee, the Insolvency Practice Committee of the Law Society, and the board of the Insolvency Practitioners Association of Singapore, Sushil was also a member of the committees convened by the Singapore Ministry of Law in 2017 and 2023, which were tasked with recommending initiatives and legal reforms that should be undertaken to enhance Singapore's effectiveness as a centre for international debt restructuring and to consider steps to further strengthen Singapore's corporate restructuring and insolvency regime. His policy work was pivotal in Singapore's development as an international restructuring and insolvency hub.

Beyond R&I, Sushil has also made wide-reaching contributions to Singapore's legal and public sectors. In 2022, he received the Friends of Ministry of Culture, Community & Youth Award for his role in the takeover of the Singapore Sports

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The European Harmonization of Creditors' Committees: A View from Spain

By **Marta Flores**

On 7 December 2022, the European Commission made public its proposal for a directive harmonising certain aspects of insolvency law (hereinafter, the "Proposal"). Said Proposal ultimately seeks to offer more certainty and create a common minimum standard of insolvency regimes across Member States, advancing in the Capital Markets Union and thus encouraging more effective cross-border investment.

To enhance the efficiency of insolvency proceedings, reduce their duration and increase the recovery value for creditors, the Proposal focuses on three strategic dimensions of insolvency law, namely: (i) maximising the recovery value of the debtor's assets for creditors; (ii) improving the efficiency of proceedings and (iii) the predictable and equitable distribution of the recovery value among creditors. Action along these three strategic axes has led the Commission to establish minimum harmonisation standards in relation to a range of highly heterogeneous and scarcely interrelated matters, such as avoidance actions, asset tracing, pre-pack procedures, duties of administrators in relation to the commencement of insolvency proceedings, simplified liquidation procedures for microenterprises and creditors' committees.

In Spain, creditors' committees sound *exotic* and *vintage*. They sound exotic because, although creditors' committees are a common body in other legal systems, in Spain they have never been a necessary body in insolvency proceedings. And creditors' committees also have a vintage touch because the attempts to introduce them in Spain date back to the Preliminary Draft of the Insolvency Law of 1983 and the Proposal for the Preliminary Draft of the Insolvency Law of 1995. However, despite their presence in these pre-legislative texts, the introduction of creditors' committees was finally discarded in the Spanish Insolvency Act of 2003. This was not an oversight, but a legislative policy choice: the Spanish legal system has omitted creditors' committees in a totally conscious manner.

That is why, from a Spanish perspective, it is startling that, of all the substantive insolvency matters that could be harmonised, the European pre-legislator has opted precisely for harmonising creditors' committees. But what is more: the inclusion of creditors' committees among the matters to be harmonised is equally striking because they have been praised and criticised in equal parts.

Their advocates insist on the scarce or directly non-existent participation of the majority of creditors in insolvency proceedings. The reasons are fundamentally economic: in most cases, the prospects for the satisfaction of claims do not compensate the costs (in terms of money and time) involved in actively participating in the proceedings. Only creditors with larger claims have incentives to participate more actively in the procedure.

Precisely due to responding to such a clear economic rationale, the need for a committee representing creditors in the day-to-day running of the insolvency proceedings was historically recognised very early on. Indeed, there is evidence of the existence of the figure already in the statutory law of medieval Italian cities (the so-called *capi dei creditori*). Nowadays, creditors' committees ¾with more or less similar features¾ are common in different legal systems: the *Gläubigerausschuß* in Germany, the *comitato dei creditori* in Italy, the creditors' committee in the United States and the United Kingdom, the *comissão de credores* in Portugal, the *contrôleurs* in France, etc.

However, the usefulness of committees and their effectiveness in practice have also been subject to criticism. In general terms, creditors' committees are often accused of being passive and ineffective. Indeed, the committees are often criticised for the scant use they make of their powers of investigation and supervision and for potentially delaying the progress of the procedure (if their compulsory intervention is required for certain issues). The introduction of creditors' committees among the matters to be harmonised can thus be considered a rather risky approach.

This being said, there are two main circumstances that (if not modified in the Directive that will eventually be enacted) will turn its transposition a real challenge for the Spanish legislator.

The first one is related to the fact that, under the Proposal, the general meeting of creditors has exclusive and excluding competence to decide whether or not to set up a committee. This poses a huge problem in Spain, where the general meeting of creditors does no longer exist: said body was suppressed in 2022 in order to simplify and accelerate insolvency proceedings, under the assumption that general meetings of creditors might have made sense in old bankruptcies ¾where there was a limited number of creditors¾ but nowadays they appear to be almost impracticable in a good number of cases, even admitting telematic meetings. Moreover, the Spanish experience

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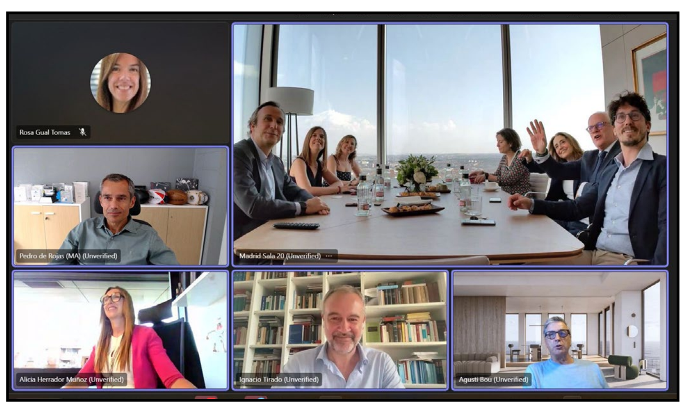
EMEA Summary

During the quarter, the EMEA regional committee continued to be active.

The co-chairs, **Stine Dalenhag Snertingdalen, Juanitta Calitz** and **Amanda Cohen**, met on several occasions to share ideas on the development and activities of the committee.

On 14 May all committee members met to discuss issues such as new committee members, diversity, activities to be organised and the annual congress in São Paulo.

The Spanish members of the Committee also met on 1 July to define the activities to be implemented between now and the end of the year.



WOM's Chapter 11 Bankruptcy Proceedings

By **Roberto Villaseca** and Ricardo Reveco

WOM S.A. is the second-largest mobile telecommunications provider in Chile, with approximately 8.5 million customers and holding around 25% of the national market share. Founded in 2015 following the acquisition of Nextel Chile's assets by British private equity firm Novator Partners LLP, WOM quickly positioned itself as a disruptive force in the Chilean telecom sector, known for its aggressive pricing and bold marketing.

Before WOM's entry into the Chilean market, three incumbent companies (Movistar, Entel and Claro) had large market shares, and gaining market share was perceived as very difficult because customers would have to migrate from one of the incumbents to the new entrant. WOM's successful advertising campaigns led to an exponential growth of its customer base.

However, WOM's strategic investment initiative aimed at diversifying its service offerings and enhancing its market position resulted in substantial financial challenges, ultimately leading the company into financial distress by early 2024.

These solvency concerns took place in a difficult time for telecoms in the region, with Brazilian operator Oi S.A. filing for bankruptcy in 2023, WOM Colombia filing for bankruptcy protection in Colombia in early 2024, and Telefonica aiming to exit several markets and filing for insolvency proceedings in Peru in early 2025.

By February 2024, WOM had liabilities for US$1,053.6 million. Besides, on November 2024 WOM was supposed to pay the balance of a US$450 million bond.

As a consequence, WOM and its affiliates filed for a Chapter 11 Bankruptcy Proceeding in Delaware, U.S.A. The initiation of the Chapter 11 proceeding was accompanied by a US$210 million debtor-in-possession (DIP) financing granted by JP Morgan, which was essential to support its restructuring efforts.

During the proceedings, WOM faced significant legal challenges, including (i) Chilean creditors willing to ignore the automatic stay, (ii) renegotiating executory contracts; (iii) a motion to dismiss filed in Delaware; and (iv) forcing some crucial shareholder's actions.

<u>Chilean creditors willing to ignore the automatic stay</u>:

During the proceedings, one of WOM's main challenges was that a significant number of Chilean creditors -seemingly without U.S. connections- were willing to ignore the automatic stay imposed on all creditors worldwide, despite potential sanctions.

Given that local claims were considerably smaller than U.S. claims, and that they posed a risk to WOM´s operation, WOM requested authorization to privately negotiate with local creditors and pay them directly (notwithstanding Chapter 11's general prohibition against paying prepetition creditors during the case) to prevent them from pursuing legal action in Chile during the restructuring proceedings.

By securing court approval to pay local creditors, WOM avoided legal challenges in Chile and preserved operational continuity. This pragmatic approach was generally well-received.

As a result —and considering that Chilean recognition would not have prevented local creditors from initiating involuntary bankruptcy proceedings in Chile, which could have jeopardized the overall restructuring efforts— no local recognition in Chile of a foreign proceeding was filed, either as a main or non-main proceeding, nor a parallel reorganization proceeding was filed.

Assumption and Rejection of Executory Contracts:

Under Chapter 11 rules, the debtor may, with court authorization, assume or reject executory contracts. This allows the debtor to retain those agreements which are valuable to its business, provided it cures most existing defaults and performs all its obligations thereunder going forward, and to reject those contracts that are no longer beneficial, leaving the counterparty with a damages claim that can be restructured in the Chapter 11 case with other unsecured prepetition claims. However, under Chilean law, contracts cannot be rejected.

This was not a major commercial issue, as most executory contracts were assumed. However, leveraging its rejection right, WOM was able to engage in private negotiations with certain of its counterparties, entering into a series of settlement agreements that renegotiated certain agreements on more favorable terms.

Motion to dismiss

During the proceeding an Ad-Hoc Group of WOM bondholders tried to dismiss the Chapter 11 cases, arguing the U.S. court lacked jurisdiction since WOM operates in Chile and claimed the filing was in bad faith.

WOM and its affiliates challenged the motion to dismiss, arguing that U.S. jurisdiction was valid because the companies held U.S.A. assets and most of the debt was governed by U.S. law. Another important point of WOM defense emphasized that Chilean law bars foreign affiliates from filing in Chile and that as a consequence Chapter 11 offered a better tool for the restructuring efforts.

Ultimately, the parties reached an agreement under which the Ad Hoc Group withdrew its motion to dismiss the Chapter 11 proceedings.

Forcing Shareholder's Action: Legal Limits and Negotiated Outcomes:

WOM's approved reorganization plan included provisions for a change of control, which involved restructuring the ownership structure of the company. Chilean corporate law in principle does not allow for forced sales, meaning that shareholders could not be compelled to divest their ownership.

To address this issue, WOM and its creditors reached a settlement agreement with WOM's existing shareholders. The transaction involved the shareholders committing to pay certain amounts of money and to fully cooperate throughout the change of control process, ensuring that the transition was completed in compliance with all legal and regulatory requirements.

As a result, in March 2025, following a year-long restructuring proceeding, the company successfully emerged from Chapter 11 proceedings, having reduced its debt by over US$650 million. In parallel, it executed a rights offering valued at US$500 million and issued new senior secured bonds totaling US$332 million.

The company also entered a new phase with a revised ownership structure. This included the exit of the British investment fund Novator Partners, which had previously controlled the company. In its place, an ad hoc group of bondholders took control of WOM, in a deal valued at US$1.6 billion.

Following the change of control, WOM's former CEO, Chris Bannister -who had become a local celebrity by participating in WOM's ad campaigns- returned to lead the company, signaling a renewed focus on operational excellence and market competitiveness. ■

Clash of Titans Between Privileged Labor and Tax Claims: A Copernican Shift by the Argentine Supreme Court

By **Hon. Verónica F. Martínez** and **Javier A. Lorente**

In the wake of Argentina's 1994 constitutional reform and the enactment of the 2015 Civil and Commercial Code (CCCN), the legal system entered a process of "constitutionalizing private law". Courts are now expected to interpret and apply domestic legislation in harmony with the National Constitution and binding human rights treaties.

This transformation has had far-reaching consequences across various areas of law—**including insolvency proceedings**—by subjecting long-standing legal rules, such as those enshrined in the Argentine Bankruptcy Law (ABL, Law No. 24,522), to new constitutional and supranational standards.

A particularly delicate area affected by this evolution concerns the ranking of privileged claims. While Argentina's insolvency framework is built upon a closed statutory system of creditor priorities, labor claims, constitutionally protected under Article 14 bis and reinforced by international treaties, have increasingly come into tension with other claims, such as public (tax) claims.

Against this backdrop, the recent "*Acevedo*" [1] ruling by the Argentine Supreme Court (CSJN) has further exposed the fragility of the privilege system by marking a dramatic departure from prior jurisprudence. It revisits the conflict between labor and tax privileges and reverses the trend of extending international labor protections into the insolvency arena—thereby reinforcing the rigidity of the statutory priority scheme.

This confrontation has created notable interpretative instability within the current insolvency framework. Although other issues involving vulnerable and/or hyper-vulnerable creditors also pose significant challenges for today's insolvency practice, they fall outside the scope of this article[2].

Labor Privileges in Insolvency Proceedings

The **principle of equal treatment among creditors** (*par conditio creditorum*) governs insolvency law, ensuring equitable satisfaction of claims. This foundational principle admits statutory exceptions through classification and privileges, which must be legally established, narrowly construed, and indivisible in nature.

Under Argentine law, labor claims enjoy a dual privileged status—both special and general—placing employees ahead of ordinary creditors. These privileges are reinforced by procedural benefits, including expedited payment and, in certain cases, continued accrual of interest despite the commencement of insolvency proceedings.

Legislative policy in Argentina has historically aimed to **progressively strengthen worker protections**, as a vulnerable group, in line

1 *Acevedo, Eva María v Manufactura Textil San Justo, Bankruptcy* (CSJN, 3 April 2025) Fallos 348:189.

2 We refer in particular to the cases *Asociación Francesa Filantrópica y de Beneficencia (AFFyB) s/ Quiebra s/ Incidente de verificación de crédito por LAR y otro* (CSJN, 6 November 2018) La Ley, AR/JUR/56326/2018; *Institutos Médicos Antártida SA s/ Quiebra s/ Incidente de verificación de crédito promovido por Ricardo A Fava y Liliana R Harreguy de Fava* (CSJN, 26 March 2019) La Ley, AR/JUR/1632/2019.

with international human rights obligations. Nonetheless, in bankruptcy scenarios, this protection can be undermined if other privileged claims—most notably those held by the tax authority—consume the available estate. This systemic tension lies at the heart of the judicial conflict addressed in the *Acevedo* ruling.

A Jurisprudential Turn: From *Pinturas* to *Acevedo*

In *Pinturas y Revestimientos Aplicados S.A.* (2014) [3], the Argentine Supreme Court departed from the statutory priority order and ruled that **labor claims prevail over tax claims**, relying on **ILO Convention No. 173**. The Court reasoned that the Convention, having been approved by Congress, enjoyed a superior normative status and should be interpreted as granting **supra-legal protection** to labor creditors *vis-à-vis* the State.

In doing so, the Court exercised active conventionality control, aligning domestic case law with the international labor protection framework. The ruling was widely followed by lower courts, becoming a pillar of insolvency jurisprudence over the past decade.

However, on April 3, 2025, in *Acevedo, Eva María v. Manufactura Textil San Justo S.A. on Bankruptcy*, the Supreme Court (with a different composition) effectively **overruled *Pinturas***, re-establishing the primacy of the **statutory tax privilege** and narrowing the scope of international labor protections in insolvency cases.

The *Acevedo* Case: Reaffirming the Principle of Legality

In *Acevedo*, the Supreme Court overturned a distribution plan that had prioritized labor claims in accordance with *Pinturas*. The majority held that **ILO Convention No. 173 is not enforceable under Argentine domestic law**, as it had been approved by Congress (Law 24.285) but never formally **ratified by the Executive Branch**—a necessary step under Articles 31, 75(22), and 99(11) of the Argentine Constitution.

The justices concurred that in the absence of ratification, the treaty lacks binding force. However, their individual opinions introduce significant nuances, which are summarized below.

Minister **Rosenkrantz** emphasized that **the treaty-making process is a constitutionally complex federal act**, consisting of signature, legislative approval, and executive ratification. Referring to the landmark case *Ekmekdjian v. Sofovich*[4], he asserted that *Pinturas* failed to respect this procedural requirement and therefore improperly extended the scope of a non-binding treaty.

In a concurring opinion, Minister **Rosatti** agreed that Convention No. 173 had not completed the constitutional process required for incorporation with **supralegal hierarchy**. Nevertheless, he diverged from Rosenkrantz by noting that **Law 24.285 constitutes a valid domestic statute**, with binding legal effects. Still, he concluded that, "contrary to the rulings of lower courts, within the domestic legal framework, Law 24.522—as the later statute—governs the case, replacing Law 24.285 to the extent that the two are incompatible."

Lastly, Minister **García Mansilla** contributed an additional line of reasoning: not only was the treaty unratified, but the Argentine State also **failed to make an express declaration** upon its approval, formally assuming the specific obligations to grant labor claims preferential treatment. He pointed out that Law 24.285 is silent in this regard, which, in his view, renders the treaty **invalid or inoperative** under domestic law. Convention No. 173, he noted, requires **an explicit, rather than tacit, acceptance** of such obligations.

The Court ultimately concluded that, **since the ratification process was incomplete**,

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[3] *Pinturas y Revestimientos Aplicados SA, Bankruptcy* (CSJN, 26 March 2014) Fallos 337:315.

[4] *Ekmekdjian, Miguel Ángel v Sofovich, Gerardo* (CSJN, 7 July 1992) Fallos 315:1492.

Bank Liquidation in Mexico: Some Considerations on its Legal Regulation

By **Víctor Manuel Peña Briseño, PhD**

OVERVIEW.

In Mexico, liquidation of credit institutions is not regulated by the Mexican Insolvency Law of May 2000. The applicable legislation is the Law of Credit Institutions (LIC[1]) of July 1990, which was last amended in January 2024.

As judicial liquidation of commercial banks under Articles 225 to 269 is performed, Mexican banking legislation does not use the words "insolvency" or "bankruptcy", with the ostensible purpose of the legislator not to create panic among bank users.

Judicial liquidation of banks is also governed by the provisions of the Bank Savings Protection Law of January 1999 (LIPAB[2]), which was last amended in May 2022, and the Payment Systems Law of December 2002.

Declaration of judicial liquidation of a multiple banking institution whose authorization to organize and operate as such has been reversed and falls under capital extinction is appropriate, and it will be understood that an institution is under this situation when its assets are not sufficient to cover its liabilities in accordance with an opinion of the financial information provided by the banking institution when such event occurs, and which is issued in the basis of criteria for accounting records established by the National Banking and Securities Commission, the regulatory and supervisory banking body in Mexico (Article 226, LIC).

[1] LIC - By its acronym in Spanish

[2] LIPAB – By its acronym in Spanish

Judicial liquidation will be heard by the District Judge (Federal Judge) of the registered address of the banking institution in question. The request to have a judicial liquidation of a multiple banking institution declared is the exclusive power of the Institute for the Protection of Bank Savings (IPAB[3]). This same Institute will act as the judicial liquidator and may perform this role through its personnel or by means of attorneys-in-fact appointed and retained thereby at the expense of the assets of the bank in liquidation.

LIMITED PROTECTION TO SAVING CLIENTS.

In terms of Article 11 of the LIPAB, deposits that are not in excess of 400,000 Investment Units (UDIS[4]) per person, individual or legal entity, which is equivalent to $8.428416 as established by the Bank of Mexico as of April 9, 2025, amounting to MXN3,371,366.40 Mexican pesos and converted to US dollars, which as of the same date and according to the peso-US dollar exchange rate, are equivalent to US$162,972.65 according to the exchange rate as of the same date.

When the IPAB pays these guaranteed obligations, it is subject to collection rights within the liquidation procedure, with preference over the collection rights related to the uncovered balance because it has exceeded the limit described above, to the detriment of the senior savers, a condition which will be discussed later.

For the purposes of this study, it is important to clarify that in terms of Chapter III of the LIPAB, every banking institution is compelled to pay ordinary and extraordinary fees to the

[3] IPAB – By its acronym in Spanish

[4] UDIS – By its acronym in Spanish

IPAB so that it can perform the powers to protect savers whose amount is not in excess of the limit described above, which makes it possible to maintain a fund for the protection of bank savings.

DUE PROTECTION OF SAVERS' INTERESTS.

In the terms of Section 129 of the LIC, the National Banking and Securities Commission (CNBV), per agreement of its Board of Directors, in order to protect the interests of savers and creditors of a multiple banking institution, will declare, as a precautionary measure, that the banking institution be intervened should the circumstances set forth in the banking law arise, emphasizing, for the purposes of this study, the provisions of Section I of said legal precept when in the course of a month, the capitalization index decreases from a level equal to or greater than the one required by the CNBV in terms of Article 50 of the banking law.

It is important to restate, mainly for the purposes of this study, that it is imperative that the CNBV declares that the bank be intervened as a Precautionary Measure when there is evidence of a decrease in the required capitalization ratio and it is only optional to declare such intervention when there are irregularities of any other kind that may affect the stability and solvency of the banking institution and endanger the interests of the public or of its creditors.

BANK LIQUIDATION OF 'ACCENDO BANCO, S.A.'

For the purposes of this study, and mainly to analyze whether the Mexican government institutions responsible for guaranteeing due supervision of banking institutions and due protection for bank savers and investors comply with their legal obligations, a brief analysis of the liquidation of Banco Accendo, S.A. is discussed.

On June 30, 1995, the Ministry of Finance and Public Credit (SHCP[5]), granted authorization to Accendo Banco, S.A. Institución de Banca Múltiple, to organize and operate as such.

On September 23, 2021, the CNBV, per resolution of its Board of Governors, reversed the aforementioned authorization due to the bank's failure to correct previously required facts and omissions and to reimburse capital in the amount necessary to maintain its operation within the legal limits, placing the bank in a state of liquidation. The Board of Governors resolved that it was not appropriate to declare the intervention of the bank without providing a basis or reason for such a resolution and notwithstanding the fact that Article 129, Section I of the LIC, in its entirety required the necessary intervention of the bank in order to protect the interests of savers. (Agreement published in the Federal Official Gazette dated September 29, 2021).

By the execution of the aforementioned Agreement and the failure to comply with the obligation to appoint a receiver in this case, as provided in section 129, paragraph I of the LIC, every saver and investor whose deposits were in excess of 400,000 UDIS guaranteed by the IPAB were affected, since, in terms of the provisions of section 180 of the LIC, which establishes the order in which the liquidator must pay the institution in liquidation, it places the credits of savers and senior investors whose limit is in excess of 400,000 UDIS in the sixth place and after the IPAB has been paid what was disbursed by said institution for the guaranteed credits up to 400,000 UDIS – as well as any other liability in favor of the institution.

This means that the Banking Law privileges payment to IPAB notwithstanding the fact that such Institute, as previously mentioned, receives ordinary and extraordinary contributions from all banks, specifically to pay guaranteed savers, but it is perceived that then, IPAB will recover again what it paid for such guaranteed loans with the savings and equity of savers and investors whose deposits are in excess of 400,000 UDIS.

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[5] SHCP- By its acronym in Spanish

In re Fairfield Sentry Ltd.: Extraterritorial Application the US Bankruptcy Code's Securities Safe Harbor from Constructive Fraudulent Transfer Claims

By **Timothy Graulich**, Joshua Sturm and Jonathan He

Introduction

United States courts have long grappled with application of various US Bankruptcy Code provisions to non-US parties through the lens of a chapter 15 proceeding. In August 2025, the US Court of Appeals for the Second Circuit (the "**Second Circuit**") resolved a split of lower court decisions, ruling that the Bankruptcy Code's securities safe harbor under section 546(e) shields transfers between non-US entities from constructive fraudulent transfer and related claims pursued through chapter 15 proceedings.[1]

Background

The debtors in *In re Fairfield Sentry Ltd.* (collectively, the "**Debtors**" and each, a "**Debtor**") were investment funds based in the British Virgin Islands ("**BVI**") that invested heavily in Bernard L. Madoff Investment Securities ("**BLMIS**"). As Madoff's Ponzi scheme unraveled, the Debtors were forced into liquidation and initiated insolvency proceedings in the BVI in 2009. In July 2010, the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") granted US chapter 15 recognition of the BVI proceedings as a foreign main proceeding.

Before the collapse of Madoff's Ponzi scheme, some investors redeemed their shares in the Debtor funds at overstated redemption prices reflecting inflated fund valuations based on BLMIS's fictitious account statements. The liquidators appointed for the Debtors brought suits in the BVI seeking to claw back these redemption payments from certain of the non-US investors that redeemed shares before the collapse (the "**Defendants**") so those Defendants would not benefit from a windfall at the expense of investors whose shares suffered substantial losses following disclosure of BLMIS's fraud.[2] Those proceedings ultimately came before the Privy Council in London, which upheld the finality of the Defendants' redemption.

The liquidators then moved for leave to amend the complaint in the US chapter 15 proceeding. The Defendants moved to dismiss the liquidators' claims for lack of personal jurisdiction, failure to state a claim, and the safe harbor for securities transactions of section 546(e) of the Bankruptcy Code. The three central issues first considered by the Bankruptcy Court were: (i) whether the forum selection clause in the Debtor fund subscription agreements established personal jurisdiction over the investors who were non-US Defendants, (ii) whether the securities safe harbor of section 546(e) of the Bankruptcy Code applies extraterritorially to bar the liquidators' fraudulent transfer claims and (iii) whether section 546(e)'s safe harbor applies to common-law claims based on non-US legal theories. The Second Circuit addressed each of these questions on appeal.

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[1] *In re Fairfield Sentry Ltd.*, No. 22-2101-BK, 2025 WL 2218836 (2d Cir. Aug. 5, 2025).

[2] The liquidators also filed about 300 separate actions in the United States to claw back over $6 billion in allegedly inflated redemption payments, asserting a number of claims directly under US law, including unjust enrichment, constructive trust, among others. The US chapter 15 proceeding consolidated and stayed all these US actions pending the outcome of the BVI proceedings.

Personal Jurisdiction Through Fund Document Forum Selection Clause

The forum selection clause in the Defendant investors' fund subscription agreements provided that a "[s]ubscriber agrees that any suit, action or proceeding ... with respect to this Agreement and the [Debtor fund] may be brought in New York." The Second Circuit adopted a broad interpretation of this clause, holding that an action was "with respect to" the subscription agreement as long as there was even an "established or discoverable relation," under which the liquidators' actions qualified. Thus, the Defendants' contractual consents through the fund documents' forum selection clause established personal jurisdiction for the liquidators' claims against the Defendants.

Extraterritorial Application of the Bankruptcy Code's Securities Safe Harbor

The Second Circuit also addressed a split among earlier decisions about whether the US Bankruptcy Code's securities safe harbor shields transfers between non-US parties. Section 546(e) of the Bankruptcy Code provides a safe harbor from the trustee's avoidance power for settlement payments "made by or to (or for the benefit of) a ... financial institution ... in connection with a securities contract" with respect to certain types of avoidance actions, including constructive fraudulent transfer claims.[3] This safe harbor is extended to chapter 15 proceedings via section 561(d) of the Bankruptcy Code, which provides that:

Any provisions of this title relating to securities contracts ... shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of [the Bankruptcy Code] (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).[4]

The parties did not dispute that the relevant transactions were settlement payments made to financial institutions in connection with a securities contract. The sole dispute was whether section 546(e) applies extraterritorially to shield transfers from and to non-US parties.

The Second Circuit started the analysis with the established presumption against extraterritorial application of US statutes and applied the standard set forth in *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325 (2016), considering (i) whether Congress intended the statute to apply extraterritorially and (ii) if the presumption against extraterritoriality has not been rebutted, whether the conduct occurred domestically.

Under the Court's analysis of the first element, Congress expressed a clear intent to apply section 546(e) extraterritorially through enactment of section 561(d) because section 561(d) would be superfluous if the safe harbors only applied domestically. Under chapter 15, the only avoidance powers possessed by a foreign representative are those under foreign law because, through section 1521(a)(7) of the Bankruptcy Code, "[c]hapter 15 expressly prohibits a foreign representative from using the statutory avoidance powers of the Bankruptcy Code" or from using state law pursuant to section 544(b). Therefore, the Court found that section 561(d) "must apply extraterritorially if it is to have any effect at all." Additionally, the Court inferred congressional intent to apply section 546(e) extraterritorially through the overall purpose of chapter 15 ("to provide filing by foreign, not domestic, debtors") and the legislative history of section 561(d). Congress added section 561(d) in response to the collapse of Long Term Capital Management L.P. ("**LTCM**")—which operated a Cayman Islands fund—to impose the US Bankruptcy Code's

[3] 11 U.S.C. § 546(e).

[4] 11 U.S.C. § 561(d).

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International Insolvency Institute Prize 2026

The International Insolvency Institute is pleased to announce its 2026 *Prize in International Insolvency Studies*. The Prize in International Insolvency Studies comprises a Gold Medal Prize for the winning submission as well as a Silver Medal Prize and Bronze Medal Prize.

The III *Prize* is awarded for original legal research, commentary or analysis on topics of international insolvency and restructuring significance and on comparative international analysis of domestic insolvency and restructuring issues and developments. The Prize Competition is open to full and part-time undergraduate and graduate students and to practitioners in practice for nine years or less. Entries must not have been published and must be available to be posted on the International Insolvency Institute website at www.iiiglobal.org. Entries will be judged by a jury of distinguished international academics. Medal-winning entries will be considered for publication in the *Norton Journal of Bankruptcy Law and Practice* (West) and for inclusion in the *Westlaw* electronic database. Submissions are traditionally scholarly length law review articles or chapters of a manuscript. Full-length manuscripts would not be appropriate; any submission more than 20,000 words will not be considered. **Entries must be received by March 15, 2026.**

The Gold Medal winner will be honored at the III's 26th Annual International Insolvency Conference in Washington, DC in June 2026. All Medal Winners will be invited to attend the Conference and will be provided with complementary Conference registration. For further details and the terms of the III *Prize in International Insolvency Studies*, please contact III Administrative Director CC Schnapp (ccschnapp@iiiglobal.org).

Summary of Terms and Conditions

The International Insolvency Institute (www.iiiglobal.org) will award its *2026 Prize in International Insolvency Studies*, for outstanding writing, research or analysis in the insolvency field. The terms of the 2026 Prize Competition are as follows:

1. Candidates must be full or part-time undergraduate or graduate students, researchers or practitioners in practice for nine years or less. A CV should display the candidate's status.
2. The article or research must be on an international or comparative insolvency topic and must be submitted in English.
3. Articles must not have been previously published.
4. Candidates may submit only one contribution.
5. The Jury may decide not to award the *Prize* if, in its opinion, no contribution of sufficient quality has been submitted.
6. Entries must be available to be posted on the III website and published in the *Journal of Bankruptcy Law and Practice* (West and Westlaw).
7. Articles must be submitted before March 15, 2026.
8. Candidates will be informed of the final decision of the Jury on or before April 15, 2026.
9. All contributions should be sent to the III at ccschnapp@iiiglobal.org and must be marked as submissions for the III *Prize in International Insolvency Studies, 2026.*
10. The Gold Medal Winner will be invited to attend the III's 25th Annual Conference in Washington, DC in June 2026 to present their work and the III will cover reasonable travel expenses. All Medal Winners and Finalist Prize recipients may attend the 2026 Annual Conference, and their Conference registration fees will be waived. ■

Creating Inclusive Insolvency Courts: A Model Code of Conduct

By **Antonia Menezes** and **Nina Pavlova Mocheva**

The World Bank's report "Women, Business and the Law" illustrates how more than one third of the world's economies have laws constraining women's decisions to join and remain in the workforce.[1] Courtrooms should be places of fairness, professionalism, and respect - but for many women professionals working in the field of insolvency law, that's far from the reality. In many parts of the world, women insolvency lawyers and administrators face dismissive treatment, subtle exclusion, and at times, outright hostility within courts. The insolvency field is still largely viewed as a male-dominated profession, because of its adversarial nature and women professionals still face many barriers from entry and advancement.[2]

That's why the World Bank's Insolvency & Debt Resolution (IDR) Program is partnering with the International Insolvency Institute's (III) Gender Subcommittee to co-develop a Model Code of Conduct for judicial – counsel or counsel-counsel interactions. The goal is simple but powerful: to help create safer, more respectful, and inclusive court environments where all professionals, regardless of gender, can do their best work.

This code will set clear, enforceable standards for behavior and professional interaction within insolvency courts. It will provide specific guidelines for judge – counsel/counsel-counsel interactions, ensuring that all stakeholders involved in court proceedings uphold respectful, equitable, and professional treatment toward female insolvency lawyers.

Whilst these standards apply more broadly to all court interactions, the focus is on insolvency proceedings given the mandate of III and the World Bank IDR Program. Nonetheless, the objective of the model code goes beyond a single legal domain. It's meant to be scalable - a framework that other sectors and jurisdictions can adopt to build a broader culture of dignity, respect, and equality.

To make this code effective and relevant, research has been undertaken by a committed team of III and NextGen volunteers focused on analyzing codes of conduct from around the world. This review will highlight best practices and identify critical gaps, particularly around gender sensitivity and accountability.

This research forms the foundation for a practical, context-sensitive code - one that is informed by real challenges and tailored for meaningful impact, especially in regions where gender bias in the legal profession is most acute.

At the same time, this project will go beyond research. A series of interviews is being conducted with female judges and litigation counsel across developing countries. Their firsthand

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[1] https://wbl.worldbank.org/en/data/exploretopics/wbl_sj

[2] For example, in Australia, the gender gap is stark in certified roles: in 2024, only about 10% of registered liquidators and 13% of registered trustees were women. In the UK, a 2024 analysis found that on average, only 15% of licensed insolvency practitioners were women.

NextGen at the 25th Annual III Conference: A Global Dialogue on the Future of Insolvency Law

Report by **Olya Antle – Co-Chair, NextGen Program, NextGen Class 2022**

On June 8, 2025, the vibrant city of São Paulo, Brazil hosted the NextGen Program at the 25th Annual Conference of the International Insolvency Institute (III). Held at the Renaissance São Paulo Hotel, the event brought together emerging leaders in insolvency law from around the world who are shaping the future of cross-border restructuring and insolvency practice. The NextGen Program, now in its fourteenth year, offers a platform for rising professionals to engage in substantive dialogue, showcase research, and build global networks.

The day began with a warm welcome and opening remarks that set the tone for a dynamic and intellectually rich program. The NextGen cohort, known for its diversity in jurisdictional backgrounds and professional experiences, was eager to delve into the pressing issues facing the insolvency field today.

Panel 1: A Rotating Roundtable of Global Perspectives

The opening session of the NextGen Program departed from the traditional panel format and embraced a dynamic, interactive structure that fostered deeper engagement and dialogue. The session was designed as a rotating roundtable discussion, featuring five distinguished discussion leaders: Hon. Lisa Beckerman, Hon. Justice Peter J. Osborne, Hon. Elizabeth S. Stong, and Prof. Dr. Annika Wolf. Each of these senior members of the International Insolvency Institute brought unique jurisdictional and professional perspective to the table.

The roundtable format proved to be a highlight of the day, allowing for rich, multi-directional exchanges that would have been difficult to achieve in a traditional panel setting. Attendees appreciated the opportunity to engage directly with seasoned experts, pose jurisdiction-specific questions, and compare legal frameworks in real time.

Panel 2: Stay Moratorium and Substantive Consolidation

The second panel of the day tackled the complex and often contentious topics of stay moratoriums and substantive consolidation. The discussion centered on how different jurisdictions approach the temporary suspension of creditor actions during insolvency proceedings and the legal mechanisms that allow for the consolidation of debtor entities.

After exploring the tension between protecting debtor assets and preserving creditor rights, the panel featuring Kathlene Burke, Sabrina Becue, Dabin Chung and Nienke Lillington, concluded with a Q&A session, where attendees debated the implications of these doctrines in cross-border settings.

Panel 3: Comparative View of Liability Management Exercises

This panel, featuring Maja Zerjal Fink, Thiago Braga Junqueira, Sebastiaan van den Berg, and moderated by David Schiff, offered a comparative analysis of liability management exercises (LMEs) across key jurisdictions, focusing on how companies restructure debt outside of formal insolvency proceedings. The discussion explored tools such as debt exchanges, consent solicitations, and out-of-court restructurings, with panelists sharing insights from the U.S., Latin America, and Europe. Each speaker highlighted the legal frameworks and market dynamics that shape LME strategies in their respective regions, emphasizing the importance of creditor engagement and regulatory clarity.

The conversation also addressed the growing complexity of capital structures and the role of LMEs in preserving value and avoiding court-driven processes. Panelists discussed recent case studies and legislative developments, underscoring the need for flexible approaches. The session provided attendees with a deeper understanding of how LMEs are evolving globally and the strategic considerations involved in executing them effectively.

Panel 4: Sovereign Debt Restructuring in Emerging Markets

The fourth panel shifted focus to sovereign debt—a topic of growing relevance amid global economic uncertainty. This session brought together experts in sovereign finance, international law, and public policy to examine the legal and practical challenges of restructuring sovereign obligations, particularly in emerging markets.

One of the most compelling segments of the panel was a case study on Argentina's recent debt negotiations, which illustrated the interplay between domestic politics, international law, and market dynamics. The panelists, Yiannis Bazinas, Javier Lorente, Charles Ho Wang Mak, Gabriel Olivera and Eugenio Vaccari, emphasized the need for a more predictable and equitable framework for sovereign debt resolution, with some advocating for a global sovereign bankruptcy regime.

Panel 5: Rapid Fire Jurisdictional Updates

Following the first four panels, the program transitioned into a series of rapid-fire presentations from NextGen members, each offering a snapshot of recent developments in their home jurisdictions. These short, high-impact talks provided valuable comparative insights and highlighted emerging trends in Brazil (Victoria Boacnin), Chile (Roberto Villaseca), Mexico (Karla Silva), and Argentina (Estela Josefina Condrac).

These updates reinforced the importance of understanding local legal landscapes while fostering global dialogue and harmonization.

Panel 6: DAOs and DeFi in International Insolvency Proceedings

The last panel of the day addressed one of the most cutting-edge topics in insolvency law: the treatment of decentralized autonomous organizations (DAOs) and decentralized finance (DeFi) platforms in international proceedings. As blockchain-based entities continue to proliferate, insolvency professionals are grappling with how to apply traditional legal concepts to these novel structures.

The panelists, Olya Antle, Adam Crane, and Alecia Johns, moderated by Steven Golden, kicked off the session by outlining the challenges of identifying and asserting jurisdiction over DAOs, which often lack a centralized management structure or physical presence, discussed the evolving regulatory landscape for DeFi platforms, as well as the implications for asset recovery and investor protection.

The panelists discussed how courts might approach questions of liability and governance, underscoring the urgent need for legal innovation and international cooperation to address the unique risks posed by decentralized technologies.

Induction of Class XIV

The day concluded with the formal induction of the fifteen new Class XIV NextGen Members into the NextGen Program, marking the beginning of their journey as part of a global network of emerging leaders in insolvency law. This year's cohort represents a diverse group of talented professionals from across jurisdictions, each selected for their contributions to the field and potential to shape its future. The induction ceremony celebrated their achievements and welcomed them into a collaborative community dedicated to advancing cross-border restructuring and insolvency practice.

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UNCITRAL Working Group V

Report by **R. Adam Swick**

In May 2025, III sent a delegation to New York to participate in the sixty-sixth session of the United Nations Commission on International Trade (UNCITRAL) Working Group V, which focuses on international insolvency law.

The New York session marked progress on two major projects: the finalization of the Asset Tracing and Recovery (ATR) toolkit and ongoing deliberations over the complex issue of Applicable Law in Insolvency (ALI).

First, the Working Group completed its work on the Asset Tracing and Recovery (ATR) toolkit, a consolidated document designed as a practical, non-binding resource for practitioners engaged in ATR in insolvency contexts. The toolkit, accompanied by narrative guidance, underwent final linguistic refinements. Importantly, the Working Group reaffirmed the educational and non-prescriptive nature of the toolkit, distinguishing it from a model law. The ATR toolkit and notes were approved at the New York session in May 2025 and formally considered and adopted by UNCITRAL's 58th session in July 2025.

Second, the ALI project, which seeks to clarify conflict-of-laws rules in cross-border insolvency, remains a work in progress. The Working Group engaged in vigorous discussions on several topics, including the structure and form of the project, and the applicable law for secured creditors, avoidance actions, and setoff. Particularly interesting was discussion over choice-of-law issues when arbitration and insolvency intertwine.

The outcomes of this session were reported to the UNCITRAL Commission at its 58th session in July 2025. The Working Group is scheduled to reconvene for its sixty-seventh session in December 2025, where deliberations on unresolved ALI issues will continue.

Along with UNCITRAL, III hosted a cocktail reception and program entitled, the Intersection of Maritime Law and Insolvency, at Akerman LLP's New York offices. Panelists included **Olya Antle** (Cooley LLP; Washington D.C.), **Mike Schaedle** (Blank Rome LLP; Philadelphia), **Warren de Waegh** (Erasmus University; Rotterdam, Netherlands), and **Kai Yun Tan** (Wong Partnership; Singapore). Special thanks to III member, **Evan Zucker** for helping plan the event.

III's Working Group V committee will present a formal update to members at III's quarterly meeting in December 2025.

The committee looks forward to sending a delegation to the Next Working Group V session in Vienna December 8-12, 2025.

As always, the committee highly encourages volunteers for written materials for the next session. If you are interested, please contact the committee's chair directly, Adam Swick at adam.swick@akerman.com. ■

Interview Segment: UNFIIILTERED Featuring Henrique Meirelles

We are pleased to present the second episode of UnfIIIltered—a talk show in which our hosts, **Dr. Robert Hanel** and **Steve Golden** (NextGen), 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 Henrique Meirelles for the program. Mr. Meirelles served as the Keynote Speaker at the III 2025 Annual Conference, where Robert and Steve had a chance to sit down with him and discuss his thoughts on economic policy, insolvency reform, and bureaucracy in Brazil.

Mr. Meirelles began his professional journey at BankBoston, where he rose through the ranks to become **President and CEO**, overseeing the bank's operations in more than 20 countries. After decades of leadership in the global financial industry, he transitioned to public service at a critical moment for Brazil. In 2003, Meirelles was appointed **President of the Central Bank of Brazil**, a position he held for a record eight years, under two administrations. During his tenure, he successfully stabilized inflation, strengthened Brazil's international reserves, restored investor confidence, and helped lay the groundwork for a period of sustained economic growth. After his term at the Central Bank, Meirelles continued to play a vital role in Brazil's economic affairs. In 2016, amid a challenging fiscal crisis, he was appointed **Minister of Finance**. In this role, he spearheaded reforms to restore fiscal responsibility, control public spending, and revive economic growth, most notably through proposing the constitutional spending cap and supporting structural reforms to modernize the Brazilian economy. Throughout his career, Meirelles has contributed to international institutions, serving on advisory boards and forums such as the World Economic Forum and the Council on Foreign Relations. **He ran for President of Brazil in 2018.**

Watch the interview on Youtube

ASK AIII:

Time to have a bit of a laugh messing with AI!

In this segment we intend to experiment with different ways to play with AI...

Shreya Prakash challenged ChatGPT to share "What practical steps would be needed to make an international insolvency court a reality - prepare a roadmap." By way of context, an international insolvency court is a proposed or conceptual judicial body designed to handle cross-border insolvency cases involving multinational corporations or entities with assets and creditors in multiple countries. Unlike national bankruptcy courts that operate within the legal framework of a single jurisdiction, an international insolvency court would aim to provide a unified, transparent, and efficient forum for resolving complex, multi-jurisdictional insolvency disputes. Establishing a truly international insolvency court faces several hurdles, including differences in national insolvency laws and creditor priorities, and sovereignty concerns regarding legal authority. While still largely theoretical, the idea of an international insolvency court represents a forward-looking approach to harmonizing global insolvency practices.

Here's what it wrote[1]

Creating an international insolvency court would be a major legal, political, and institutional undertaking. Here's a realistic roadmap outlining the practical steps required to make it a reality, broken into phases with clear objectives.

[1]Text generated by ChatGPT, August 8, 2025, OpenAI, https://chat.openai.com.

Roadmap to Establish an International Insolvency Court

Phase 1: Feasibility & Consensus Building (Short-Term: 1–3 Years)

1. Conduct a Global Feasibility Study
   - Commissioned by international bodies like the UN, World Bank, or IMF.
   - Assess demand, legal barriers, and economic impact.
   - Compare existing frameworks (UNCITRAL Model Law, EU Insolvency Regulation, etc.).
2. Initiate Multilateral Dialogue
   - Convene stakeholder consultations: governments, judges, insolvency professionals, creditors, international financial institutions.
   - Focus on G20, OECD, and emerging markets.
   - Explore appetite for cooperation and scope (e.g. corporate insolvency only?).
3. Establish a Steering Committee or Task Force
   - Composed of legal, economic, and political experts from a diverse range of jurisdictions.
   - Tasked with drafting a conceptual framework and governance model.
4. Public Outreach & Industry Input
   - Engage business associations (e.g. ICC, INSOL International).
   - Solicit feedback from insolvency practitioners and cross-border creditors.

Phase 2: Legal Framework Development (Medium-Term: 3–6 Years)

5. Draft an International Treaty or Convention
   - Outline jurisdiction, procedures, enforcement mechanisms, and scope of authority.
   - Build on principles of the UNCITRAL Model Law but with added supranational authority.
   - Address sovereignty concerns with opt-in or tiered participation models.

6. Define Jurisdiction & Case Criteria
 • Determine what types of cases the court will hear (e.g. multijurisdictional corporate bankruptcies only).
 • Set thresholds for cross-border significance (number of countries involved, asset distribution, creditor makeup).
7. Establish Institutional Structure
 • Location and legal seat of the court (e.g. The Hague, Geneva).
 • Rules for judicial appointments, neutrality, transparency, and appeals.
 • Funding model (contributions from member states, case fees, donor funding).
8. Build Enforcement Mechanisms
 • Require domestic recognition of judgments under the treaty (similar to the New York Convention for arbitration).
 • Encourage states to pass implementing legislation to give domestic legal effect to the court's rulings.

Phase 3: Institutional Set-Up (6–10 Years)

9. Secure Initial Ratifications
 • Seek ratification from a critical mass of countries, ideally including major economies and financial hubs.
 • Offer incentives for early adopters (technical assistance, advisory roles).
10. Recruit and Train Judges and Staff
 • Appoint a diverse, expert judicial panel with insolvency experience.
 • Establish a professional administrative body and case management system.
11. Pilot Phase with Limited Jurisdiction
 • Start with a narrow range of case types (e.g. cross-border corporate insolvency over a certain size).
 • Allow voluntary referral of disputes by national courts.
12. Monitoring and Evaluation Mechanism
 • Independent oversight body to track the court's performance.
 • Mechanisms for revision of the treaty or procedural rules.

Phase 4: Expansion and Institutional Maturity (10+ Years)

13. Expand Membership
 • Continue diplomatic outreach to expand global participation.
 • Work with regional blocs (e.g. ASEAN, African Union, EU) to promote regional adoption.
14. Broaden Jurisdiction (if successful)
 • Consider expanding to include sovereign debt restructuring or cross-border consumer insolvency in later stages.
15. Integrate with Existing Legal Infrastructure
 • Develop interoperability with international arbitration, national insolvency courts, and organizations like UNCITRAL, IMF, and WTO.

Summary Timeline

Phase 1: Feasibility & Consensus
• 1–3 Years
• Milestones: Global study, stakeholder consultations

Phase 2: Legal Framework Development
• 3–6 Years
• Milestones: Treaty drafting, jurisdiction and enforcement rules

Phase 3: Institutional Set-Up
• 6–10 Years
• Milestones: Ratifications, pilot operations, recruitment

Phase 4: Expansion & Maturity
• 10+ Years
• Milestones: Global adoption, broader jurisdiction

Got any ideas on how to keep the game rolling? Share your AI hacks with us for the next edition. Submissions are due January 31st 2026. ■

From the Chair continued from page 3

Patrick was one of the people with whom I always looked forward to spending time at meetings and events around the world – dinners at so many INSOL meetings and events; exploring the quiet side streets of Hanoi after presenting on a panel together for the New York State Bar Association International Section in 2013; getting together for a late-night drink in Singapore following the III Annual Meeting last June; or what neither of us knew would be our final time together as we slipped away for a private lunch at the III Asia Regional Meeting in Hong Kong last November. Patrick contributed thoughtfully and enthusiastically to all of these organizations and so many others, with an unmatchable combination of insight, charm and wit, creating lasting friendships everywhere he went.

I deeply feel and mourn his untimely passing, will cherish his memory, and continue to think of him as the greatest of role models for members of our organization and profession. ■

President's Columns continued from page 4

Or maybe you are interested in supporting the Fletcher Moot Competition? Join our Moot Committee – a joint committee with INSOL! We also welcome members in a variety of "Thought Leadership" working groups, which currently exist, for instance, for the Gibbs principle or Cramdowns or the dissemination of UNCITRAL model laws. We remain open to new ideas for working groups. As certain of our committees require some greater level of familiarity within our organization, we urge our newer members and Next Gens to gain experience on committees other than the Membership Committee, the Induction & Orientation Committee, the Nominating Committee, the Awards & Recognition Committee (selecting our annual award winners) as well as, for obvious reasons, the Academic and Judicial Committees.

I am looking forward to seeing you in our meetings and committees. This is an active member organization, so please feel invited to get involved! If you see room for improvement or if you have a new initiative in mind, which could be beneficial to our Institute, please reach out! ■

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Hub by Sport Singapore. In 2023, he was awarded Singapore's Public Service Star (COVID-19) and the Ministry of Law Partner of the Year Award for his work on Singapore's COVID-19 (Temporary Measures) Bill. He also served on the boards of Sport Singapore, the Singapore Accountancy Commission, SingHealth Fund, and KK Women's and Children's Hospital.

Both professionally and on a personal basis, Sushil has an incredibly generous spirit and is particularly personable and affable.

Sushil's appointment to the Bench reflects the depth and breadth of his legal experience, his practical understanding of commercial realities, and his longstanding contributions to public service. As he takes on his new role, his presence will bring valuable expertise to the Supreme Court and further strengthen Singapore's judicial system and role as a regional hub for international debt restructuring.

We extend our heartfelt congratulations to Sushil on his appointment. ■

Indonesia continued from page 30

foreign-located assets (Article 212), prevent the assignment or sale of claims to foreign third parties in a manner that could disrupt domestic creditor priorities (Article 213), and prevent the use of claim transfers as a means of conducting set-off abroad (Article 214). However, these provisions do not establish a framework for recognizing foreign insolvency proceedings or for facilitating cooperation between Indonesian courts and foreign jurisdictions. As a result, the existing regime is silent on scenarios where insolvency proceedings are initiated abroad but involve assets or liabilities located in Indonesia, and vice versa.

Reform Direction: Incorporating the Model Law into Existing Legislation

Recent discussions suggest that Indonesia is not considering a full repeal of its bankruptcy law but rather intends to amend the existing framework to incorporate cross-border insolvency principles derived from the Model Law. Although legislative drafts have not been made public, the reform initiative appears to focus on enabling the recognition of foreign insolvency proceedings, granting access to local courts by foreign representatives, introducing moratorium or stay provisions in the context of cross-border cases, and promoting cooperation between courts and insolvency practitioners across jurisdictions.

Challenges to Adoption

Despite the promising trajectory, significant legal and institutional challenges lie ahead. Among these is a growing concern among domestic practitioners regarding the potential erosion of Indonesian judicial authority. The involvement of foreign representatives in domestic insolvency matters is perceived by some as a threat to national sovereignty. Such concerns may hinder political and institutional support for reform.

Moreover, there are serious capacity constraints. Cross-border insolvency is a complex and highly technical field, and its integration into domestic practice will require extensive education and training for judges, insolvency administrators, legal practitioners, and regulatory officials. For the reform to be effective and credible, it will need the support of the wider legal community, academia, and business associations. Without a shared understanding of its practical application, the adoption of Model Law principles could lead to uncertainty and inconsistent enforcement.

In addition to institutional challenges, Indonesia's broader legal framework poses doctrinal barriers to recognizing foreign court judgments. As a general rule, Indonesian law adheres to the principle of territoriality in civil procedure. Article 436 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv) stipulates that foreign judgments are not enforceable in Indonesia, save for limited exceptions. This deep-rooted territoriality principle poses a significant obstacle to the recognition of foreign insolvency proceedings. Any new legislation would therefore need to carve out a *lex specialis*, explicitly permitting cross-border recognition in insolvency matters, as an exception to the prevailing territoriality principle.

Conclusion

If successful, the adoption of the Model Law—either in full or in a modified—would mark a substantial advancement in Indonesia's insolvency regime. Discussions to date indicate a preference for selective adoption, potentially guided by the implementation models used by other civil law jurisdictions that have acceded to the Model Law. However, the process remains fluid and will likely evolve in tandem with policy debates, legal refinement, and institutional capacity-building.

While challenges are inevitable, the reform represents a rare opportunity to align Indonesia's insolvency framework with international best practices and to respond to the growing demand for legal certainty in cross-border commercial transactions. For legal practitioners and stakeholders, the coming months may prove pivotal in shaping a more globally integrated insolvency regime in Indonesia. ■

View from Spain continued from page 33

showed at the time that general meetings of creditors were not really a body for debating and finding solutions, as creditors' attendance was extremely infrequent. Since the general meeting of creditors has been suppressed (yet not particularly missed), were the Proposal to go ahead in its original terms, Spain would have to resurrect creditors' meetings ¾a resurrection that would necessarily entail major amendments and adjustments in the Spanish Insolvency Act. This is why the Council's General Approach of 23 May 2025 on the Proposal ¾which envisages a solution for Member States whose national law does not provide for a general meeting of creditors¾ is to be welcomed[1].

The second circumstance that will complicate the Spanish transposition as far as creditors' committees are concerned is that, when it comes to setting up the specific design of the body, the Proposal grants Member States a great margin of freedom. Indeed, many are the issues that are left to the discretion of Member States: the voluntary or mandatory nature of the appointment as member, the removal and replacement of a member (grounds, procedures, consequences), their remuneration if any, the working methods (who convenes the meetings, whether or not regular meetings are necessary, whether or not the attendance through a representative is allowed), the rights, duties and powers of the committee (as only a minimum standard is set), etc. Irrespective of the doubts that arise from the effectiveness of the harmonization when such a great margin of freedom is attributed to Member States (as the resulting body might end up with significant differences in each jurisdiction), the transposition of the Directive will entail for Spain the need to build up *ex novo* the legal regime of the creditors' committee: abundant decisions would have to be taken on issues of great importance and impact on the effectiveness and usefulness of the body that finally emerges, and they would have to be taken without prior experience in the matter.

In conclusion, the foreseen harmonization of creditors' committees is being followed up in Spain with incertitude and great expectancy as to the final text that will be enacted. ■

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Networking and Collaboration

Beyond the panels, the NextGen Program offered ample opportunities for networking and collaboration. Attendees participated in breakout sessions, cocktail and dinner receptions, and other social activities carefully planned by the NextGen Conference Planning Committee, which brought together NextGen members with other III members and conference participants. These informal interactions were instrumental in building relationships and sparking new ideas for research and practice.

Conclusion

The 2025 NextGen Program at the III Annual Conference was a resounding success, offering a rich blend of substantive content, comparative analysis, and forward-looking dialogue. As insolvency law continues to evolve in response to global economic shifts and technological innovation, the NextGen community remains at the forefront: driving change, fostering collaboration, and shaping the future of the field. ■

Fairfield Sentry continued from page 41
securities safe harbors upon transfers initiated by a foreign debtor to domestic recipients with the goal of preventing financial contagion stemming from foreign debtors' bankruptcies.[5] The Court reasoned that Congress, when legislating section 561(d) in the wake of LTCM's collapse, could not have "intended to hobble investors by leaving them exposed to the risk of avoidance litigation brought by the bankruptcy estates of failed foreign companies, especially when the Bankruptcy Code bars domestic trustees from bringing the exact [same] claims."[6]

Because it found that Congress clearly intended extraterritorial application, the Second Circuit did not need to consider the second *Nabisco* element.

The Scope of Section 546(e)'s Powers

After determining that the securities safe harbor applies extraterritorially, the Second Circuit proceeded to hold that section 546(e) bars all of the liquidators' claims, including the constructive trust claims based on BVI common law. First, the Court held that the liquidators' claims did not meet section 546(e)'s carve-out for intentional fraudulent transfer claims under section 548(a)(1)(A) (transfers made "with actual intent to hinder, delay, or defraud" a creditor) because (i) the liquidators failed to establish the requisite intent on the part of Citco Fund Services (Europe) B.V. ("**Citco**"), the fund administration service provider that calculated and certified the funds' net asset values to the fund administrators based on fictitious account statements provided by BLMIS and (ii) even if Citco had fraudulent intent, the liquidators failed to plausibly allege that such intent was attributable to the Debtors who authorized the transfers.[7]

The Court next held that, based on a natural reading of the text of section 546(e), section 546(e)'s safe harbor covers state common-law and foreign common-law claims that seek to avoid covered transactions through alternative means. As the Court noted, "the focus of § 546(e) is the transaction, not the specific legal authority that a domestic trustee would use to avoid that transaction." The Court also rejected the argument that the liquidators' constructive trust claims bypassed section 546(e) altogether because they were based on a different legal theory than a traditional avoidance claim. Ultimately, all of the liquidators' claims against the Defendants fell under section 546(e)'s safe harbor and were dismissed.

Conclusion

In recent years, multiple US court decisions have addressed the extraterritorial application of trustees' recovery powers, including the extent to which they reach property that was subject of an overseas transaction.[8] In *Fairfield*, the Second Circuit extended extraterritorial application of the US securities safe harbor, shielding these transactions between non-US parties from some of the most potent types of US fraudulent transfer liability.

The *Fairfield* decision also broadens section 546(e) to cover common-law claims based on non-US legal theories. This reflects the continued expansion of the reach of section 546(e) within the Second Circuit, whose rulings are binding authority on the Bankruptcy Court for the Southern District of New York where many non-US debtors file chapter 15 petitions for recognition of non-US proceedings. ■

[5] *See* President's Working Group, *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management* (Apr. 1999).

[6] Brief of the Securities Industry and Financial Markets Association as Amicus Curiae Supporting Appellees, *Fairfield Sentry Ltd. (In Liquidation) by & through Krys v. Citibank, N.A. London*, 630 F. Supp. 3d 463 (S.D.N.Y. 2022), 14.

[7] 11 U.S.C. § 548(a)(1)(A).

[8] *See e.g. Inv'r Prot Corp v. Bernard L Madoff Inv Sec LLC*, 480 BR 501 (Bankr. S.D.N.Y. 2012); *Sec Inv'r Prot Corp v. Bernard L Madoff Inv Sec LLC*, 513 BR 222 (S.D.N.Y. 2014); *In re Picard*, 917 F3d 85 (2d Cir. 2019).

Clash of Titans continued from page 37

Convention No. 173 cannot override the statutory priority order enshrined in Articles 239 et seq. of the Bankruptcy Law. So, it granted the AFIP's (Federal Tax Authority's) complaint and reinstated the statutory ranking, thereby restoring tax claims to their original -legal- position of priority.

Doctrinal Debate

The *Acevedo* ruling sparked divided reactions. Some legal scholars[5] support the decision, viewing it as a necessary reordering of the normative system in line with constitutional principles of legality and hierarchical supremacy. They emphasize the importance of adhering to the proper treaty-making process and caution against allowing judicial precedents—such as *Pinturas*—to undermine legal certainty through expansive and unwarranted interpretations of international instruments. Others[6] see *Acevedo* as an institutional reaffirmation by the Supreme Court, reasserting the primacy of domestic law over supranational aspirations or any perceived surrender of normative sovereignty.

Indeed, some argue that *Acevedo* dismantles the legal architecture that, for over a decade, allowed courts—particularly the SCJN—to penetrate the "closed" system of privileges set forth in the BL. That architecture had enabled judges to assign judicially constructed payment priorities to certain claims by broadly interpreting international treaties with domestic legal status[7].

On the other hand, several respected voices in Argentine legal doctrine[8] have criticized the ruling, contending that it disregards the object and purpose of ILO Convention No. 173. They argue that the treaty's protective aims remain relevant under Article 18 of the Vienna Convention on the Law of Treaties, which obligates States to refrain from acts that defeat the object and purpose of a treaty pending its formal entry into force.

Additionally, they point out that for over ten years, the Argentine State consistently applied the *Pinturas* doctrine, thereby creating legitimate expectations among labor creditors and reinforcing the principle of reliance on established jurisprudence.

In the words of one commentator: "The true issue in *Acevedo* is not merely the acknowledgment that the Convention is not technically in force, but rather the failure to engage with the underlying conflict—the effective erosion of labor protections when confronted with the tax authority." [9].

Conclusion

This controversy warrants a broader reflection on a unique feature of the conflict: it is the State itself, through its tax agency, that litigates against the labor creditor, despite the State's constitutional and international obligations to uphold labor rights and social security protections.

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[5] Fernando Javier Marcos, *The Priority of Labour Claims in Insolvency Proceedings and the New Doctrine of the Supreme Court: The "Acevedo" Ruling* RC D 254/2025. Walter F Carnota, *The Ratification of International Treaties: Its Impact on Insolvency Priorities* (Buenos Aires, Thomson Reuters, 5 June 2025) LA LEY 2025-C, Year LXXXIX, No 104.

[6] Nahuel N Espinillo, *Acevedo: The Ratification of National Sovereignty* (Buenos Aires, Thomson Reuters, 5 June 2025) LA LEY 2025-C, Year LXXXIX, No 104, TR LALEY AR/DOC/1325/2025.

[7] Javier A Lorente and Paula Cecilia Cattelán, *The "Acevedo" Ruling and a Limit to the Judicial Creation of Priorities: Is This Just the Beginning of a Return to the Closed System?*, paper presented at the LXXI Meeting of Commercial Law Institutes of the Province of Buenos Aires (La Plata, Buenos Aires Province, 6–7 June 2025).

[8] Ana C Alonso and Patricia A Fernández Andreani, *Everything Changes Except What Needs to Change: Reflections Derived from the "Acevedo" Case* (Buenos Aires, Thomson Reuters, 5 June 2025) LA LEY 2025-C, Year LXXXIX, No 104. Gabriela F Boquín, *The Erroneous Abandonment of a Wrong Precedent* (Buenos Aires, Thomson Reuters, 5 June 2025) LA LEY 2025-C, Year LXXXIX, No 104.

[9] Alexis M Marega, *The Mercurial Position of the Supreme Court Regarding Insolvency Privileges: On the "Acevedo" Ruling* (Buenos Aires, Thomson Reuters, 5 June 2025) LA LEY 2025-C, Year LXXXIX, No 104, TR LALEY AR/DOC/1323/2025.

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Paradoxically, it is the very same State that failed to ratify ILO Convention No. 173 —even after completing all preliminary steps of the complex treaty-making process— and now invokes that omission to justify the enforcement of a tax privilege that stands in contradiction to the very international instruments it intended to embrace; and it is the State that bears the primary responsibility, as expressed in the very Preamble of the Constitution, to promote the general welfare.

Along these lines, Boquín argues: "The Executive cannot undo what has already been done, unless it formally denounces the treaty. In good faith, it cannot act against what its representatives have approved as this jeopardizes the objective sought: to protect labor claims and ensure their collection in bankruptcy distributions" [10]. Boquín further notes that in doing so, the judiciary, as a component of the State, exacerbates the international breach, by contributing to the frustration of the treaty's object and purpose.

Moreover, it is the same State that, for the past ten years, applied and upheld the doctrine established in *Pinturas* without reservation—thus implicitly recognizing labor creditors' rights and reinforcing expectations of preferential treatment.

This leads to a final, pressing question: Do such radical shifts in jurisprudence by the highest court—though arguably formally correct under constitutional treaty law—truly contribute to the rule of law and legal certainty?

[10] Gabriela F Boquín, *The Erroneous Abandonment of a Wrong Precedent*, above n° 8.

Legal certainty depends on **predictability**: individuals and institutions must be able to anticipate the legal consequences of their actions. It also promotes **justice and equality under the law**[11]. But after more than a decade of consistent case law, the Supreme Court's abrupt departure in *Acevedo* has generated deep doctrinal confusion, calling into question the future role of labor claims vis-à-vis tax claims in insolvency proceedings.

In short, while the legal reasoning in *Acevedo* appears constitutionally flawless, the State's conduct emerges as deeply problematic on several fronts:

First, for failing to modernize the Bankruptcy Law in light of the evolving constitutional and international framework—not only regarding labor claims but also concerning other categories of vulnerability that demand justice.

Second, as revealed in *Acevedo*, for promoting a human rights discourse in theory, while failing to complete the formal adoption of the international treaties it purports to support.

And third, -clearly evident in this latest precedent-, for invoking its own procedural omission to sustain a fiscal privilege over labor claims, despite its reiterated commitments and obligations to prioritize labor claims above all others.

It is fair to conclude that the State is, in practice, undermining the very international treaties it once sought to adopt—and doing so not to protect the public interest, but rather to secure its own financial advantage in insolvency distributions. ■

[11] Nicolás José Di Lella, *Controversias en la concurrencia de acreedores vulnerables en los procesos concursales*, Estudios de Derecho Empresario, ISSN 2346-9404

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In view of the unfairness which, in my opinion, represents the Order of Priority in the aforementioned payments and given the fact that to date our Supreme Court of Justice of the Nation has not made any rule on the constitutionality of such priority challenged through various 'amparo' proceedings that are *sub judice*, it is appropriate then, to analyze the possible Patrimonial Liability of the Mexican State to indemnify for damages caused to unpaid savers and investors, resulting from the irregular behavior of the CNBV and, in general, of the authorities that are responsible for overseeing due compliance of the obligations of the banks and mainly due protection of the interests of savers and investors.

PATRIMONIAL RESPONSIBILITY OF THE STATE.

As regulated by the Federal Law of State Patrimonial Liability in Mexico, published on December 31, 2004, lastly amended on December 29, 2023, its purpose is to establish the bases and procedures to recognize the right to indemnify people who, without legal obligation to bear it, suffer damages of any of their assets and rights as a result of the irregular administrative activity of the State.

In the aforementioned case regarding liquidation of Accendo Banco, S.A., the irregular actions of the CNBV and other authorities responsible for overseeing and supervising Mexican banking and especially regarding the protection of savings and investments of banking user public, the assumptions of the State's Patrimonial Liability for its irregular actions are met and all affected parties have the right to claim the related compensation for damages from the Mexican State. ■

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stories and experiences will shape the model code, making sure it reflects the real challenges and lived experiences of women in courtrooms today.

The ultimate aim is to reduce gender-based exclusion and discrimination in insolvency courts (or courts with jurisdiction over insolvency matters), creating an environment where women lawyers can thrive. With clear standards that foster respect, inclusivity, and accountability, the code will help increase women's participation in litigation and help close the gender gap in insolvency law.

But we also hope this code will have a ripple effect. By setting a new standard in one legal space, we believe it can inspire broader reforms across other sectors and jurisdictions - moving us one step closer to a more equitable legal profession.

Whether you're a legal professional with insights to share, or someone with ideas to make this code more practical, accessible, and impactful—your voice matters. Help us shape a tool that truly reflects the needs of those it's meant to serve.

To get involved or learn more about the project, please contact **Nina Pavlova Mocheva** nmocheva@worldbank.org **and Antonia Preciosa Menezes** at and amenezes1@ifc.org. ■

The International Insolvency Institute is a non-profit, limited-membership organization dedicated to advancing and promoting insolvency as a respected discipline in the international field.

Its primary objectives include improving international co-operation in the insolvency area and achieving greater coordination among nations in multinational business reorganizations and restructurings. The Institute's membership is drawn from the most senior and respected insolvency practitioners, judges and academics in the world and it has valuable liaisons with many of the most senior regulatory and administrative professionals in the insolvency field. The Institute, due to its exceptional membership, its international leadership, and its resources, plays a valuable and highly significant role in the international insolvency field. It has achieved a worldwide reputation and is developing into a catalyst for improvement and change in the international insolvency area that has few, if any, equals.

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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, 2026.

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