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Restructuring and insolvency in 2018

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Chambers UK 2018 – Restructuring & Insolvency

Looking ahead

"Intelligence is the ability to adapt to change." So said Stephen Hawking in one of his best-known quotations. If this is right, restructuring professionals will need to be particularly clever, nimble and inventive in the forthcoming year. With political instability in certain regions, an anticipated rise in global interest rates (following those seen in the U.S.) and several sectors remaining vulnerable (particularly retail, services, consumer finance, shipping and oil and gas), it is likely that we will continue to see some sizeable restructurings and high profile insolvencies in 2018. The challenge will be in coming up with new restructuring solutions to reflect ever-changing financing structures and cross-border challenges, particularly as Brexit approaches.

Another theme running through our predictions is the anticipated activity in the NPL market in 2018. European legislative initiatives aimed at easing the NPL burden and creating a more active secondary market in these loans are likely to be progressed in the year ahead, and outside Europe (for example in China) steps are being taken to attract foreign buyers to NPL markets which will provide further opportunities. Emerging markets will remain on many radars in 2018, and for good reason. In 2017 we saw increased activity in Egypt, Nigeria, Turkey, Brazil and India, to name just a few, and there will undoubtedly be further opportunities in these markets in the year ahead. In some of these jurisdictions, legislative reform will make it even more interesting in the next 12-24 months (for example India).

The legal backdrop is continuing to change at a pace. Local tools are being developed and many jurisdictions are overhauling their insolvency and restructuring regimesto make them fit for purpose in this competitive market. Notwithstanding the emergence of such local tools, the popularity of U.S. Chapter 11 proceedings (particularly in shipping deals) and the English scheme of arrangementshows no sign of waning in 2018. The flexibility of these well-established procedures means they will always be a solid choice but the increase in credible alternatives is undoubtedly a good thing for creditors – the greater the number of options, the greater the potential for better outcomes or returns.

In both Europe and beyond, the focus is on cross-border initiatives (with Singapore making a bid to be the new international hub, at least in Asia) and harmonisation – see our Cross-border legal outlook. An intervening Brexit may mean that the UK will not be bound to implement the European reforms but it will still need to compete with jurisdictions that do – hopefully 2018 will bring greater clarity on what Brexit will mean for cross-border restructurings and insolvencies.

Here is our pick of what to look out for in 2018.

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GLOBAL RESTRUCTURING GROUP CONTACT BROCHURE

Jurisdiction outlook

EU

Although market conditions are generally favourable across Europe, there are particular sectors in distress. This month saw the collapse of the construction giant Carillion and the retail sector is still showing signs of stress. It is expected that the non-performing loan (or NPL) market will become active this year due to increasing regulatory capital requirements for banks and, in the lead up to Brexit, we are still seeing European jurisdictions (such as the Netherlands) work on their alternatives to the English scheme of arrangement in an attempt to gain the competitive edge.

UK

Mixed economic forecasts for the UK signal that 2018 should remain steady for restructurings. Without a trigger to remove some of the liquidity in the market, we do not foresee widespread distress but certain sectors will struggle. In particular, low consumer confidence leading to tightening consumer spending is likely to impact on some parts of the retail market, compounding difficulties faced as a result of the continued market shift to online suppliers and increasing costs due to the falling value of sterling and rising minimum wage. Other sectors that may see continued areas of activity include oil and gas, where previously restructured situations may need to be restructured again, and construction and facilities management (as evidenced by the recent high profile collapse of Carillion).

As we have seen over the last few years, we expect the English scheme of arrangement to remain a primary tool in effecting restructurings of UK and foreign companies, including in the case of European high yield bond issuances. Although more local alternatives are being introduced and gaining traction (which is a good thing for debtors and creditors), it is unlikely that the established English procedure (which is being used for ever more innovative restructurings given its flexibility) will be knocked from its mantle until the new procedures have been properly tested in practice.

"Without a trigger to remove some of the liquidity in the market, widespread distress is unlikely; however certain sectors will struggle including consumer retail, oil and gas (perhaps with previous restructurings needing another fix) and construction and facilities management. The scheme of arrangement is still holding its place as a primary restructuring tool for UK and foreign companies, but local alternatives continue to develop."

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Germany

The German economy is continuing to run at full steam with excellent market conditions and significant liquidity available for refinancings or new investments. Despite favourable market conditions, last year saw some large-scale German restructurings (eg A1 mobil), and even major insolvencies (eg Air Berlin, Solarworld), and this trend may continue in 2018. Although looming political uncertainties and increasing pressure on the financing cost side (influenced by higher interest rates) are not yet having a meaningful impact, there are a number of factors that could trigger restructuring cases. Many sectors, like consumer goods, retail, shipping, renewable energies or automotive, are facing continuing pressure to adapt to a changing regulatory environment and cope with the disruption caused by digitalisation and new technical developments which requires costly investments in strategy, processes and products.

Reflecting on trends in recent years, we expect more complexity and cross-border aspects in future restructurings in Germany, often with bank/bond structures or German Schuldschein, resulting in more hold-out positions and situations where alternative investors and original lenders are dependent on each other. Due to increasing regulatory capital requirements for credit institutions, it is expected that the NPL market will become more active again. Over the last five years, the German restructuring culture has become more creditor-friendly and pre-packaged insolvency plan concepts have been successfully put into practice (eg Pfleiderer). New European and German laws make available new options for cross-border group insolvencies and the pre-insolvency restructuring framework, as incorporated in the draft European directive, is strongly welcomed by the market and still under discussion. Given the new challenges and the broader set of available options, the German market for distressed investments is becoming even more interesting for investors and financing institutions.

"We expect more complexity and cross-border aspects for future restructurings in Germany, often with bank/bond structures or German Schuldschein, resulting in more hold-out positions and situations where alternative investors and original lenders are dependent on each other. And, due to increasing regulatory capital requirements for credit institutions, it is expected that the NPL-market becomes more active again."

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Italy

After a reduction in restructuring cases and an increase in NPL transactions during 2017, in the year ahead, we expect that banks will continue to sell their exposures in restructurings and that NPL transactions will feed the distressed market in a new restructuring wave.

On the legal side, we expect to see new legislation in the next few months – in 2017 the Italian Parliament approved a draft law providing guidelines and principles in relation to certain amendments to the Italian insolvency law and we anticipate the Government will implement these amendments by adopting one or more dedicated decrees in the first quarter of 2018. Main features of the reform include the introduction of an early warning system aimed at anticipating and preventing the occurrence of insolvency situations and several amendments to the rules governing out-of-court and in-court proceedings with the aim of increasing legal certainty and encouraging new investments.

"We are in the middle of a deep reforming process of the rules governing pre-insolvency and insolvency proceedings aimed at increasing legal certainty and attracting new investors by means of simplification of the legal framework. The restructuring market will be supported by transactions in NPLs which show no sign of decreasing."

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Spain

In 2017, we saw the decision by the Single Resolution Board on Banco Popular, which resulted in all its shares being transferred to Banco Santander for one euro; a very competitive market in the purchase of NPL portfolios, in which Sareb has been especially active through its new platform for the sale of loans; and a significant number of trades in single names like Abengoa, Isolux, Toll Roads and Reyal Urbis.

And we expect the activity to continue throughout 2018.

New provisions to adapt our legislation to IFRS9 will accelerate the process of banks selling more NPLs portfolios. We are seeing a big appetite for hotel investments; and we are expecting a very active trade market with regard to single names like Celsa, Adveo, Duro Felguera, Deoleo or Eroski.

If we add to all these ingredients the project of a new piece of legislation to consolidate and provide more consistency to the Spanish Insolvency Law, we will find a much safer, and more predictable market and a jurisdiction which is not only offering great opportunities to investors but also much more certainty on the potential outcomes of their investments.

"The distressed market is getting more and more competitive in Spain, but there are still a lot of opportunities to come including potential proprietary names in complex situations which may lead to real profitable outcomes."

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Asia

2018 will be a year marked by innovation and creativity in Asia as practitioners take advantage of legal developments and political will to implement restructurings.

China's policymakers have long recognised that increasing efficiency in recycling capital from failing or zombie companies to areas of potential growth is essential to solving the country's looming demographic challenges and also the need to reduce financial risk by, amongst other things, reducing banks' non-performing asset ratios. This has manifested itself in liberalisation of the non-performing asset market with the goal of attracting foreign buyers, increased political and regulatory pressure on banks to cease practices that prevented accurate monitoring of risk and improving the corporate rescue tools available.

Singapore has introduced a comprehensive package of insolvency reforms and the judiciary is now encouraging practitioners to consider how the new regime may be used creatively to implement cross border restructurings.

In Hong Kong, in the absence of legislative change, the judiciary is driving a common-law derived and pragmatic approach that allows restructurings to be successfully implemented through the appointment of an offshore insolvency practitioner and subsequent recognition.

"As always, China is crucial to the outlook for the region. The key question is whether China is changing quickly enough (in insolvency as well as other areas) to result in the population getting rich before it gets old. This will likely depend upon whether reforms can be successfully implemented across the whole country and not merely in the major financial centres."

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"A&O has a big team which can provide us with the attention when we need it and with a seamless service between departments. They're one of the best all-round legal service providers in town."

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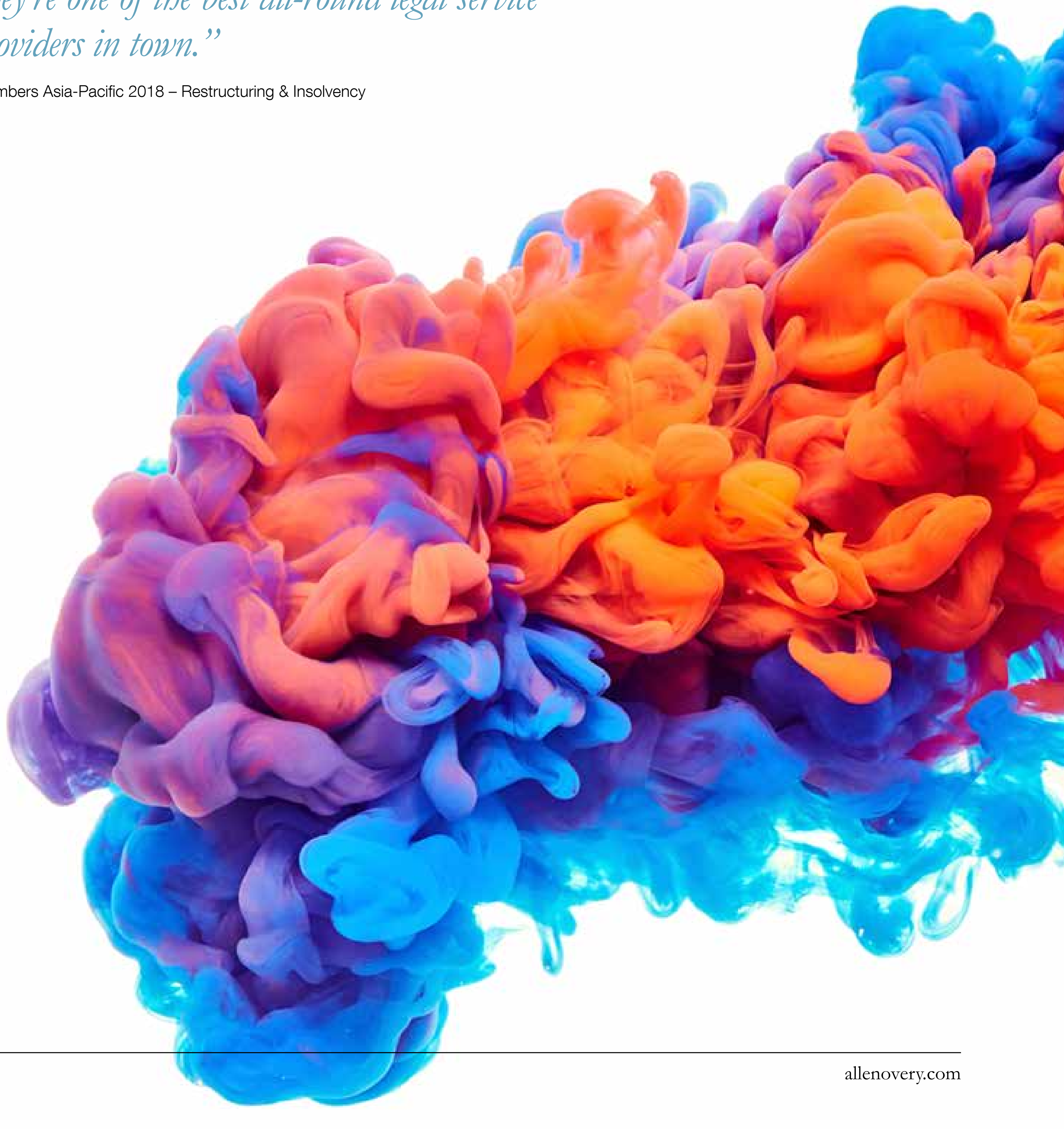

Africa and emerging markets

The difficulties experienced by South African group Steinhoff last month indicate that African retailers continue to struggle. Meanwhile, in a number of emerging economies (such as India), the focus is on new insolvency laws, often modelled on U.S. Chapter 11 or the English scheme of arrangement.

Africa

Political uncertainty, volatile local currencies and stagnant economies in parts of Africa will continue to put pressure on African debtors, in particular those who have borrowed in hard foreign currencies and rely on local income sources to service their debt. There are parallels to be drawn with emerging markets in nearby regions, such as Turkey. Investigations into financial irregularities and corruption have uncovered some serious cases involving African corporates. South Africa will continue to generate its fair share of high profile restructurings, especially in the retail sector, as we have seen with Steinhoff.

"South Africa and other parts of Africa will be on many people's radar. At a macro level, there are political changes in motion which will have an economic impact. At a micro level, there will be greater scrutiny over corporate practices and financial reporting."

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India

In 2018, we are likely to see further acceptance by international investors of the use of restructuring procedures in jurisdictions outside of the U.S. and the UK, in particular emerging economies. A good example is India, where reforms to company legislation and the introduction of a new bankruptcy code have attracted considerable interest from international investors.

The code provides for the resolution of a company's financial position through a 'resolution plan'. Key elements of the new law include:

– once a company enters resolution its management is put in the hands of a *resolution professional*

– resolution professionals, liquidators and other insolvency practitioners are now subject to a regulatory *licensing regime*

– resolution is intended and designed to be a swift procedure with a *time limit of six months* (extendable by up to three further months with approval of the controlling tribunal)

– if resolution is not achieved by approval of a resolution plan within the time limit, the company *automatically* goes into *liquidation* and has to be wound up

– the role of *financial creditors* is central to the process: they must approve the plan by a 75% majority and they have considerable control over the resolution professional's actions during the process

– the original *promoters* of the company and their associates are prohibited from proposing or being part of a resolution plan

– new laws of *wrongful trading, preference and transaction* at an *undervalue* are introduced

– the National Company Law Tribunal (NCLT) is the relevant judicial authority for giving legal rulings on and orders under the code and the usual civil law courts are excluded.

Whilst the new laws are relatively untested, several large distressed Indian debtors are already subject to the new bankruptcy regime and more local insolvencies are expected in the market. The evolving regime will no doubt present challenges for market participants but there will likely be significant opportunities as well, including distressed M&A transactions and the provision of fresh capital.

"The new Indian bankruptcy reforms are a welcome development for this jurisdiction; although in its infancy, we expect the new regime to continue to spark the interest of international investors seeking opportunities in the region."

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United States of America

Widespread financial distress is unlikely given the buoyant stock market and the effects of the tax cuts passed at the end of 2017, but some sectors are likely to see significant restructuring activity.

In particular, the consumer retail market will continue to see consolidation and store closures; as dwindling interest in mall shopping and the closures that occurred in 2017 have a snowball effect, this could be the year Sears finally files for bankruptcy. Wireline telecommunications and healthcare are also troubled sectors that have not seen the deregulation promised by the Trump administration. Wireline faces competition from cable and wireless providers, particularly for high value content services, while burdened by requirements to reach remote customers and give access to competitors. Healthcare, particularly skilled nursing facilities, are experiencing a decrease in reimbursement rates, and their ability to maintain staffing levels may be jeopardised by restrictions on immigration.

"Renewable energy faces headwinds as the Trump administration rolls back green incentives and backs coal and nuclear power."

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"Allen & Overy can provide advice that is pertinent to all the different jurisdictions."

Chambers Global 2018 – Restructuring & Insolvency

Sector outlook

As highlighted in our Jurisdiction outlook, the particular sectors that are likely to struggle in 2018 are retail, oil and gas (with the potential for some of the restructurings of 2017 to come around for a second go), shipping, construction and facilities management and consumer finance. There will be continued pressure on healthcare including old people's homes and nursing facilities.

Shipping

After a number of lean years for many core shipping sectors (bulk carriers, tankers and container ships), 2017 saw a continuation of the trend of shipping restructuring cases including the conclusion of the high profile Hanjin Shipping insolvency and liquidation. In 2018, however, those same sectors are reporting the emergence of green shoots as a result of a gradual realignment of the world fleet supply/demand balance. Key drivers in this include:

- on the supply side, a slowdown in world merchant fleet growth arising from a reduction in scheduled deliveries/lower new vessel contracting, set against continued scrapping of older vessels; and
- on the demand side, a modest recovery in world seaborne trade and the industrial production that drives it.

There remain sectors experiencing particular distress such as the offshore sector and it is likely new restructuring activity will be concentrated in these sectors. However, this hesitant recovery has also coincided with an uptick in activity in shipping NPL portfolios, particularly from the traditional German shipping banks.

"2018 will see a continuation and expansion of the shipping NPL portfolio market that many have been predicting for some time. However, what is critical for the shipping market now is what approach is taken by the new owners to the loans they acquire"

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Services and healthcare

2017 saw a number of construction and facilities management groups undertake financial restructurings, culminating in the high profile liquidation of Carillion in early 2018 (its lack of cash and realisable assets led potential appointees to conclude there wasn't even enough liquidity to fund an administration). Increasing labour costs, materials price inflation and the legacy of long-term, unprofitable contracts are just a few factors that will keep this sector in the spotlight in 2018, and beyond. Joint venture structures, contractual complexities and sizeable pension debts present a number of challenges to a successful restructuring of these companies, as do aggressive accounting strategies (in particular in relation to the recognition of revenues and the over-capitalisation of costs) that may now have to be reassessed, and names in this sector will remain in the press for much of 2018 (eg MITIE). Joint venture partners and/or others in the supply chain may, in time, also feel the impact if they take on the performance of the "problem" contracts. The current round of restructurings will also provide opportunities for those in the sector with stronger capital structures who are able to withstand the current pressures better than others.

The healthcare sector, in the UK (both public and private) and in the U.S., is likely to remain vulnerable in 2018. As with the construction and facilities management sector, the living wage in the UK is having a huge impact on staffing costs and further pressure on the sector is coming from local authority budget constraints and the high maintenance and capital expenditure required to preserve an ageing stock of care homes. Across the pond, immigration restrictions and a decrease in reimbursement rates are continuing to push the sector closer to the edge.

"We are unlikely to see a wave of formal insolvencies in the services sector in 2018, but given the severe pressures in this sector we expect a number of names to commence restructurings and the particular complexities of the situation will determine whether a consensual resolution is possible or if a formal process is inevitable (as was the case with Carillion)."

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Corporate Trustees and Agents

In 2017 we saw trustees and agents continuing to take central roles in the successful resolution of complex restructurings and defaults and we expect this trend to continue, if not increase, in 2018. In light of this recent trend, creditors' expectations as to what their trustee and/or agent(s) will be able to achieve on their behalves are likely to increase; and the use of ever more complex financing structures and the introduction (and use) of a wider variety of restructuring and insolvency tools present more challenges for trustees and agents in 2018.

Often, at the outset of a complex restructuring, agents and trustees may (rightly so) consider whether it is appropriate to continue with all roles in the underlying structure, in particular if the relevant institution also holds an interest in the issued debt. There are a number of new players in the market who will look to take on such agency and security trustee roles although, due to the complexity of the finance documents, it can often be a real challenge to replace the existing agent and great care is required.

"We expect to see trustees and agents continuing to take integral roles in complex restructurings in 2018 with creditors' expectations as to what can be achieved on their behalves also increasing."

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"Security agents often play a pivotal role in the implementation of a restructuring, utilising the wide powers granted in their favour under a typical intercreditor agreement. This of course carries a level of risk for security agents and we are seeing the market adopt an ever increasing level of scrutiny of the role to be undertaken by the security agent in any restructuring. Alongside this, and perhaps as a natural consequence, we are also seeing increasing instances of litigation involving security agents."

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Cross-border legal outlook

Advances in international insolvency regimes

As anticipated, the menu of available (and credible) restructuring and insolvency tools expanded in 2017 and is set to continue to do so in 2018. Singapore took great strides in amending its insolvency and restructuring offering in 2017 (see links to a couple of our client bulletins below) and many other jurisdictions are making improvements (and in some cases wholesale changes). India has introduced a new bankruptcy code and 2018 will continue to see the development of that new regime. China is looking at legislative reform and Italy is also embarking on a comprehensive review of its insolvency and restructuring laws.

Other jurisdictions will be adding procedures to their existing regimes: hopefully the Dutch scheme and pre-pack procedure will come into force in 2018 and we will see the continued testing of other alternatives to the English scheme of arrangement (such as the Spanish homologacion which is gaining traction with debtors and creditors). The popularity of U.S. Chapter 11 proceedings will continue; it is proving to be the tool of choice in shipping restructurings, a sector that is likely to see continued activity in 2018. The jostling for position – to be the jurisdiction of choice for regional and international restructurings and insolvencies (or at least to keep up with the best/rest) – will continue in 2018, spurred on no doubt (in part at least) by the impending Brexit.

SINGAPORE NEW INSOLVENCY PROVISIONS AVAILABLE TO FOREIGN COMPANIES – JUNE 2017

SINGAPORE SUPER-PRIORITY FINANCING TO BE AVAILABLE FOR COMPANIES IN DISTRESS DECEMBER 2016

"More options bring more opportunities for creditors and debtors: whilst the devil is always in the detail and the road-testing of these new procedures in 2018 will no doubt uncover the need for further refinement, healthy competition among international insolvency regimes is definitely a good thing for stakeholders in the year to come (and beyond)."

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European developments continue

European initiatives that were expected to result in final (or near final) legislation in 2017 rumble on into 2018.

“Harmonisation” directive:
The proposed EU directive on preventative restructuring frameworks, second chance and increasing efficiencies (or the “harmonisation” directive) is still going through the European legislative process. We should see a further draft directive this year but it is unlikely to be finalised until 2019 and then Member States will be given a period of time to implement; and it is this implementing legislation that will drive the real impact of the directive. The proposals are commendable and set out certain minimum standards for a restructuring framework, including (i) a potential stay (of up to 12 months) on creditor action while a restructuring plan is negotiated; (ii) common rules for the content, adoption and confirmation of restructuring plans including provisions for the cram down of impaired classes; and (iii) protections for new financing. In theory, when implemented, the directive should go some way to level the playing field between European jurisdictions and make it easier to conduct pan-European restructurings. However, the devil will be in the detail of the implementing legislation and, given the nature of the directive (minimum standards rather than prescribing a harmonised restructuring procedure), there will inevitably be differences between Member States as to what is eventually on offer as an additional restructuring tool. The effectiveness of the courts in implementing the legislation will also be key. For these reasons, we think it is likely that, post implementation of the directive, there will still be (good) forum shopping to take advantage of what is perceived to be the most effective tool in any given restructuring situation.

NPLs – “accelerated loan security interest”:
Another consultation issued in 2017 concerned the development of secondary markets for NPLs and the creation of a new EU “accelerated loan security interest”. The key objective behind this initiative is to better protect secured creditors when borrowers default by equipping them with a swift, out-of-court enforcement mechanism. NPLs collateralised in this manner are potentially more attractive to potential purchasers thereby encouraging NPL disposals and counteracting the accumulation of NPLs on bank balance sheets, an issue highlighted by many of our contributors in our Jurisdiction outlook for 2018. The UK already has a contractual, out-of-court, security enforcement procedure in the form of receivership but some other Member States do not have a similar tool. In such Member States enforcement through a court-based process is an unattractive prospect due to the time, cost and uncertainty of the process.
The consultation acknowledged that any new security interest would need to dovetail with existing national and European laws and the proposed “harmonisation” directive mentioned above (including any stay on creditor action). However, in theory, more enforcement options should make NPLs more attractive to potential purchasers and encourage them to take part in the secondary market for such loans given the greater opportunities to realise value. The consultation closed in October 2017 and further activity on the topics covered by the consultation is expected in 2018; it will be interesting to watch how the parameters of this potential new EU “accelerated loan security interest” are formulated over the next 12 months to see if it will really have the impact the consultation envisaged.

BRRD2

BRRD2:
Discussions on the EU Commission's banking reform package (or BRRD2)[1] will continue into 2018. The amendments to bank insolvency creditor hierarchy were considered less controversial than other reforms and these amendments were fast-tracked in 2017 resulting in a final directive being published at the end of December 2017[2]. Member States are required to implement the directive by 29 December 2018. Other key reforms from a resolution, restructuring and insolvency perspective include: (i) the proposed Article 55 waiver – allowing resolution authorities to grant a waiver from compliance with Article 55 for certain types of liabilities; Article 55 required EEA banks to include contractual provisions in non-EEA law governed contracts recognising and giving effect to an EEA bail-in; and (ii) the new moratorium tool – allowing for the suspension of certain contractual obligations for a short period of time in resolution as well as in the early intervention phase. One addition to the reform package to keep an eye on is a new Article 71A which is effectively the equivalent of Article 55 for EEA law governed stays on creditor action (ie a requirement on EEA banks to include contractual provisions in non-EEA law governed contracts recognising and giving effect to EEA law governed stays on creditor action). These reforms are still very much subject to debate (with the moratorium tool exercising the market a little more than the Article 55 waiver) but there is a lot of political will to get the legislation finalised in the first half of 2018, following which Member States will have a period of implementation (which may run past Brexit next year). These reforms are certainly most relevant in the context of bank resolution, but their impact is wider than that and the contractual provisions highlighted above will appear in documents where, among other things, lenders give an indemnity to another finance party (for example an agent or trustee).

"There is a lot going on within the Commission, with the harmonisation directive, the next banking reform package (BRRD2) and provisions intended to develop the secondary markets for NPLs. The harmonisation directive and the NPLs reforms, in particular, could lead to more options and, therefore, more opportunities in European restructurings and so they are worth keeping an eye on this year to see how they develop. The harmonisation directive will, perhaps, have the most impact on the European restructuring market but the uncertainty surrounding Member State implementation and local court supervision of the new procedures means (good) forum shopping is likely to remain."

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01_The package proposes fundamental changes to CRDIV (Directive 2013/36 EU and Regulation 575/2013) and BRRD (The Bank Recovery and Resolution Directive 2014/59/EU).

02_Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 on amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (published in the OJ on 27 December 2017).

Brexit uncertainty persists

2018 should hopefully shed some light on the UK's Brexit proposals in an insolvency and restructuring context. In 2017, the UK Government published its European Union (Withdrawal) Bill which will repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the UK from the EU – **see our client bulletin *Legislating for Brexit – the UK Government's EU Withdrawal Bill***. This suggested that all EU legislation would become part of UK domestic law unless expressly modified or "switched off". However, the challenge for the UK Government is what to do with legislation (such as Recast Insolvency Regulation[3] and the Recast Judgments Regulation[4]) which relies on reciprocity with EU Member States; the UK cannot unilaterally enact the EU recognition provisions into UK domestic law.

The UK Government made some encouraging statements regarding the Recast Insolvency Regulation in one of its Brexit position papers issued over the summer last year – **see the *Spotlight on cross-border insolvency* in our client bulletin *The UK's proposals on post-Brexit civil and judicial co-operation – common sense prevails*** – confirming that its preferred option is to enter into a reciprocal arrangement with the remaining Member States which, largely, replicates the effect of the Recast Insolvency Regulation post-Brexit. However, much depends on the appetite of the remaining Member States to continue the reciprocal – and highly successful – regime that exists today. It is possible that the negotiations in 2018 may involve the UK agreeing to adopt "equivalent" laws to those set out in the "harmonisation" directive mentioned above (rather than cherry-picking the best bits only) as part of a deal to ensure the continuation of a reciprocal regime equivalent to the Recast Insolvency Regulation – we will have to wait and see. In the meantime, the continuing uncertainty is a factor being taken into account by English judges with the Nortel administrations being extended for one year only (to January 2019) so as not to go beyond Brexit and raise recognition issues[5].

Although not a replacement for the Recast Insolvency Regulation, the extension of the UNCITRAL Model Law on Cross-Border Insolvency to allow recognition and enforcement of foreign insolvency-related judgments will hopefully come to a conclusion in 2018, with final legislation expected to be published.

03_Regulation (EU) 2015/848
04_Regulation (EU) 2012/1215
05_*Re Nortel Networks UK Limited & Ors* [2017] EWHC 3299 (Ch)

"There is still some work to be done regarding the new UNCITRAL Model Law to ensure proper safeguards but it is a great initiative which will hopefully not get lost in the UK Government's inbox given the focus on Brexit. Whilst only four Member States (other than the UK) [6] *have adopted the original Model Law, it is possible that others may choose to do so, particularly given the competition in the market at the moment for jurisdictions to have a restructuring and insolvency regime that is "best in class"."*

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