When serving as trusted business advisors or in interim management roles, Alvarez & Marsal delivers results when you need them most.

Operational and Financial Performance Improvement
Turnaround and Restructuring
Interim and Crisis Management
Business Advisory Services
Specialized Industry Expertise

LEADERSHIP
ACTION
RESULTS

www.alvarezandmarsal.com
Editors’ Column

As this edition of INSOL World goes to print, the mixed messages emanating from the financial world make it as difficult as ever before to predict the global economic future in the near term. Whilst equity markets have never been stronger, bond markets point to challenging times ahead. They cannot both be right. The next few months should go some way to sorting the bulls from the bears and by the time the INSOL community gathers in San Francisco in March 2015, there are bound to be a number of interesting developments to discuss.

Meanwhile this edition is principally devoted to some of the developing markets in the UAE and Africa and the ways in which they are addressing the challenges of creating a restructuring and insolvency infrastructure equipped to handle financial distress. With thanks to Aaron Bielenberg for his assistance in commissioning UAE articles, we have a number of interesting perspectives on both recent developments and the particular challenges of dealing with the distinctive features of Shari’a law.

Other articles provide insight into the way in which certain African jurisdictions (South Africa, Kenya and Uganda) are developing laws to deal with the increasing complexity and cross-border nature of their economies. We are reminded also of the efforts which are being made in developing offshore jurisdictions such as Mauritius to raise standards and competency in the insolvency market.

The contributions in this edition highlight the diversity of issues which confront practitioners in different countries and in different cultures. It is suggested, for example, that the burgeoning Islamic finance industry requires new and different laws with which to address financial distress. It is interesting to note that, although there is consensus as to the need, there are divergent views among scholars and practitioners as to address the need.

The African story is similarly complex and diverse, but the relevant contributions illustrate some progress towards improved laws and practices with which to deal with the region’s many challenges.

INSOL and its publications rely upon the support of our sponsors, which is greatly appreciated. We would like again to thank Mourant Ozannes for their sponsorship of INSOL World in 2014. We would also like to remind you that in between INSOL World editions you can stay up to date by reading our monthly technical electronic newsletters (ENLs), kindly sponsored by South Square. As always, we welcome members’ contributions and if you have any article suggestions for future editions of INSOL World or the ENL, please email Jelena Sisko (jelena@insolision.co.uk).

Joe Bannister
Hogan Lovells International LLP (UK)

David Kidd
Linklaters (Hong Kong)

Local expertise. International reputation.
Sponsor of INSOL World

BVI | CAYMAN ISLANDS | GUERNSEY | HONG KONG | JERSEY | LONDON

MOURANT OZANNES

Leading offshore law firm Mourant Ozannes advises on all aspects of complex insolvency related litigation and corporate restructurings, providing pragmatic and workable solutions for clients.
To find out more visit mourantozannes.com
Dear Friends and Colleagues,

Perhaps one of the most enjoyable aspects of my role as President of INSOL International is the time spent collaborating with my colleagues on the INSOL Board. The members of this truly impressive group stand among the leaders of the global insolvency practice, and learning from them has been inspiring. The latest INSOL Board meeting occurred in Chicago in early October, along with two other INSOL events: a young practitioners event and reception and a panel I moderated at the annual meeting of the U.S. National Conference of Bankruptcy Judges with INSOL's own Luís Fernando Valente de Paiva, Edward Middleton, Adam Harris, and Mark Robinson. But the visit to Chicago did not end there — the INSOL Board members also met with Mayor Rahm Emanuel and Ivo Daldal, the President of the Chicago Council on Global Affairs. INSOL's trip to Chicago was warmly welcomed and a big success.

With that, I would like to express our sincere gratitude, on behalf of all INSOL International, to the departing members of INSOL Board, who retired as of the meeting in Chicago:

- Robert Dangremond, AlixPartners, USA;
- Edward Middleton, Fellow, INSOL International, KPMG, Hong Kong;
- Luíz Fernando Valente de Paiva, Pinheiro Neto Advogados, Brazil; and
- David Perry, Buddle Findlay, New Zealand.

Having come to know these gentlemen on a personal level is a veritable bonus to the lessons and ideas they brought to the INSOL Board.

In their place, the INSOL Board welcomes the following new members, whose experiences and insights will surely drive the group to uphold the group's lofty standards:

- Stephen Briscoe, Briscoe Wong Ferrier Limited, Hong Kong, representing the Hong Kong Institute of Certified Public Accountants;
- Brendon Gibson, KordaMentha, New Zealand, representing INSOL New Zealand; and
- Leonardo Morato, Taul & Chequer associado a Mayer Brown LLP, Brazil, representing the Turnaround Management Association.

Among the many objectives these new INSOL Board members will help INSOL pursue is the development of restructuring and insolvency law (both domestic and cross-border) in Africa and the Middle East — the focus of this edition of INSOL World. According to the World Bank, on average, a bankruptcy proceeding in the regions takes almost twice as long, costs over 50 percent more, and returns less than half in creditor recoveries in comparison to the average for OECD countries. As certain countries consider and adopt important reforms to increase efficiency in their insolvency regimes, it will be an exciting time for restructuring and insolvency professionals in the region.

These developments are highlighted by two recent events in the Middle East and Africa. In September, Life President of INSOL Europe and Past President of INSOL International Neil Cooper joined the Arab Center for the Development of the Rule of Law and Integrity in Jordan for Modernizing the Bankruptcy Law in Egypt and Jordan. The panel discussed in detail other jurisdictions’ restructuring and insolvency systems, the latest thinking on insolvency regimes generally, and the hurdles that reformers might face in Egypt and Jordan, as well as ways to overcome those hurdles. Many thanks to Neil for attending and contributing to this important event, and I speak for all of INSOL in noting that we look forward to the continued development of insolvency law and practice in those countries and the rest of the region.

In Africa, I participated in the fifth annual Africa Round Table in Kampala, Uganda in October, focused on the UNCITRAL Model Law on Cross-Border Insolvency and its application. (Notwithstanding the general concerns expressed by the press and other outlets, Uganda is and has been Ebola-free, and only a very few participants were forced to miss the event due to travel restrictions.) The excellent conference hosted approximately 75 participants from approximately 15 countries, including judges, regulators, non-governmental organization representatives (including INSOL and the World
Bank), and practitioners, The Africa Round Table continues to lay the groundwork for further reform of Africa’s restructuring and insolvency regimes and for enhanced training and development for members of the “rescue community” in developing jurisdictions — an important mission of INSOL as well, given the many benefits of efficient business rescue. Many thanks to INSOL Executive Committee member Adam Harris for organizing, INSOL’s Penny Robertson and the event staff for all of their hard work in support, and the World Bank for co-sponsoring this great event. As in the Middle East, the ongoing and anticipated reform efforts underway in multiple African nations should lead to new opportunities for INSOL members in the region to help shape the local insolvency practice.

With the insolvency practice continuing to grow and evolve internationally, I would like to invite all of our INSOL members to attend one or more of the upcoming INSOL International events planned across the globe:

• INSOL International Annual Regional Conference, San Francisco, California, United States - 22–24 March 2015
• INSOL International Bermuda One Day Seminar, Hamilton, Bermuda - 4 June 2015

Our events, as well as others hosted by INSOL member associations, present great opportunities to engage with other professionals, learn from our leading practitioners, regulators, and judges, and develop relationships with peers from around the world. Whether you have attended an INSOL event before or not, you will not regret attending one of these upcoming seminars or conferences.

As always, much thanks is owed to you all for your support of INSOL. Our organization is home to some of the very best practitioners around the globe, and without your efforts, INSOL’s progress would not be possible. I look forward to meeting or catching up with you at one of our upcoming events.

---

**IN THIS ISSUE:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editors’ Column</td>
<td>3</td>
</tr>
<tr>
<td>President’s Column</td>
<td>4</td>
</tr>
<tr>
<td><strong>Focus: Africa &amp; Middle East</strong></td>
<td>6-33</td>
</tr>
<tr>
<td>Financial Re-structuring of Government-related Entities in the UAE</td>
<td>6</td>
</tr>
<tr>
<td>The Role of Corporate Governance in Restructuring</td>
<td>8</td>
</tr>
<tr>
<td>The Role of a CRO in the Gulf Cooperation Council</td>
<td>10</td>
</tr>
<tr>
<td>DIFC Courts – Insolvency Regime</td>
<td>12</td>
</tr>
<tr>
<td>Dubai World Tribunal Insolvency Regime</td>
<td>14</td>
</tr>
<tr>
<td>Insolvency in the UAE – In the Space Between Bankruptcy Laws, No One Can Hear Your Creditors Scream</td>
<td>15</td>
</tr>
<tr>
<td><strong>G36 Feature</strong></td>
<td>18</td>
</tr>
<tr>
<td>Arcpita and the Need for Mideast Restructuring Regimes</td>
<td>20</td>
</tr>
<tr>
<td>Lasting Infancy or Coming of Age? Insolvency Considerations when Islamic Finance Vails</td>
<td>24</td>
</tr>
<tr>
<td><strong>INSOL San Francisco</strong></td>
<td>25</td>
</tr>
<tr>
<td>Opportunities for Investors Arising from the New Business Rescue Provisions of the South African Companies Act, 2008</td>
<td>28</td>
</tr>
<tr>
<td>Distress in the Mining Sector in South Africa – A Case Study</td>
<td>26</td>
</tr>
<tr>
<td>The Different Governance Constructs Applicable to Solvent, Financially Distressed or Insolvent Companies in South Africa</td>
<td>30</td>
</tr>
<tr>
<td>Reciprocity in Bankruptcy Proceedings: A Case for More Cogent Rules on Cross-Border Insolvency in Kenya</td>
<td>31</td>
</tr>
<tr>
<td>INSOL Board Directors</td>
<td>32</td>
</tr>
<tr>
<td>The Mauritius Insolvency Act: A New Approach</td>
<td>33</td>
</tr>
<tr>
<td>Recent Trends in Ugandan Insolvency Law</td>
<td>34</td>
</tr>
<tr>
<td><strong>INSOL Africa Round Table 2014</strong></td>
<td>35</td>
</tr>
<tr>
<td>INSOL International Academics’ Group</td>
<td>36</td>
</tr>
<tr>
<td>2015 Colloquium: March 21-22, San Francisco</td>
<td>37</td>
</tr>
<tr>
<td>INSOL International Presentation to the 88th National Conference of Bankruptcy Judges (NCBJ) Annual Conference, Chicago 8-11 October 2014</td>
<td>38</td>
</tr>
<tr>
<td>GloballINSOL蠢vency.com Overhaul</td>
<td>39</td>
</tr>
<tr>
<td>Postgraduate Diploma (PG Dip) in International Insolvency Law: Nottingham Law School, Nottingham Trent University</td>
<td>40</td>
</tr>
<tr>
<td><strong>Small Practice Feature</strong></td>
<td>41</td>
</tr>
<tr>
<td>Small Practitioners – Stealing a Marketing March</td>
<td>42</td>
</tr>
<tr>
<td><strong>Fellowship</strong></td>
<td>43</td>
</tr>
<tr>
<td>100 Here We Come - The First 6 Years of The INSOL Fellowship</td>
<td>44</td>
</tr>
<tr>
<td>INSOL International Technical News</td>
<td>45</td>
</tr>
<tr>
<td>Conference Diary</td>
<td>46</td>
</tr>
<tr>
<td>Member Associations</td>
<td>47</td>
</tr>
</tbody>
</table>

---

**INSOL International**

**INSOL World Editorial Board 2014**

**Co-Editors**

Joe Bannister, Hogan Lovells International LLP, UK
David Kidd, Linklaters, Hong Kong

**Editorial Board**

Aaron Bielenberg, McKinsey & Company Inc, UAE
Mark Bloom, Greenberg Traurig LLP, USA
Daniel Bryant, Fellow, INSOL International, PPB Advisory, Australia
Juanitta Calitz, University of Johannesburg, South Africa
Mark Forte, Conyers Dill & Pearman, BVI
Gabriel Gómez Giglio, Baker & McKenzie Sociedad Civil, Argentina
Helena Huang, King & Wood Mallesons, Hong Kong
Steffen Koch, hwweiember wihem, Germany
Timothy Le Curn, Fellow, INSOL International, KRY Global, Channel Islands
Jim Luby, McStay Luby, Ireland
David Molton, Fellow, INSOL International, Brown Rudnick LLP, USA
Allan Nacan, Fellow, INSOL International, Farber Financial Group, Canada
Francisco Satiro, University of Sao Paulo, Brazil

Editorial comments or articles should be sent to: Jelena Sisko, email: jelena@insol.ispon.co.uk
Advertising rates are available from Christopher Robertson, email: jelena@insol.ispon.co.uk

**www.insol.org**

By Eric Levenstein  
Werksmans Attorneys  
Johannesburg, South Africa

Background  
A new Companies Act (Act 71 of 2008) as amended (“Act”) became operative in South Africa on 1 May 2011. This Act introduced some novel provisions into South African law. Among them was that of business rescue.

The business rescue provisions of the Act are designed to facilitate the rehabilitation of a company that is financially distressed by providing for the temporary supervision of the company, and the management of its affairs, business and property, by a business rescue practitioner in substitution for the company’s board and prior management; a temporary moratorium (stay) on the rights of claimants against the company or in respect of property in its possession; and the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its affairs.

There are two objectives which need to be met for a business rescue to be granted. Either the affairs of the company need to be restructured in an attempt to ensure that the company continues to trade on a solvent basis or, failing this, the business rescue must at least provide a better return for the stakeholders (ie creditors and shareholders) than would ordinarily result from a liquidation.

Opportunities
As an emerging market, South Africa offers opportunities for foreign and local investors and distressed funds to consider the purchase of valuable assets that might become available at heavily discounted prices as a result of a company’s financial distress.

As business rescue has become more common in South Africa, we have seen an increase in interest from venture capitalists, private equity funds and foreign investors in the business rescue space.

The business rescue process is fast becoming a mechanism for cash flush companies to identify valuable assets in distressed, engaging with the business rescue practitioner and working towards the acquisition of either the company or its assets. The final acquisition proposal is placed in a business rescue plan and put to the vote by creditors and shareholders (the latter only if their rights are affected).

The transactions that one can conclude during business rescue vary. The business rescue practitioner may put forward a proposal to rescue the company which involves a sale of the assets of the company, a sale of the business of the company or a sale of shares of the company.

These acquisitions have resulted in the market and stakeholders (including creditors) becoming confident in the business rescue process and the ability for business rescue to be a real and viable option for parties that seek strategic acquisitions in South Africa of good value assets with significant upside for the acquirer.

The business rescue process is one which requires an early identification of a distressed asset, the immediate availability of cash to fund the acquisition, as well as a commitment to propping up the company by introducing funding to pay on-going expenses and overheads while the company is going through its restructuring and acquisition process in business rescue.

Business rescue thus provides new opportunities for merger and acquisition activity in South Africa. From our experience, it is common for third parties to acquire shares in the distressed company. In such an instance, the shares are often sold for nominal value, with funds made available to pay creditors’ claims at a reduced and compromised amount (higher than liquidation value). More often than not, the third party who acquires the shares of the company in distress is often able to acquire valuable assets at discounted prices.

Target sectors for distressed debt investing
Investments in distressed assets in South Africa include investments in the manufacturing and mining industries as well as the retail, property and infrastructure sectors.

A key offering is mining and oil. The renewable energy space in particular has been targeted, with recent announcements of success by Chinese bidders in the South African renewable programme projects-third window.

South African mining laws are once again under scrutiny with new amendments being considered together with new legislation in regard to Broad Based Black Economic Empowerment. These factors must be taken into consideration when investing in the natural resources sector, but they have not prevented acquisitions, such as the recent acquisition by a Chinese consortium led by Hebei (China’s largest steel producer) of 74.5% in Palabora Mining Company from Rio Tinto and Anglo American.

Other examples of successful acquisitions in business rescue are: the acquisition by the HUB of a major clothing retail chain, Meltz; the acquisition by StarSat (Chinese) of On Digital Media, a satellite television station; the acquisition by Witsgold of the gold mine Southgold; the acquisition by Paramount of Advanced Technology and Engineering (ATE), an aerospace company; and the acquisition by Fournews of the Moyo Restaurant (African themed) group. Many of the acquisitions resulted in the offeror acquiring the assets at heavily discounted prices through the business rescue process.

The South African market is open to those investors who believe that opportunity exists in the distressed debt market, and where good value acquisitions can result in significant upside for such investors.