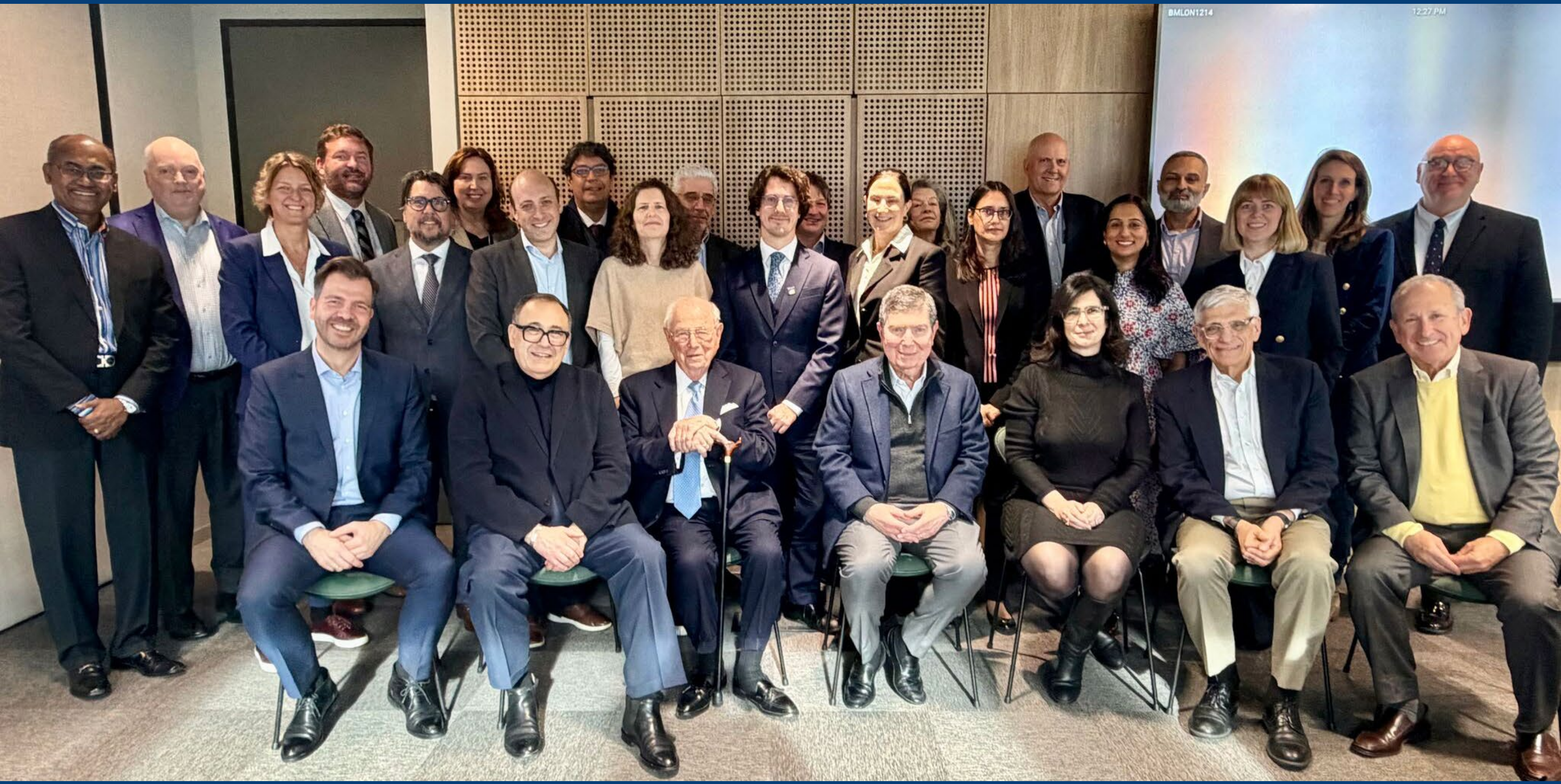
THE DIIIGEST

A Publication of the International Insolvency Institute



VOL. 3
MARCH 2026

INTERNATIONAL
INSOLVENCY
INSTITUTE

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INSIDE THIS ISSUE

From the Chair

By **Mark D. Bloom**
III Chair

In this, the second and final column of my one-year term as Chair of III, I write to advise of recent activities and plans for the future.

The past several months continue to reflect increased activity for III and opportunities for member engagement and Involvement:

On December 8-10, 2025, our III delegation attended and participated actively at the 67th Session of UNCITRAL Working Group V meetings in Vienna discussing a Draft Model Law on Applicable Law in Insolvency Proceedings. The depth and breadth of III's experience and the high regard in which its members are held is reflected not just in our delegation of five members (Adam Swick, Evan Zucker, Debra Grassgreen, José Carles, and NextGen Olya Antle), but in the more than 20 other III members who attended and participated on behalf of UNCITRAL member state or other non-governmental organizations.

In connection with the WG V meetings, on December 11-12, 2025, we hosted an authentic Viennese dinner for more than 40 participants, and sponsored a *Colloquium on Possible Updates to the Guide to Enactment and Interpretation of the 1997 UNCITRAL Model Law on Cross-Border Insolvency.* in Vienna.

Following up on these WG V efforts, on December 17, 2026 we devoted our Quarterly Members Call to a report and update from and highly interactive discussion with our WG V delegation on the WGV meetings and Colloquium.

On January 20-21, 2026 the US/Canada/Caribbean Regional Committee hosted its Regional Meeting related events in Miami, Florida, featuring the usual top-notch level of educational programs on such diverse topics of interest as international asset recovery, conflicting decisions among competing jurisdictions, letterbox jurisdictions and the evolving role and influence of private credit, followed by a well-attended wine reception and casual dinner to foster closer relationships between our members, NextGens and guests in attendance.

In that same vein, on February 19, 2026 our EMEA Regional Committee hosted its Regional Meeting in Madrid, Spain, featuring an afternoon or panel presentations on current challenges in restructuring processes, group insolvencies and the use of prepacks in various jurisdictions.

In February, we also announced the release of a new episode of our podcast series, *Global Perspectives*, focusing on the treatment of micro and small enterprises, as well as individual entrepreneurs in financial distress, in Japan.

In the midst of this activity falls the event to which I will devote the remainder of this column – our semi-annual Strategic Leadership Meeting in London on February 6-7, 2026. Attended by senior III leadership from 14 different countries, including five of our Past Presidents who remain actively engaged in the important work of III, the Meeting focused on the Strategic Plan unveiled by Past President Hon. Kannan Ramesh in Singapore in 2024 and augmented by the Board at its in-person meeting in Sao Paolo in 2025.

The Leadership Meeting featured a series of presentations and highly interactive discussions focused on the immediate and longer-terms needs of and opportunities for III,

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in several critical areas, and produced an ambitious action plan that we now seek the engagement and support of our membership to undertake.

Membership Engagement & Collaboration

The goal here is to construct and put into place an end-to-end chain of initiatives to identify, nominate, onboard and engage our new and recent members to promote active participation and advancement in the international insolvency arena. Among other things, that effort will include:

- A request that the Regional Committees appoint regional admissions councils to identify, vet and recommend candidates, commencing with the creation of a "name bank" of active and future candidates to be updated each year.
    - The admissions councils will be asked to continue to focus on diversity in all its forms in their identification of prospective individuals who may qualify for membership.
- A more formal approach to the onboarding and integration of new members, including:
    - Some form of welcome ceremony or recognition at each Annual Meeting, Legendary Dinner, in addition to the New Member Breakfast held each year.
    - Mentorship from nominators and/or a committee that will focus on post-induction engagement, to promote and advance our position as an "active member organization" that will channel the efforts of our new and recent members to support III initiatives through Committee membership and other contributions.
- A more clearly defined set of terms of reference for our active committees, including the conduct of virtual meetings 4-6 times/year or more often as needed, and an afternoon slot for hybrid live/virtual Committee meetings each year at the Annual Meeting.
- Active engagement and participation of our members to advance collaboration efforts with other like-minded organizations on the international and regional levels – particularly in emerging markets in which our current membership may be underrepresented.

Identity & Differentiation

Especially as we advance that process of collaboration, it becomes more important for us to identify and differentiate our unique place in the global insolvency market, and to publicize both internally and externally that **we are an organization that is at once inclusive and exclusive -- an excellence-driven, active member organization that seeks out, engages, attracts, offers membership and provides opportunity for the best and brightest thought leaders of the insolvency community all over the world, including in new and emerging markets.**

Membership and active participation in III carry with them direct access to and engagement with the leading practitioners, judges and academics from all over the world – the people whose energy and thought leadership propel the advancement and development of insolvency law reform in every jurisdiction. We act not in competition with other insolvency-focused organizations, but in furtherance of and commitment to these goals, as a smaller, high-caliber group that consistently turns out the most thoughtful and leading content and offers unique opportunities for participation at the highest level.

This is our identity. This is our value proposition. This is what we bring to the world of international insolvency in a way that distinguishes us from other global and regional organizations, and that we must strive to achieve and communicate both internally to our members and externally to the larger international community as relevant to our mission.

Our Financial Model

To be sure, the ambitious agenda and strategic plan we seek to implement requires that we explore additional and recurring sources of topline revenue. These same features that are among our greatest strengths – our small but globally diverse membership of some 475 leading practitioners, judges and academics – present financial challenges that we need to continue to address in order to maintain the vast number of initiatives we undertake and level of excellence that is and must remain our hallmark.

The Board and leadership are sharply focused on creating a stable, sustainable financial model for III, and undertaking such additional steps as are necessary to ensure the continuing viability necessary to advance and pursue our organizational goals.

Education & Programs

Of course, the outstanding educational programs and ability to respond quickly and authoritatively to requests for thought leadership in so many areas remain at the forefront of our identity and strategic plan. As a leading academic, it is our President **Stephan Madaus** who is in best position to articulate the vision developed at the Leadership Meeting, in his separate column that appears in this issue.

What's Next??

And so where do we go from here? In so many institutions it is often the case that good (even great) ideas arise at off-site retreats and meetings, generate tremendous enthusiasm and self-congratulation among those present, and then are tucked away never to be heard from again.

But we are different – again, a dynamic, active member organization that seizes the moment and advances its initiatives toward fruition. In the coming weeks and months we plan to pursue and begin implementation of these and other goals – some immediate, others longer-term – through our Operational Committees that are set up to provide the continuity and focus required, and our Regional Committees as most direct local touch points with our members to get the message out and create the and acceptance and buy-in as are necessary to pursue these initiatives. We know you know them all by heart, but just in case you need a refresher, or a bit of encouragement to pick one (or two) and get involved in our mission, all of them are listed here.

It has been a great honor to serve III as Chair, and be part of its growth and this enthusiastic effort to attract and engage our members, collaborate with other global and regional insolvency organizations while defining and advancing our own unique identity and differentiation from those organizations, securing our financial future, and observing at every turn the unique and significant contributions that III continues to make to the global thought leadership in our field. Above all else, I take away from my two days with our senior leadership – past, present and future – that III builds on a rich heritage, has the right plan and the right people to implement and realize on it both the immediate present and future years.

And now, on to Montreal! Register early, bring friends and colleagues – members or not! See you there! ■

President's Column

By Stephan Madaus
III President

The new year started with a usual degree of capital market volatility. It indicates that the level of uncertainty remains high as does the level of demand for advice. Our Institute assists our members and the broader insolvency community in meeting this demand. The thought leadership and international perspective of our events should provide lawyers and financial advisors as well as judges and policy makers with perspective and ideas that make a difference in their daily work.

We need active members to pursue these goals and fulfil our ambitions. I can only encourage the reader to register for our annual conference in June in beautiful Montreal (registration is open). Bring your spouse! And remember that our conferences are open to non-members. If you find it difficult to justify travel in your firm, feel free to give your colleagues a taste of our community.

To ensure that our events remain topical and insightful, III will ask all members to complete a survey in the coming days. We would like to understand what are the 'hot topics' in your region or jurisdiction. We would also learn more about your individual perspective regarding our Institute. Do you plan to attend events? Are you interested in joining one of our committees and become more involved? Please take your time and complete the survey.

Based on this survey, we plan to establish permanent working parties under our 'Thought Leadership' umbrella. Similar to existing working parties on the 'rule in Gibbs' and 'cramdown rules in restructuring proceedings', we will identify additional topics that are of high relevance in developing local case law or are even considered for law reform initiatives. Based on the expertise collected in these working parties, III will be able to better respond to requests for presentations on local conferences and, even more importantly, for feedback to policy papers or law reform draft legislation. Such feedback is not intended to be presented as a position of the III and all of its members. We are aware that such uniformity does not exist. But it will reflect the considerations and advice as formulated by the working party. Utilizing our global perspective and expertise should strengthen the profile of our Institute as an independent global source of unique expertise.

The task of communicating our activities remains a constant one. I would like to take the opportunity to ask the reader to share content on social media when we reach out. We depend on your network. Feel free to share The DIIGEST and any other post by the Institute. And please take the time to join a virtual quarterly meeting or, even more, one of our in-person events.

I am looking forward to seeing you in Montreal. The annual conference is our key event where you meet many of our members and where you will learn more about latest developments in law reforms, case law and market trends. Please register! ■

ANNUAL CONFERENCE

The International Insolvency Institute will convene its **26th Annual Conference in Montreal, Canada, on June 14-16, 2026**. Judicial and Academic Committee Meetings and the Class XV NextGen Program will take place on Sunday, June 14.

This year, the Program Committee and NextGen Program Committee have curated a dynamic and thought-provoking series of panels addressing the most pressing trends, challenges, and questions shaping the global insolvency landscape. The III also invites you to an unforgettable Legendary Dinner at Montreal's celebrated Theatre St-James, an extraordinary former bank hall transformed into one of the city's most elegant event venues. With its grand columns, dramatic vaults, and refined historic ambiance, the setting provides a fitting backdrop to honor the 2026 Outstanding Service Award and Founders Award recipients—leaders whose impact has shaped the international insolvency profession. We are pleased to celebrate Chief Justice Geoffrey B. Morawetz as the 2026 Outstanding Service Award recipient and Steven T. Kargman as the 2026 Founders Award recipient.

Register here for the III Annual Conference

REGIONAL EVENTS

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

Register here

III Asia Pacific Regional Seminar
October 17, 2026
Guangzhou City, China

Save the Date!

Welcome New III Members

Daniel Bayfield KC

Attorney, South Square
London, United Kingdom

Daniel is a barrister practising from South Square in London. He specialises in business and finance law, with a strong emphasis on insolvency and restructuring, banking law and general commercial litigation.

Adam Goldberg

Attorney, Latham & Watkins LLP
New York, USA

Adam is a restructuring and bankruptcy lawyer representing parties of all types. He focuses on lender representations and cross-border and sovereign-related matters involving complex financing, distressed M&A, and litigation strategies. Adam has practiced with Latham throughout his career of over 20 years and spent over 15 months working in Latham's Dubai office. His most notable recent engagements include the joint liquidators of Three Arrows Capital, the supporting ad hoc creditor group of Intrum AB, the supporting ad hoc creditor group of Mega Newco Limited, and certain lenders to the purchaser of PDV Holding Inc. (a holding company for CITGO Petroleum) from a judicial foreclosure sale.

Nick Hoffman

Attorney, Harneys
Georgetown, Cayman Islands

Nick Hoffman is the global head of Litigation, Insolvency and Restructuring at Harneys, based in the Cayman Islands. He specialises in insolvency and restructuring, financial services litigation, company disputes, and fraud, and has practised in the Cayman Islands since 2011, following over a decade at the London Bar. Nick has appeared at all levels of the Cayman Court system, from the Grand Court to the Privy Council.

Penelope Jensen

Attorney, Linklaters LLP
New York, USA

Penelope's practice focuses on representing creditors, companies, equity holders, and other parties facing bankruptcy and insolvency-related issues in complex domestic and cross-border restructurings of all sizes. Penelope is recognized by Chambers USA, The Legal 500, and IFLR1000.

Lucas Kortmann

Attorney, RESOR N.V.
Amsterdam, The Netherlands

Lucas is a founding partner of Dutch law firm RESOR, specializing in high-end complex and cross-border corporate restructuring and insolvency mandates. Lucas also takes positions as chief restructuring officer as well as interim executive and non-executive roles at companies in distress. Lucas is a Fellow of INSOL International, a board member of the Dutch Restructuring Association, and an advisor to the World Bank.

Pooja Mahajan
Attorney, Chandhiok & Mahajan, Advocates and Solicitors
New Delhi, India

Pooja Mahajan is a Partner and Head of Restructuring & Insolvency at Chandhiok & Mahajan, Advocates & Solicitors. She regularly represents creditors, debtors, and insolvency professionals in both contentious and non contentious insolvency and restructuring matters. She also advises clients on investments and acquisition in distressed assets and companies. Recognised by leading legal directories and publications, Pooja is also the President of INSOL India and an active member of IWIRC. She is considered a thought leader in her field and is closely involved with the capacity building initiatives of relevant Indian regulators.

Jo Mitchell-Marais
Financial Advisor, Deloitte Consulting
Midrand, South Africa

Jo leads the Africa Turnaround & Restructuring practice at Deloitte, working with clients and their stakeholders to solve financial distress. She is the first female Chairperson of the local professional body in South Africa - the South African Restructuring & Insolvency Practitioners Association (SARIPA), which comprises 800+ members. She obtained her INSOL Fellow designation with honours in 2021 and is co-chair of the INSOL International / World Bank Africa Round Table.

João de Oliveira Rodrigues Filho
Judge, São Paulo State Court of Justice (TJSP)
São Paulo,Brazil

He was appointed in February 2013 as a Presiding State Judge at the Court of Justice of São Paulo (TJSP). Previously he served as an Assistant Judge at the 1st Bankruptcy and Restructuring Court of the Capital (São Paulo). He holds a Ph.D. in Corporate Law from Universidade Nove de Julho. He is also an INSOL Fellow, a member of the American Bankruptcy Institute (ABI), a specialist in Corporate Law from the São Paulo School of Magistrates (EPM), past President of the National Forum of Business Judges (FONAJEM), and a member of the São Paulo Academy of Magistrates.

Danny Ong
Attorney, Setia Law LLC
Singapore

Danny co-founded and leads Setia Law LLC, a law firm in Singapore specialising in restructuring insolvency, crisis management, and dispute resolution. He is particularly known for his work in the financial and digital assets industries, and advocacy in contentious cross border restructurings and insolvencies.

Andréa Galhardo Palma

Judge, São Paulo State Court (TJSP)
São Paulo, Brazil

Andrea is a civil law judge at the São Paulo State Court (Brazil). She currently leads the 2nd Regional Corporate, Insolvency and Arbitration Court in São Paulo City, which cover 176 industrial cities around São Paulo State. She has a law Degree from USP, Brazil, LLM from University of Pennsylvania (PennState) with a focus on International Commercial Arbitration and alternative dispute resolution; Specialization in International Commercial Arbitration at Columbia University (EUA) also in Domestic arbitration at FGV University of São Paulo. She is a PhD candidate in Business Law and Innovation at FGV Law- São Paulo, focusing on the interplay between insolvency and arbitration. She is a frequent guest speaker on mediation and arbitration in the recovery and insolvency field.

Óscar Javier Palomino Bernal

Peña Briseño, Peña Barba-Palomino
Zapopan, Mexico

Óscar Palomino is a partner at Palomino, Flores, Hernández & Rodríguez Abogados, where he advises clients on complex commercial, corporate, and cross-border matters. He is recognized for combining technical legal expertise with a deep understanding of business realities in Latin American markets.

Robert Peldán

Attorney, Borenius Attorneys Ltd
Helsinki, Finland

Robert Peldán is an attorney from Finland and a proud new member of the Institute. He is the Head of the Borenius Attorneys Restructuring & Insolvency Practice and advises clients on restructuring & insolvency, corporate advisory, and dispute resolution-related matters. During his free time he enjoys partaking in sports, in particular sailing and down-hill skiing with his family.

Dr. Joseph Spooner

Associate Professor, The London School of Economics & Political Science
London, United Kingdom

Joe Spooner is an Associate Professor in the LSE Law School at the London School of Economics, and a Senior Consultant with the World Bank Group Financial, Competitiveness and Innovation Global Practice (Insolvency and Debt Resolution). He holds a particular interest in personal insolvency, both in his academic research and in his work on law reform and insolvency policy. Key ideas from his research are explored in his book 'Bankruptcy: the Case for Relief in an Economy of Debt', published with Cambridge University Press.

Christophe Thevenot

Judicial Administrator, Thevenot Partners

Paris, France

Christophe Thevenot, founder of Thevenot Partners in Paris, France, has been practicing as an insolvency administrator since 1997. He and his team specialize in reorganization proceedings, as well as in confidential pre-insolvency and out of court negotiations for distressed companies, always under a Court Order. Christophe is a past President of the French National Council of Insolvency administrators and Liquidators, a semi public organization, and its current delegate at UNCITRAL Group V.

John T. Young Jr.

Financial Advisor, Neinda Advisors, LLC

Houston, USA

John T. Young, Jr. brings nearly three decades of restructuring expertise with a proven track record of protecting stakeholder value while stabilizing business operations. As Managing Partner of Neinda Advisors, he provides independent director services in contested situations involving special committee investigations, insider transactions, and board level governance changes. A CPA who has served as Chief Executive Officer and Chief Restructuring Officer of numerous companies, he combines direct operational turnaround experience with sophisticated debt restructuring capabilities. Notably, he led the restructuring process that resulted in the Australian Federal Court's first recognition of a U.S. Chapter 11 as a foreign main proceeding under the UNCITRAL Model Law, based on a determination that the company's Center of Main Interests (COMI) was in the United States despite its Australian incorporation. Sought after by leading financial institutions and private equity sponsors, Mr. Young regularly oversees complex contested restructurings requiring objective governance between competing stakeholder interests. Qualified as an audit committee financial expert under SEC regulations, he leverages his broad background as a corporate executive, restructuring advisor, and expert witness to provide substantive contributions to boards navigating complex financial transitions.

International Forum on Cross-Border Insolvency Law Held in Guangzhou

By Prof. & Dr. Jingxia Shi

The International Forum on Cross-Border Insolvency Law was held on 21 March 2025 in Guangzhou, People's Republic of China, convening insolvency judges, academics, restructuring professionals, industry associations, and representatives from financial institutions in China and abroad. The Forum was jointly organised by the Guangdong Association of Bankruptcy Administrators, the Yao Meizhen Law Foundation of Wuhan University, and China CITIC Bank (Guangzhou Branch), with institutional support from the Guangzhou, Shenzhen, and Zhuhai Associations of Bankruptcy Administrators, and academic advisory support from Professor Jingxia Shi. INSOL International and the Hong Kong Institute of Certified Public Accountants served as supporting organizations as well.

The Forum focused on institutional innovation in cross-border insolvency and restructuring, with particular emphasis on advancing the Guangdong - Hong Kong -Macao Greater Bay Area (GBA) as a world-class corporate restructuring and reorganization hub. More than 260 participants attended in person, with a substantially larger audience joining online. Approximately 60 onsite participants came from overseas jurisdictions and Hong Kong, alongside around 200 local participants.

Opening remarks were delivered by Clare Wee, Head of INSOL Asia-Pacific, and Li Kejian, representing the Guangdong High People's Court. The speakers emphasized the growing importance of cross-border coordination in insolvency and restructuring matters and highlighted the GBA's potential role as a regional platform for complex cross-border cases. The opening session was moderated by Zhu Zhengfu, the President of the Guangdong Association of Bankruptcy Administrators.

The Forum comprised four thematic panels, addressing current developments and practical challenges in cross-border insolvency and restructuring across the Asia-Pacific region, including: Enhancing Insolvency Frameworks in the Asia-Pacific; Cross-Border Restructuring in Mainland China, Hong Kong, and Beyond; Real Estate Restructuring amid Market Downturns; Out-of-Court Workouts and Pre-Restructuring Mechanisms. Speakers included judges from the United States Bankruptcy Courts, the High Court of England and Wales, and Chinese courts, as well as academics and practitioners from international law firms, financial advisory firms, arbitral institutions, and multilateral development organizations, and etc.

Key Discussion Themes

1. Asia-Pacific Insolvency Reform

Discussions highlighted the need for continued refinement of insolvency regimes across the Asia-Pacific to address increasingly complex cross-border cases. Comparative perspectives underscored the importance of procedural coordination, recognition mechanisms, and predictable outcomes for stakeholders.

2. Cross-Border Restructuring Practice

Panels focusing on Mainland China, Hong Kong, and other jurisdictions examined recent cases and cooperation models, including judicial communication, parallel proceedings, and the interaction between court-led and consensual restructuring processes.

3. Real Estate Sector Challenges

Participants discussed how insolvency and restructuring tools can support risk resolution and orderly adjustment in the real estate sector amid market downturns, with particular attention to large-scale, asset-intensive restructurings.

4. Out-of-Court Workouts and Pre-Restructuring

The final panel explored developments in out-of-court debt restructuring and pre-restructuring mechanisms, emphasising flexibility, efficiency, and early intervention, as well as enhanced coordination between courts, regulators, and market participants.

Why This Forum Matters for Practitioners

For insolvency and restructuring practitioners, the Forum underscored the increasing convergence between legal frameworks, court practice, and market-driven solutions in cross-border cases involving the Asia-Pacific region. Discussions highlighted practical considerations around jurisdictional coordination, recognition and assistance, sequencing of proceedings, and the growing role of out-of-court and pre-restructuring tools. The focus on the GBA reflects its emerging significance as a venue for complex cross-border restructurings involving Mainland China and Hong Kong, offering practitioners valuable insights into evolving institutional practices, judicial approaches, and strategic options for managing multi-jurisdictional distress. ■

2025 Draft Amendment of the Chinese Enterprise Bankruptcy Law

By Xiahong Chen and Shuai Guo

In September 2025, the National People's Congress of the People's Republic of China (PRC) released the first draft amendment to the 2006 Chinese Enterprise Bankruptcy Law (EBL), lifting the veil on a long-awaited reform. This marks the fifth bankruptcy statute enacted in China over the past 120 years, and the third since the founding of the PRC. The draft amendment reflects China's evolving approach to insolvency governance in the context of economic restructuring, rising corporate distress, and expanding cross-border commercial activity. This article provides an overview of the draft amendment and highlights its most significant innovations.

Overview

The draft amendment significantly expands the scope and sophistication of the EBL. It consists of 16 chapters and 216 articles, compared with 12 chapters and 136 articles in the 2006 law. While retaining the three traditional bankruptcy procedures, i.e. reorganisation, compromise, and liquidation, the draft introduces four new chapters addressing micro, small and medium-sized enterprise (MSME) insolvency, enterprise group insolvency, financial institution insolvency, and cross-border proceedings.

More broadly, the evolution of China's bankruptcy law mirrors the country's wider social and economic transformation. Historically, debtors were often treated as moral wrongdoers, and no meaningful culture of debt discharge existed. Over time, however, bankruptcy law has become an institutional vehicle for market exit, corporate rescue, and risk allocation. The draft amendment consolidates this shift toward a more debtor-tolerant, rescue-oriented, and internationally aligned insolvency regime, providing the structural foundation for the more targeted reforms discussed below.

Introduction of quasi-consumer bankruptcy mechanisms

A notable innovation in the draft amendment is the introduction of elements resembling a consumer bankruptcy regime. In Chinese commercial practice, shareholders and company directors frequently provide personal guarantees for corporate debts. Under the 2006 EBL, however, individual debtors had no legal avenue to obtain a discharge, particularly those liable for company-related obligations.

The absence of a nationwide personal bankruptcy regime has also generated persistent enforcement difficulties. Where an insolvent natural person lacks attachable assets, courts often face enforcement problems. In response, the Supreme People's Court (SPC) has emerged as a key driver of reform, encouraging experimentation through local pilot programmes in cities such as Shenzhen and Xiamen.

Against this background, the draft amendment introduces a quasi-consumer bankruptcy mechanism by permitting the discharge of debts owed by certain company-related individual debtors within enterprise bankruptcy proceedings. Although concerns remain that personal bankruptcy could be abused to evade debts, this measured and indirect approach represents an important milestone toward the eventual establishment of a comprehensive personal bankruptcy regime in China. In particular, the draft also allows, in appropriate cases, for the substantive or procedural consolidation of individual debts into enterprise bankruptcy proceedings, reflecting an integrated approach to corporate and personal insolvency.

Institutionalisation of practice-driven reforms

The basic structure of the 2006 EBL proved robust, but its limited scope left many substantive and procedural issues unaddressed. Over the past two decades, courts and insolvency practitioners have responded pragmatically, filling legislative gaps through local rules, judicial policies, and interpretative guidance.

One of the most striking features of the draft amendment is its openness to this accumulated practice. Many solutions developed at the local level are now expressly incorporated into the statute. These include streamlined filing and hearing procedures, clearer rules on executory contracts and avoidance actions, an expanded pool of eligible administrators, a reallocation of administrators' powers and responsibilities, and the establishment of government-funded compensation mechanisms for asset-less cases. The draft also reorders creditor priorities and promotes the digitalisation of bankruptcy procedures. In this respect, the reform is not purely top-down, but represents an effort to institutionalise practical experience accumulated over two decades.

Modernisation of reorganisation proceedings

The draft amendment substantially modernises China's reorganisation framework. It introduces public hearings both before case acceptance and prior to confirmation of a reorganisation plan, enhancing transparency and stakeholder participation. Out-of-court restructuring negotiations are explicitly encouraged, and agreements reached in such negotiations may be recognised, in whole or in part, as a reorganisation plan. While the debtor-in-possession (DIP) model is retained, the draft specifies circumstances under which it may be terminated. Both the DIP and the administrator are subject to enhanced disclosure obligations toward creditors and other stakeholders. Following plan confirmation, the administrator is formally entrusted with detailed supervisory responsibilities, reinforcing the credibility and enforceability of reorganisation outcomes.

In addition, the role of external investors is also clarified, including their rights to information and corresponding confidentiality obligations. In particular, reorganisation financing is accorded higher priority, ranking immediately below bankruptcy costs, and expenses incurred by professionals engaged in estate investigation are expressly included within the catalogue of bankruptcy expenses. Together, these changes signal a clear policy shift toward earlier intervention, greater transparency, and stronger incentives for rescue financing.

Special regime for MSME insolvency

The draft amendment introduces a simplified insolvency regime for MSEMs. Where the debtor's assets and liabilities are clear, creditor relationships are straightforward, and the number of creditors is limited, courts may apply streamlined procedures. Such cases may be heard by a single judge, with individual administrators appointed where appropriate, and creditor committees are generally dispensed with.

Procedural efficiency is further enhanced through relaxed rules on creditor participation and voting, flexible claim-filing deadlines, and a mandatory six-month time limit for case completion. In MSME reorganisations, debtors typically retain control of operations under administrator supervision, and reorganisation plans must be submitted within three months. Where investors contribute future disposable income to debt repayment, the plan may allow them to retain all or part of their equity and control rights. This tailored regime reflects a

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2026 III EMEA Regional Seminar

By **Amanda Cohen** and **José Carles**

The EMEA Regional Committee hosted the 2026 III EMEA Regional Seminar on February 19, 2026 at the Escuela de Práctica Jurídica Complutense (Complutense School of Legal Practice) in Madrid, Spain. The conference, open to III members, NextGens and any other interested parties, drew 60 attendees from all over the world. Leading academics, judges, policymakers and practitioners gathered in Madrid for a timely discussion on the evolution of restructuring frameworks across Europe and beyond, at a moment when harmonisation initiatives at EU level intersect with increasingly sophisticated cross-border practice.

The event opened with welcoming remarks from Mark Bloom (III Chair and Partner at Baker McKenzie), Justice Amanda Cohen (III Director and immediate past Co-Chair of the III EMEA Regional Committee), and José Carles (Partner at CARLES Legal and Co-Chair of the III EMEA Regional Committee). The introductory session emphasized the growing need for coordination between jurisdictions and the importance of combining academic reflection with practical experience. III President Stephan Madaus (Martin-Luther-Universität Halle-Wittenberg professor, Germany) and III EMEA Regional Committee Co-chair Stine D. Snertingdalen also attended the conference.

1. The first panel, moderated by Rodrigo Rodríguez of the University of Lucerne, examined the **operational challenges in the post-Preventive Restructuring Directive landscape**. Juana Pulgar (Universidad Complutense de Madrid, Spain), Rosa Gual (Cuatrecasas, Spain), and Agustí Bou (BDO Abogados & Asesores Tributarios, Spain) discussed the current hottest topics in Spanish restructuring proceedings: creditor coordination, the relevance of valuation in order to avoid (or maximize the chance of success in) valuation disputes, court involvement and the balance between flexibility and legal certainty (which at the moment is complicated given the different —even opposite— criteria of Courts in several matters like the ranking of PPLs). Several recent Spanish cases were cited to illustrate emerging trends:

- *Vilaseca* was referenced as an example of a cramdown confirmed despite only a relatively small percentage of total debt being included within the perimeter of the restructuring plan.
- *Grupo Rator* was highlighted for the fact that financial creditors themselves filed the restructuring plan, which was subsequently sanctioned by the court. The case illustrates creditor-driven restructurings and the increasing willingness of courts to validate plans promoted by creditor majorities where statutory safeguards are met.

2. The second panel focused on **group restructurings**, increasingly central in complex cross-border cases with parallel proceedings such as Intercement. Moderated by Prof. Ignacio Tirado (Secretary General of UNIDROIT), the discussion addressed COMI-issues, coordination across proceedings, intragroup guarantees and value allocation within distressed corporate groups.

Stephan Madaus addressed the available international tools that provide for coordination

and cooperation.

[Marta Flores](#) (Universidad Autónoma de Madrid, Spain) provided a detailed explanation of Article 755 of the Spanish Insolvency Act, which offers a procedural coordination mechanism for corporate groups where the centre of main interests (COMI) of the parent company is located in Spain She explained that, while the mechanism strengthens centralised restructuring solutions, it may potentially raise recognition challenges in other jurisdictions, particularly where local entities have distinct COMIs. Nevertheless, practice to date suggests that the tool has been effectively used and, importantly, creditors have generally accepted the Spanish coordinated approach.

[Florian Bruder](#) (DLA Piper) complemented the discussion by examining practical aspects of cross-border coordination and creditor alignment in multinational restructurings.

3. The seminar concluded with an in-depth comparative discussion on **prepack proceedings**, with José Carles (CARLES Legal, Spain). [Mylène Boché-Robinet](#) (Boché Dobelle, France), [Lucas Kortmann](#) (RESOR, The Netherlands), and Stine D. Snertingdalen (KVALE, Norway) offered insights into national approaches and the growing influence of EU harmonisation efforts.

A key focus was the proposed Directive on harmonisation of certain aspects of insolvency law, which will introduce a structured two-step prepack procedure in the EU (therefore, not in Norway).

- Preparation phase (1): A court appoints a monitor to supervise the preparation of a sale of the business. The debtor remains in control while a competitive marketing process is conducted. Negotiations with potential purchasers take place under supervision to ensure transparency, market testing and creditor protection.
- Formal insolvency and execution of the

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Bankruptcy Remoteness in Colombia

By **Diana Rivera Andrade**

Insolvency Framework in Colombia

The Colombian insolvency regime applicable to individuals and legal entities comprises five reorganization mechanisms and two liquidation mechanisms, ranging from fully judicialized procedures to predominantly out-of-court mechanisms, depending on the debtor's size and economic relevance.

Reorganization proceedings seek to preserve the debtor as a going concern and normalize its liabilities, whereas liquidation proceedings aim at the orderly realization of assets, satisfaction of creditors in accordance with statutory priorities, and cessation of economic activity.

Only since the enactment of Law 1116 of 2006 Independent Trusts (hereinafter, **I.T.**) derived from trust agreements and structured for the execution of business operations may be subject to insolvency proceedings[1]. Over the past nearly twenty years the Superintendence of Companies has received 63 petitions for the admission of insolvency proceedings involving trusts, of which 33 have been admitted. As of December 31, 2025, these proceedings represent approximately 0.6% of the total number of insolvency proceedings (5,502), according to the *Atlas de Insolvencia*[2].

Concept of Bankruptcy Remoteness

Regarding the concept of bankruptcy remoteness, it is a "term used to describe an entity formed to develop, own, and operate a specific project while isolating financial risk and minimizing insolvency risk, such as a special purpose vehicle (SPV) or special purpose entity (SPE)[3], that is, legal structures designed to isolate certain assets and cash flows from the insolvency risk of the originator".

In Colombia, bankruptcy remoteness became legally relevant with the development of securitization transactions in the early 1990s and the systematic use of Independent Trusts as insolvency-remote vehicles. Article 5.6.2.1.1. of Decree 2555 of 2010 recognizes irrevocable commercial trust agreements as an appropriate securitization mechanism, pursuant to which assets or acquisition funds are transferred to the trust.[4]

Independent Trusts constituted for securitization purposes are expressly excluded from the scope of application of Law 1116 of 2006.

Outside securitization, Independent Trusts are commonly used in project finance structures to administer project cash flows, assume direct payment obligations, and grant security interests in favor of lenders. Unlike securitization trusts, these structures do not benefit from an explicit statutory exclusion from insolvency proceedings, despite their functional similarity in terms of asset segregation[5].

Early Judicial Practice Prior to 2014

During the initial phase of application of Law

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[1]Article 20 Law 1116 of 2006.

[2]https://www.supersociedades.gov.co/noticias-supersociedades//asset_publisher/atwl/content/nuevo-atlas-de-insolvencia

[3]https://uk.practicallaw.thomsonreuters.com/Glossary/PracticalLaw/I03f4d6deeee311e28578f7ccc38dcbee?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Also%20known%20as%20bankruptcy%2Dremote,%22bankruptcy%2Dremote%22).

[4]Article 5º. Num 3º, and Artcicle 50 Law 1116 of 2006

[5]Reorganization Proceeding of Energia Integral Andina S.A., Official Letter No. 400-227679 dated December 18, 2013

1116 of 2006, insolvency judges generally acknowledged the segregation of trust assets based on contractual stipulations and accounting treatment. However, in practice, once the settlor-debtor was admitted to reorganization proceedings, judges frequently ordered trustees to suspend payments to secured creditors and to transfer trust funds to the settlor's insolvency estate.

Such measures were justified on debtor-protective grounds and were often adopted without a substantive examination of whether the Independent Trust had autonomously assumed the underlying obligations vis-à-vis the creditors.

Recognition of Obligational Isolation (2014–2023)

Beginning in 2014, Colombian insolvency case law evolved to recognize not only asset isolation but also obligational isolation. Insolvency judges began to assess whether the I.T. had directly assumed obligations toward creditors. Where this was the case, they held that the trust could continue servicing its debts with trust assets even if the settlor was undergoing insolvency proceedings.

This approach was first articulated in the *Campollo*[6] case and subsequently reaffirmed in multiple decisions distinguishing situations in which the I.T. was a direct debtor from those in which it was not[7].

This jurisprudential development was reinforced by Law 1676 of 2013—modeled on Article 9 of the U.S. Uniform Commercial Code—which significantly modified the Colombian insolvency regime by allowing the enforcement of security interests within reorganization or liquidation proceedings under certain conditions.

As a result, project cash flows structured as security interests under Law 1676 of 2013, together with an I.T. acting as the debtor, became legally protected. In such cases, funds may not be redirected to the insolvent settlor unless secured creditors expressly consent.

Between 2014 and 2023, case law consistently held that an I.T. must satisfy its liabilities with its own resources and that neither its assets nor its liabilities were affected by the settlor's insolvency, provided that the trust had directly incurred the obligation and that an enforceable security interest existed over the cash flows[8].

Recent Jurisprudential Shift Since 2023

Since June 2023, certain insolvency decisions—sometimes prompted by settlor-debtors and, in some cases, supported by trustees—have challenged the asset and obligational isolation of I.T. that had traditionally been regarded as separate from the settlor's insolvency. On various grounds, five trusts structured as independent debtors and payment sources, and which do not conduct business activities, have been subjected to insolvency proceedings.

The following three cases involve these five trusts:

- **Gacsas:** PA Acreedores and Patrimonio Autónomo Aeropuerto Ernesto Cortissoz.
- **Gmovil:** P.A. SITP Gmovil.
- **Azteca:** Fideicomiso Azteca Tier 1 and Fideicomiso Azteca Colombia Tier 2.

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[6]Reorganization Proceeding of Campollo S.A., Order No. 430-008152 dated June 4, 2014.

[7]Reorganization Proceeding of Jungla Kumba Entretenimiento S.A.S., Order No. 400-013438 dated October 9, 2018, Reorganization Proceeding of Central Papelera de Colombia S.A.S., Order No. 400-014007 dated September 16, 2016, Reorganization Proceeding of Organización Suma S.A.S., Order No. 400-002370 dated March 26, 2019

[8]In the event that the insolvency proceeding is a liquidation, if the trust serves solely as a security vehicle, it shall be terminated pursuant to Article 50 of Law 1116; however, if it has multiple purposes and not only a security function, but the trust agreement shall also continue to be performed, preserving the asset and obligational segregation.

Report on UCC Regional Conference – Miami 2026

By Adam Crane

The UCC Regional Committee hosted the III North American Regional Conference in Miami, Florida on January 20-21, 2026, bringing together leading insolvency practitioners, financial advisors, judges, academics and lawyers from across the region for two days of engaging and thought-provoking discussions on trends and developments.

The conference featured a rich program exploring critical developments in international insolvency law and practice. The panels addressed a variety of topics including the rapidly evolving role of private credit in restructurings, jurisdictional complexities arising from multinational corporate structures, and innovative approaches to valuing and recovering diverse asset classes.

Panel Highlights

The conference kicked off with the opening panel featuring Gemma Bellfield, Kelly Bourassa, Stephen Lerner, and Judith Elkin as moderator, who discussed *Recent Updates on Avoidance Actions: Foreign Sovereign Immunity Defense and Extraterritoriality of Safe Harbours*.

The second panel featured the Honorable Judge Martin Glenn as moderator along with Andrew Dawson, Sharon Hamilton and Nick Hoffman, and focused on *Nation Privacy Laws and the Impact on Insolvency Proceedings*. The panelists discussed how courts, lawyers and insolvency practitioners grapple with practical issues including privacy protection and obligations of official holders to ensure secure record keeping of personal data.

Following a networking break, the third panel featuring Shayne Kukulowicz, **John Dodd**, **Adam Crane**, and Tara Cooper Burnside KC as moderator, discussed the topic *In Search of Assets: Jurisdictional Differences in Pursuing Recovery*. The panel covered a variety of topics including common obstacles and challenges in the recovery process, tools available to trace and recover assets, and the interplay between civil and criminal proceedings.

The last panel of day one featured Paul Keenan, Rebecca Kennedy, Liam Faulkner, and Penelope Jensen as moderator, who engaged in a lively debate on *Restructuring Foreign Companies: Navigating Potential Conflicting Decisions Among Courts*.

Day two started with an engaging panel on *Letterbox Jurisdiction Issues: No COMI, No Establishment, Now What?* This panel featured Natasha MacParland, Caroline Moran, Adam Swick and was moderated by Nienke Lillington.

The discussion examined how courts across jurisdictions are grappling with increasingly complex multinational corporate structures and sophisticated forum selection strategies. Panelists analyzed recent jurisprudence from the United States, Canada, and offshore jurisdictions, highlighting growing judicial sensitivity to the distinction between legitimate restructuring planning and opportunistic forum shopping.

For the second panel on day two, Valerie Cross moderated a timely discussion on *How private credit is reshaping the restructuring landscape*. The panel also featured Eleanor Fisher, Joel Cohen, and Linc Rogers.

The discussion explored the explosive growth of private credit, which reached $1.5 trillion globally in 2023 and is expected to hit $3 trillion by 2028. Panelists examined regional trends,

with the US market comprising the bulk of private credit volume, while Canada's market remains more modest due to the dominance of the Big Six Canadian banks. The conversation delved into the advantages private credit offers (speed, flexibility, and custom solutions) as well as emerging concerns about due diligence standards, rating agency reliability, and the potential for "kicking the can down the road" in troubled company situations.

In the penultimate panel of the conference, Hon. Stuart Neiberg, Maria Konyukhova and Trevor Courtis as moderator, engaged in a fascinating session on *Unconventional assets in insolvency proceedings*, discussing real-world case studies that pushed the boundaries of traditional asset valuation.

The panel explored remarkable examples including the sale of Hudson's Bay Company's Royal Charter, novel security structures involving aging whiskey barrels, and the preservation and realization of embryos in fertility clinic insolvencies. These case studies illustrated how practitioners are increasingly confronting assets that defy conventional valuation frameworks and require multidisciplinary approaches combining legal expertise with operational, regulatory, and reputational considerations.

Social Events

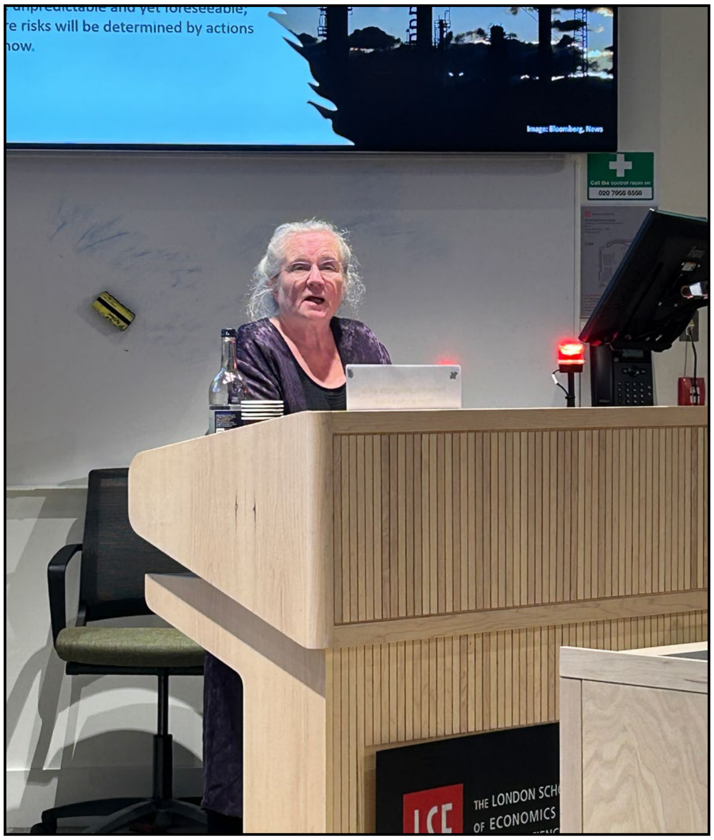
The conference fostered valuable networking and relationship-building throughout. On the first evening, attendees gathered for a memorable wine reception hosted by Mark Bloom and Baker McKenzie at their offices, offering attendees a fantastic opportunity to continue discussions in a collegial atmosphere. Following the wine reception, the attendees had dinner at Tacology, a Mexican Taqueria with a vibrant mercado-style dining experience, providing an informal setting to socialize with colleagues over a fantastic meal.

The Takeaway The III North American Regional Conference demonstrated the III's continued leadership in facilitating dialogue on cutting-edge insolvency and restructuring issues. The conference provided attendees with practical insights and strategic frameworks to navigate evolving challenges while strengthening the professional community that addresses them.

Thank you to everyone involved in planning the conference. UCC Co-Chairs, Sharon Hamilton, Evan Zucker, and Adam Crane welcome feedback on the conference and suggestions for future panel topics. ■

Moss Fletcher Lecture

The International Insolvency Institute, together with LSE and South Square, hosted the **Moss-Fletcher Lecture** in London on **23 October 2025.** The London lecture was the second of two Moss-Fletcher lectures. The first was held in São Paulo, Brazil on Friday June 6, 2025. The Moss-Fletcher lecture series is a tribute to the late **Gabriel Moss QC** and **Ian Fletcher QC**. The inaugural Moss-Fletcher lectures were delivered by **Sir Roy Goode KC** in 2023 and Professor Westbrook in 2024. This year's speaker is Dr Janis Sarra, Professor of Law Emerita, University of British Columbia, Principal Co-Investigator of the Canada Climate Law Initiative, a member of the Canadian Delegation to UNCITRAL WG V, and past Presidential Distinguished Professor of UBC. In her lecture, 'Green Swans and Blue Skies: Climate Change and Insolvency Risk for Financial Institutions,' Dr Sarra engaged with the challenge of climate-related financial risk. 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. The Bank for International Settlements is concerned about potential 'green swans', where timing of climate change impacts is uncertain, but there is a high degree of certainty that risks will materialize and negatively affect the financial system. The IMF suggests bank supervisors can mitigate these risks by requiring banks to embed climate in their business strategy, risk management, and governance. Using examples of both hard and soft law tools in Brazil, the UK, and other jurisdictions, the lecture reflected on the most effective regulatory strategies to mitigate risk and build on opportunities. If you were unable to attend the London Moss Fletcher Lecture in person, we're pleased to let you know that the full lecture is now available to watch on YouTube. Watch the lecture here. ■



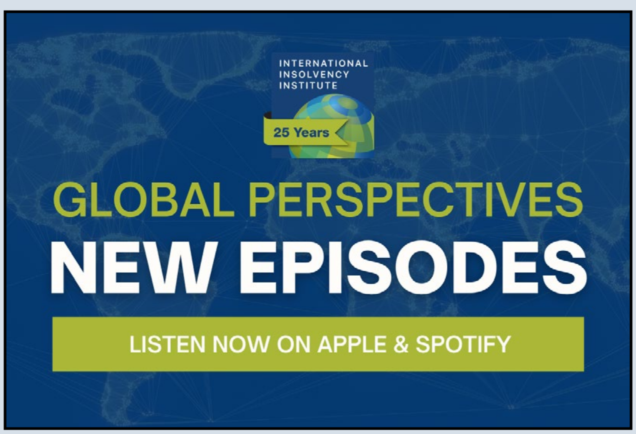
2026 Prize in International Insolvency Studies

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 Montreal, Canada in June 2026. All Medal Winners will be invited to attend the Conference and will be provided with complementary Conference registration. Please visit the III website for further details and the terms of the III Prize in International Insolvency Studies.

Global Perspectives Podcast



The International Insolvency Institute has released new episodes of its Global Perspectives Podcast. This includes a series discussing MSE insolvencies in different countries. Listen to all of the latest episodes on Spotify or Apple Podcasts using the links below.

Spotify

Apple Podcasts

III 2025 Prize in International Insolvency Studies Winners

Gold Medal Winner
Alex Huang, University of Hong Kong
The Doctrinal Evolution of Bankruptcy Law

Bankruptcy law professors often remind their students that although the Bankruptcy Code has remained largely stable, the practice of bankruptcy has been anything but static. Over time, Chapter 11 practice has undergone a paradigm shift: from debtor control to creditor control.

How, then, might one document a legal paradigm shift? Two dimensions offer insight. The first is case outcomes, which record the effects of law: who wins, what is approved by judges, and what events occur. The second is case content, which captures how law is interpreted and applied. Judges are expected to articulate the legal rationales that justify case outcomes, drawing on statutes, precedents, and doctrines.

In Chapter 11's paradigm shift, many empirical studies have documented changes in case outcomes: increased CEO turnover, shorter case durations ending in rapid going-concern sales, and reduced recovery rates for shareholders. Yet systematic research on case content remains largely absent. Has case content in Chapter 11 changed? If so, how has it evolved? Bankruptcy Law's Doctrinal Evolution: An Empirical Study, addresses the questions above. It finds a doctrinal evolution from unbundling to bundling.

This article adopts a framework that maps bankruptcy law onto two dimensions: operational issues and distributional issues. Sections accordingly fall into two categories: operational sections, which govern the deployment of assets and access to new financing—for example, Sections 363 and 364—and distributional sections, which determine how value is allocated among creditors, most prominently Sections 1121–1129. It traces the doctrinal evolution of Chapter 11 over more than three decades based on approximately 6500 opinions. In the earlier periods (1982–1993 and 1994–2005), operational and distributional decisions were made largely in isolation. By contrast, in the most recent period (2006–2017), they increasingly appear to have been made simultaneously.

The paper links stronger co-citation patterns to evolving deal structures. In modern bankruptcy practice, distributional decisions are increasingly bundled with operational ones. Bundling strategically circumvents the priority rule by leveraging the threat of firm-value destruction, thereby securing favorable distributions for certain creditors. As judges oversee more bundled transactions, sections of different types are co-cited more frequently.

The study begins with an individual-level co-citation analysis, which serves as a proxy for doctrinal relationships by capturing how judges connect sections in their reasoning. This approach is valid as judges tend to co-cite sections that are doctrinally related. The study further constructs a global-level network representation of Chapter 11 cases, treating sections as nodes and co-citation links as edges. Applying community detection algorithms reveals structural shifts in the bankruptcy law network. From the 1980s through the early 2000s, operational and distributional communities remained largely distinct. In later years, however, these communities began to converge, as sections such as 363 and 364—once firmly situated within the operational cluster—became integrated into the distributional community.

This article contributes to the bankruptcy law literature by showing how case content has evolved. Bundling emerges as the legal mechanism through which creditor control is exercised. More broadly, the computational doctrinal framework developed here is applicable to other areas of statutory law. ■

Silver Medal Winner
Simge Aslan, University of Nottingham
Digital Assets and Automated Transactions in Insolvency

In the last decade, digital assets (also referred to as crypto assets) collided with insolvency proceedings at full force. At the point of collision, it exposed critical pressure points. In this article, I aimed to examine those points and assess whether they ricocheted off the existing principles of insolvency or the impact was strong enough to crack part of the foundation.

My focus was on digital assets, and the article begins by exploring how their decentralised nature and storage in various types of wallets complicate the identification and recovery of assets in insolvency proceedings. It highlights the distinction between ownership and control of digital assets, especially when they are held via intermediaries or in cold wallets. Although acknowledging the special concerns that arise with the insolvency of intermediaries, the focus of the article was issues that arise in the insolvency of any company that owns or holds digital assets.

In addition to the idiosyncrasies of holding digital assets, the article also addresses a particular application. Automated scripts, which can perform pre-set transactions without human intervention, are identified as particularly problematic. Once triggered, these scripts can transfer assets despite an automatic stay being in effect, potentially undermining the collective treatment of creditors. The article draws analogies with traditional self-help mechanisms, like starter interrupters, and escrow arrangements to evaluate how courts might handle these challenges.

Once the issues are identified, they are analysed against the backdrop of universally recognised goals and mechanisms of insolvency. I use the UNCITRAL Legislative Guide's goals—such as balancing the interests of stakeholders, maximising estate value, and ensuring collective creditor treatment—to assess the compatibility of current insolvency frameworks with digital assets. The analysis shows that while some issues (e.g., tracing assets or identifying ownership) can be managed with existing tools and investigatory powers, other aspects—like the rigidity of automated scripts or the difficulty in halting transfers—may require bespoke legal interventions or further guidance.

Finally, the article addresses the conceptual debate on whether on-chain asset transfers create a "new" asset or merely change control, which has direct implications for tracing and recovery.

In the end, I observed a pattern emerge when looking at the various issues that take the forefront of discussions regarding digital assets. Every aspect that appears to require further legal guidance is caused by the same characteristic of the technology that underlies digital assets – the ability to subject the assets to factual exclusive control. As such, to be able to effectively accommodate digital assets in any legal framework, the novelty of factual control needs to be considered. ■

Bronze Medal Winner

Alexander Völker, Martin-Luther-University Halle Wittenberg

A Breathing Spell in Turbulent Times

It is the year 1773 in the German city of Frankfurt am Main. A young lawyer writes a letter on behalf of his client to the client's creditors: “[...] I therefore ask you to grant me the well-deserved Beneficium Moratorii for five years, so that I can put myself in a position to work on the successive repayment of my creditors during this time;” Just one year after writing this client letter, the young lawyer writes a novel, as he has done several times before. The novel will be titled “The Sorrows of Young Werther”. The young lawyer's name is Johann Wolfgang von Goethe.

This short story exemplifies that the idea of granting the debtor a temporary breathing spell to facilitate his restructuring is not new. In fact, its first beginnings can be traced back to the Roman Empire. Although dealing with an insolvent debtor in earlier times was rather physical (and violent), examples of statutes and laws granting debtors a temporary respite can be found throughout the centuries.

Nowadays, almost all modern legal systems have such instruments (hereinafter referred to as “restructuring moratoria”) in their respective insolvency or restructuring laws.

Although these restructuring moratoria have a wide variety of names nowadays (e.g. "stay" in the US, "moratorium" in the UK and Singapore, "Stabilisierungsanordnung” (stabilization order) in Germany, "afkoelingsperiode" (cooling-off period) in the Netherlands), they all have the same purpose. They are intended to temporarily protect the debtor from certain actions by its creditors that could hinder an effective restructuring. In the case of unsecured creditors, these obstructive creditor actions include the termination of contracts, the acceleration of outstanding loans, certain other contractual rights, enforcement actions against the debtor and applications to open insolvency proceedings over the debtor's assets. In the case of secured creditors and subject to the respective collateral, there are additional options to disrupt the restructuring process, such as the forfeiture and realization of the collateral.

It is therefore no surprise that such creditor actions are suspended by most restructuring moratoria. This suspension, in turn, entails a restriction of creditors’ contractual and statutory rights. Particular attention must therefore be paid to the procedure in which the restructuring moratoria are embedded. A comparison of several legal systems with well-known restructuring frameworks—such as those of the United States, the United Kingdom, Germany, France, and Singapore—reveals that two categories can be identified: on the one hand, moratoria that take effect automatically by operation of law and apply collectively (i.e., to all creditors of the debtor); and on the other hand, moratoria that require a court order and apply only to individual dissenting creditors.

Further differences and similarities among modern restructuring moratoria, as well as the conclusions that can be drawn from them, are discussed in the article "A Breathing Spell in Turbulent Times". Interested readers are warmly invited to take a look at the article on the website of the International Insolvency Institute (III). ■

NextGen Update

By Gemma Bellfield and Olya Antle

2026 marks 15 years of the III NextGen Program, which was launched in 2012 to bring together insolvency and restructuring professionals and academics from around the world, offering them a distinguished forum for intellectual exchange, professional growth, and close engagement with more senior leaders in the global insolvency area, the members of the International Insolvency Institute.

NextGen Snapshot at 15 Years

The III NextGen Program is a special organisation. It not only enables NextGen members to liaise with full III members, who comprise leading figures in the global insolvency and restructuring space, but also enables NextGen members to build meaningful and lasting connections, business relationships and in many cases, enduring friendships, with their peers. Those inducted into the NextGen Program are already recognized as influential contributors in their jurisdictions and are positioned to shape the future of our field. You will find III NextGens advocating before the leading insolvency and restructuring courts around the world, actively participating in the sessions of UNCITRAL Working Group V, speaking on international panels on cutting-edge legal developments in our space, and serving as insolvency practitioners in some of the most significant corporate insolvencies and restructurings affecting the global economy.

There are currently 151 active NextGen members (attending conferences, producing III podcast episodes, writing articles, serving on III committees, and participating in other III thought leadership initiatives) representing 28 countries around the globe. Since the Program's inception, some 312 professionals and academics have participated in the NextGen Program.

NextGen @ the III Annual Conference in Montreal, Canada

In addition to participating in the main III annual conference each year, NextGens host their own ancillary one day conference (to which all are welcome), which will be held this year at the Palais des Congrès de Montréal on 14 June 2026.

As in previous years, an engaging and rich program of panels canvassing a range of issues challenging insolvency and restructuring professionals around the world will be on display at the NextGen conference this year:

- The day will begin with a panel undertaking a **Comparative Analysis of Restructuring Proceedings** across the US, Netherlands, Japan, Brazil and Canada. Panellists will consider common themes across jurisdictions, why and how approaches might diverge, and how this can be managed in increasing numbers of cross-border insolvencies;
- The second panel of the day will consider **AI Developments in Legal Practice**: the benefits, the pitfalls and how as a practical matter we as insolvency professionals and academics can better and responsibly incorporate AI into our working lives;

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- After a short break, a further panel will consider **Restructuring and Insolvency in an Era of Tariffs, Trade Wars, and Sanctions**: what are the trends we are seeing and the commercial consequences of tariff and sanction regimes we have seen imposed in recent years; The afternoon agenda will begin with a panel considering **State Owned Enterprises in Distress** and the particular issues which arise in managing restructuring plans and insolvency risks for SOEs and their creditors;
- The technical content will conclude with the **Battle of Brilliant Ideas**: 5 NextGens debating which brilliant legislative or common law restructuring or insolvency tool in their jurisdiction ought to be replicated elsewhere.

The day will conclude with the induction of 15 new members of NextGen Class XV. We encourage all III members to consider nominating rising leaders in their insolvency and restructuring networks who can contribute meaningfully to the vibrant and engaged III NextGen community, as we move into its 15th year and beyond. ■

Click here to register for the NextGen Program in Montreal

Preventive Debt Restructuring in Japan: A New Legislative Approach

By Midori Yamaguchi (NextGen Class XIII)

In June 2025, Japan enacted a landmark statute introducing a preventive debt restructuring framework for enterprises that are at risk of falling into financial distress but are not yet insolvent. Commonly referred to as the Early Business Recovery Act (official English title pending; Act No. 67 of 2025[1]), this legislation establishes a hybrid mechanism involving a neutral third-party organization with limited court involvement. The framework allows financial debt to be restructured through supermajority creditor approval while preserving confidentiality and minimizing reputational and operational disruption. It is designed to bridge the longstanding gap between out-of-court workouts and formal insolvency proceedings and draws inspiration from comparable regimes abroad, particularly the preventive restructuring frameworks developed under EU Directive 2019/1023.

The Act is expected to come into force by the end of 2026 and to have a significant impact on Japan's corporate debt restructuring landscape. This article outlines the economic background and the principal procedural features of the new framework. The author was seconded to the Ministry of Economy, Trade and Industry (METI) during the drafting process; however, the views expressed are all personal.

[1] For the text of the Act, see https://laws.e-gov.go.jp/law/507AC0000000067/20280613_000000000000000 (only in Japanese). Link accessed January 15, 2025.

I. Economic and Legislative Context

1. Economic Background

Corporate debt in Japan has risen materially, by approximately 120 trillion yen since before the COVID-19 pandemic.[2] At the same time, businesses continue to face persistent challenges such as higher raw material costs, inflationary pressures, and labor shortages. Against this backdrop, corporate insolvency cases exceeded 10,000 cases in both 2024 and 2025,[3] the highest annual totals in over a decade.

2. Challenges in the Existing Debt Restructuring Options

Japan's current debt restructuring toolkit consists primarily of formal insolvency procedures and out-of-court workouts. Court-led procedures, such as civil rehabilitation and corporate reorganization, enable majority-approved restructuring across all creditors but are public in nature and often entail significant reputational and commercial harm. By contrast, out-of-court workouts, including structured frameworks such as Turnaround ADR, primarily apply to financial claims held by banks and other financial institutions and generally offer greater confidentiality and flexibility. However, these workouts depend on unanimous consent from financial creditors, which often impedes their effectiveness. Although Japan

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[2] Calculated based on the *Flow of Funds Accounts* published by the Bank of Japan (March 21, 2025).

[3] Based on *Nationwide Corporate Insolvency Statistics* published by Tokyo Shoko Research (January 14, 2025 and January 13, 2026). The statistics cover corporate insolvency cases nationwide involving liabilities of JPY 10 million or more.

Preventive Debt continued from page 29

has developed out-of-court mechanisms over the past two decades, these frameworks have remained limited in scope due to their reliance on creditor consensus and lack of effective means to bind dissenting creditors.

3. Legislative Development

Recognizing this structural gap, METI developed a preventive debt restructuring regime aimed at enterprises that are not yet insolvent but face a risk of financial distress. The framework was inspired by international models, including the UK's Scheme of Arrangement and Restructuring Plan and Germany's StaRUG, while also incorporating elements familiar to Japanese practice, such as oversight by an independent third-party organization.

A distinctive feature of the Act is its hybrid structure: the debt restructuring process is conducted as a non-public procedure under third-party supervision, with court involvement limited to approving resolutions adopted by a supermajority of creditors. The enactment of the Act reflects the culmination of extensive academic and practitioner debate and has been accelerated by the global shift toward preventive restructuring.

II. Key Features of the New Framework

1. Eligible Debtors and Scope of Claims

The Act applies to enterprises at risk of falling into financial distress, a stage that precedes the threshold required for formal insolvency proceedings. The regime is industry-neutral and size-neutral, although it is expected to be used mainly by large and mid-sized companies with a relatively large number of financial creditors.

Only financial debts existing at the commencement of the procedure may be restructured. Eligible creditors include banks, insurance companies, licensed money lenders, government-affiliated entities, local governments, and licensed servicers that have acquired such claims held by these entities. While the secured portions of claims are excluded from modification under the majority voting mechanism, they may be subject to procedural stays that prevent asset enforcement during the process.

2. Commencement and Third-Party Confirmation

To initiate the procedure, the debtor must submit an application to a neutral third-party organization to be designated by METI, which must confirm that the statutory conditions are met. These conditions include the existence of a risk of falling into financial distress, the eligibility of the claims, a reasonable prospect of obtaining creditor approval, compliance with the liquidation value test, and the absence of ongoing in-court insolvency proceedings. Upon issuance of the third party's confirmation, the designated organization notifies the affected creditors.

3. Temporary Stays

Following commencement, the designated third-party organization will request that affected creditors voluntarily suspend enforcement actions. Where necessary, the court may, upon petition by the debtor or any affected creditor, issue a legally binding temporary stay to prevent enforcement or realization of security interests.

4. Submission of Proposal and Early Business Recovery Plan

Within six months of third-party confirmation, the debtor must submit a written proposal setting out the terms of the claim modifications, together with an early business recovery plan. The plan must explain the business background, the debtor's current financial and operational status, future projections, details of security interests, and any other matters specified by ministerial ordinance. Equal treatment of affected creditors is required unless differential treatment can be justified.

5. Review by the Third-Party Organization

The designated third-party organization will review the debtor's proposal and plan to assess legal compliance, feasibility, and consistency

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Judicial Training in Vienna: Training the Trainers

By **Jim Peck**

Last December, three longstanding judicial members of III, Judge Elsbeth De Vos, Hon. Allan Gropper and **Hon. James M. Peck**, were in Vienna at the invitation of UNCITRAL to take part in an innovative capacity building exercise for judges from Arab countries. These members had been recruited to share their expertise and to serve as faculty members who would help in developing cross border awareness and judicial skills in North Africa and the Middle East. The course materials for the training were prepared by Professor Rosa M. Rojas-Vértiz who co-chairs the Latin American Region for III.

The judges from the MENA region (Morocco, Oman and Saudi Arabia) who came to Vienna seemed very eager to learn more about cross border issues. They wanted to improve their understanding of the Model Law and how it functions in practice with the aim of spreading the word to other MENA judges at a conference in Riyadh organized by The World Bank. They were training to lead discussions concerning an unfamiliar discipline and gained confidence and fluency during a week of curated exposure to our members.

These tutoring seminars took place over two separate afternoons following Working Group V meetings. The sessions were spontaneous and interactive and served as a kind of crash course in the Model Law from the viewpoint of experienced III members. The judges who took part in the program are now better informed and more effective spokespersons for cross border cooperation.

The underlying concept here was to "train the trainers", i.e., to concentrate on teaching a select few who would then be better able to go forth, spread the word about cross border insolvency and teach other judges in their home jurisdictions. The judges who participated in the sessions were intensely engaged in the subject and eager to learn from the experiences of our members. This was a fascinating cross-cultural exchange, and a good example of how individual members can share their own experiences and, in the process, help to advance the goals of III.

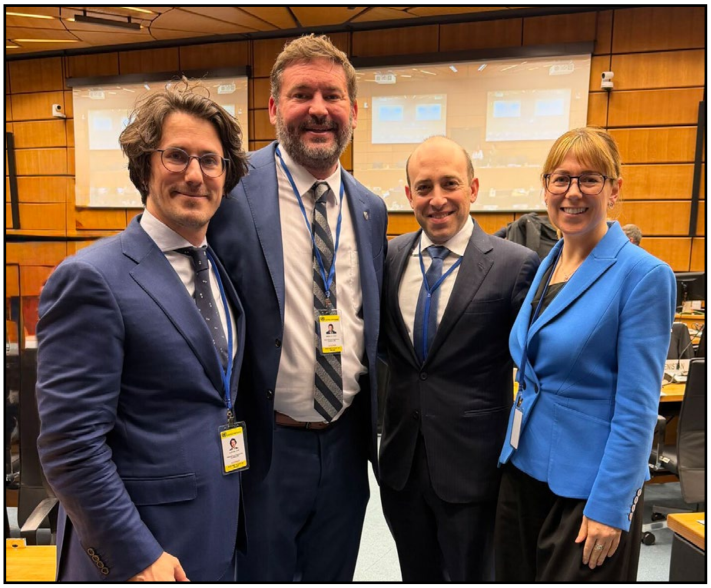
This training program took place in conjunction with meetings of Working Group V and a related colloquium organized by UNCITRAL that was convened in Vienna to evaluate recent experiences with the Model Law and to consider whether revisions to the Guide to Enactment might be desirable or appropriate. III members from many countries have participated actively over the years in Working Group V and, collectively, have made significant contributions to UNCITRAL's work and the advancement of III's core mission.

As a postscript, we have learned that the seminar in Vienna appears to have achieved its intended purpose. UNCITRAL has reported that the training in Riyadh involved 38 participants, including 22 Saudi judges and several representatives from Bahrain, Qatar and Kuwat. Many topics were covered, including choice of law, public policy and cooperation. The fact that the seminar was conducted in Arabic was praised by those who attended. Thus, III members have partnered with UNCITRAL, INSOL International and The World Bank in promoting a better understanding of cross border practices. ■

UNCITRAL Working Group V

III recently launched a new initiative to keep III members informed and engaged. Last fall III started hosting quarterly virtual meetings to spotlight our programs, share updates, and feature insights from members involved in global projects and initiatives.

Members met on December 17 to hear about updates from III's operational committee for UNCITRAL Working Group V, fresh on the heels of WG V's 67th session in Vienna. UNCITRAL WG V focuses on insolvency law, including asset tracing, recovery, applicable law, and the UN Model Law on Cross-Border Insolvency, and the Vienna meeting considered possible updates to the Guide to Enactment and Interpretation of the Model Law. III was awarded special consultative status to United Nations Agencies in 2014 and regularly attends and participates at the bi-annual meetings of WGV. The committee reported regarding recent developments at the Vienna session and explained what is on the horizon for future sessions.



The III Delegation: Jose Carles, Adam Swick, Evan Zucker, and Olya Antle (NextGen)

This meeting offers a great opportunity to hear directly from fellow members and learn more about III's work around the world. We look forward to seeing you soon! ■

Watch the Presentation

All III members who attended the UNCITRAL WG V meetings in December in Vienna.

Project Application Guidelines and the Spring Call for Applications for III Funding for 2026

The International Insolvency Institute supports exceptionally worthy projects, undertaken by experts in the field of insolvency and business rescue, with an international component. These procedures set forth the framework for the consideration and funding of projects by the III. Applications for funding of a project may be submitted by one or more individuals, and those individuals may, but need not, be III members. Applications may also be submitted by organizations. Applications may be submitted at any time. Absent extraordinary circumstances, applications will be considered by the Projects Committee twice a year.

- To be considered in the Spring, they should be submitted before **May 1, 2026**.
- To be considered in the Fall, proposals should be submitted on or before **October 30, 2026**.

Pursuant to the objectives of the organization, successful projects should have an **international component**. This means that the projects should refer to the international dimension of insolvency – cross border issues, comparative issues, international standards, regional systems, and similar matters – or concern at least two or more jurisdictions. Successful projects may be research or educational projects.

- <u>Research projects</u> are those with a predominant original research component, aiming to advance the state of the art or to work towards law reform.
- <u>Educational projects</u> are those that, although essentially descriptive in nature, provide a useful tool to the legal community, as well as those that contribute to the capacity-building of the institutions and professionals engaged in insolvency and the resolution of creditors' rights.

A successful project should address at least one of the following topics, or a substantially similar or related topic:

- Cross-border insolvency, including jurisdiction, applicable law, institutional structure and setting;
- Substantive and procedural insolvency law, including due process, commencement of an insolvency proceeding, governance, administration, clams and claim resolution procedures, reorganization, liquidation, and corporate groups;
- Insolvency and micro, small and midsize ("MSME") enterprises;
- Insolvency and alternative dispute resolution mechanisms, including arbitration, mediation, and conciliation;
- Secured transactions and insolvency;
- Insolvency of banks, insurance companies, and systemically important financial institutions and entities;
- and Sovereign and public sector insolvency.

Projects will be evaluated pursuant to the following rubric:

- Consistency with the goals of the organization;
- Theoretical and practical relevance;
- Timeliness of the topic;
- and Qualifications and experience of the applicants.

You can read about past projects sponsored by the Institute online (https://www.iiiglobal.org/initiatives/projects-sponsored-by-iii/).

<u>Submit your application via online form here.</u> Project funding applications should be submitted before **May 1, 2026.** ■

ASK AIII:

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

Check out this **Insolvency Zodiac**, brought to life thanks to the wit of Karla Silva R. (NextGen Class XIV). Karla decided to play around with Gemini and asked it to create a Zodiac in that very specific "Legal English" style, but with a satirical twist.

Here's what it wrote[1]

♈ **Aries**

The Impulsive Petitioner

- **Forecast:** You are likely to file for voluntary bankruptcy without a prior feasibility test. Your martial energy will lead you to challenge the Court's jurisdiction just for the thrill of it.
- **Legal Tip:** Filing a petition in "good faith" requires more than just a bold attitude and a depleted bank account.

♉ **Taurus**

The Asset Holder

- **Forecast:** Your planetary alignment suggests a stubborn refusal to surrender collateral. You view "liquidation" as a personal insult rather than a statutory procedure.
- **Legal Tip:** The automatic stay is a shield, not a permanent residence. Eventually, the secured creditors will knock.

♊ **Gemini**

The Dual Accountant

- **Forecast:** Mercury brings a high risk of "off-balance-sheet" creativity. You have a unique talent for explaining why the Schedule of Assets looks nothing like your tax returns.
- **Legal Tip:** Having two corporate identities is fine for branding, but less ideal during a Rule 2004 examination.

♋ **Cancer**

The Emotional Creditor

- **Forecast:** You are deeply attached to your priority claim. You will spend the entire month mourning the loss of a business relationship that was, in hindsight, strictly contractual.
- **Legal Tip:** Emotional distress is rarely an administrative expense. Seek solace in the recovery rate, however small.

♌ **Leo**

The Grandstanding Debtor

- **Forecast:** You treat the Meeting of Creditors like a press conference. You expect a standing ovation for your reorganization plan, even though it offers a 2% recovery over 50 years.
- **Legal Tip:** The Judge is your audience, but the Receiver is your critic. Tone down the ego, or they'll "recast" your management.

♍ **Virgo**

The Diligent Auditor

- **Forecast:** Your Proof of Claim is a work of art, cross-referenced with 400 pages of exhibits. You are the only one who actually read the Disclosure Statement footnotes.
- **Legal Tip:** Perfection is not a substitute for liquidity. Don't spend $10,000 in legal fees to recover a $500 debt.

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[1]Text generated by Gemini, January 21, 2026, OpenAI, https://gemini.google.com

♎ Libra
The Cramdown Specialist

- **Forecast:** You are obsessed with "fair and equitable" treatment, yet you can't decide which class of claims to impair. You seek harmony in a room full of litigators.
- **Legal Tip:** Sometimes justice isn't a balance; it's just a final decree that nobody likes.

♏ Scorpio
The Forensic Investigator

- **Forecast:** You have a psychic ability to find voidable preferences and hidden offshore accounts. You thrive in the "Shadow of the Law."
- **Legal Tip:** Be careful—when you stare into the clawback provisions, the clawback provisions stare into you.

♐ Sagittarius
The Blue-Sky Reorganizer

- **Forecast:** Your Restructuring Plan is based on "projected global expansion" while your electricity is currently cut off. You see "opportunity" where the law sees "insolvency."
- **Legal Tip:** Speculative profits are not disposable income. Keep your projections within the same dimension as the facts.

♑ Capricorn
The Senior Secured Lender

- **Forecast:** Cold, calculating, and first in line. You have no interest in "rehabilitation," only in foreclosure and strict compliance with the Credit Agreement.
- **Legal Tip:** Being right is your "lucky color," but even a Capricorn can't squeeze blood from a pro forma turnip.

♒ Aquarius
The Disruptive Distressed-Debt Buyer

- **Forecast:** You are looking to buy the blocking position using a complex derivative nobody understands. You find the current Bankruptcy Code "too mainstream."
- **Legal Tip:** Innovation is great, but the Bankruptcy Judge still uses a gavel, not a smart contract.

♓ Pisces
The Fresh Start Dreamer

- **Forecast:** You believe in the discharge of indebtedness like it's a spiritual rebirth. You are currently "manifesting" a zero-tax liability.
- **Legal Tip:** A discharge is not an exorcism. The ghosts of your non-dischargeable debts (and student loans) may still haunt you. ■

Share Your ASK AIII Ideas

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

Interview Segment: UNFIIILTERED
Featuring Debra Grassgreen

We are pleased to present the third episode of UNFIIILTERED— a talk show in which our hosts, Dr. Robert Hänel and Steve Golden (NextGen Class X), interview a pre-eminent restructuring professional on both the professional and personal aspects of their life and career. We were honored to be joined by Debra Grassgreen for the program.

Debra Grassgreen is a highly respected restructuring and insolvency lawyer with decades of experience representing debtors, trustees, and creditors' committees in large, complex Chapter 11 cases across the United States and internationally. She is a senior partner at Pachulski Stang Ziehl & Jones LLP in San Francisco, where she chairs the firm's international insolvency practice and is widely recognized as a leading expert on cross-border restructuring matters. Notable engagements include high-profile representations in cases such as Solyndra, American Suzuki Motor Corporation, Mesa Airlines, and the creditors' committees in the Weinstein Company bankruptcy, among others.

Debra has played a significant role in shaping global insolvency discourse. She served as President of the International Insolvency Institute (III)—the first woman elected to that position—from 2019 to 2021. In recognition of her contributions to the field and to the III's mission, Debra was honored with the Institute's 2023 Founder's Award.

In addition to her III leadership, she has held prominent roles with the International Women's Insolvency & Restructuring Confederation and the American College of Bankruptcy, and she has served for many years as an NGO delegate to the United Nations Commission on International Trade Law (UNCITRAL) working group on international insolvency law. Debra is a frequent speaker and author on restructuring topics and is consistently recognized by leading legal directories for her expertise and influence in the field.

Watch the interview on Youtube

Chinese Enterprise continued from page 15

conscious effort to balance procedural economy with the preservation of viable small businesses.

Enterprise group insolvency

The draft amendment introduces, for the first time, a statutory framework for enterprise group insolvency, establishing a dual-track regime of substantive consolidation and procedural coordination. Substantive consolidation is permitted where affiliated enterprises exhibit severe commingling of legal personality, assets, or liabilities, such that separation is impracticable and creditor equality would otherwise be seriously impaired, or where group structures were established for fraudulent purposes. Upon application by eligible stakeholders, courts may order consolidation, resulting in the pooling of assets, extinguishment of inter-company claims, and unified creditor distribution. Jurisdiction, notice, hearing, and review procedures are expressly regulated, enhancing procedural certainty and creditor protection.

Where the stringent conditions for substantive consolidation are not met, the new draft authorises procedural coordination of affiliated enterprises. Under this mechanism, legal personality, asset separation, and inter-company claims are preserved, while courts may coordinate jurisdiction, timelines, and hearings, and allow single or coordinated reorganisation plans. Creditors vote and receive distributions on an entity-by-entity basis, with safeguards against abuse of related-party claims. This calibrated approach enables courts to address complex group cases without resorting to over-inclusive consolidation.

Financial Institution Insolvency

Recent financial sector failures exposed the limitations of China's fragmented insolvency framework for financial institutions. In response, the new draft creates a dedicated chapter governing the insolvency of a broad range of institutions, including banks, insurers, securities firms, trust companies, asset management companies, and non-bank payment institutions.

Under this regime, bankruptcy proceedings may be initiated either when statutory insolvency criteria are met or when competent financial regulators determine that regulatory requirements have been breached. In most cases, prior regulatory approval is required before judicial proceedings may commence. The resulting framework reflects a hybrid model in which administrative supervision and judicial procedures are closely integrated, underscoring the public interest dimension of financial institution insolvency.

Cross-Border Insolvency and International Implications

The 2006 EBL addressed cross-border insolvency in a single, highly general provision. The draft amendment represents a major departure by devoting an entire chapter to the subject. Chapter 14 sets out rules on jurisdiction, recognition and assistance of foreign insolvency proceedings, coordination of parallel proceedings, and the ranking of claims involving foreign creditors. It also addresses distribution coordination through the "hotchpot rule" and confirms the primacy of applicable international treaties.

While the draft does not adopt the UNCITRAL Model Law on Cross-Border Insolvency, it reflects selective convergence. Both regimes permit foreign creditor participation and recognise the standing of foreign insolvency representatives. At the same time, the draft retains reciprocity requirements, allows the opening of local proceedings based on the "closest connection" principle, and prioritises domestic statutory claims in distributions. Recognition remains subject to public policy and domestic creditor protection considerations, indicating a cautious and sovereignty-sensitive approach to cross-border cooperation.

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Concluding Remarks

The 2025 draft amendment marks a pivotal stage in the evolution of China's insolvency framework. Rather than a wholesale departure from the 2006 law, it represents a systematic consolidation and refinement of two decades of judicial practice, policy experimentation, and market experience. Its significance lies not only in the expansion of substantive rules, but also in the articulation of differentiated procedures capable of addressing enterprises of varying size, complexity, and systemic importance.

Looking forward, the effectiveness of the reform will depend on the content and finalisation of the amended legislation, as well as on its practical implementation. The draft has many new developments, yet it also leaves open important questions concerning the future development of a comprehensive personal bankruptcy regime, the scope and depth of cross-border insolvency cooperation, and the coordination between judicial and regulatory authorities. In this sense, the 2025 draft amendment should be understood not as the end point of reform, but as a foundation for the next phase of China's insolvency law development. Its success will ultimately hinge on judicial capacity, professional training, and effective coordination among courts and insolvency practitioners in translating statutory design into functional outcomes. ■

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with the general interests of creditors, including satisfaction of the liquidation value test. If the requirements are not met, it will revoke its prior confirmation and the procedure will terminate.

6. Creditors' Meeting and Voting

After the third-party review, a creditors' meeting is convened. Voting rights are allocated pro rata based on the value of unsecured eligible claims. Two outcomes are possible. If all affected creditors unanimously approve the proposal, it becomes immediately binding. Alternatively, the proposal may be adopted by a supermajority, requiring approval by at least 75% in value of voting claims; where a single creditor holds 75% or more of the claims, adoption also requires a headcount majority.

7. Court Approval

In cases of supermajority approval, court authorization is required. The court may deny approval only on limited grounds, including unremedied legal violations, clear infeasibility of performing the modified obligations, unlawful means on the voting process, or inconsistency with creditors' general interests. Immediate appeals against the court's decision are available to both the debtors and affected creditors.

III. Significance and Outlook

The Early Business Recovery Act marks a major step toward modernizing Japan's debt restructuring framework. By introducing a confidential, hybrid procedure that enables financial debt restructuring with supermajority creditor approval while safeguarding creditor interests, the Act brings Japan's regime closer to international best practices. With subordinate regulations currently under development, the framework is expected to become operational by the end of 2026 and is likely to attract close attention from turnaround professionals both in Japan and abroad. ■

EMEA Seminar continued from page 17

sale (2): Once formal insolvency proceedings are opened, the court will rapidly authorise the pre-arranged sale.

Panellists highlighted how the statutory anchoring of prepacks is particularly significant in light of rulings of the Court of Justice of the European Union concerning the Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights (usually referred to as the Transfer of Undertakings Directive).

Some conclusions:

- Employment protection varies significantly from country to country. III President Stephan Madaus intervened and explained that in Germany, employees benefit from insolvency wage protection covering up to three months of salary while a transaction is prepared. It is also common practice to transfer selected employees to a special purpose vehicle (SPV), allowing operational continuity and selective workforce integration.
- Contract assignment rules also differ. Spain and France offer relatively similar mechanisms permitting court-supervised assignment of contracts in insolvency. The Netherlands adopts a more restrictive approach. In Norway, the purchaser gains a competitive advantage through access to data and early engagement with contractual counterparties, but there is no compulsory assignment of contracts.

Finally, III Chair Mark Bloom contributed comparative insight into U.S. practice under Sections 363 and 365 of the U.S. Bankruptcy Code.

- Section 363 allows "free and clear" sales of assets, enabling purchasers to acquire assets without successor liability for most pre-existing claims, provided statutory requirements are met. These sales resemble, in functional terms, EU prepack-style transactions.
- Section 365 is central to going-concern sales. It permits the debtor, subject to court approval, to assume and assign executory contracts notwithstanding anti-assignment clauses, provided defaults are cured and adequate assurance of future performance is given. This facilitates the transfer of key contracts to a purchaser and underpins transactional certainty.

The III EMEA Regional Seminar highlighted that while convergence is visible within the region, significant national differences remain, particularly in labour law, contract assignment and procedural design. ■

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Key Cases

GACSAS[9]

The insolvent settlor instructed the trustee to file insolvency petitions for two I.T. structured under an asset and obligational isolation scheme and not engaged in business activities. The trust agreements neither contemplated insolvency proceedings nor authorized the settlor to issue such instructions. Creditors opposed the filings, arguing that the trusts merely collected and distributed funds. Nevertheless, the judge found that business activity existed based on a registration made for opposability purposes before the Chamber of Commerce of the settlor's domicile.

GMÓVIL[10]

Similarly, the insolvent settlor instructed the trustee to file an insolvency petition for the I.T. without contractual authorization. Creditors did not challenge the court's decision to open the proceedings.

AZTECA[11]

The settlors requested that insolvency proceedings be opened *ex officio* for two I.T. in parallel with their own reorganization proceedings. The trustee objected, noting that the trusts did not conduct business activities and merely administered cash flows for creditor payment. The judge nonetheless ordered the *ex officio* commencement of insolvency proceedings, citing the existence of operational, economic, and financial unity between the settlors and the trusts, and holding that contractual provisions were not determinative. Appeals by creditors and the trustee were dismissed.

Impact on Bankruptcy Remoteness

Notwithstanding the admission of these trusts into insolvency proceedings, none of the decisions has resulted in the invalidation of security interests or in the forced redirection of trust cash flows to the settlor's insolvency estate in contravention of Article 43(5) of Law 1116 of 2006[12].

The legal tension therefore does not concern the validity or enforceability of security interests, but rather the expansion of the subjective scope of insolvency law to encompass Independent Trusts that were contractually and structurally designed as insolvency-remote vehicles and that do not conduct business activities.

As a result, such trusts currently offer a diminished degree of bankruptcy remoteness vis-à-vis the insolvency risk of the originator, relative to prior market assumptions and established structuring practices.

Conclusions

Although the three cases involving these five trusts represent less than 0.1% of all insolvency proceedings, they establish a significant legal precedent for the financial and project finance markets.

While there is no indication of a direct assault on the enforceability of security interests, there is a discernible shift in judicial interpretation regarding the subjective and obligational autonomy of Independent Trusts that lack business activity.

Although reliance on patrimonial and obligational segregation through commercial trust structures remains legally viable, it is now

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[9] Orders Nos. 2023-01-499527 and 2023-01-499511 dated June 2, 2023, Independent Trusts ERNESTO CORTIZZOS and CREDITORS, Superintendence of Companies.

[10] Order No. 2025-01-146051 dated April 3, 2025, Superintendence of Companies.

[11] Order No. 2025-01-687025 dated September 25, 2025, Superintendence of Companies.

[12] In fact, this criterion has remained consistent even in cases where the debtor-settlor filed for insolvency and petitioned the court to make the trust's resources available for its own reorganization: **Auto No. 2025-01-267489** (April 28, 2025), concerning the single-purpose company *Sociedad de Objeto Único Este Es Mi Bus S.A.S.*, and **Auto No. 2025-01-867159** (December 24, 2025), regarding *Azteca Comunicaciones Colombia*. In both cases, the petition was denied, as the court formally recognized the principle of **asset and liability isolation**.

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imperative to reinforce transaction structuring and to enhance the legal, functional, and governance separation between the settlor and the Independent Trust.

This development is attributable to two principal factors. First, settlor-debtors frequently transfer all or substantially all operating cash flows to the trust, leaving themselves with insufficient liquidity to absorb adverse performance shocks. Second, evolving jurisprudential interpretations have introduced legal uncertainty that may not fully align with the statutory insolvency framework applicable to trusts or with broader macroeconomic policy objectives.

The first factor may be mitigated through refined financial and contractual structuring. The second depends to a significant extent on the technical specialization of insolvency adjudicators and their appreciation of the systemic implications of these decisions for credit markets, infrastructure development, and legal certainty.

Prospective Considerations: Structuring and Contractual Mitigation Measures

Transaction structuring

- Avoid full assignment of project cash flows to the payment source
- Limit trust-administered flows to debt service amounts
- Permit the trust to acquire receivables through discounting or factoring mechanisms
- Implement contingent payment waterfalls tied to independently verified performance metrics
- Grant perfected security interests over trust assets in favor of lenders, with pre-agreed valuation and dispute resolution mechanisms
- Evaluate the use of regulated securitization structures for infrastructure, public services, and structured cash-flow transactions

Contractual safeguards

- Precisely delineate the trust's purpose to preclude characterization as a business operator
- Clearly allocate authority to initiate insolvency proceedings
- Strengthen the trustee's fiduciary duty to preserve bankruptcy remoteness
- Impose immediate notification obligations in favor of lenders regarding any insolvency-related instruction
- Incorporate negative covenants prohibiting the settlor from disputing trust ownership of assets

Public policy considerations

Given that the Superintendence of Companies operates under the Ministry of Commerce, Industry, and Tourism, the systemic and macroeconomic implications of extending insolvency proceedings to insolvency-remote trust structures should be carefully assessed, particularly in relation to access to long-term financing and infrastructure development. ■

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.

Communications Committee

This edition of The DIIIGEST was brought to you by:
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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 July 31, 2026.

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