



AIPSA 1st Annual Insolvency Conference
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South Africa

**Global Insolvency Regimes and its
impact on Foreign Investments**

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Landscape

Part 1:

Importance of efficient insolvency systems
Experience in developing countries

Part 2:

INSOL International



Importance of Sound Insolvency Systems

- **An important element of financial sector stability**
 - Play a pivotal role in times of crisis to enable country to respond and resolve financial distress on systemic scales.
 - Effective insolvency systems mitigate impact of crisis by:
 - Allocating risk in a predictable, equitable, and transparent way, thereby bolstering confidence in the credit system
 - Maximizing value through continuation of a viable enterprise
 - Enabling financial institutions to curtail deterioration of assets by providing a means of enforcing claims
 - Deepening and broadening capital markets by stimulating the development of a secondary market in debt instruments that allows financial institutions to transfer their loans to entities specialized in the workout process



Importance of Sound Insolvency Systems

- **Encourage private entrepreneurship**

- Markets more accurately price, manage, resolve default risk. Insolvency is legitimized and not considered stigma

Reallocate valuable national resources

- Salvage viable businesses and preserve jobs (rescue)
- Efficient transfer of assets (bankruptcy liquidation)
- Safety valve for corporate distress

- **Maintain public confidence in investment**

- Foster commercial confidence. Encourage responsible corporate behavior & governance
- Penalize owners and managers who behave irresponsibly



Importance of Sound Insolvency Systems

(Contd.)

- **Encourage foreign direct investment**
 - For investors availability of an efficient exit law is one of the key basis for investment decision.
 - Dignified exit is as important as a welcome entry. Investors feel suffocated in economy without efficient exit laws
 - Private equity investors expect higher cost of return due to higher risk. They expect collateral to cover the risk of investment as unsecured creditors have little influence
 - Capital and credit are lifeblood of modern commerce. Facilitate access to credit at low cost
 - Enhance market certainty and promote growth and stability.



A Sound Insolvency Systems comprises:

A legislative framework that meets international benchmarks

- Unified Standards - UNCITRAL Legislative Guide and World Bank Principles

A solid Institutional Framework that can implement law effectively

- A judiciary which has the capacity to deal with complex and sophisticated dynamics of insolvency law
- An effective framework for insolvency practitioners
- A regulatory machinery which can keep ahead of market



Experience – Developing Countries

Categories	India	South Africa	Brazil	Rus	China
Ease of Doing Business	122	32	125	120	83
Hiring / Firing Employee	89	102	121	101	111
Registering Property	105	87	111	49	30
Getting Credit	28	2	84	109	59
Enforcing Contracts	180	82	100	18	18
Protecting Investors	38	9	70	88	88
Paying Taxes	169	23	145	134	132
Trading Across Borders	90	147	92	161	48
Closing of Business	140	73	127	89	62

Source: World bank doing business report
2009



Experience – OECD Countries

Categories	Australia	Canada	Fr	Ger	Jap	NZ	USA
Ease of Doing Business	9	8	31	25	12	2	3
Hiring / Firing Employee	8	18	148	142	17	14	1
Registering Property	33	32	166	52	51	3	12
Getting Credit	5	28	43	12	12	5	5
Enforcing Contracts	20	58	10	9	21	11	6
Protecting Investors	53	5	70	88	15	1	5
Paying Taxes	48	28	66	80	112	12	46
Trading Across Borders	45	44	22	11	17	23	15
Closing of Business	14	4	40	33	1	17	15



Experience in Developed Countries

- Under current insolvency regimes in developing countries for each dollar of debt that enters bankruptcy less than 30 cents is recovered by the creditors. Improvements in insolvency regimes can double this recovery rate.
- Weak insolvency laws are identified as key shortcoming of the investment climate
- Where reasonably modern laws do exist, their weak implementation hampers effectiveness



Part 2: INSOL International



INSOL International

- Independent
- Non-governmental Organization
- Recognized authority
- Knowledge repository
- Membership ascribes highest ethical standards and professional excellence



Membership , Special Interest Groups and Partners

Members

- Over 10000 members - Lawyers, accountants, judges, academics
- Over 40 Member Associations
- Members from over 70 countries

G36 - a prestigious group of firms

INSOL Lenders Group – UK, Australia, HK, India

INSOL Academics Group



Partners

**UNCITRAL, OECD, World Bank, EBRD, Hawkamah,
ISCI**

INSOL /UNCITRAL Judicial Colloquium

**International Association of Insolvency
Regulators**



INSOL's Mission

“together with its member associations, take the leadership role in international turnaround, insolvency and related credit issues, facilitate the exchange of information and ideas and encourage greater international co-operation and communication amongst the insolvency profession, the credit community and related constituencies”



INSOL's goals are:

- Implement research into international and comparative turnaround and insolvency issues
- Liaise and participate with Governmental, Intergovernmental and NGO advisory groups
- Develop cross border insolvency policies, international codes and best practice guidelines
- Leadership in international turnaround and insolvency education

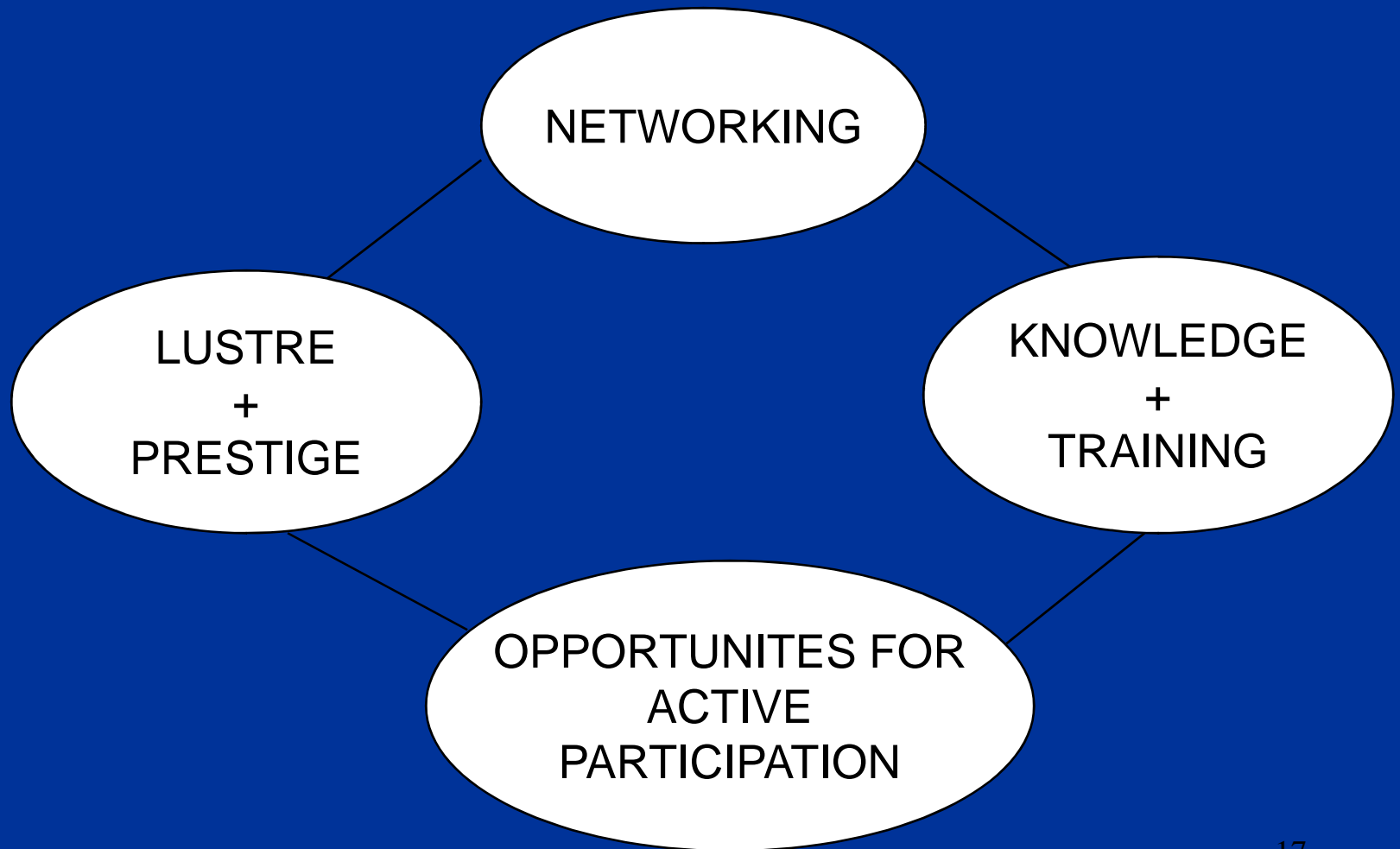


INSOL Developmental Initiatives

- **Forum for Asian Insolvency Reforms**
OECD, APEC, WB, UNCITRAL and INSOL
- **The BRIC Initiative**
 - Russia – Policy roundtable
 - India - Policy roundtables, training, partnerships
 - China – Two INSOL regional conferences
 - BRIC Committee
- **MENA Region – MoU with Hawkamah, Task Force, Survey, Policy Dialogues, MENA Roundtable**
- **Latin America – Columbia, Argentina, Brazil**



The benefits of INSOL membership





The benefits of INSOL membership

(Contd.)

Knowledge and Training

- INSOL website
- www.globalinsolvency.com: useful website hosted for INSOL member organisations by the ABI
- Global Turnaround - INSOL member discount
- International Insolvency Review (down from \$825 to \$180 for INSOL members)
- Surveys – (in collaboration with academics)
- INSOL case studies



The benefits of INSOL membership

(Contd.)

Publications

Members of INSOL receive free of charge a personally mailed copy of any publications produced by INSOL. In the last few years this has included:

- Global Principles for Multi-Creditor Workouts (2000)
- Directors in the Twilight Zone I, II and III (2001, 2005 and 2009)
- Consumer Debt Project (2001)
- Employee Entitlements (March 2005)
- Bank Insolvency, An International Guide for Deposit Insurers (January 2005)
- Financing in Insolvency Proceedings (May 2006)
- Credit Derivatives (2007)
- Treatment of Secured Claims in Insolvency and Pre-Insolvency Proceedings (June 2007)
- Claims Presentation and Resolutions: a guidance booklet



The benefits of INSOL membership

(Contd.)

INSOL Technical Papers Series (2006)

INSOL publishes technical papers regularly on current hot topics.

- "Economic and Geographical Implications of Hedge Funds in Distressed Debt" by Sandra A Larratt-Smith, Swing Bridge Capital and Steven P. Ordaz, BMC Group
- "Securities Law Claims in Insolvency Proceedings" by Professor Janis Sarra, Associate Dean, University of British Columbia Faculty of Law, Vancouver, Canada
- "Formalities for the Transfer of Insolvent Businesses: The Obligatory Transfer of Employees in South Africa and the United Kingdom" by Professor David Burdette, University of Pretoria, Republic of South Africa
- "Inter-Company Debts and Set-Off" by Alastair Beveridge, Partner, Kroll Limited Deborah King, Director, Kroll Limited



The benefits of INSOL membership

(Contd.)

INSOL Technical Papers Series

- "Strategic Consideration for Creditors Facing a debtor in Chapter 15 Under the United States Bankruptcy" by Mr. John J Rapisardi, Partner Cadwalader, Wickersham & Taft LLP, Ingrid Bagby, Partner Cadwalader, Wickersham & Taft LLP & William Golden, an Associate Cadwalader, Wickersham & Taft LLP
- "Animal Figures & Alphabet Soup Understanding the Fat-tails of Asset Backed Securities" by Sebastian Miralles.
- "Avoidance Provisions in a Local and Cross-border Context: A Comparative Overview" by Professor André Boraine, University of Pretoria, South Africa
- "Bank Bankruptcy in Canada: A Comparative Perspective" by Associate Prof. Stephanie Ben-Ishai, York University, Toronto, Canada



The benefits of INSOL membership

INSOL Case Studies

- Eurotunnel Plc & Eurotunnel S.A and Associated Companies
 - Thanks to Andrew De Natale of White & Case
- HIH Casualty & General Insurance Ltd. & Other Companies
 - Thanks to Geoffrey Raicht of McDermott Will & Emery



INSOL Fellowship

- Global Insolvency Practice Course
- Second Course starts 2009
- Intensive Programme
- Unique international learning experience
- Facilitates future networks



Structure of Course

Module A: Three day face to face meeting

Module B: Three day face to face meeting

Module C: Five days on line sessions

**In association with and organised by the National
Centre of Business Law University of British
Columbia, Vancouver, Canada**



Mahesh Uttamchandani

Senior Counsel and Head of Global Insolvency Initiative, World Bank:

“The fellowship programme will be a very rewarding investment towards a successful career, both through helping the development of professional skills and through fostering a greater understanding of different jurisdictions' cultures and systems.”



INSOL One Day Seminars

- Rio de Janeiro - April 2, 2009
- Grand Cayman - November 5, 2009
- Mexico – April, 2010



The benefits of INSOL membership

(Contd.)

NETWORKING

- membership of the only truly international and cross-disciplinary insolvency and restructuring organisation
- conferences
- quadrennial
- annual regional
- seminars
- international directory of members and firms
- smaller practitioner website, younger members website
- website links to other I&R sites
- access to secretariat (based in London)
- Committee involvement
- directory of contacts / printed & updated daily on website



The benefits of INSOL membership

(Contd.)

OPPORTUNITIES FOR ACTIVE PARTICIPATION

SMALLER PRACTICES

- website network
- specific programme at conferences
- research publications eg. Consumer Debt publication
- survey
- articles in INSOL World

YOUNGER MEMBERS

- website network being developed
- Fellowship course
- survey
- specific programme at conferences
- articles in INSOL World

LARGER FIRMS

- opportunity to help in training & education projects in new markets
- representation at Governmental, UNCITRAL, World Bank, FAIR meetings
- best practice cross-border initiatives assist all firms with cross-border cases
- specific programme at conferences

G36

- membership supports specific technical research & assistance in countries developing insolvency legislation & profession
- training of profession in emerging jurisdictions
- networking
- education - specific seminars & programme
- assistance in BRIC countries & Latin American will benefit profession overall



The benefits of INSOL membership

(Contd.)

LUSTRE AND PRESTIGE

- contribution to reputation of the profession
- internationally AND domestically
- key position of AIPSA as a major member association of INSOL
- leadership opportunities
- 'if INSOL didn't exist we'd have to invent it'
- INSOL's membership benefits enhance AIPSA membership benefits & create a perfect package for members to have both local & international influence.



Join us at our next regional conference
first time in MENA region

INSOL DUBAI
February 21-24
Dubai, UAE



Thank You