



Fellow of INSOL International

International Association of Restructuring, Insolvency & Bankruptcy Professionals

INSOL Fellows Refresher Course in Dubai: More Than Just a Refresher, More Than Just a Course

Report by Lucas Kortmann

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Since 2008, when INSOL first organised the Global Insolvency Practice Course, 94 participants have been recognized as Fellows of INSOL International. By 2016, the Fellowship has become a truly global brand within INSOL International, with Fellows from 26 countries, spread across all continents.

Fellows are equipped with the highest technical knowledge and practical experience on global insolvency and restructuring. In addition, the Fellowship has become an extremely valuable network of like-minded individuals. Over the past years, Fellows have been able to increasingly refer and assist other Fellows in their cross-border cases. Also within the organisation of INSOL, Fellows have shown great commitment to and interest in INSOL and its global activities. Many Fellows are members of the various committees within INSOL and contribute to technical content. As such, Fellows are playing an active and ever increasing role in the presence and future of INSOL International.

At the same time, the Fellows themselves have started initiatives to strengthen the brand and bond of the Fellowship. The Fellows cocktail reception at the annual INSOL Conference has become a tradition and this year's reception at the Layali Bar of the Madinat Jumeirah was again a great success. Rich communication among Fellows has been developed, such as a special LinkedIn Group and a Fellows website (www.insolfellows.com), where Fellows exchange experiences, raise questions, find referrals, showcase their thought leadership, and get access to valuable know how. Another attribute is the Fellow Refresher Course.

At the Dubai Regional conference in January 2016, the second edition of the Fellows Refresher Course was held. The Refresher Course ensures that Fellows get the benefit of continued education 'by Fellows, for Fellows'. Fellows receive an update on and recent developments in the key areas of global insolvency and restructuring. Because the topics are presented by and discussed

between Fellows, there is a lively exchange of practical experiences from around the globe.

The half-day programme was held on the Sunday prior to the main conference and was generously sponsored by Morrison & Foerster and RESOR. Almost 40 Fellows were able to attend.



Co-Chaired by Allan Nackan of Farber Financial Group (Canada) and Lucas Kortmann of RESOR (Netherlands), the programme contained an interesting mixture of technical topics and various case studies.

The programme kicked off with a session titled: *I hear you (?) – Recognition of foreign proceedings, recent case law and developments*. Craig Martin (DLA Piper, USA) gave a valuable outline of recent case law in the United States on the requirement of meeting certain eligibility standards and demonstrating a presence of the debtor in the United States to obtain Chapter 15 recognition. This was followed by Friedrich von Kaltenborn-Stachau (RSM, Germany) acknowledging the lack of proper pre-insolvency proceedings, causing German restructurings having to take place in formal insolvency proceedings. Richard Mizak (Alvarez & Marsal, USA) added further flavour to the discussion by introducing several real life examples on how to deal with multi-jurisdictional enterprises. Many Fellows engaged in the discussion, shedding light from various other jurisdictions, such as France, Spain, Canada and the Netherlands.

The next technical panel '*Changing the rules of the game – New and evolving tools in the Restructuring Toolbox*' was a true beauty contest between the United Kingdom (Charlotte Moller, Reed Smith, UK), the United States (David Molton, Brown Rudnick, USA) and the Netherlands (Johan Jol, ABN Amro Bank, Netherlands). Each Fellow showed him or herself a true advocate for their home jurisdiction. The UK scheme of arrangements was promoted as the recent success tool for European restructurings, countered by the true flexibility offered by the US Chapter 11, welcoming foreign debtors to the US, even with very limited presence. The Netherlands was identified as the bright future for global restructuring, introducing upcoming legislation that combines elements of Chapter 11 and schemes of arrangements. As with all beauty contests, the floor got to debate and vote on its preferred system.

The final session before the coffee break was '*Being responsible and being liable – Directors' and officers' liability; a comparative study*'. Through an interesting case study, the systems of Australia, the United States and Netherlands were compared. Karin Sixma (De Brauw, the Netherlands) flagged the risks of external liability under Dutch law, when allowing the company to trade whilst (factually) insolvent. Scott Aspinall (Wentworth Chambers, Australia) provided the Australian view, *inter alia* identifying the risks for holding companies and even financing parties to be considered as directors of a company. Farrington Yates (Dentons, USA) explained that under US law, when entering the 'zone of insolvency', directors' duties shift from being primarily to the shareholders towards its creditors. The session also covered the (often present) problems around groups with directors at multiple levels within the structure, having to deal with conflicting group and corporate interests.

Two practical case studies were moulded into one presentation to cover the final (hot) topic of the day: '*How (not) to deal with group insolvencies*'. Allan Nackan (Farber

Financial, Canada) gave a very noteworthy overview of several problems that occurred and are ongoing in the Nortel case, touching upon topics such as the challenge of multiple plenary proceedings, the necessity of successful cooperation and coordination and cultural differences. This was followed by a joint presentation of Peter Declercq (Morrison & Foerster, UK) and Lucas Kortmann (RESOR, Netherlands) on the rise and fall of the OSX Empire. They covered the challenges that the group faced in restructuring attempts, as well as some of the disputes that have arisen between various stakeholders. Lee Pascoe (Mills Oakley Lawyers, Australia) rounded off the session and the day by providing an update on the legislative processes for dealing

with multinational enterprise groups. In addition to discussing the upcoming changes of the European Insolvency Regulation dealing with groups, she was able to give an insight in the UNCITRAL Working Group V that is making good progress on draft amendments for the Model Law on group insolvencies.

Active involvement from Fellows across the room ensured a fruitful and most interesting afternoon. The Fellows Refresher Course has quickly become a proven concept and will be a regular feature at INSOL conferences to come, be it under a more suitable name that better fits the interactive nature of these sessions: *the Fellows Forum*. 🌐

Younger Members Reception

Report by Brendan O'Neill

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Chair, Younger Members Committee

As Chair of the Younger Members Committee, I'm pleased to report that this year's annual conference in Dubai was well attended by many of INSOL's younger members, including many of the growing number of INSOL Fellows.

On Monday night of the conference, many younger members, INSOL Fellows and members of the Younger Members Committee gathered at the Younger Members Committee cocktail reception sponsored by Goodmans LLP on the fabulous Water Terrace. In preparation for the event, the Younger Members Committee had developed a short presentation on *Networking Tips* for the younger members. These tips would have been presented at the cocktail reception but for the fact that the reception itself was such a buzzing younger members networking event that Committee member Rich Mizak and I decided not to interrupt the flow with a speech on networking! The Committee's Networking Tips are available on the website at <https://www.insol.org/page/131/insol-younger-members> and we encourage all younger members to review these tips in order to get the most out of their next INSOL conference experience.

As part of its preparations for INSOL Dubai, the Younger Members Committee also developed a Chaperone Programme through which new (and newer) INSOL

attendees can get in touch with any one of the chaperones (made up members of the Younger Member Committee, INSOL Fellows and other more senior members of INSOL community) who have volunteered to be available to a younger or newer member of INSOL to dialogue with them before a conference and to meet at the conference to discuss, increase and share networking opportunities at our conferences. Details regarding this programme are available on the website at <https://www.insol.org/page/131/insol-younger-members>. This programme is in addition to the Younger Members Network – a special section on the Younger Members website page where younger members can display their CVs and search for contacts in the network (www.insol.org / Special Interest Groups / Younger Members). Also under this section the younger members can find the interview series with senior professionals sharing their experience and career highlights and advice to the younger professionals.

Whether it is at one of our cocktail receptions or through one of our programmes, we strongly and sincerely encourage all younger members of INSOL to reach out and get in touch with the Younger Members Committee. We want to hear from you, we are here to serve you and we have a number of tools, tips and programmes for you, along with a few free drinks to enjoy and a few new INSOL friends to meet. Please reach out to me directly at boneill@godmans.ca or to any other member of the Committee (listed at <https://www.insol.org/page/30/committees#YMC>) and please do check out all of the Committee's tips, programmes and videos at the links above. 🌐



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