

Foreword

Making an insolvency system work

Globally, we continue to experience a period of relatively stable economic growth, with generally low inflation and low interest rates. Entrepreneurial activity continues to be strong and business failures are at an all-time low. As the summer of 2007 unfolded, liquidity issues emerged and the credit market displayed signs of weakening. Market participants in structured finance and leveraged acquisition began experiencing challenges that reflected this weakness. Despite these recent events, the outlook is for a continued relatively strong global economic climate. But even in this period of strength it is vital that we remain constantly vigilant to ensure that insolvency systems continue to develop and adapt to the changing business environment.

Insolvency is not a domestic issue. An economy is a complex network of trade and investment that is linked into a global system. Corporations and capital move around the world with increasing velocity, bringing development and employment, but the movement is based on a number of factors, not the least of which is the stability and predictability of the investment climate.

A major part of any investment decision is the strength and efficiency of the insolvency and restructuring environment. Inconsistency or inefficiency in the application of the law can frustrate a country's ability to attract investment and the benefits that come with it. Volatility in the global capital market has increased the need for a responsive infrastructure that reduces friction in the system.

It is for this reason that those in the international community, such as the

European Bank for Reconstruction and Development (EBRD), INSOL International, the World Bank and the United Nations Commission on International Trade Law (UNCITRAL), are working together to assist the development of effective and efficient insolvency systems around the world; systems that work not only in the home jurisdiction, but that also work seamlessly with those in other countries.

INSOL International works on a global scale, holding conferences, advising governments on legal reforms and training insolvency practitioners. One of its constituent organisations, INSOL Europe, has taken an active role in insolvency-related activities in central and eastern Europe, most notably through its Accessing Countries Committee (ACC). The work of the ACC is designed to supplement and build on the work being carried out by the EBRD, other multilateral organisations and national development aid agencies with an emphasis on training professionals who subscribe to the highest ethical standards and professional codes of conduct.

Together, we are working to build insolvency systems that are based on three pillars: (i) rules and regulations, normally in the form of laws and secondary legislation; (ii) a judiciary that is well trained and free of corruption; and (iii) insolvency professionals.

The three pillars are reasonably well established in the major economies, but most transition economies continue to exhibit weakness in one or more of them. We have seen a great deal of progress in many of the EBRD countries of operations – new laws are being adopted and old ones



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amended; regulators, both private and governmental, are being set up; associations of professional insolvency practitioners are being created; and judges are being trained in insolvency issues.

Serbia provides an excellent example of cooperation between INSOL, the EBRD, the World Bank, the United States Agency for International Development (USAID) and Gesellschaft für Technische Zusammenarbeit (GTZ), each of which is active in the country and each of which has focused its efforts on helping to develop part of the insolvency system. INSOL Europe recently held its ACC meeting in Belgrade, providing technical training and useful insights into cross-border insolvency issues to practitioners from across the region. For its part, the EBRD has focused on developing regulatory capacity, helping the Serbian Bankruptcy Supervisory Agency train and regulate the country's insolvency practitioners.

However, work in the transition countries, as well as the major economies, is not finished. There is a need to constantly improve the training of insolvency professionals and judges. Laws must be periodically amended to keep pace with economic developments and all countries need to focus on the realities of cross-border insolvency brought on by economic globalisation.

In this issue of Law in transition online we look at all of these important subjects, focusing on making an insolvency system work. Articles written by EBRD staff present the results of a survey undertaken by the EBRD, which examined the regulation of insolvency office holders in south-eastern Europe, set out a series of principles for the regulation of insolvency office holders and examine the impact of the Basel II agreement on banks in the EBRD's countries of operations. Other contributors look at the USAID Commercial Court Administration Strengthening Activity and the Bankruptcy and Enforcement Strengthening projects in Serbia, the insolvency-related work of UNCITRAL, developments relating to the use of derivative instruments in Russia, and important issues relating to cross-border bank insolvency.

In this period of economic strength, and bearing in mind the number of challenges facing the global economy, it is my hope that the work of the EBRD, INSOL and others will help to minimise the obstacles on the road to further economic development, which is promising even if a little bumpy from time to time. Together we can prepare the system so that it can handle the shock of any future economic downturn, minimise the pain and set us back on the course of economic growth and renewal.

1. [INSOL International](http://www.insol.org) is a world-wide federation of national associations for accountants and lawyers who specialise in turnaround and insolvency. See www.insol.org