



GLOBAL TURNAROUND

14th International Insolvency & Restructuring Symposium

EUROPE – Where to now?

WELCOME TO THE AMERICAN BANKRUPTCY INSTITUTE'S (ABI) 14TH INTERNATIONAL INSOLVENCY & RESTRUCTURING SYMPOSIUM IN MILAN, ITALY! GLOBAL TURNAROUND IS PROUD, ONCE AGAIN, TO BE MEDIA SPONSOR FOR THE CONFERENCE.



Dr Ulriike Guérot
European Policy Lab

Dr Ulriike Guérot, founder and director of the European Democracy Lab, will present a keynote on Europe's future. Based in Berlin, she has 20 years' experience in the European think-tank community, with a focus on German-French relations as the heart and centre of European progress.

Delegates can expect a thought-provoking presentation. To give a flavour of her thinking, Dr Guérot's study topics include 'The European crisis as the new normal', 'The future of democracy in Europe: between populism and nationalism', 'Beyond politics; living in a P2P (people to people) world – and how this impacts on modern democracy', and 'Digital democracy and the question of freedom.'



Ian Williams
RSM

Ian Williams, a partner with RSM in London, said:

"It will be great to be in Milan for our 14th European programme. It's a great venue for a conference and we're right in the centre!

"For the second year we have panels from other organisations which has augmented our ABI programming excellently. Following the success of our Dublin programme last year, I am looking forward to another well received event."

"Ten years on from the Lehman Brothers bankruptcy that precipitated the global financial crisis, Milan is a stimulating place to debate the shape of restructurings and insolvencies to come, and how they will be dealt with.

"Trade wars, cryptocurrencies that boom and crash, and efforts to build a more harmonised European corporate rescue regime; all of this and more will be discussed at the two day event.

"In the following pages we present a preview from some of the conference's speakers."

John Willcock
Editor, Global Turnaround





'Like generals fighting the last war'



Jamie Sprayregen
Kirkland & Ellis

Jamie Sprayregen, Kirkland's global head of restructuring, is one of the industry's great travellers, and with good reason. His group is currently advising, amongst other things, one of the biggest agribusinesses in the Balkans, Agrokor, on its restructuring; Noble Securities in Singapore; the European estate of Toys R Us following its Chapter 11; and bondholders in Steinhoff, the South Africa-based retailer with operations in Europe and the US.

Sprayregen loves to keep in touch with the market, and one of his biggest enthusiasms at the moment is the rapid development of a functioning restructuring market in India.

Globally, many economies like the US and Europe are seeing historically low levels of both formal insolvency and out of court restructuring. But in India, "things are booming," said Sprayregen.

Two years ago premier Modi's Government enacted a sweeping set of legal and regulatory reforms to bring India's insolvency and restructuring system out of the 19th century and bang up to date. The central bank then ordered the country's financial institutions to get to use the new system to deal with the largest distressed businesses. "The new law is forcing out the zombies," said Sprayregen.

It started with India's twelve largest distressed businesses, dubbed 'the Dirty Dozen', and since then has spread out to getting on for a hundred more.

Of course, these are early days, with new laws, new insolvency practitioners and new courts. But the Kirkland boss thinks the reforms by India are real and need to be recognised. "There is even cross-border work coming out of India, too," he said.

So, ten years after the collapse of Lehman Brothers, did Sprayregen think the world was a

safer place? "No," came the blunt reply.

"Generals have always had a tendency to fight the last war," he said. The causes of the next crisis would be different to last time, he felt.

"If you look at the history of the financial system, it's one of boom and bust. Countries go in and out [of prosperity]. The idea that there will be no more busts is ridiculous."

"I'm not predicting that the next crisis will happen any time soon. Just that we're not safer," said Sprayregen.

Backlash against globalisation

It is now 15 years since Nobel laureate Joseph Stiglitz published his book '*Globalization and its discontents*'. At the time it was seen as controversial. Now, following the Brexit vote and the election of Donald Trump, it is seen as a commonplace.

"There has been a global backlash against globalisation," said Sprayregen. "I don't think it has impacted on the cross-border restructuring market – yet."

There are warning signs. For instance, the economic turmoil in Venezuela, which is suffering hyperinflation. The massive depreciation in the Turkish and Argentine currencies against the US dollar, both of which have corporate sectors with heavy borrowings in the American currency.

This global uncertainty hasn't influenced the US so far, he said. "I haven't seen much impact on restructurings yet."

The US/China tariff war is in the same category, in a way; very worrying, but with no concrete impact on restructurings up till now. There are plenty of clouds gathering on the horizon. Sprayregen is in no doubt that at some point restructuring professionals are going to be very busy indeed.

Italian market dominated by NPLs and real estate woes

Italian restructuring professionals at the moment spend most of their time wrestling with two phenomena – a 164 billion euro mountain of Non Performing Exposures (NPE) and a seriously depressed real estate market.

Enrica Ghia is managing partner of Studio Legale Ghia, based in Milan, and is a familiar face at ABI gatherings. Ghia cautions that, as with most things in Italy, the real estate problems differ according to geography; "Real estate values in the north of Italy are still rising; whereas retail and industrial space values are falling in the South. Also, retail space has been hit by competition from the internet."

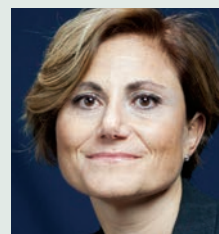
As for the mountain of problem loans weighing down Italy's banks, the total has decreased from a record 324 billion euro at the end of 2016 to 165 billion euro today.

The first months of 2018 have seen a couple of big deals, said Ghia: Monte dei Paschi di Siena (MPS) sold 24 billion of bad loans, while Intesa sold 10.4 billion euro.

"Reading these numbers, someone could think that the NPE market in Italy has come to an end, but I don't think so," said Ghia.

"There could be a good volume of transactions related to the bad loans transferred from Banca Popolare di Vicenza and Veneto Banca which are covered by a government guarantee (GACS)."

Ghia also reckoned that bad loans that qualify as 'Unlikely to Pay' (UtP) totalling 94 billion euro, "will be the next El Dorado for the players in this market."



Enrica Ghia
Studio Legale Ghia

"Everything is cross-border now!"

Van C. Durrer II is a partner with Skadden who has spent the last fifteen years building the restructuring practice in Los Angeles, having worked before in Delaware and Baltimore.

Perhaps the Delaware influence rubbed off on him, for as far as Durrer is concerned, "everything is cross-border now!" Currently his remit is the entire Pacific Rim.

Durrer has recently been representing participants in the giant Westinghouse bankruptcy, which has taken him to many parts of Asia including Toshiba's home, Japan.

Durrer points out that it isn't just big cases, however, that tend to have an international component. "The size of bankruptcies where there are cross-border issues, international stakeholders, has come down and down," says Durrer.

For instance, fifteen years ago a great boom in investing in emerging markets (EM) took off, he said, which means now you may see many US bankruptcies with an EM component. "People aren't novices [about dealing with cross-border issues] any more, so they aren't nervous any more," he says.

Durrer approves of the US Chapter 15 as a "highly flexible tool. But there have definitely been more challenges to filings. I've done two or three, which have all been successful.

"But challenges can make reorganisations more costly and time consuming," he warns.

Durrer thinks that in future more non-US corporates might take advantage of Chapter 15 particularly if they have US debt.



Van C. Durrer II
Skadden



RSM leader has faith in Italian law reforms



Alberto Cerini
RSM

Sweeping legal reforms to Italy's antiquated insolvency laws could be enacted as early as the end of the year, helping both local practitioners and restructuring advisers from overseas.

So says Alberto Cerini, who leads the corporate restructuring practice for RSM in Italy from his base in Milan, where he launched it three years ago.

Cerini is also one of two RSM European leaders for restructuring services, the other being Graham Bushby in London.

Cerini gained his degree in business administration locally, from the Bocconi University in Milan, and is also an Italian CPA with an MBA degree.

Cerini is optimistic that the long-awaited reform to Italian bankruptcy law will boost corporate restructuring, and therefore economic activity generally.

The old Law dates back to 1942

"The Italian bankruptcy law dates back to 1942 (Royal Decree 19 March, 1942 n. 267) and, in recent years, has been affected by repeated interventions that were never performed in an organic way," says Cerini.

In December 2017, however, Italy's Ministerial Commission appointed by the Ministry of Justice to implement systematic reform of the Italian bankruptcy law, completed its work. It presented a draft text of three decrees that contain guidelines and principles that by the end of 2018 should be enacted by the Government into law.

The former Italian Minister of Justice has described this reform as an "epochal transition."

The changes redesign bankruptcy and other insolvency procedures in Italy, taking inspiration from recent EU proposals and the best procedures available from around the world.

Amongst the key principles of the reforms are the crisis alert procedures and the reduction of the duration and costs of the insolvency process. The procedural phase has been simplified, and there is an increased emphasis on business continuity and a 'second chance for entrepreneurs' rather than liquidation.

This brings Italy much closer to the American model of business rehabilitation with the debtor remaining in possession, says Cerini.

Ending the stigma of bankruptcy

The traditional Italian expression for bankruptcy, fallimento, is replaced by a general reference to 'judicial liquidation' or liquidazione giudiziale.

"The idea is to overcome the negative connotation and the aura of dishonour that the term bankruptcy has always had in Italy," says Cerini.

The reforms also provide important new ways to deal with insolvencies of groups of companies, as well as a new system of privileges and priorities.

In particular, says Cerini, the alert phase will consist of a confidential period aimed at anticipating and preventing a crisis, so that the

most appropriate business continuity solution can be identified and implemented in time.

This alert procedure will take place outside the courts in order to encourage entrepreneurs and distressed companies alike to use the new processes.

There will also be incentives and protection measures for companies that take action in an early stage of distress.

Cerini concludes: "The long-awaited reform of the Italian Bankruptcy Law, being in line with the most recent orientations and recommendations of the European Union, will represent an important step forward in the realisation of a more modern, organic and efficient system to manage companies' crisis and insolvency situations."

"For these reasons," he adds, "the implementation of this reform is expected to attract more investors interested in Italian stressed and distressed companies, both from Italy and from abroad.

"It is also set to make cross-border restructuring procedures of groups with subsidiaries in Italy more efficient and effective."

Tashiro encourages ABI to reach out to Europe and the world



Annerose Tashiro
Schultze & Braun

Annerose Tashiro spends a lot of time shuttling between Schultze & Braun's headquarters in Achern, Germany and her other office in London. At the beginning of September she was further afield, in Las Vegas, proclaiming the need for more international co-operation at a meeting of the ABI's executive committee.

Tashiro is ABI's vice president of international affairs, and as such she is keen to see the Institute do more for its current and future members – in Europe and the rest of the world.

"ABI is perfectly positioned to provide a platform for insolvency professionals in Europe who have business in the US, and vice versa."

"For instance, there is the ABI chapter 15 database, which is about to be relaunched

with new features covering statistics and articles on how to use the legislation," she says.

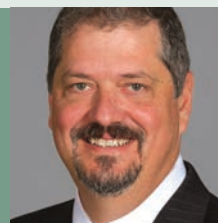
"By its nature most of the ABI's content and educational material is aimed at a US audience."

"Our aim is to broaden it out to contain more information from Europe and Asia, and to create a space for content and exchange amongst professionals and experts in the field."

Tashiro is also co-chair of the European wing of the International Women's Insolvency & Restructuring Confederation (IWIRC), which has just launched a branch in the UK. She is chairing an IWIRC panel at this conference on cryptocurrencies, a topic that could not be more topical, with the gyrations in bitcoin prices seizing the headlines in recent months.



Restructuring professionals can't just be 'local' anymore



Bradley Sharp
Development
Specialists, Inc (DSI)

Bradley Sharp of Development Specialists, Inc (DSI) in Los Angeles, a native of Colorado, will be part of a panel at the ABI Symposium discussing the convergence of international insolvency regimes.

"There was a time when the only cases that figured a big cross-border element were the large, 'mega-cases'. That's changed over time," says Sharp. Now, he observes, even middle market companies often have subsidiaries, distribution or some other activity outside the US.

"Professionals can't just be 'local' anymore. This doesn't mean their firm has to have an international presence. But it does mean they should have an awareness of how things operate in different markets."

How to do this? There are two vital ingredients, says Sharp. First is a reliable 'best friends' network of professionals in markets you are likely to become involved in, so that you know who to call when the balloon goes up.

Second, he says, "don't be afraid to fly out there and engage with your contacts yourself."

"It's not the different language that is so important, it's the different business culture."

Sharp admits that it can be difficult figuring out where to concentrate your resources, which jurisdictions to expand into and which to stay out of.

"To some extent you don't know what you

don't know. Working abroad for years can be difficult and time-consuming," he says. "Striking the balance is the thing. Globalisation may have experienced a lot of push-backs recently, but it's not going away."

Sharp's firm DSI, founded by William Brandt, a hands-on restructuring veteran and a well-known figure at ABI conferences, takes a very particular view of the market.

"We've resisted the title 'turnaround' simply because there are companies that shouldn't be turned around."

"Instead, we aim to cover the whole spectrum of dealing with a distressed company, from Chapter 11 and out of court restructurings to full operational and financial turnarounds."

DSI sprang from Brandt's business, which Sharp describes as "essentially 'taking the keys' when a bank lost patience with a failing debtor."

With six offices across the US, DSI now has about 50 restructuring experts, bankers and accountants. It also has a relationship office in London that deals with the firm's 'best friends' in Europe.

Rotten tomatoes

One of Sharp's most fascinating cross-border cases started back in 2009, and still continues, that of SK Foods.

SK Foods' bankruptcy in 2009 prompted

the clash of two insolvency regimes, and then the clash of two criminal forfeiture laws, says Sharp. "It got quite complicated," he adds, with almost English levels of understatement.

SK Foods was one of the US's biggest processors of tomatoes, accounting for over half of the US's total production when it was founded in 2005, and supplying the likes of Kraft Foods.

The founder and former owner of SK Foods, Frederick Scott Salyer was arrested on racketeering and corruption charges in early 2010 after a five-year investigation of practices in the processed-tomato arm of his company by the United States Department of Justice (DoJ).

Investigators alleged that the company bribed buyers such as Frito-Lay, Kraft Foods and Safeway to accept tomato paste with higher mold counts than listed, to pay above-market prices, and to provide SK with information on competitors' activities.

Lenders to SK Foods filed an involuntary Chapter 11 petition in May 2009 and Sharp was appointed as the Chapter 11 trustee. Shortly after his appointment, Sharp sold the business to Singapore-based Olam International.

SK Foods's subsidiaries in Australia and New Zealand were put into receivership, the businesses sold and the banks paid off. When they were put into liquidation, Sharp was drawn into a series of running disputes with two separate parties; firstly the liquidators, John Sheahan and Ian Lock of Sheahan Lock Partners, over how much of the proceeds from the sales should be returned to US-based creditors (he claimed that Sheahan and Lock were conflicted by prior relationships with the directors of SK Foods Australia); and secondly, the Federal Australian police, who claimed the proceeds of the sales fell under the country's 'proceeds of crime' legislation and therefore should go to them.

After years of litigation, says Sharp, and many lengthy flights from LA to Australia and back, "it's been resolved and the majority of the money has gone to the US. A lot of the credit should go to the lawyer I used in Australia, David Porter of Norton Rose Fulbright, who was very good," says Sharp.

In 2013, US District Court Judge Lawrence K. Karlton questioned why Salyer threw away a Monterey-based farming empire that stretched from the San Joaquin Valley to Australia and New Zealand.

"Here's a millionaire who risked everything for nothing," the judge says. "I don't understand it."

Delaware is busy

Judge Kevin Carey has served in the Wilmington, Delaware bankruptcy court for nearly 14 years. So what does he think of the US bankruptcy market today?

Judge Carey says that the overall trend for Chapter 11s is that they are mostly 'sale' cases, where distressed debtors use the protection of the process for an orderly exit.

Meanwhile, says Judge Carey, other countries are introducing pre-insolvency procedures similar to the English Scheme of Arrangement. For instance, consider the European Union's Directive on Preventative procedures, or Singapore's recent reforms.

All around the world, regimes are being designed for reorganisation rather than liquidation.

"So in the US it seems we are going in the opposite direction," says Carey. Many US corporates are weighed down by too much secured debt, and if owners cannot manage a debt/equity swap, the only option is to sell. So

Chapter 11s often end up being mere selling devices, rather than a traditional operational turnaround, says the Judge.

The Delaware bankruptcy court is a busy hub for cross-border cases, and as such Judge Carey finds he deals with a lot of Chapter 15s. "These are usually approving the sale of a business or a reorganization plan which a foreign court has already approved," says Carey.

Increasingly, however, applications to recognise overseas proceedings that include pre-insolvency mechanisms, such as the Spanish 'homologacion' used in the restructuring of the Spanish energy group Abengoa, are being challenged. Judge Carey has also had to rule on a challenge to a Chapter 15 recognising an Australian process.

"I've over-ruled these challenges. We might see more of these in the future," he says.



Judge Kevin Carey