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Reshaping Restructuring: Takeaways from the INSOL Hong Kong Conference



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In today's fast-changing economic and regulatory landscape, restructuring and insolvency professionals face escalating challenges that demand innovative and collaborative solutions. The INSOL Hong Kong Conference provided a dynamic platform for global experts to share insights, fostering meaningful discussions on the forces driving industry change and the practical steps needed to adapt.

Transformative topics—such as artificial intelligence, financial crime, and regional nuances—took center stage, sparking valuable dialogue on legislative reforms, sector-specific challenges, and cross-border collaboration. These conversations emphasized the importance of proactive approaches to thrive in an evolving environment.

Kroll experts played a key role in these discussions, offering actionable strategies to tackle emerging complexities and drive impactful outcomes. For more insights from this industry-leading conference, explore their full takeaways in this document.

- **Fund Management Dynamics:** Mitchell Mansfield, Co-Head of Fund Solutions, explored innovative strategies to overcome liquidity challenges and operational complexities in fund structures.
- **Cross-Border Collaboration:** Angela Barkhouse highlighted the power of procedural alignment in fostering equitable outcomes for creditors in complex, cross-border insolvency cases.
- **Bias and Noise in Valuations:** Valuation leaders Marc Broekema and Jan Adriaanse emphasized impartiality and transparency as cornerstones for restoring stakeholder trust.
- **Regional Trends in Valuation:** Annabelle Cai shed light on Asia's unique restructuring challenges, including underdeveloped legal frameworks and the growing role of mediation and negotiation.



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Strategic Fund Stewardship: Navigating the 2025 Playbook for Liquidity, Oversight, and Innovation

In an era where liquidity challenges and operational complexities are at the forefront of fund management, innovative strategies are essential for success. Mitchell Mansfield, Co-Head of Fund Solutions, delved into these critical issues, offering insights on how to navigate and overcome these obstacles effectively.

Revisiting the Role of Independent Directors

The discussion began by examining the wave of fund collapses following the Global Financial Crisis (GFC), which exposed widespread mismanagement and fraud. This highlighted the essential role of fund directors, particularly independent directors, in maintaining accountability and oversight.

Key practices included implementing robust governance frameworks, conducting thorough due diligence on fund managers, and ensuring transparency through financial disclosures. Emphasis was placed on board composition and documenting decision-making processes. Addressing conflicts of interest was another focal point, with panelists stressing the importance of clear policies to balance fiduciary duties and resolve issues such as fee discrepancies and deviations from investment strategies.

Exploring Out-of-Court Remedies

The panel explored strategies to address tensions between Limited Partners (LPs) and General Partners (GPs) without resorting to litigation. Voluntary fund wind-downs emerged as a key solution, allowing funds to reduce costs, realign incentives, and extend the runway for asset divestment. Appointing independent directors to fund boards was highlighted as an effective way to mediate disputes and provide a bridge between GPs and LPs, while replacing underperforming managers has become a growing trend to realign interests, restore confidence among stakeholders and pursue strategies to unlock capital (particularly where the incumbent manager may be disincentivised to do so).

Addressing Segregated Portfolios

Operational challenges within segregated portfolios were another recurring theme. Investors are increasingly seeking to transfer management of their assets to better-aligned operators, reflecting efforts to ensure fund structures meet evolving stakeholder priorities. While complex from operational and legal standpoints, these transitions offer opportunities to enhance alignment and accountability.

Legal Recourse for Investors

Investor claims against funds were addressed, with a focus on scenarios involving fraudulent misrepresentation in pre-liquidation and liquidation



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phases. Such claims introduce legal uncertainties, including prioritization against other claims like those from redemption creditors. Redemption creditors, typically ranked higher than unredeemed shareholders, still fall behind unsecured creditors—complicating payouts during wind-downs.

Redemptions and Side Pockets

Managing liquidity and fund exits was examined, with side pockets—a mechanism to segregate illiquid or hard-to-value assets—emerging as a strategy to balance investor interests. While effective, side pockets require transparent communication to avoid disputes.

“ Voluntary fund wind-downs realign incentives, reduce costs, and extend the runway for asset divestment while fostering collaboration. ”

Summary

The session concluded with actionable insights for practitioners navigating the fund management landscape:

- Independent directors must strengthen oversight practices and foster transparency.
- Voluntary wind-downs and manager replacements are effective for mitigating disputes, ensuring efficiency, realigning interests and unlocking capital.
- Proactive understanding of governing documents and legal precedents is crucial for safeguarding investor confidence.
- Flexibility in fund structures is necessary to address challenges like segregated portfolios and redemption liquidity.

As the market continues to evolve, the insights from this session underscore the importance of strategic foresight and collaboration in overcoming the challenges of 2025 and beyond.



Global Synergy: Harnessing Cross-Border Collaboration to Reshape Insolvency and Restructuring Practices

Cross-border collaboration is crucial in addressing the complexities of insolvency and restructuring cases. Angela Barkhouse, along with other expert practitioners and senior judges, demonstrated how leveraging perspectives from multiple jurisdictions can drive equitable and efficient outcomes. The discussion provided actionable insights into innovative frameworks, practical examples, and the challenges involved in international coordination.

Key Highlights

- Collaboration between courts in different jurisdictions emerged as a cornerstone of effective cross-border insolvency management. Practical examples, such as the cooperation mechanism between Hong Kong and mainland China, as well as the coordinated efforts between Australian and New Zealand courts in the Halifax case, demonstrated how procedural alignment fosters better outcomes for creditors and stakeholders. The cooperation between Hong Kong and Cayman courts further illustrates the importance of unified judicial approaches to ensure fairness and accountability.
- Informal communication methods were emphasized as a means of achieving efficient resolutions. While formal mechanisms provide structure, informal approaches, such as direct exchanges of information or intermediaries acting as neutral conduits, enable quicker decision-making and foster trust among parties. Transparency in these exchanges remains critical to maintain fairness, particularly in contentious or complex restructurings.
- Hong Kong's evolving legal ecosystem solidifies its status as a regional restructuring hub. Beyond the cooperation mechanism introduced in 2021, which enables Hong Kong-appointed liquidators to gain recognition in mainland China, Hong Kong's strategic location and robust legal framework allow it to act as a bridge for cross-border cases involving jurisdictions like the Cayman Islands. Although judicial unfamiliarity with insolvency laws in some mainland courts presents challenges, the region remains pivotal in fostering international collaboration and managing intricate restructurings.
- Recognition of foreign insolvency proceedings showcased the adaptability required in global collaboration. Courts like Singapore's have adopted pragmatic approaches, focusing on compatibility rather than identity between legal frameworks. This ensures creditor protection and procedural fairness while respecting jurisdictional autonomy.
- The session also delved into the evolving challenges presented by cryptocurrency-related crimes. Angela Barkhouse brought attention to the "scamdemic," a distressing trend involving human trafficking to fuel cryptocurrency scams. Victims are coerced into online scam operations under brutal conditions, with the funds they generate feeding an



Angela Barkhouse

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estimated \$25 billion global criminal enterprise. Angela's proactive approach in coordinating with law enforcement agencies and seeking justice alongside restitution underscores the critical need for cross-border efforts in tackling these crimes.

- The proposal of neutral court-appointed officers to act as intermediaries in cross-border insolvency cases adds another dimension to improving communication and decision-making. By providing objective updates and clarifying proceedings, such officers could help align interests and reduce biases, enhancing trust among all stakeholders involved.
- The session underscored the transformative power of cross-border collaboration in insolvency and restructuring. By sharing insights and adopting practices to meet the demands of complex international cases,

jurisdictions can foster fairness, efficiency and innovation. Angela Barkhouse's contributions highlighted both the opportunities and challenges of navigating these multifaceted cases, particularly in addressing emerging issues like cryptocurrency crimes. Such discussions pave the way for more effective global insolvency frameworks, ensuring justice and equity in an interconnected world.

“ Collaboration between courts across jurisdictions emerged as a cornerstone for fostering fairness, efficiency, and equitable outcomes. ”



Rebuilding Valuation Credibility: Tackling Bias, Noise, and Challenges in Restructuring Practices

The INSOL Hong Kong Conference served as the launch platform for *Valuation for INSOLvency Practitioners*. This publication is rooted in findings from extensive primary research by a group of esteemed authors from academia and practice, including a chapter on principles to mitigate biases and noise in restructuring valuation and a chapter on the cost of capital authored by Kroll's Valuation Team. Its robust empirical data and actionable principles offer a pathway to meaningful improvements in valuation practices, emphasizing the importance of fair and transparent processes.

The INSOL study also gathered responses from 161 insolvency practitioners across 48 countries, exploring discussion points, bottlenecks and technical challenges shaping valuation practices in restructuring. The research dives into systemic issues, behavioral dynamics and structural hurdles that frequently obstruct impartial valuation outcomes in restructuring and insolvency situations.

“**Unchecked biases and behavioral noise not only compromise valuation accuracy but also risk damaging professional credibility.**”

Redefining Valuation: Addressing Bias, Divergence and Structural Challenges

- **The Role of Biases in Valuation:** The research sheds light on unconscious biases, such as engagement bias and anchoring effects, which influence valuation results. Engagement bias often leads valuers to unconsciously favor their clients, overestimating or underestimating values depending on whether they represent buyers or sellers. The findings, developed by Marc Broekema as part of his research activities at Leiden University, emphasize how such behavioral patterns shape valuation outcomes even in neutral scenarios.
- **Diverging Valuation Outcomes:** One of the most striking insights was the frequent discrepancy in valuation outcomes, even when identical methods and inputs are used. Over half of the survey respondents noted this divergence, often arising from differing projections of future cash flows and interpretations of turnaround plans. These inconsistencies frequently lead to disputes in restructuring context.
- **Structural Challenges and Ambiguities:** The study also identifies structural obstacles, including the lack of standardized valuation guidelines in financial restructuring and insufficient market testing—particularly in European jurisdictions. These gaps exacerbate disputes and erode trust in valuation processes, making standardization an urgent priority.



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- **Behavioral Noise and Stakeholder Conflicts:** Behavioral noise, such as clients anchoring valuers with specific desired outcomes early on, narrows the valuation range and influences assessments. This dynamic, combined with conflicts between creditor classes over who is “in the money,” complicates restructuring cases. These issues underscore the critical need for impartiality and robust oversight to manage valuation-related challenges effectively.
- **Safeguarding Professional Credibility:** Unchecked biases and behavioral noise not only compromise valuation accuracy but also risk damaging the credibility and trustworthiness of professionals in the field. This can jeopardize the sanctioning of restructuring plans and undermine confidence in valuation as a discipline. Addressing these challenges is essential to maintaining the profession’s integrity.

Principles for Mitigating Bias: To counter these issues, the publication outlines, among others, actionable solutions:

- Better organizing the valuation process to allow for more thorough analysis and debate using an “information processing protocol”

- Engaging neutral experts to mediate conflicting viewpoints on a valuation
- Actively seeking for subjectivity and performing a debiasing and noise-reducing exercise within the valuation team

Although biases cannot be entirely eliminated, these principles aim to mitigate their impact and create a foundation for equitable valuation practices in restructuring.

Redefining Industry Standards

Valuation for INSOLvency Practitioners serves as a critical resource for industry professionals seeking to refine their practices and address structural and behavioral challenges. It underscores the need for practitioners to adopt a proactive approach, focusing on transparency, standardization and stakeholder alignment.

As a contributor to this publication, Kroll continues to lead the charge in shaping valuation best practices. Access the book via the INSOL website under the ‘Library’ section to explore this pivotal resource.



Redefining Regional Valuations: Navigating Asia's Evolving Restructuring Landscape

Valuations play a critical role in insolvency and restructuring, as highlighted during the INSOL book launch event centered around “Valuations for Insolvency Practitioners”, but its relative importance can vary depending on the jurisdiction and specific circumstances of the case. Kroll Managing Director Annabelle Cai provided insights from an Asia-specific perspective, while other panelists emphasized regional variations and shared approaches to navigating the complexities of cross-jurisdictional valuations.

Global disparities in frameworks were a starting point for the discussion, with panelists highlighting how valuation approaches differ significantly by jurisdiction:

- **UK:** Recent high-profile cases, such as Thames Water, have underscored procedural tensions, with courts navigating extensive valuation evidence under significant time pressures.
- **Asia:** Underdeveloped legal infrastructure across the region has led to a preference for consensual negotiations over court processes, reducing the emphasis and reliance on valuation. Emerging markets present unique challenges in asset enforcement, which could result in significant deviation between valuation and realizable values.
- **U.S.:** Chapter 11 proceedings rely heavily on valuations to underpin financing, priority distributions and plan confirmations. A growing reliance on mediation reflects the drive for cost and time efficiency.

Procedural tension was discussed with a need to balance procedural fairness against the need for expedited resolutions. In some jurisdictions, judges must adjudicate on valuation without sufficient time to fully assess competing expert evidence. This is even more problematic when you consider the interplay of global frameworks and harmonization, particularly when organizations seek cross-border solutions to navigate insolvency challenges.

Navigating Valuations: Negotiation, Mediation and Judicial Challenges

Valuations often extend beyond technical assessments and serve as powerful negotiation tool in restructuring processes. In Asia, valuations primarily guide creditor negotiations rather than becoming contentious legal focal points. However, as local regulatory frameworks evolve to align with those in the UK and U.S., this approach may shift, fostering a more standardized use of valuations in restructurings and dispute resolutions.

Mediation has increasingly emerged as a preferred dispute resolution mechanism in several jurisdictions, offering stakeholders an efficient alternative to protracted legal proceedings. By bridging valuation gaps, mediation helps to resolve multiple creditor disputes, achieve consensus amongst disparate stakeholders and streamline



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the restructuring process. This is particularly helpful during the “pre-insolvency” stage in which a financially distressed but viable business seeks to explore options for informal or out of court workouts, or in countries that do not have an effective pre-insolvency framework in place. Additionally, market-based solutions, such as rights offerings or opportunities for junior creditors to invest, have been instrumental in validating valuation positions, particularly in the context of U.S. proceedings.

The panel also emphasized the growing judicial expertise in restructuring, especially in the UK. However, they highlighted the pressing need for procedural reforms to address challenges such as limited timelines for rulings. The Thames Water case, where a judge acknowledged the difficulty of thoroughly evaluating multiple competing expert reports within the tight time constraints, was presented as a clear example.

Future Trends

The panel identified several evolving trends, including:

- Increasing adoption of insolvency laws and restructuring tools in Asia, which will drive increased focus on valuation
- Potential procedural reforms in the UK to narrow valuation disputes and streamline processes
- The gaining prominence of cross-border valuation issues as companies increasingly pursue solutions across multiple jurisdictions

“ In Asia, valuations primarily guide creditor negotiations, but evolving legal frameworks may foster standardized dispute resolutions. ”



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