

The role of the Insolvency Section of the International Bar Association



by Anja Droege Gagnier and Darío Oscós,
Co-Chairs of the Insolvency Section of the International Bar Association



2020 was and 2021 still is under worldwide COVID-19 unprecedented health, economy and financial distress. It is unclear for how long this status will last, although vaccination is promising to minimise the COVID-19 catastrophic effects. Economies are being reactivated, notably in China and in the US. We should be realistic, optimistic and positive.

Most industries and commercial chains as well as enterprises have been affected, from individual and micro enterprises to large group of companies. Health restrictions for in-person meetings and travelling have prevented most gatherings and networking opportunities during the COVID-19 era. This crisis has led to a new life standard: the widespread use of online virtual environments among families and businesses.

Indeed, the 2020 IBA annual conference was fully virtual with an outstanding success. Nevertheless, in-person meetings and face to face contact cannot be replaced. The 2021 IBA annual conference, expected to take place in Paris, will also go virtual and the Paris in-person conference is postponed to 2023. It is planned that the 2022 IBA annual conference will take place as an in-person conference in Miami, US. The IBA Insolvency Section 'Spring conference' was postponed to September 5-7, 2021 with the hope that it could take place in-person or at least, in a hybrid version. For next year, the Insolvency Section Spring conference is planned for May 2022 in Montreal, Canada. Fingers crossed!

In order to promote its activities, keep the link among officers and make more cohesion and interaction among its officers, members and invitees, the Insolvency Section has set up monthly online gatherings, namely the "aperitif/coffee meetings". These "aperitif/coffee meetings" are informal by nature to freely discuss, in a friendly atmosphere, hot, insight, informative and current insolvency issues. The

first one started in February 2020 and was a great success with a high number of attendees. The second was scheduled for April 21, 2021.

In the insolvency industry, most jurisdictions have provided a wide range of legal tools to alleviate the financial crisis seeking to keep businesses as going concerns and securing employment as far as possible. Assets value in liquidation should also be maximised. Legal measures include financial and tax support and rescue programmes, simplified insolvency proceedings, no mandatory debtor insolvency filings, ban involuntary filings by creditors, less strict sanctions for director's liability and the like. Notably, the increasing debt restructuring and out-of-court settlements have characterised the way out to get relief.

In other instances, creative and innovative insolvency vehicles like airlines have sought insolvency protection under US Chapter 11. New simplified insolvency proceedings have been enacted by legislators or governments to support and alleviate the current COVID-19 financial crisis.

The International Bar Association, established in 1947, is the world's leading organisation of international lawyers, bar associations and law societies. Membership includes over 80,000 lawyers and 190 bar associations. Within the International Bar Association, there are various groups focused on specific practice areas. One such group is the Insolvency Section. The Insolvency Section, then known as Committee

J, originated sometime in the 1970s as a small assembly of business insolvency lawyers mostly from North America, the United Kingdom and Western Europe. Today the Insolvency Section is a truly global group of insolvency professionals with about 1,000 members from most world jurisdictions.

In the 1990s, the World Bank promoted the idea that it was important for economies, especially those in early stages of development, to establish predictable and transparent insolvency regimes to attract financing. At about the same time, UNCITRAL recognised the need for increased coordination and cooperation across borders in large multi-national insolvencies. In the 1990s Insolvency Section's representatives played a critical role in drafting UNCITRAL's Model Law on Cross-Border Insolvency and in the early 2000s its Legislative Guide to Insolvency Law. In addition, in the mid-1990s, the Insolvency Section drafted and published the first Cross-Border Insolvency Concordat, which has since provided the basis for protocols for administering many of the world's largest cross-border insolvencies.

Insolvency Section's delegates at UNCITRAL Working Group V Insolvency have permanently participated in UNCITRAL insolvency projects. As of today, UNCITRAL has adopted a number of insolvency laws and their guide to enactment: Model Law on Cross-Border Insolvency (1997), Legislative Guide on Insolvency Law (2000), Part three: treatment of enterprise groups (2010), Part four: director's obligations in the period approaching insolvency (2010), Practice Guide on Cross-Border Insolvency Cooperation (2011), Model Law on Cross-Border Insolvency: the Judicial Perspective (2011), Model Law on Recognition and Enforcement of Insolvency Related Judgments (2018), Model Law on Enterprise Group Insolvency (2019), and text on obligations of directors of enterprise group companies.

Currently, the UNCITRAL Working Group V is in the process of finalising a simplified insolvency regime of individuals entrepreneurs and micro and small businesses.

As cross-border businesses and insolvencies grew in number, so did the Insolvency Section, focusing no longer just on insolvency, but also on out-of-court restructuring as well as transactional and litigation aspects, including alternative dispute resolution mechanisms, e.g. mediation.

Over time, the Section developed a practice of meeting twice per year – once at the International Bar Annual Meeting in autumn in conjunction with all other IBA practice groups and once all by itself at a focused mid-year meeting of Section members in May, with traditionally between 140 and 200 participants. In addition, the Section occasionally has held colloquiums on special subjects.

In 2007, the Section began to publish a semi-annual journal called the *Insolvency and Restructuring International*. Since then, the Journal has featured numerous scholarly articles contributed by hundreds of authors. The Section has also produced a number of valuable treatises, including one on Cash Pooling and Insolvency, one on Title Retention, one on Licences and Insolvency and another on Financing Company Group Restructurings.

The Section has four major subcommittees – Creditor's Rights, Legislation and Policy, Reorganisations and Workouts, and Financial Institutions and Insolvency. Each subcommittee plans and puts on topical programmes at the annual and mid-year meetings. There are also officers of the Section focused on, amongst others, projects and publications; membership; conference planning; and coordination with organisations such as UNCITRAL, the World Bank and other professional associations.

In recognition of the fact that insolvency practice often requires specialised knowledge, the Section has developed task forces focused on oil and gas, transportation and infrastructure, shipping, real estate, automotive, and finance and insurance, private equity, insolvency administration, and employment.

As of 2021, the Section has 71 officers from 31

countries in six continents. The section officers are advised by the wisdom and experience of an Advisory Board comprising of former co-chairs of the Insolvency Section.

The following are the Insolvency Section's main goals:

1. to support the effectiveness application and enforcement of the rule of law and human rights protection worldwide;
2. to meet at least twice a year to provide:
 - stimulating programming on important insolvency topics with leading thinkers and creative and innovative legal and practical tools; and
 - networking opportunities to enable members to develop enduring business and social relationships;
3. to provide opportunities for members to disseminate new ideas, experiences and insights in insolvency through active participation in dialogues at meetings and publication of materials in the IS Journal and IS books, as well as by enhanced use of the Section's website and social media;
4. to achieve cultural, gender and geographical balance among speakers at conferences and in leadership positions;
5. to participate in the important work of UNCITRAL, the World Bank and similar organisations in their efforts to promote more effective insolvency laws and cross-border cooperation and coordination; and
6. to increase membership of in-house legal counsel and non-lawyer insolvency practitioners.

The Insolvency Section endeavours to spread its mid-year conferences globally, aligned with the IBA's annual conferences.

Anja and Darío, as co-Chairs of the IBA Insolvency Section for the period 2021-22, invite and welcome all interested insolvency practitioners and insolvency professionals to join the section and actively participate in its goals and be benefitted from the wide and deep range of insolvency knowledge, practice, insightful information, experience, networking and friendship of its members and outstanding participants.

Authors:

Anja Droege Gagnier, Partner
Avocat au Barreau de Paris
BMH Avocats
29, rue du Faubourg Saint-Honoré
75008 Paris
France
Tel: +33 1 42 66 63 19
Email: adroege@bmhavocats.co
Website: www.bmhavocats.com

Darío Oscós, Partner
Oscós Abogados
Paseo del Río 53
04340, Copilco el Bajo
Alcaldía Coyoacán
Ciudad de México
México
Tel: +52 55 1253 0100
Email: doscosc@oscocabogados.com.mx
Website: www.oscocabogados.com.mx