



Our place on the planet

globally, locally and looking forward

DR JANIS SARRA

UNIVERSITY OF BRITISH COLUMBIA, CANADA
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Globally

IWIRC members are taking a lead role





Aisling Dwyer

Maples and Calder (Hong Kong) LLP

Currently working on a Cayman Islands just and equitable winding-up petition brought by a minority shareholder against a listed Company in Hong Kong - long running battle for power of listed company between several of China's largest cement companies that involves interesting interaction between the rules governing shareholder disputes and insolvency proceedings.

Specializes in complex, high value, international cross-border litigation and restructuring, acting in some of Asia's largest offshore corporate and insolvency restructuring cases.



Beatriz Faneca Leite de Souza

Krikor Kaysserlian e advogados associados, SÃO PAULO, Brazil



Undertakes complex fraud analysis, asset tracing & recovery, eg Banco Santos, Fazendas Reunidas Boi Gordo (BRL 5 billion debt).

Currently engaged in supervising and verifying fraudulent management of MMX Sudeste, controlled by Eike Batista. Has made viable gains in piercing of the corporate veil of MMX Sudeste to Batista, two US entities through which he controlled Brazilian structure, his son and offshore entities (BRL 780 million debt).

Beatriz: “Events such as these clarify that our country is no longer comfortable overlooking wrongdoings committed by powerful individuals, beginning to submit them to the full effects and enforcement of law.”



Meiyen Tan

Oon & Bazul LLP, Singapore



First woman to lead a restructuring and insolvency legal practice in Singapore, and has been involved in several important Model Law cases.

In 2018, successfully represented Zetta Jet Pte Ltd and Zetta Jet USA, Inc. and their US Trustee in the first two reported cases in Singapore under the UNCITRAL Model Law for recognition of US insolvency proceedings as foreign main proceedings, leading authorities in Singapore dealing with the public policy exception and the COMI test in Singapore to ascertain if the proceedings to be recognised is a foreign main or non-main proceeding.

Just this week, successfully obtained an order granting super-priority status for rescue financing on behalf of AsiaTravel.com Holdings Ltd. and subsidiary - the first successful application to the Singapore Court for super priority financing under the new restructuring laws of Singapore.

Marie Tanaka

Nishimura & Asahi
Tokyo, Japan

As lead associate, Marie has been advising Toshiba, Japan-based global company, on its overall restructuring, including in relation to the sales of various subsidiaries and affiliates, workouts with banks for debt refinancing, and the Chapter 11 process for its US subsidiary, Westinghouse Electric.

Marie: “the most interesting thing is how to manage and conduct the global group companies' restructuring successfully”





Rita Gismondi

Gianni, Origoni, Grippo, Cappelli & Partners, Rome, Italy



Currently assisting the extraordinary commissioners of Alitalia in business continuity, day-by-day management of the company, cross-border issues, and complex negotiations with other entities aimed at a successful restructuring.

Involved with the Astaldi composition with creditors in cross-border proceedings.

Rita: “The restructuring and insolvency market is particularly active at the moment in Italy, both for high number of cases, and for lively discussions on the recently enacted insolvency and restructuring Code”.

Pooja Singh

Global Legal Solutions, Singapore



Representing an Indonesian government-owned company on a debt restructuring of certain bonds issued under a composition plan approved by the Indonesian court - helping it navigate interests of multiple stakeholders including certain state-owned entities who are majority bondholders and funds and commodity houses looking to advance working capital loans.

Works on a wide range of restructuring transactions in Asia, particularly in India and Indonesia, advising on complex restructurings that involve the use of schemes of arrangements, litigation strategy in connection with restructurings, debt-equity swaps and comprehensive debt restructurings.



Felicity Toubé, Queen's Counsel

South Square, London UK



Acted in relation to most recent major corporate restructurings or insolvencies and related litigation, including in recent years Saad, Madoff, Lehman, Stanford, Rastogi, and Nortel. Her particular specialism is cross-border insolvencies, in Europe, between the US and UK, or in the Commonwealth, particularly in Cayman Islands.

Most recent cases include two appeals in *Crumpler v Candey Ltd* (2018 and 2019), in which the UK Court of Appeal examined the interaction between the ownership of monies paid into Court and floating charge, and the related appeal, which is now the leading case on the value of floating charges given to secure services; and *Lehman Brothers Europe Ltd* [2018], involving a distribution to shareholders in a solvent administration by newly appointed directors.

Also heavily involved in cases arising under ISDA Master Agreements, facility agreements and other security documents, issues relating to redemptions by shareholders, and restructurings outside formal insolvency processes, particularly schemes of arrangement.

Justine Lau

Mourant Ozannes, Hong Kong

Represents liquidators appointed in respect of Hong Kong listed companies, including advising in relation to schemes of arrangement, disclosure and examination orders and disclaimer of onerous property. Also acts for institutional creditors in applications seeking appointment of provisional liquidators in Hong Kong.

In 2018, while still at Mayer Brown, she was highly involved in the Hong Kong Court's precedent-setting recognition of a BVI-incorporated media company's voluntary winding-up, addressing for the first time the issue of assistance to a foreign voluntary liquidation and declining to follow the UK Privy Council's 2014 *Singularis* decision.



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Locally

While most of us work in
commercial insolvency,
foreclosure and consumer
bankruptcy in the U.S. needs
attention



Subprime mortgage debacle

At the time of the subprime market collapse, subprime lending market was US \$600 billion, and one in five homes in the U.S. mortgage market were purchased with subprime loans.

Since 2008, more than 17 million home foreclosures in the U.S., Americans who lost their homes and life savings.

While there were a number of contributing factors to the subprime mortgage collapse, a significant cause was securitization, which created a rapidly expanding market for highly risky mortgages.

Securitization, if used appropriately, can help spread risk of default; in the subprime context, responsible securitization never occurred.

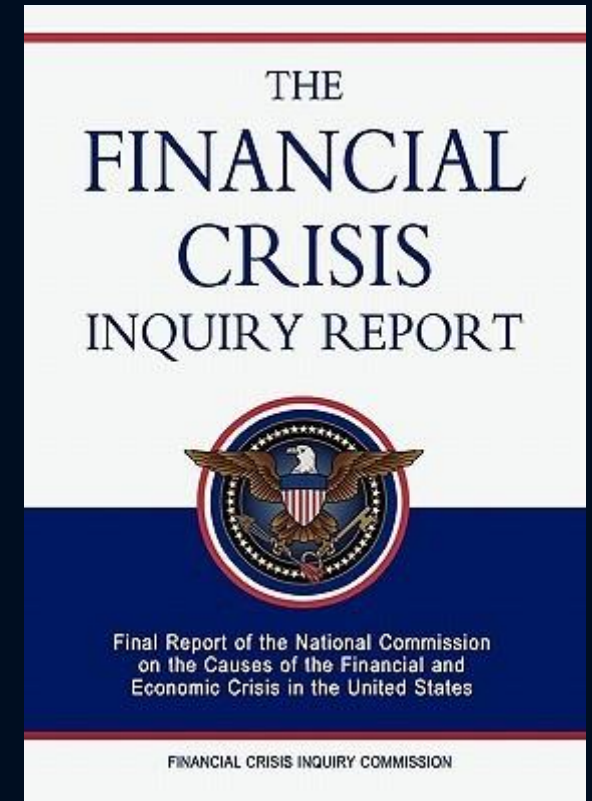
U.S. Financial Crisis Inquiry Commission found many unethical and illegal practices

Now well documented that lenders, brokers, mortgage servicers engaged in fraudulent and misleading conduct.

The mortgage market charged excessively high rates and fees, engaged in high-pressure sales, imposed unnecessarily harsh prepayment penalties, and undertook distortion of loan structures to avoid the application of consumer protection statutes.

Targeting occurred: African American and Latinx communities

Millions of middle class and high income African Americans who qualified for regular fixed-rate long-term mortgages were steered to subprime mortgages because of the huge fees and interest amounts extracted by lenders.



Hundreds of civil enforcement lawsuits in the U.S. for misleading mortgage borrowers and investors, fraud, 'toxic mortgages'

More than 20 settlements to date:

JP Morgan Chase Bank for \$13.2 billion

Citigroup Inc for \$7.4 billion

Bank of America, including Countrywide, \$16.65 billion

Goldman Sachs \$6.6 billion

Morgan Stanley \$5 billion

Wells Fargo \$6 billion

Royal Bank of Scotland \$12.6 billion

Inadequate regulatory responses

2019 - hundreds of thousands of foreclosures still pending

Harms to intergenerational wealth due to the continuing crisis - what mechanisms might be available to change that trajectory?

‘Nonprime mortgages’, ‘nonprime small business loans’, etc, are the new subprime - exponential increase in the past year

e.g. Angel Oak Capital Advisors completed non-qualifying (nonprime) mortgage securitizations totalling \$1.6 billion

A predatory loan by any other name...



Looking forward

Climate-related insolvencies will be the next big wave of insolvencies





Climate change represents a significant financial risk affecting valuation of many investment portfolios (World Economic Forum, 2017).

Climate change is increasing frequency & severity of extreme weather events, now account for 77% of total economic losses annually, \$2.2 trillion.

Intergovernmental Panel on Climate Change 2018 Report - scientific evidence that human-induced global warming has now reached 1°C above preindustrial levels.

Tipping point sooner than expected...

PG&E

Chapter 11

US Bankruptcy Code

Listing \$51.69 billion in debts, in 2019 PG&E filed for bankruptcy, one of largest utility bankruptcies in history, tied to climate change.

Camp Fire killed 85 people and destroyed 18,800 buildings in Butte County.





PG&E reported that it is “probable” that investigators will determine that its equipment ignited given worsening drought conditions due to climate change.

Fire victims suing PG&E for \$30 billion claim company did not adapt quickly enough to the increased risks created by more persistent hot, dry weather.

Climate-related risk to value of financial assets

Physical risks - resulting from climate change can be event driven (acute) or longer-term shifts (chronic) in weather patterns.

IAIS: insured losses from climate-related natural catastrophes reached \$138 billion US in 2017



Transition Risks

Policy changes

Market dynamics

Climate Action 100+, comprised of 225 institutional investors with US\$26 trillion in assets under management, has program to engage with world's largest corporate GHG emitters, encouraging the companies to step up their actions on climate change.

Technological innovation

Reputational and legal

As of November 2018, 1690 climate change cases had been filed in 25 countries against companies.



Implications for insolvency law and practice

Transition financing

preventive

sustainable finance

Restructuring

Liquidation



Taking our place on the planet

Thank you

Janis

