INSOL IPG: LIVELY "APPOINTMENT TAKERS" DISCUSSION ON HEADLINES OF MAJOR RESTRUCTURINGS IN THE LAST 12 - 18 MONTHS PERIOD

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One of the highlights of INSOL London 2022 was the inaugural panel discussion for the Insolvency Practitioners' Group (IPG) held on Sunday 26 June 2022. IPG is a new INSOL Focus Group geared towards engaging Insolvency Practitioners in discussions regarding cutting-edge and practical issues that many appointment takers have to regularly deal with.

Dr. Eric Levenstein (Werksmans Attorneys, South Africa), Chair of the IPG Committee, started the meeting by speaking about IPG generally and noting some of the group's early accomplishments, including its highly popular Vlog series (available on INSOL's website at https://www.insol.org/Focus-Groups/Insolvency-Practice-Group/Vlog) and which had addressed various topics of interest for appointment takers in the last period.

INSOL IPG is a collaboration of insolvency practitioners (appointment takers) and their advisors from around the globe and who all come together in this practice group to discuss issues relevant to the challenges that appointment takers face in restructuring, insolvency and formal administration matters.

Dr. Levenstein then introduced a formal panel discussion titled "*Reflections on Major Restructurings During a Pandemic*". The panel was moderated by Gayle Dickerson (Grant Thornton, Australia). Ms. Dickerson then introduced her distinguished panel: Holly Etlin (Alix Partners, USA); Richard Ferguson (ASOC Management Company (Pty) Ltd, South Africa); and Jacqueline Walsh (Kroll, Hong Kong).

In the session, Gayle took the panelists through key points of interest in respect of themes relevant to restructuring mandates experienced over the last few years (since 2019). This involved debate/discussion as to the root cause and drivers of restructuring in aviation, retail and construction matters, and how appointment takers were challenged in their interactions, particularly during the pandemic. Discussion included the levels of interaction with boards of directors, landlords, lessors, lenders, equity holders, customers, employees, suppliers and government. A key feature of this discussion was the level of communication in a virtual environment which was of course challenging at the time, and which prohibited appointment takers from being company side and in the offices of distressed companies during the pandemic.

Each of the panelists approached the discussion from their unique areas of expertise. Ms. Etlin's comments were focused on the retail industry where she often fulfills the role of Chief Restructuring Officer for struggling retailers. Mr. Ferguson recalled his experiences in the airline industry, specifically, his role as Business Rescue Practitioner for Comair Limited. Ms. Walsh reflected upon the real estate sector in Hong Kong and mainland China, and her role in assisting parties with buying, selling, or developing real estate in the distressed environment.

Ms. Dickerson opened the discussion by raising the question of lessons learned from the global Covid pandemic. Ms. Dickerson noted that, generally, there had been far less restructuring appointments in the last two years (then had originally been expected) because governments across the globe had generally provided financial assistance (Covid loans) to many distressed businesses during the pandemic period.

Ms. Etlin reported that the pandemic was a "death blow" for many retailers that were already struggling due to online shopping competition. Additionally, Ms. Etlin stated that some retailers had used Covid as a "plausible reason" to implement long needed restructurings.

Mr. Ferguson recalled the positive attitude of key constituents at the beginning of the pandemic in that parties realized they were on new ground and where there was a feeling of "we're all in this together". However, after the passage of some time, he noted that self-interest took over again, and most parties looked after their own peculiar needs withing the restructuring framework. Mr. Ferguson echoed the sentiment that COVID was used as an excuse for many business downfalls, in that many businesses already had pre-COVID problems that needed to be sorted out. To which Ms. Dickerson exclaimed the agreed sentiment: "never waste a good crisis."

To that point, Ms. Etlin gave some background on the Tailored Brands case and how she successfully guided the restructuring of this company during the pandemic by, among other things, reducing their brick and mortar footprint. Ms. Etlin further noted that several other retailers followed a similar path to restructuring during the pandemic; by reducing store locations while growing their on-line presence.

Mr. Ferguson explained that a passenger airline had a much more difficult task to pivot its business. It was a drastic shift when essentially overnight the airline business was shut down due to COVID. It then became a task of preserving the assets (planes) and evaluating options.

Ms. Walsh noted that the Chinese government played a major role in real estate companies during the pandemic. She explained that there were complete shutdowns of ongoing/new real estate developments imposed by the government. However, Ms. Walsh did note that buy/sell transactions for distressed real estate did occur, but at a slower pace.

The panelists then discussed the challenges and potential benefits of virtual interactions. Mr. Ferguson noted the difficulty in "reading the electronic room," but stated that despite significant online interactions, productivity for restructuring professionals did not drop. Ms. Etlin observed that virtual meetings were exhausting because they allowed for no days off and the intensity of staring at a screen for hours took a toll. Ms. Walsh noted that the virtual aspect of interactions allowed for some hostile exchanges to be done in a better, more productive way.

Building on the positive changes from the pandemic, Mr. Ferguson said he expects less commuting to work and less travelling to client sites in the future. Ms. Etlin said the pandemic fundamentally changed how businesses operate; noting that although there will still need to be in-person meetings for certain events/topics/issues, however, businesses and professionals are much more comfortable communicating virtually.

When the discussion was opened up to the audience, several interesting points were raised by IPG members. One observation was that informal restructurings can be achieved in a more timely way because having the ability to do virtual meetings 24/7 allows they key constituents to focus on issues quickly and with intensity. Additionally, a point was made that the "flexibility of assets" and pivoting a business were brought into heightened focus during the pandemic; some examples being: (i) repurposing a retail mall for warehousing to meet the demand of online shopping; and; (ii) using passenger aircrafts to deliver cargo, such as medical supplies, around the world.

Gayle summed up the session by thanking her panel and confirming that clearly major lessons had been learned in the last two-year period, and the way restructuring professionals conduct themselves going forward will have changed for the good, and perhaps for the better.

In conclusion, Dr. Levenstein stated that appointment takers have an important role to play in the global business community. Without highly skilled restructuring professionals being in a position to restructure and turnaround ailing businesses, world economies will be severely and prejudicially affected. It is his hope that the IPG will continue to address topics and conduct informative discussions on topics similar to what we have heard today. There is little doubt that appointment takers' ability to lead and to be creative in their restructuring mandates will continue to play important roles in assisting companies and their stakeholders with the challenges of an inevitably changing world.

INSOL LONDON 2022 SMALL PRACTICE GROUP (SPG) MEETING

Peter Sargent
Chair, INSOL Small Practice Group
UK

It was so good to meet old friends and colleagues in person and make many new friends at INSOL London 2022, after only seeing them on Zoom (other video conference services are available) for what seemed a very long last two years.

This was our first SPG meeting since Singapore 2019, there was a real positive vibe in the room, and as ever with this group it was a lively affair!

After a brief introduction by yours truly, Lloyd Hinton (Insolve Plus, UK) led a panel discussion on how to get the most out of a conference for SPG members and those attending for the first time. He was joined on the panel by Rocky Gupta (INSOL Fellow, UNITEDJURIS, India), Javier Lorente (Lorente & Lopez Abogados, Argentina) and Catherine Ottaway (HOCHE Avocats, France), who all provided some great insight as to how to get best value from the conference, as well as developing an international practice.

After a short tea break (we were in England), Kim Barnes (Kim Barnes Coaching, UK) lead an interactive session on PR and Comms aimed at highlighting what to do and more importantly what not to do in a crisis.

Following a short video setting the scene and discussion in groups on how to and how not to do things when making a public statement, Kim set about interviewing a nominated member of each group. Kim's interview techniques provided some hilarious moments, I personally know how tough she can be, as she trained me whilst I was R3 president!

It was interesting how delegates from different cultural backgrounds reacted to the interview, from being very defensive to very open and transparent.

Kim has kindly provided a bullet point list of handy hints and tips to deal with such events and this has been circulated to all those who signed up for the SPG session.

There was also a desire to create a communication platform between small practitioners to help each other out across jurisdictions; this we are working on now, watch this space!

The SPG Committee would love to see more members at future conferences, and ideas for topics for discussion are always welcome.

We are currently working on the next edition of our TouchPoint newsletter and would welcome articles or suggestions for topics of interest to members of the group.

Very best wishes to all SPG members.