



TRI Leiden

TURNAROUND, RESCUE & INSOLVENCY

NEWSLETTER

A view on the 2016 horizon for turnaround, rescue and insolvency

2015 in the reverse

This year, TRI Leiden has worked successfully on various projects, including guidelines for Restructuring and Turnaround Professionals. But also the Business Rescue Project, which entered into the final phase, and the publication of the EU JudgeCo Principles.

At the EU level, the European Insolvency Regulation (recast) ([click here](#)) was adopted. Also, the European Commission's Recommendation on a New approach to business failure and insolvency of 12 March 2014 ([click here](#)) had its follow up just a few months ago. The Commission published an evaluation report on the implementation of the Recommendation ([click here](#)). And an action plan for a Capital Markets Union has been presented ([click here](#)).

And what will 2016 bring?

We'll highlight some of the topics that may become relevant next year. The EIR (recast) casts its shadow. Although the majority of its provisions will enter into force as of 26 June 2017, Article 86 (information

on national and Union insolvency law) will already enter into force in the course of 2016. Another topic for 2016 will be cross-border issues in the area of director's liability and disqualifications as the European Commission is expected to submit a study on this topic to the European Parliament by 1 January 2016 (Article 90 (3) EIR (recast)).

In the area of harmonization, undoubtedly, the efforts on the Capital Markets Union will continue and with the expected publication of the Study on Substantive Insolvency Law, new debates will start.

Other debates continue. TRI Leiden expect to finalise reports and books on bank recovery, resolution and insolvency, on turnaround management, on innovations in insolvency proceedings and business rescue.

Enough to look forward to. We wish you happy holidays!

TRI Leiden Research Team



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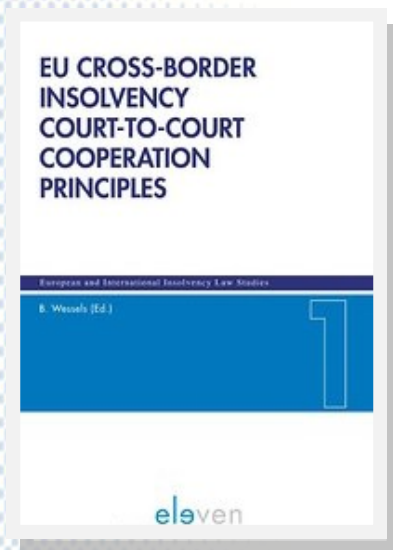


Publication of EU JudgeCo Principles

TRI Leiden has been strongly involved, together with Nottingham Law School, in the development of the EU Cross-Border Insolvency Court-to-Court Cooperation Principles ('EU JudgeCo Principles'). These principles were finalised in February 2015 and recently a book has been published. The contain the black letter text of these principles as well as an extended commentary to each of them. During a business rescue conference in Vienna, Professor Bob Wessels (left) presented the book to Michael Shotter, Head of the Civil Justice Policy Unit, DG Justice and Consumers of the European Commission.



Furthering Cross-Border Judicial Cooperation



The EU JudgeCo Principles include principles on their non-binding status and their objectives, case management of courts and the equal treatment of creditors and principles about the judicial decisions itself, on its reasoning and for instance on providing a stay or moratorium.

Several principles relate to the course of the proceedings, such as notifications and authentication of documents, and principles on the outcome of judicial cooperation, for instance cross-border sales, assistance to a reorganisation or rules for binding creditors to an international reorganisation plan. The 26 EU JudgeCo Principles are accompanied by 18 EU Cross-Border Insolvency Court-to-Court Communications Guidelines ('EU JudgeCo Guidelines'), a set of very practical guidelines to facilitate communications in individual cross-border cases.

Read more at www.tri-leiden.eu. Visit www.eujudgco.eu for the full text of the EU JudgeCo Principles and EU JudgeCo Guidelines.

Business Rescue Project Discussed at 2015 ELI Annual Conference

It was for the second time that the theme of Business Rescue was discussed at the Annual Conference of the European Law Institute (ELI). In September 2014 Bob Wessels (one of the Project Reporters) presented a progress report on the first nine months of the project emphasizing the relevance of the topic and discussing the structure of the project. A year later the project has made incredible progress as the reporters received extensive inventory and normative reports on substantive national laws of a selection of thirteen EU Member States.

Key note speaker at this conference was Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality. In the ELI Newsletter she already referred explicitly to this project: *'Another very interesting project is "Rescue of Business in Insolvency Law". We need a new approach to business failure and insolvency. I am determined to improve the conditions to get viable companies experiencing financial difficulties back to business and giving honest entrepreneurs a second chance. The aim is to boost growth, save jobs and create business opportunities. ELI's work in this highly relevant area will be of great use for my project on insolvency reform in the EU.'*



At the 2015 Annual Conference, taking place in Vienna, two sessions were devoted to business rescue, first a panel session chaired by Professor Bob Wessels. The panel consisted of Professor Stephan Madaus (Project Reporter and Professor at the Martin Luther University Halle-Wittenberg), Professor Paul Oberhammer (Dean and Professor of the Faculty of Law of the University of Vienna and member of the project's Advisory Committee) and Mr Stephen Taylor (Partner at Isonomy, with 30+ years of experience in global restructuring practice). They discussed the following topics:

1. out-of-court solutions for distressed businesses;
2. restructuring in the shadow of the (insolvency) law, and
3. the role of key actors in business rescue, such as courts, lawyers and financial advisors.

Subsequently at the Members Consultative Committee (MCC) meeting selective issues were discussed with the participants. For a short report on both these sessions, see the Report on Business Rescue Sessions at ELI's 2015 Annual Conference ('Perspectives on Business Rescue'), which is [available here](#).

Guidelines for Turnaround and Restructuring Professionals

During the annual conference in Istanbul in October 2014 and on request of its Turnaround Wing, INSOL Europe decided to commission a project to Leiden Law School (LLS) to design 'guidelines for out-of-court turnaround professionals' ('TW Guidelines').

By setting professional and ethical standards for the profession in Europe, the TW Guidelines aim (a) to offer leadership to turnaround practice in Europe, (b) to promote out-of-court restructuring rather than liquidation, (c) to provide the basis for a long-term sustainable future for the business by ascertaining the quality of turnaround professionals, and (d) to enhance the trust in the profession on the market. The TW guidelines explicitly target out-of-court turnaround professionals.

An Interactive Process

The project to design Turnaround Wing Guidelines, coordinated by Prof. Jan Adriaanse and Senior Researcher Bernard Santen, was divided in two phases. The first, the research and analysis phase, culminated in a review of issues and topics which can be possibly covered by a system of Principles and Guidelines for restructuring and turnaround professionals.

The second phase was to deliver draft TW Guidelines for the Turnaround Wing. Together with a Review and Advisory Group we went in May/June through an intensive process. We decided to focus in this project on abstract but essential Guidelines which can be extended in new consultancy rounds with the members towards more practical and detailed Best Practices.

Six TW Guidelines for RTPs

The TW Guidelines drafted relate to application, i.e. only in out-of-court assignments (TW Guideline 1). TW Guideline 2 is on Professional Attitude, Guideline 3 on the Ethical Attitude of the Restructuring and Turnaround Professional (RTP). The essentials on transparent Communication with the Client, on honest Communication with Stakeholders and on adequate Governance are covered by Guidelines 4 – 6.

These TW Guidelines were presented by Bernard Santen on 2 October 2015 to the annual conference of INSOL Europe in Berlin and were well received. The TW Guidelines as well as the Reports are available at www.tri-leiden.eu. [Click here](#) to read more.

Anthon Verweij Appointed as Secretary of INSOL Europe Academic Forum

During the fall conference of INSOL Europe Academic Forum in Berlin Anthon Verweij, PhD-candidate at the Department of Business Studies, has been appointed as Secretary to the Board of INSOL Europe Academic Forum. Anthon Verweij took over the responsibilities of Professor Paul Omar of Nottingham Trent University. The INSOL Europe Academic Forum, founded in 2004, is a constituent body of INSOL Europe, a Europe-wide association of practitioners in insolvency with over 1000 members.

The Academic Forum's primary mission is to engage its members, interested in insolvency law and research, in discussions and to encourage and assist in the development of research initiatives in the insolvency field. [Click here](#) to read more.



Anthon Verweij (left) and former secretary of INSOL Europe Academic Forum, Paul Omar (right)

ABI Project - Proposals to Reform Chapter 11 US Bankruptcy Code

In December 2014 the American Bankruptcy Institute published its [report on the Reform of Chapter 11 US Bankruptcy Act](#). The ABI Commission, which started its work in 2012, deemed it worthwhile to learn in what way certain other countries have enacted their versions of certain topics of Chapter 11 in their legislation. It established an international working group, coordinated by Professor Bob Wessels (Leiden University) and Dr Rolef de Weijs (University of Amsterdam), with the task to report on developments regarding business financial distress in several countries, where it seems that their legislation has been inspired by Chapter 11.

In September 2015 the international contributions, by way of country reports, have been published as a separate book titled 'The Reform of Chapter 11: Its Process and the Recommendation Made'. During the annual conference of INSOL Europe Academic Forum (Berlin, October 1, 2015) the editors have presented the book to *Professor Rosalind Mason, Professor of Insolvency & Restructuring Law, Queensland University of Technology, Brisbane, Australia, and Chair of INSOL International Academics Group*.

The American bankruptcy proceeding of Chapter 11 U.S. Bankruptcy Code has been a source of



Bob Wessels (right) and Rolef de Weijs (left) presenting the book to Professor Rosalind Mason

inspiration for insolvency and reorganisation laws throughout the world. Countries such as Spain, Italy, France and Germany have also recently enacted new versions of insolvency rescue proceedings, using the American Chapter 11 as an example. This book includes reports on Austria, Australia, Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, PR of China, Spain and England & Wales. For more information, [click here](#).

The Second Chance Project

Recently Professor mr. Jan Adriaanse and his colleagues Jennifer van Kesteren BSc. and Dr. Mark Dechesne initiated a new project: **The Second Chance Project**. It involves an interdisciplinary study on second chance entrepreneurship. The program aims to provide a knowledge base to be used by entrepreneurs undergoing bankruptcy, and comes with a training program to promote optimal resiliency in the face of bankruptcy. We are developing a best-practice model based on the most recent academic insights and experiences from entrepreneurs.

Why? There exists a 'blame and shame' culture when it comes to business failure and bankruptcy. But as an old saying wants us to have it: 'a smooth sea never made a skillful sailor'; one learns from these experiences. Indeed, research suggests that under the right conditions, entrepreneurs who have undergone turbulence in business are better able to

cope with subsequent challenges. The stigma surrounding business failure oftentimes impedes these circumstances, potentially leading to intensively negative experiences, including depression, social isolation, domestic turmoil, or the loss of reputation. The project aims to create the conditions under which learning experiences are optimally used and the negative consequences of business failure are optimally managed, as to ensure a successful path moving forward.

Getting involved?

If you have experience with entrepreneurs who experienced business failure or you are an entrepreneur who experienced business failure and you would like to share your experiences?

Please contact us for more information: j.van.kesteren@law.leidenuniv.nl or visit www.tri-leiden.eu for more information.

Video on European Insolvency Regulation (recast)



Professor Bob Wessels recorded early this year a video on the (draft) EU Insolvency Regulation (recast). Although the text was not final in all its details at that time (February 2015), the video presents a short analysis of the recast's key topics.

The video is accessible for free, available via the European Commercial Law Observatory (ECLO). [Click here](#) to watch the video.

Recent events

Crisis Management in the Banking Industry

On Friday 6 November 2015, at Leiden University, Matthias Haentjens (left) and Bob Wessels (right),



launched the book *Crisis Management in the Banking Sector*, by presenting a first copy to Mr Nout Wellink, former president of the Dutch Central Bank and Chairman of the Board of Supervisors of the University of Leiden, during a seminar with close to 100 registrants. [Click here](#) to read more.

place preceding the defence of the PhD dissertation of Yanying Li: "Inter-creditor Equity in Sovereign Debt Restructuring Towards the Establishment of a Multilateral Legal Framework".

The seminar was chaired by Professor Matthias Haentjens. Speakers included Prof Ignacio Tirado, (Universidad Autónoma de Madrid, Spain), Kim Solberg, Dutch Ministry of Finance, and Prof. Reinout Vriesendorp. [Click here](#) to read more.



Perspectives on Sovereign Debt Restructuring

On Wednesday 9 December 2015, a seminar was organized to discuss perspectives on sovereign debt restructuring at Leiden Law School. The seminar took

3rd Turnaround Rescue and Insolvency (TRI) Leiden Research Seminar

On Thursday 10 December 2015, the 3rd TRI Leiden seminar took place at the Leiden Law School. During the seminar, chaired by professor Vriesendorp, current research on turnaround, rescue and insolvency was discussed. Bernard Santen discussed the development of the Guidelines for Restructuring and Turnaround Professionals, a project commissioned by INSOL Europe. Bob Wessels discussed European developments with regard to the rescue of distressed businesses, and elaborated how the European Law Institutes' Project on Rescue of Business in Insolvency Law fits within these developments. Reinout Vriesendorp shared various insights on (un)just behaviour of directors before and during insolvency.

Gert-Jan Boon spoke on the finalisation of the EU JudgeCo Project, in particular some experience derived from the judicial training sessions organised subsequent to the development of these Principles Guidelines. Jean-Pierre van der Rest showed the wide array of current research in the field of turnaround, rescue and insolvency by discussing the 'Routledge Companion to Turnaround Management and Bankruptcy', which he and various other scholars are currently working on.



The seminar was ended by a festive book presentation.

Bob Wessels and Gert-Jan Boon presented the first copy of their book: 'Cross-Border Insolvency Law: International Instruments and Commentary' to Professor Reinout Vriesendorp.

Persons Involved



Prof. Reinout Vriesendorp

Reinout Vriesendorp will succeed Professor Bob Wessels and become Professor of insolvency law at the University of Leiden as of 1 January 2016. Reinout has extensive experience in the field of international and national insolvency law as both a practitioner and academic. For over 20 years he has been a professor of insolvency law at Tilburg University. Reinout is also partner and lawyer at De Brauw Blackstone Westbroek in Amsterdam where he primarily focuses on the Corporate Restructuring and Insolvency practice.

A current project Reinout is involved in is the European Law Institute's project on Rescue of Business in Insolvency Law. Together with Mr. Rick van Dommelen he prepared an extensive inventory report on the rescue of distressed business-ees under Dutch law. Reinout is among others a member of the editorial board of the *International Insolvency Review* and the *Dutch Insolvency law review*. Besides this Reinout is a member of both INSOL International and INSOL Europe.



Dr. Yanying Li

On 9 December 2015 Yanying Li successfully defended her dissertation, titled: "Inter-creditor Equity in Sovereign Debt Restructuring: Towards the Establishment of a Multilateral Legal Framework", funded by the Netherlands Organisation for Scientific Research (NWO). Her supervisor ('promotor') was prof. Bob Wessels.

In 2008, she graduated *cum laude* from the Zhejiang Gongshang University in China and continued to complete various LLM programmes in international business law in the United States and at Leiden University. She has published extensively on the topic of sovereign debt and has won gold and silver medals of the International Insolvency Institute. Dr. Yanying Li presently is a lawyer specialising in finance at Clifford Chance, London Office. Her work includes sovereign debt financing and the restructuring of sovereign debt. Prior to joining Clifford Chance, she has worked at the Permanent Court of Arbitration in The Hague, the Netherlands, and the United Nations Commission on International Trade Law in Vienna, Austria.

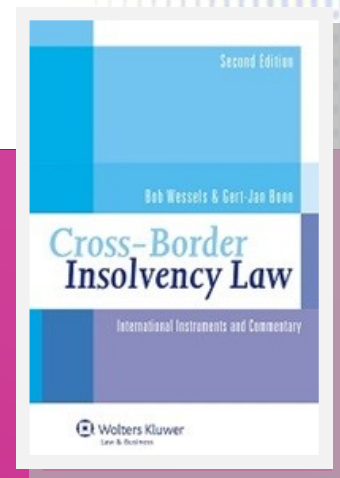
Publications

(Selection of recent publications in the field of Turnaround Rescue and Insolvency)

Bob Wessels & Gert-Jan Boon, Cross-Border Insolvency Law: International Instruments and Commentary, Alphen aan den Rijn: Kluwer Law International, 2015.

Recent insolvency cases highlight the growing importance of cross-border insolvency matters in international transactions. In order to obtain relevant information essential for conduct in such transactions, an insolvency lawyer needs to have access to the many relevant instruments that have been introduced and implemented in recent years, but that until now have not been available in any single place.

This very useful volume collects, for the second time in one source, all important international and regional legal instruments relating to insolvency of companies and consumers, as well as to corporate rescue law. The book includes international and regional conventions, model laws, EU regulations and directives, uniform rules and guiding principles produced by various international bodies (such as the World Bank, the United Nations Committee on International Trade Law, the American Law Institute, and INSOL International), and international and European restatements of insolvency law by scholars.



[Click here](#) for more information.

Bob Wessels and Rolof J. de Weijs (eds.), International Contribution to the Reform of Chapter 11 U.S. Bankruptcy Code, European and International Insolvency Law Studies 2, The Hague: Eleven International Publishing 2015.

[See also: <http://www.elevenpub.com/law/catalogus/international-contributions-to-the-reform-of-chapter-11-us-bankruptcy-code-1#>]

Matthias Haentjens and Bob Wessels (eds.), Research Handbook on Crisis Management in the Banking Sector, Research Handbooks on Financial Law, Edward Elgar Publishing, Cheltenham, UK, 2015.

[See also: <http://www.e-elgar.com/shop/research-handbook-on-crisis-management-in-the-banking-sector>]

Bob Wessels authored the following publications:

EU Courts Can Rely on Soft Law Principles for Cooperation in International Insolvency Cases, in: 6 International Insolvency Law Review 2015/2, pp. 145-160.

Giving Legal Effect to Foreign Resolution Measures in the Financial Sector, in: 28 Insolvency Intelligence, Issue 3, 44-45.

Harmonisation of Requirements for Insolvency Holders on a European Level, in: Festschrift für Bruno M. Kübler zum 70. Geburtstag, München: Verlag C.H. Beck oHG 2015, 757-772.

The Remington Rand Affair, in: Festschrift in Honour of Professor Ian Fletcher QC, Nottingham Insolvency and Business Law e-Journal, Volume 3 (Special Edition), (2015) 3 Nottingham Law School e-Journal 22, pp. 401-415 (with slightly adapted version in Tijdschrift voor Insolventierecht September/oktober 2015/43, pp. 290-297.

The Long March towards Attaining a Global Approach to Cross-Border Insolvency Cases in a Globalizing World, in: Law Review of Corporate Reorganisation & Restructuring 2014-4, pp. 254-282 (translated in Chinese) (with Prof. Ian F. Fletcher)

Cooperación judicial transfronteriza en supuestos de insolvencia en la unión europea: las herramientas están disponibles, in: Revista de Derecho Concursal y Paraconcursal, Wolters Kluwer La Ley: Madrid, no. 23/2015, pp. 299-317.

Business Rescue in Insolvency Law – Changing the laws and challenges for the profession, in: Tijdschrift voor vennootschapsrecht, rechtspersonenrecht en ondernemingsbestuur (TvOB), December 2015, pp. 207-215.

For more publications of TRI Leiden, see also: www.tri-leiden.eu/publications.

Visit us also at: www.tri-leiden.eu

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