



TRI Leiden

TURNAROUND, RESCUE & INSOLVENCY

NEWSLETTER

Europe on the move

This newsletter provides an update on the various activities of the [Turnaround, Rescue and Insolvency Leiden research team](#). It takes place, against many developments in Brussels. The European Commission is working on its legislative proposal on business insolvency, including early restructuring and second chance. This legislation will be a major step in bringing harmonization of insolvency laws in Europe.

In this process, the European Commission gathers input from a variety of perspectives on the various topics. A [group of experts](#) (including academics and practitioners) provides the Commission with advise on specific issues. Also, the European Commission organizes [meetings with stakeholders](#), and recently the Commission launched a [public consultation](#) (which is open until 14 June 2016).

TRI Leiden research

With great interest we follow these developments and seek to contribute to the discussions. In this newsletter you will read for example on the adoption of the Restructuring and Turnaround Professional Guidelines we worked on, as well as developments regarding the Business Rescue Project and the Second Chance Project.

Upcoming

On Friday 24 June 2016, Professor Reinout Vriesendorp will give his inaugural address as Professor of Insolvency Law at Leiden University. The preceding day, 23 June, an international seminar will take place on hindsight bias in insolvency law.

You are kindly invited to join these events (see more at page 3).

TRI Leiden Research Team



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Nordic-Baltic perspectives on Business Rescue

On Tuesday 16 and Wednesday 17 February, a joint Conference of the European Law Institute and the Stockholm Centre for Commercial Law (Stockholm University) was convened in Stockholm to discuss both the ELI Business Rescue Project, as well as draft text of the Nordic-Baltic Recommendations on Insolvency Law, drafted by the Nordic-Baltic Insolvency Network.

Nordic-Baltic Recommendations on Insolvency Law

The Nordic Baltic Insolvency Network has taken the initiative to develop 'Nordic-Baltic Recommendations on Insolvency Law'. This is the product of an ambitious attempt at regional harmonization of European Insolvency Law. The countries involved are Denmark, Norway, Sweden, Finland as well as Estonia, Latvia and Lithuania. Central to the discussions were the provisions on reorganisation plans and on the treatment of groups of companies in insolvency proceedings. The June 2015 version of Nordic Baltic Recommendations can be found [here](#).



Bob Wessels, Johan Gernandt and Stephan Madaus

Business Rescue: Key Role Players and Out-of-Court Solutions

On Wednesday, Professor Bob Wessels talked about the role and responsibilities of different actors in out-of-court and (pre-)insolvency proceedings, including supervisors, mediators, insolvency practitioners, judges, turnaround professionals or chief restructuring officers. Professor Stephan Madaus spoke on short-term protection of voluntary restructuring negotiations. He discussed several alternatives to realise out-of-court solutions for financially distressed businesses. The Conference was a welcomed opportunity for the Reporters to discuss their findings with a group of specialists from a number of EU countries.

More information

For more information on recent activities regarding to the Business Rescue Project, see the [March-April 2016 Newsletter of the European Law Institute](#). For more information on the Business Rescue Project, [visit this webpage](#).

Discussing the Second Chance Project in Brisbane

The TRI Leiden Second Chance Project aims to promote recovery and re-integration of entrepreneurs who have recently undergone bankruptcy. The Project Team, Jan Adriaanse, Mark Dechesne and Jennifer van Kesteren, have been accepted to speak at the *Personal Insolvency Conference* themed 'A Fresh Look at Fresh Start: the Human Dimension to Bankruptcy'. Here we can provide you with the conference abstract:

"Bankrupts in their own words: the bankruptcy experience through extensive semi-structured interviews Jennifer van Kesteren BSc, dr. Mark Dechesne, Prof. Jan Adriaans

The number of bankruptcies dramatically increased since the economic crisis in 2008. Little is known about the personal experiences of entrepreneurs who went bankrupt within this timeframe. The present study interviewed ten Dutch SME-entrepreneurs who saw their business go bankrupt in order to better understand the personal, social, legal and financial implications of bankruptcy. Researchers have made a start in systematically investigating these issues. However these efforts have not yet taken into account the phenomenological experience of the bankrupt entrepreneur. Insight in these experiences is of critical importance for obtaining a comprehensive understanding of the impact of bankruptcy and how to best cope with it."

[Click here to read more ...](#)

More information

The [Personal Insolvency Conference](#) will take place in Brisbane Australia, 7-9 September 2016. For more information on the Second Chance Project, [click here](#).



Upcoming events: Hindsight Bias in Insolvency Law

Inaugural address professor Reinout Vriesendorp on Friday 24 June 2016 and preceding seminar on Thursday 23 June 2016.

Reinout Vriesendorp joined Leiden University on 1 January 2016 as professor of insolvency law and in such capacity partially succeeded Bob Wessels who retired from the international insolvency law chair in 2014. Reinout divides his time at Leiden University between the departments of Business Studies and Company Law. Accordingly, besides teaching in courses related to (international) insolvency law and turnaround management (with Jan Adriaanse and Johan Jol), his research will focus on the crossroads of these two areas. Where directors' and shareholders' liabilities draw the attention of the insolvency law specialist in the area of company law, the multidisciplinary study of mismanagement is a core part of Leiden University's business studies' research.

Director's liability and hindsight bias

Upon bankruptcy, many stakeholders become interested in the cause(s) thereof and part of the administrator's job is to investigate the period before the bankruptcy and search for possible irregularities by stakeholders. One of the objectives is to assess whether there are good reasons to go after the directors and/or shareholders to hold them liable for damages resulting from the bankruptcy. In practice, such investigation is – by definition – tainted by the disastrous outcome and the question arises how this outcome (un)consciously influences the assessment by the administrator; and the

court, should it come to litigation. Although the courts sometimes recognize the danger of hindsight bias, it appears to be quite difficult to eliminate the unconscious process when getting to a judgment. This raises questions about legitimacy where the test is considered to be the situation at the time of the action or inaction by such stakeholder.

Inaugural address and international seminar

In his inaugural address (*[**]it happens; then and now*) on Friday 24 June 2016 at 4 PM in the Academiegebouw in Leiden, Reinout Vriesendorp will lecture (in Dutch) about the hindsight bias in insolvency law from the perspective of company law and business studies. The afternoon prior to this event, on Thursday 23 June, both departments jointly organize a seminar (in English) about this topic from an international perspective with a panel of distinguished scholars and practitioners.



Registration

If you are interested to join one or both events, please contact the secretary of the department of Business Studies via bedrijfswetenschappen@law.leidenuniv.nl.

INSOL Europe adopts RTP Guidelines

End March 2016, in Madrid, the Council on behalf of INSOL Europe adopted the *'INSOL Europe Turnaround Wing Guidelines for Restructuring and Turn Around Professionals'* (also known as *'TW Guidelines'*) unanimously. These non-binding TW Guidelines have been prepared by the TRI Leiden Research Team (including Prof. Jan Adriaanse and dr. Bernard Santen) in close cooperation with INSOL Europe's Turn Around Wing chairman Dr. Steffen Koch, *Insolvenzverwalter*, Partner of Hermann Wienberg Wilhelm, Germany.



A huge step forward

The TW Guidelines were developed in 2015 through consultation with members of INSOL Europe practising throughout Europe and beyond, under the supervision of a Review and Advisory Board. Preceding the recent adoption by the INSOL Europe Council, the final draft of these Guidelines were presented and discussed during the INSOL Europe Annual Conference that took place in Berlin, in October 2015. As INSOL Europe stated on their website: *'These guidelines are a huge step forward for the Turnaround Wing of INSOL Europe to mark leadership in the turnaround community in Europe.'*

Download the TW Guidelines

The TW Guidelines were developed in two phases. During the first step an analysis was made of international and national sources as a basis for the design of principles and guidelines for out-of-court turnaround professionals. Subsequently, a second report was prepared including the TW Guidelines, and a commentary. For more information and to download the TW Guidelines, [click here](#).

Cross-Border Insolvency Law: Int. Instruments and Commentary

Recently the book by Bob Wessels and Gert-Jan Boon, [Cross-Border Insolvency Law: International Instruments and Commentary](#), was reviewed. Prof. Ian Fletcher and Prof. Paul Omar discussed this book collecting over fifty international and regional legal instruments relating to insolvency of companies as well as to corporate rescue law.

The book includes international and regional (Asia, Africa, the Americas, Europe) conventions, model laws, 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,

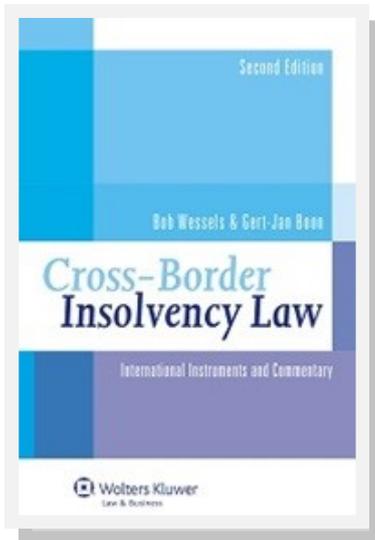
the American Law Institute, INSOL International, the European Bank for Reconstruction and Development, EBRD), and international and European restatements of insolvency law by scholars, including the most recent EU Cross-border Insolvency Court-to-Court Cooperation Principles.

Reviews

It is very rewarding that Prof. Fletcher assesses the opening Commentary (134 pages; the book itself contains over 1000 pages) 'a masterly survey of the fruits of over 50 different instruments', and 'a useful "crash course" for anyone coming freshly to the subject' (INSOL World First Quarter 2016), whilst Prof. Omar calls the book an 'indispensable source of reference' and 'a truly comprehensive, yet navigable work' (Eurofenix, Winter 2015/2016).

More information

For more information on the book and on International Instruments [click here](#).



Routledge Companion on Turnaround Management and Bankruptcy

Prof. Jan Adriaanse and Dr. Jean-Pierre van der Rest are completing an edited volume on Turnaround Management and Bankruptcy which will be published by Routledge in December 2016.

Written by leading experts in the field of business, law and finance, this edited volume brings together the latest thoughts and developments on turnaround management and business rescue from an academic, management, judiciary and turnaround/insolvency practitioner perspective. The Companion presents different viewpoints on turnarounds and business rescue. Presenting a state-of-the-art review of failure research, such as on bankruptcy prediction, causes of decline, or distressed asset valuation, it also presents the latest insights from turnaround management research as well as a contemporary insight into law debates on insolvency legislation reform, cross-border judicial issues and insolvency policy effectiveness. In this way, the volume presents a modern, interdisciplinary and scholarly overview of the latest insights, issues and debates in turnaround management and business rescue, from an international perspective. [Click here to read more ...](#)

Recent events

Milan (Italy): Conference on Implementation of EIR Recast
Early February, Bob Wessels attended a Conference in Milan that took part in relation to the EU sponsored research project on the Implementation of the European Insolvency Regulation Recast (EIR Recast). This is a joint project of the Max Planck Institute Luxembourg, the University of Vienna and the University of Milan. At the conference, they discussed, among others: (i) the best solution to solve the dramatic inflexible relationship with the Recast and Annex A, (ii) is it possible to define 'insolvency'

in a uniform way throughout the EU, and (iii) gaps between the Recast and Brussels I when dealing with 'pre-insolvency' proceedings. See also this [blog from Prof. Wessels](#).

Lille (France): International Colloquium

On 30 and 31 March an international conference took place in Lille, at the Catholic University of Lille. Theme of the conference was 'La gestion du risque d'insolvabilité à l'heure du règlement (UE) N°2015/848 << Insolvabilité bis >>'. Bob Wessels spoke, accompanied by dr. Samantha Renssen, at this conference on the Business Rescue Project of the European Law Institute.

Jan Adriaanse Starts Company on Business Failure Analytics



Jan Adriaanse, Professor of Turnaround Management at the Leiden Law School, has started a new company called Business Failure Intelligence (BFI).

BFI is an independent technology-enabled research company specializing in business failure analytics. The company offers business failure prevention solutions as well as business failure investigation services. For more information, please visit: www.bfiglobal.com.

Wessels International Insolvency Law - Part I

Earlier this year the fourth edition of Bob Wessel's book on "*International Insolvency Law*" has been published. This edition will appear in two parts, of which the first (*Global Cross-Border Insolvency Law*) has now been published. In January 2016 the book was presented to professor Michael Veder, Chairman of the Netherlands Association of Comparative and International Insolvency Law. ([NACIL](#)) The book contains three topics:

1. principles, dogmatic and pragmatic approaches to issues and disputes on international insolvency law, including a commentary on regional conventions (in Latin-America, the Nordic European countries, the OHADA Treaty in Central Africa), 'soft law' sources (e.g. UNCITRAL's Legislative Guide on Insolvency Law) and the use of Protocols or cross-border insolvency agreements,
2. the status of international insolvency law in the Netherlands (outside of the EU Insolvency Regulation), relevant for cross-border cases with third-(non-EU) countries, including courts such as the cross-border legal disputes related to the insolvent Russian corporate giant Yukos Oil having shares in a company, incorporated in the Netherlands, which holds large assets in several countries, and
3. the UNCITRAL Model Law on Cross-Border Insolvency of 1997 and its application demonstrated in some fifty USA and UK cases.

More information

Bob Wessels, *International Insolvency Law Part I. Global Perspectives on Cross-Border Insolvency Law*, 4th ed., 2015, is now available. [Click here](#) for more information.



Persons Involved



Dr. Rick Aalbers

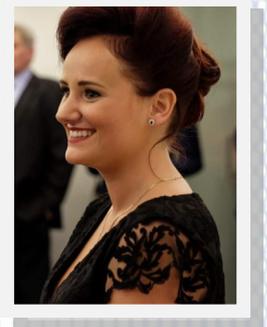
Rick Aalbers is an Associate Professor in Strategy and Innovation (tenured) at the department of Business Administration of the Radboud University Nijmegen, The Netherlands, and director of the Radboud Centre For Organization Restructuring. He is also involved in the Routledge Companion on Turnaround Management and Bankruptcy, where he is co-author of one of the chapters of this book. He has been a visiting scholar at Imperial College London and National University of Ireland at Galway. Prior to his academic career, he worked as a Manager at Deloitte Consulting where he advised on strategic change in the financial services industry.

His research focuses on corporate restructuring and inter- and intra-organizational innovation policy with a particular interest in the performance effects of various means of restructuring over time. Work along these research lines has been accepted for publication by leading international journals, including *Research Policy*, *British Journal of Management*, *Journal of Product Innovation Management*, *MIT Sloan Management Review*, *Journal of Economic Issues*, *Journal of Engineering and Technology Management* and *Journal of Business Strategy*, among others, and was published as book chapters with Routledge London and Edward Elgar. His dissertation on intra organizational collaboration and restructuring won the SOM Best Dissertation Award of the University of Groningen. Rick is a frequent speaker to a business and policy audience on the topics listed above, and his work features regularly in the popular media. His MIT Sloan Management Review contribution won the 2012 MIT Richard Beckhard Memorial Prize.

Dr. Samantha Renssen

Since March 2016, Samantha Renssen is a honorary senior researcher at the European Law Institute (ELI) for the reporters of the Rescue of Business in Insolvency Law Project. The aim of the ELI Project on Rescue of Business in Insolvency Law is to design (elements of) an appropriate legal enabling framework, which includes certain statutory procedures that encourage parties to negotiate solutions in a situation of business distress. During the course of the project Samantha will focus on the following topics: directors' liability, the position of the debtor-in-possession and company groups.

Samantha Renssen is an assistant professor in Corporate and Insolvency Law at Maastricht University. She is also a Research Fellow at the Institute for Corporate Law, Governance and Innovation Policies (ICGI) and the coordinator of the ICGI PREMIUM Masterclass. Her research for the ICGI is focused on the liquidation of companies, companies in financial distress and the history of company law. Samantha Renssen graduated cum laude in 2013 from Maastricht University, where she focused on corporate and labour law. On 18 November 2015 Samantha successfully defended her dissertation, titled: The turbo-liquidation of the Dutch private limited liability company.



New Centre for Entrepreneurship and Innovation in Leiden

At the Leiden Law School, the department of Business Studies has set up the Centre of Entrepreneurship and Innovation. This Centre will focus on stimulating entrepreneurship and innovation in the legal sector. It bridges the gap between study and practice.

The industry of legal services is facing big challenges due to the rise of technological developments and especially the “Legal tech”. Legal tech refers to the use of technology and software to provide legal services like cloud computing and the use of big data. It traditionally referred to the application of technology and software to help law firms with practice management and efficient document storage. Nowadays, the legal tech market has developed itself into a market where it is totally disrupting the legal industry. Legal entrepreneurship and innovation pre-eminently come together in legal tech. For more information visit: www.leidenlawvalley.nl.

Publications

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

Hussain, N., Rigoni, U., & Orij, R. P. (2016). Corporate Governance and Sustainability Performance: Analysis of Triple Bottom Line Performance. *Journal of Business Ethics*, 1-22.

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

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

Bob Wessels, ‘Commentary Court of Justice of the European Union 15 October 2015, Case C-310/14 (Nike BV v. Sportland Oy)’, *INS Updates insolventierecht (INS_2015_0285)*, 3 pages.

Bob Wessels, *International Insolvency Law Part I. Global Perspectives on Cross-Border Insolvency Law (Wessels Insolvency Law Volume X)*, Deventer: Kluwer, 4th ed., 2015, CXCVI + 527 pp.

Bob Wessels, ‘The EU Regulation on Insolvency Proceedings (Recast)’, *22 Maastricht Journal of European and Comparative Law* 2015/5, pp. 771-777.

Bob Wessels, ‘Book review: Rodrigo Olivares-Caminal (ed.), Expedited corporate debt restructurings in the EU’, *International Insolvency Law Review* 1/2016, pp. 47-48

Bob Wessels, ‘Mediation in Restructuring and Insolvency’, *Eurofenix* Spring 2016, 24/25.

Recent Leiden Law Blogs on Turnaround, Rescue and Insolvency

- [Regulating the turnaround profession](#)
- [Nordic-Baltic Recommendations on Insolvency Law](#)
- [V&D and the arbitrariness of rescuing businesses](#)
- [Myths of mismanagement](#)

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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