



Debt
Collection,
Restructuring
& Insolvency
NEWS

Newsletter
No. 07 | Winter 2017

© 2017
GGI | Geneva Group International



Employee Handbooks – Why Employees Need to Sign Acknowledgement Forms

and other information
from the DCRI segment

Editorial

Dear Reader,

It is my pleasure to welcome you to the seventh issue of the GGI Debt Collection, Restructuring & Insolvency (DCRI) Practice Group's FYI Newsletter. This issue is a wonderful edition with brilliant articles covering all angles of DCRI.

Whichever way you look at it, restructuring is a complicated engagement and, to be successful, it requires proficient legal and accounting skills, and efficient, modern and often multi-professional teams.

This is why we decided to focus on legal and innovative matters in this edition of the Newsletter. We have included detailed contributions about changes to

worldwide legislation on the one hand, and innovative proposals on the other.

Restructuring engagements always raises complicated questions, and together we can look forward towards creating flexible and efficient solutions for our clients, at a profitable but realistic price.

GGI provides a wonderful platform, as it is comprised of highly professional members located all around the world which in turn leads to valuable collaboration between members, allowing us to offer solid solutions to our clients and business opportunities to advisors.

As usual, we appreciate the enthusiasm and professional attitude of all members who dedicated their time to offer their ideas and write clear and



thought-provoking articles. The GGI DCRI Practice Group is developing and becoming larger every year.

Thank you to all the members who contributed, and also to those who offered ideas and comments. We hope to see you all soon at one of our upcoming meetings.

Claudio Ceradini
European Regional Chairperson
of the GGI Debt Collection,
Restructuring & Insolvency
Practice Group

Employee Handbooks – Why Employees Need to Sign Acknowledgement Forms

By **Herb Fineburg**

Recently, it was reported that a paint supplier who sued the Trump National Doral resort and spa for an unpaid bill

obtained a judgment against the resort of USD 32,000 for paint plus a staggering USD 390,000 in collection legal fees. In the US, each party pays their own legal fees in commercial litigation

unless the contract provides otherwise. Even the Trump organisation did not notice or object to the legal fees claim in the supplier's contract or credit application.

Disclaimer – The information provided in this newsletter came from reliable sources and was prepared from data assumed to be correct; however, prior to making it the basis of a decision, it must be double checked. Ratings and assessments reflect the personal opinion of the respective author only. We neither accept liability for, nor are we able to guarantee, the content. This publication is for GGI internal use only and intended solely and exclusively for GGI members.

In order to improve the collection of your accounts receivable, vendors should take care when using a sales and/or credit agreement with certain minimum beneficial terms. The following are three material provisions that will help ensure that your customer is motivated to pay their account with you in a timely manner:

- include the right to recover your costs of collection including legal fees, court costs and interest, regardless of whether you file suit;
- establish that the governing jurisdiction of any dispute will be designated to a court in the county where you are located and/or otherwise convenient for you;
- include a personal guarantee by the buyer's owners.

Most buyers do not consider these provisions objectionable if they even review your sales and/or credit agreement. With these provisions in place, the buyer is more motivated to pay. Moreover, if the buyer is in financial difficulty, the personal guarantee greatly increases the possibility that you will

GGI member firm
Offit Kurman
Law Firm
Washington DC, USA
T: +1 267 338 1376
W: www.offitkurman.com
Herb Fineburg
E: hfineburg@offitkurman.com



Herb Fineburg

Offit Kurman is a dynamic full-service law firm. As trusted legal advisors, they help clients to maximise and protect their business value and individual wealth. They strive to maintain clients' trust in every interaction, furthering their objectives and helping them to achieve their goals in an efficient manner.

Herb Fineburg's substantial knowledge of tax law provides clients with strategic and cost-saving benefits, in connection with commercial transactions,

taxation and wills, trusts and estates matters. Known for his ability to resolve complicated matters effectively, Mr Fineburg has assisted businesses and individuals with the organisation of their finances, business and real estate affairs, and the structure of their assets.

Offit | Kurman®
Attorneys At Law
the perfect legal partner®

be paid before any other creditors for which the owner has no personal guarantee over. There are also other terms,

typically in a sales and/or credit agreement, which can form part of your agreement with the buyer.

New Court Decision Changes Rules for Going Concerns in Germany

By **Oliver Biernat**

In a 2017 decision of the German Federal Court of Justice (BGH), the German rules for using going concern or liquidation values in a company's financial statements have been re-interpreted. Following this decision, it is no longer allowed to use going concern values when there is a threat of

...next page



insolvency (e.g. over-indebtedness, illiquidity or imminent illiquidity). Exceptions are possible if:

- a credible insolvency plan for continuation is presented,
- a reorganising take-over is intended within the next 12 months or
- it is expected that the company can carry on with its business after opening insolvency procedures for at least 12 months after the balance-sheet date.

Violations may raise personal liability issues for the legal representative of the company. Tax advisors that prepare annual financial statements must now not only inform and warn their clients if there is a threat of insolvency but also make their own judgement if the assumptions of the client are plausible in order to prevent a liability of their own. If they think they are not plausible they must insist on using liquidation values.

The court's decision is in contrast to the prevailing view in the literature and the Institute of Chartered Accountants in Germany, where going concern

GGI member firm

Benefitax GmbH
Steuerberatungsgesellschaft
Wirtschaftsprüfungsgesellschaft

Auditing & Accounting, Tax, Advisory,
Corporate Finance, Fiduciary & Estate
Planning

Frankfurt am Main, Germany

T: +49 69 256 227 60

W: www.benefitax.de

Oliver Biernat

E: o.biernat@benefitax.de

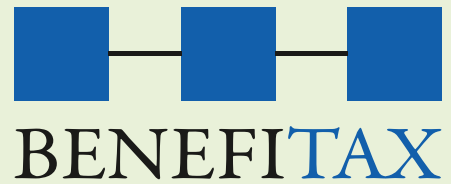
Benefitax GmbH is a tax consultancy and public auditing company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-sized German companies with cross-border activities and wealthy private individuals.

Oliver Biernat is Founder and Managing



Oliver Biernat

Partner of Benefitax. He is a German chartered accountant, certified tax advisor and specialist advisor for international taxation with more than 20 years' experience. Since 2008, he has chaired GGI's International Taxation Practice Group, increasing its size to more than 460 experts from 80 countries in the process.



is generally accepted as long as the company is expected to carry on with its business. It is recommended that

if you wish to avoid personal liability, you should consult with an insolvency expert.

Official Creditors' Committees in US Chapter 11 Cases: What Foreign Creditors Should Expect

By Stuart A. Laven, Jr. and Yao Liu

The continuing upward trend in US bankruptcy filings by 'brick and mortar' retailers has significantly impacted non-US suppliers, especially those in China and other apparel/textile manufacturing

centres in Southeast Asia. The first question these overseas suppliers often face in US Chapter 11 cases is how to respond to – and what to expect from – an invitation from the United States Trustee (UST) to serve on an Official Committee of Unsecured Creditors (UCC).

UCCs in US Chapter 11 cases have statutory standing to represent the entire unsecured creditor body and counter-balance what would otherwise be the unfettered power of the debtor's senior secured lenders. The UST has discretion in appointing a UCC, which

typically has seven members (plus or minus). In most jurisdictions, the UST sends an invitation letter to each of the top 20 creditors as listed by the debtor, and those interested in serving must attend (in person or via proxy) a formation

meeting in the US. Committee service is not compulsory for any creditor.

For overseas creditors, the prospect of serving on a UCC can be daunting, especially at the formation stage. Thus, it is common practice in large jurisdic-

tions for creditors to designate an attorney or other representative to attend the formation meeting and vote on important matters – e.g. selection of UCC counsel – via written proxy.

GGI member firm
Cavitch Familo & Durkin LPA

Law Firm Services
Cleveland, OH, USA

T: +1 216 621 7860

W: www.cavitch.com

Stuart A. Laven, Jr.

E: slaven@cavitch.com

Yao Liu

E: yliu@cavitch.com



**Stuart A.
Laven, Jr.**



Yao Liu

Stuart A. Laven, Jr is a Shareholder of **Cavitch, Familo & Durkin LPA**, where he focuses his practice on US Chapter 11 bankruptcies and distressed M&A transactions. Mr Laven has significant restructuring ex-

perience in industries including healthcare, transportation, telecommunications, heavy industries and retail.

Yao Liu is an Associate with the firm and represents both Chinese and US clients in cross-border investments, M&A, financing transactions and related regulatory matters.



The Insolvency Code is Reformed in India

As banks invoke the code for USD 40 billion of non-performing debt

By Aditya Kumar

While the banking regulations in India were providing various restructuring mechanisms to address the mounting debt problem, ranging from CDR, SDR or the Scheme for Sustainable Restructuring, the Government has enacted the Insolvency & Bankruptcy Code in line with what exists in most developed countries. The Reserve Bank of India, in June 2017, instructed the banks to take this route for the resolution of

...next page



non-performing debts amounting to USD 40 billion.

The new Code aims to move cases of company failure into a single forum, replacing an archaic system of overlapping regulations under which banks, company promoters and other creditors could all initiate competing proceedings in different courts, tribunals and regions.

The World Bank estimated it took 4.3 years on average in India to resolve insolvency under the old laws, more than twice as long as China. Moreover, average recoveries were just 25.7 cents on the dollar, one of the worst among similar sized economies.

The new regime aims to significantly boost recoveries and puts a firm timeline (270 days) around case resolution in the hope that this will help clean-up bank balance sheets and spur lending.

India's central bank, the Reserve Bank of India, has already told banks to push 12 of the largest defaulters into insolvency, but experts worry the framework is largely untested and hampered by a shortage of experienced bankruptcy professionals.

If the first batch stalls the judicial pro-

GGI member firm

**Ashwani & Associates,
Chartered Accountants**

Auditing & Accounting, Tax, Legal,
Advisory, Corporate Finance
Ludhiana, India

T: +91 98554 00428

W: www.ashwaniassociates.in

Aditya Kumar

E: aditya@ashwaniassociates.in

Ashwani & Associates is an audit, tax and consulting firm in India with three offices. Their clients range from emerging entities to large corporations with billions of dollars as revenue. They include privately held businesses, not-for-profit organisations and publicly traded com-

ashwani & associates
chartered accountants



Aditya Kumar

panies. We support a local, national and international client base.

Aditya Kumar is a Partner of the firm and a registered insolvency professional with the Indian Board of Bankruptcy of India. He is also the indirect tax partner for the firm and handles matters pertaining to GST, another tax reform recently implemented in India. He is the author of

the first book on GST, to be published by a leading tax books publisher in India.

cess, there will be a question over the remaining USD 150 billion of stressed assets. This kitty will swell if telecom loans join the nightmare, making it even

more important for the government and all stake holders to make this law a success and help the banks to improve their leveraged position.

Your Deadbeat Debtor has Assets in Canada

What Should You Do?



By Carrie Kennedy

Your judgment debtor has moved to Canada and has assets there. How do you enforce your monetary judgment against them? Each province has its own rules for this process. In Ontario, a new action is brought for recognition of a foreign judgment or, if

the judgment originates in the UK, an application may be brought to register that judgment. The Canadian court will consider if the originating court had jurisdiction to try the case, the court acted in accordance with due process, the judgment is final and the money is still owing. A defendant may challenge the jurisdiction of the original court or raise issues of fraud, denial of natural justice, or public policy concerns but the court will not

consider defences that were subject to adjudication in the original action. Defendants, therefore, are not entitled to raise merit based defences to the Canadian action or application. Canadian courts will not consider if the decision to grant the original judgment was right, but will consider if it is the result of due process. Canadian courts will not recognise tax or penalty related judgments. Each province has its own limitation period for this process which range from two to six years either from the date the creditor ought to have reasonably known that proceeding in Canada was warranted or, for UK judgments, from the date of the original judgment. So, if you learn that your judgment debtor has assets in Canada, act quickly to have that judgment recognised or registered!

GGI member firm
Devry Smith Frank LLP
Law Firm Services
Toronto, Canada
T: +1 416 449 1400
W: www.devrylaw.ca
Carrie Kennedy
E: carrie.kennedy@devrylaw.ca



Carrie Kennedy

Since 1964, **Devry Smith Frank LLP (DSF)** has been a trusted advisor and advocate for corporations, individuals and small businesses. Comprised of over 175 dedicated legal and support staff, DSF prides itself on effective representation and a drive to deliver value to clients.

Carrie Kennedy is an Ontario lawyer practicing in the areas of

commercial litigation, bankruptcy and insolvency, debt recovery, real estate litigation, and employment. She enjoys representing businesses, banks and individuals in these fast-paced matters with the support of her full service firm.



The Insolvency Rules 2016 – The Impact on Creditors of UK Insolvency Proceedings

By Jane Garvin

The Insolvency Rules 2016 significantly change the way in which Insolvency Practitioners ('IPs') must engage with creditors.

Under the 1986 Rules, a meeting of creditors was held at the start of most insolvencies. Creditors could vote on various matters, set up a committee to guide the IP, ask questions, share information and challenge the actions of the IP.

However, creditors' meetings could be time-consuming, costly and often no creditors would attend.

Under the 2016 Rules, physical meetings are no longer the default decision-making process. In fact they are not allowed at all, except in limited circumstances.

IPs must use a different method of establishing the wishes of creditors, the main options being virtual meetings,

...next page



decisions by correspondence and electronic voting.

The new Rules also allow an IP to issue notices of 'deemed consent' where resolutions will be deemed to have been passed unless creditors object before the decision date.

So what does this mean?

Without a creditors' meeting, it might not always be clear how a creditor in UK proceedings can best meet their objectives, whether that be to challenge an IP's fees, appoint an alternative IP or to simply ask questions and obtain information. Non-UK creditors may also face issues with establishing the full extent of their claim, particularly in relation to contracts and other matters not subject to UK law. This means that early expert advice for creditors is becoming increasingly vital to ensure the best outcome.

GGI member firm

Ward Hadaway

Law Firm Services

Newcastle upon Tyne, UK

T: +44 191 204 4000

W: www.wardhadaway.com

Jane Garvin

E: jane.garvin@wardhadaway.com

Ward Hadaway is one of the UK's Top 100 law firms with offices located in Newcastle, Leeds and Manchester in Northern England. It offers a full range of legal services, acting for national and international public and private entities, entrepreneurs, healthcare organisations and Government agencies.

Jane Garvin is a Partner in the insolvency and corpo-



Jane Garvin

rate recovery team at Ward Hadaway. She has a wealth of experience on all aspects of insolvency-related issues, including cross-border insolvency matters and regularly advises non-UK entities on the consequences of English insolvency proceedings.

wardhadaway
lawfirm

Liability of the Managers and the Members in the Liquidation Procedure



By Dr Attila Kovács

According to the modification of the Liquidation Act that comes into effect on 1 July, it will no longer be possible to initiate a direct condemnation procedure against the managers. As a first step, the creditor or the liquidator (in the name of the debtor company) has to ask the court to establish the liability of the managers. Bringing action for condemnation is only possible in the possession of a judgement stating the liability.

The behaviours suitable for establishing the liability have not changed, in so much that after the occurrence of the potential danger of insolvency the interests of the creditors shall be considered.

Previously it had to be proved that there was causation between the conduct of the manager and the diminishing of the economic operator's assets. This rule has been amended so that it is enough to prove, from 1 July, that providing full satisfaction for the creditors' claims may be frustrated for other reasons.

There is also a new possibility for a manager for not being held responsible if he proves he has not undertaken any business risk that may be considered unreasonable in light of the debtor's financial position.

Compared to the prior rules, there is a novelty that where a manager fails to perform or improperly performed the requirement prior to the opening of liquidation proceedings of having to deposit and publish the economic operator's annual accounts, the burden of proof lies with the manager to prove that no situation carrying potential danger of insolvency has occurred during his tenure as manager – or, if such a situation has in fact occurred, that he has performed his management functions in due consideration of the interests of creditors, and of the other managers.

The novelty in terms of the responsibility of the controlling party or the sole member (shareholder) of the

GGI member firm
Kovács Réti Szegheő Attorneys at Law
 Law Firm Services, Tax Consulting
 Budapest, Hungary
 T: +361 275 27 85
 W: www.krs.hu
Dr Attila Kovács
 E: kovacs.attila@krs.hu



Dr Attila Kovács

Kovács Réti Szegheő Attorneys at Law, established in 1992, is one of the oldest independent Hungarian law firms. It is active in Hungarian, English, German and Italian and operates over a wide spectrum within the fields of civil and business law, for both domestic and international clients. The firm has gained immersive experience in the fields of corporate law, mergers and acquisitions, construction law, real estate law, securities law, bankruptcy law, labour and employment, competition law and intellectual property law.

Dr Attila Kovács graduated in 1996. After gaining professional experience in Hungarian and German law offices, he is now at Kovács Réti Szegheő, and has been Managing Partner since 2004. He speaks Hungarian, English and German and his primary areas of practice are bankruptcy law, real estate law and corporate law.



debtor is that the creditor or the liquidator (in the name of the debtor company) – on account of such a debtor having had a history of making unfavourable business decisions from the standpoint of the debtor – may file a

claim for the court to satisfy the creditor's claim registered in the liquidation proceedings, which are not covered in the liquidation proceedings.

Restructuring Evolution and a New Advisory Approach

A case study on a restructuring plan and turnover deal

By Claudio Ceradini

The Company Background – A medium-sized company is suffering a deep financial crisis, with good technical skills but poor market strategy and approach. The CEO is an engineer with great production knowledge but old

styled distribution and market politics. Key aspects of the deal were (typical of restarting plans):

- short time window
- distressed financial situation, Net Financial Position worsening day-by-day
- credit lines shortage

- challenging supplier relationship
- high turnover of key employees and agents

As nobody is interested in a non-profitable enterprise, the advisors must determine if a new strategy plan and marketing/communication approach

...next page

is feasible, and if it will impact sufficiently on the product range, supporting a tangible sales and gross margin forecast.

Furthermore, plant efficiency, building and machinery law compliance and HR availability need to be checked, and an investment budget needs to be drawn up. Only when the restarting plan is clear, reliable and the overall project checks out, can lawyers and accountants focus on takeover legal structure, tax impact and funds collection.

The next step is to create advisory structures, networks and alliances. This should include the skills and technology to support a real team-thinking approach.

A modern and innovative advisor should be able to provide a reliable answer, in a short time, at a reasonable price and anywhere in the globalised world.

Modern advisors are asked to keep

GGI member firm

SLT – Studi Legali e Tributari

Advisory, Auditing & Accounting,
Corporate Finance, Fiduciary & Estate
Planning, Tax

Verona, Italy

T: +39 045 806 51 51

W: www.slt.vr.it

Dr Claudio Ceradini

E: claudio.ceradini@slt.vr.it

Dr Claudio Ceradini is the major partner of **SLT – Studi Legali e Tributari**, working in the Business and Tax department as an auditor and a business and tax advisor. He is also an Adjunct Professor in Economics at Verona University. He has over 15 years' experience in business restructuring and M&A for both large and small companies. He has authored many



Dr Claudio Ceradini

articles on the above subjects which have been published in dedicated magazines.



their minds open, and to modify their approach, from services-oriented to

client-oriented, in order to create real value for their customers.

Ireland as a Gateway to European Insolvency post Brexit



By Tom Murray

Currently, insolvency proceedings amongst member states of the European Union ('EU') (excluding Denmark) are subject to Regulation on Insolvency Proceedings 1346/2000. The regulation imposes a regime for dealing with the insolvency of companies and individuals with assets and corporate affairs in more than one EU member country and in this respect it introduced a set of rules on the jurisdiction to open and the recognition of insolvency proceedings across the EU.

This has given rise to 'forum shopping' amongst creditors and debtors in search of the most favourable regime. In this context, the UK with its well-es-

established regime has a large appeal and favourable reputation on the international stage for cross border insolvency and restructuring.

The key implication of Brexit is that without an 'exit' agreement, UK insolvency proceedings will no longer benefit from automatic recognition across the EU. In a similar vein, the jurisdiction and enforcement of judgments between the UK and other EU member states is currently regulated by the Brussels I Regulation (44/2001) which will also cease to apply upon the completion of Brexit.

Given the economic crises that engulfed Ireland, the country now has one of the most progressive regimes for dealing with corporate and personal insolvency, and is now a better regime than the UK for debtors. Ireland has in recent years completely revised and refined its Corporate and Personal Insolvency Law through the Companies Acts 2014 and Personal Insolvency Act 2012

GGI member firm

Friel Stafford Chartered Accountants
Advisory, Auditing & Accounting, Tax
Dublin, Ireland

T: +353 1 661 4066

F: +353 1 661 4145

W: www.frielstafford.ie

Tom Murray

E: tom.murray@frielstafford.ie



Tom Murray

Friel Stafford is Ireland's leading independent corporate restructuring and personal insolvency practice.

Tom Murray is a Partner in the firm and former past President of the Association of Certified Accountants in Ireland. He spe-

cialises in Restructuring & Insolvency, Corporate Finance and Forensic Accounting.



Friel Stafford

(as amended) respectively.

With the clock ticking on the countdown to the UK's planned exit in 2019, and uncertainty being the only certainty in relation to how it will all eventually

play out, there is a significant opportunity for Ireland to become a new safe destination of choice for creditors seeking to commence insolvency proceedings within the EU.



Debt
Collection,
Restructuring
& Insolvency
NEWS

Contact

GGI Geneva Group International AG
Schaffhauserstrasse 550
8052 Zurich, Switzerland
T: +41 44 256 18 18
E: info@ggi.com
W: www.ggi.com
W: www.ggiforum.com

Let us know what you think about FYI – Debt Collection, Restructuring & Insolvency News, we welcome your feedback. If you wish to be removed from the mailing list, please send an email to info@ggi.com.

Responsible Editor in charge of Debt Collection, Restructuring & Insolvency content:

Claudio Ceradini
European Regional Chairperson of the
GGI Debt Collection, Restructuring &
Insolvency Practice Group

GGI member firm
SLT Strategy Legal Tax
Advisory, Auditing & Accounting,
Corporate Finance, Fiduciary &
Estate Planning, Tax
Via Filopanti, 2/A
37123 Verona, Italy
T: +39 045 806 51 51
E: claudio.ceradini@slt.vr.it
W: www.slt.vr.it