



**UNCITRAL National Coordination Committee
for Australia**

Presents

The Fifth Annual May Seminar

Friday 10th May 2019

Hosted by

University of Canberra

Program Overview

8.45am: Welcome – The Hon. Justice Neil McKerracher (Chair of UNCCA, Federal Court of Australia)

9.00am: Keynote – Jenny Clift (Former Principal Legal Officer at UNCITRAL Secretariat, Vienna)

9.40am: Special UNCITRAL address – Video presentation by Anna Joubin-Bret (Secretary of UNCITRAL)

10.00am: SESSION I – CROSS-BORDER INSOLVENCY

Chair: Michael Murray (Murrays Legal, Sydney)

1. Model Law on the Recognition and Enforcement of Insolvency-related Judgments, and current conflict of laws issues in relation to cross-border insolvency

Stewart Maiden QC (Victorian Bar)

2. Provision of assistance by Australia to Myanmar to adopt the UNCITRAL Model Law on Cross-border Insolvency

Scott Atkins and John Martin (Partners, Norton Rose Fulbright)

3. Regional initiatives in cross-border insolvency

Justice Jacqueline Gleeson (Federal Court of Australia)

11.45am: SESSION II – MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES

Chair: Anne Matthew (School of Law – Queensland University of Technology)

1. From MSMEs to SMEs, UNCITRAL's Work on Limited Liability Organisations

Diane Chapman (Solicitor, Bannister Law, Sydney)

2. UNCITRAL'S UNLLO – Implications and observations for civil society

Jennifer Anderson (Special Counsel, Sparke Helmore Lawyers)

3. Contractual Networks: Alternative Business Forms to Corporate Like Models –

Are Contractual Networks the answer to MSME access to global supply chains and global trade?

Anne Matthew (School of Law – Queensland University of Technology)

4. A Simplified Insolvency Regime Tailored to the Needs of Small Debtors

Michael Murray (Murrays Legal, Sydney)

Anne Matthew (School of Law – Queensland University of Technology)

2.00pm: SESSION III – JUDICIAL SALE OF SHIPS

Chair: Justice Brigitte Markovic (Federal Court of Australia)

1. Commentary: Stuart Hetherington (Immediate past chair, Comite of Maritime International, Partner, Colin Biggers and Paisley)

2. Commentary: Catherine Gleeson (Barrister, Sydney)

3.15pm: SESSION IV – UPDATES ON CURRENT WORKS IN TRADE LAW

Chair: Dr Dalma Demeter (Deputy Chair UNCCA, University of Canberra)

1. Updates from DFAT on Australia's involvement in WTO disputes

Johanna Taylor (Assistant Director, Trade and Investment Law Branch, DFAT)

2. Updates from AGD on Judgments Diplomatic Session; Singapore Convention; International Civil Law Bill

Melissa-Jane Ford (Principal Legal Officer, Private Int'l and Commercial Law Section, AGD)

3. Update on the Inquiry by Hon Roger Gyles AO QC in relation to International Commercial Arbitration

Tim Castle (Chair of the Australian Bar Association, International Committee)

4. Updates from WG IV and the UNLAWS program

Dr Alan Davidson (TC Beirne School of Law – The University of Queensland, UNLAWS Director)

4.15pm: Closing address

About UNCCA

The UNCITRAL National Coordination Committee for Australia (UNCCA), established in 2013 by Tim Castle, is the first of its kind globally. It serves as a platform where academics, legal practitioners and government representatives can discuss topics that are within the scope of the UNCITRAL.

UNCITRAL (United Nations Commission on International Trade Law) is an independent UN Commission comprising 60 member states, elected every three years by the UN General Assembly. Australia is currently a member of UNCITRAL having been elected in 2015 for a 6-year term. UNCITRAL also has a Regional Centre for the Asia Pacific Region based in Incheon, South Korea.

Sitting beneath the Commission are six working groups that are responsible for developing and drafting legal texts in the fields of MSMEs, alternative dispute resolution, investor-state dispute settlement, electronic commerce, insolvency, and security interest. The Working Groups provide a rare forum for multi-lateral discussions of commercial law issues, with a clear focus on producing a solution, in the form of a text, by consensus. Finalisation, meaning adoption, by the Commission gives these texts their official status.

Since 2014, Australians participate in every Working Group meeting either as delegates of the Australian government or - as a result of our work at UNCCA - as NGO observers, usually on behalf of LAWASIA. UNCCA has been instrumental in providing opportunities for such observers, particularly students to participate in observing the Working Group Meetings.

UNCCA operates through a Board of Directors and Expert Advisory Committees (EACs). The directors and the Executive meet regularly by teleconference to progress the operation of UNCCA. The agenda for these meetings reflects the broad scope of UNCITRAL's activities, including working group participation, adoption of texts, and participation in events organized by UNCITRAL's Regional Centre for Asia and the Pacific.

UNCCA's key event is the Annual May Seminar in Canberra to provide a forum for exchange about items of current interest in relation to UNCITRAL. We also seek to organize seminars and other events in the capital cities that are more accessible to a broader group of our friends and supporters. In addition, the UNCCA website gives on-going means of communicating information about the work of UNCITRAL and UNCCA to interested parties in Australia.

We are keen to encourage interested lawyers, academics and students to join UNCCA as associate members to learn more about our work and events, and hopefully progress to the rank of UNCCA Fellow by attending a Working Group meeting, or other equivalent events organized by the RCAP.

Associate members are more than welcome to participate in the work of one of our EACs. These Committees are primarily composed of lawyers and academics with specialist expertise or interest in one of the areas of UNCITRAL's work. The principal role of the EACs is to prepare for upcoming Working Group meetings, but they have a wider role to play in relation to any other matter of relevance to their specialist area.

UNCCA has and will play an increasingly important role in supporting the work of UNCITRAL in Australia, and in providing opportunities for Australian lawyers, academics and students to participate in the development, adoption and implementation of international commercial law. In our last four or five years we have established a national presence, and we have done something relatively rare in Australian legal circles of bringing together expertise from the practicing profession and the academy in relation to the key focus areas of UNCITRAL's work.

Presenters' profiles

The Hon. Justice Neil McKerracher

UNCCA Chair



Justice McKerracher was appointed chair of UNCCA in late 2017. He assumes the position from Former Chair, Tim Castle.

Justice McKerracher was appointed to the Federal Court on 15 October 2007. His Honour generally practised in commercial and civil disputes until his appointment to the Bench. He took silk in 1997. He was actively involved in several professional bodies and served for 15 years as a Director, Chairman and Deputy Chairman of WA Bar Chambers Ltd. He also served as an acting Commissioner of the Corruption and Crime Commission (the CCC), a Senior Sessional Member of the State Administrative Tribunal and as a Commissioner of the Supreme Court of Western Australia. He has chaired a number of educational and sporting institutions

Dr Dalma R Demeter

UNCCA Deputy Chair



Dalma is an academic at the University of Canberra, an international arbitrator, and a legal practitioner for over fifteen years. She has a truly international background encompassing both civil law and common law education and practice, with law degrees from leading European and US universities, and Australian qualifications in higher education. She is teaching and researching in international arbitration, international sales law, international trade law, moot and advocacy. She is also coaching and arbitrating for the Willem C. Vis International Commercial Arbitration Moot in both Hong Kong and Vienna. Her teaching is based on extensive research, and her excellence has been recognised by several teaching awards both locally and internationally.

Combining teaching with practice, Dalma is also an arbitrator in international commercial disputes, a partner at the Australasian Dispute Resolution Centre, and the Deputy Chair of the UNCITRAL National Coordination Committee for Australia (UNCCA). She is also a member of the Law Council of Australia International Division, and of numerous arbitral institutions and professional organisations globally. She is a contributor to law reform inquiries in private international law, alternative dispute resolution and international trade law, and is fluent in English, Hungarian and Romanian.

Jenny Clift



Jenny Clift was formerly the Principal Legal Officer of the International Trade Law Division, United Nations Office of Legal Affairs, which functions as the Secretariat for the United Nations Commission on International Trade Law (UNCITRAL). She was head of the Legislative Branch of the Secretariat, with oversight of the 6 working groups current active at UNCITRAL, and secretary of UNCITRAL's Working Group V on insolvency law. In the latter position, she led the completion of a number of insolvency texts, including the UNCITRAL Legislative Guide on Insolvency Law, parts one to four; the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation; the Judicial Perspective on the Model Law on Cross-Border Insolvency, the revised Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency and most recently the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and Guide to Enactment. Before her retirement at the end of 2018, she also largely completed work on the forthcoming model law on enterprise group insolvency and its guide to enactment, as well as an addition to part four of the Legislative Guide dealing with the obligations of directors of enterprise group companies in the period approaching insolvency.

Prior to joining the United Nations in 1998, Jenny worked as a senior legal adviser for the Australian Attorney-General's Department on international trade law and for five years was the Australian delegate to UNCITRAL's working group on electronic commerce. She has received the INSOL International's Scroll of Honour and is a Fellow of the American College of Bankruptcy.



Anna Joubin-Bret

Mrs. Anna Joubin-Bret is the Secretary of the United Nations Commission on International Trade Law and Director of the Division on International Trade Law in the Office of Legal Affairs of the United Nations. She has been appointed on 24 November 2017.

Prior to her appointment, Mrs. Joubin-Bret was Attorney-at-law and practiced in Paris. She specialized in International Investment Law and Investment Dispute Resolution. She focused on serving as counsel, arbitrator, mediator and conciliator in international investment disputes. She served as arbitrator in

several ICSID, UNCITRAL and ICC disputes. Prior to 2011 and for 15 years, Anna was the Senior Legal Adviser for the United Nations Conference on Trade and Development (UNCTAD). In this capacity, she managed the research and advisory work on international investment law issues as well as the technical assistance program on international investment agreements (IIAs). During her tenure, Anna assisted countries and governments in the formulation of investment policies and frameworks and the management of investor-State disputes. Anna has edited and authored seminal research and publications on international investment law, notably the Sequels to UNCTAD IIA Series. She co-edited with Jean Kalicki a book on Reform of Investor-State Dispute Settlement in 2015. She lectures on international investment law in various universities and institutes all over the world. She holds a post-graduate degree (DEA) in Private International Law from the University of Paris I, Panthéon-Sorbonne, a Masters Degree in International Economic Law from University Paris I and in Political Science from Institut d'Etudes Politiques. She has been Legal Counsel in the legal department of the Schneider Group, General Counsel of the KIS Group and Director-Export of Pomagalski S.A. She has been appointed judge at the Commercial Court in Grenoble (France) and was elected Regional Counsellor of the Rhône-Alpes Region in 1998.

Michael Murray

Michael Murray is an insolvency lawyer, academic and writer. He co-authors the standard text *Keay's Insolvency*, writes on cross-border bankruptcy for LexisNexis and writes for or edits a range of other insolvency publications. He publishes his own views through Murrays Legal.



He is the chair of the expert advisory group for Working Group V which monitors and advises on WGV's debates. Michael has recently attended and presented at insolvency conferences in India and Singapore. He is a visiting fellow at QUT Law School, a member of INSOL Academics and a Fellow and Director of the Australian Academy of Law.



Stewart Maiden QC

Stewart practises in complex commercial litigation, with a focus on insolvency law. He has a broad appearance and advice practice which encompasses cross-border and domestic insolvency, securities class actions, fiduciary and fraud-related actions, banking and finance disputes, corporate control disputes and general commercial litigation. Clients and instructors recognise him as being numerate, articulate and approachable.

Stewart is recognised as a pre-eminent senior counsel in Doyle's Guide's ranking of Victorian insolvency and reconstruction barristers, and as recommended senior counsel in its list of commercial litigation and dispute resolution barristers. Before he took silk, Stewart's work as junior counsel was recognised by Chambers Global as justifying a 'band 1' ranking within its rankings of Australian insolvency and restructuring barristers. Chambers now recognises him as 'new silk' in those rankings.

Stewart is widely published. He edited and co-authored the book *Insolvent Investments* (LexisNexis, 2015). He serves on the Editorial Board of the *Insolvency Law Journal* and writes the chapter on private international law for *McPherson's Law of Company Liquidation*. He has published articles in journals including the *Australian Law Journal*, *International Corporate Rescue*, the *Insolvency Law Journal*, the *Company and Securities Law Journal* and the *Australian Bar Review*, several of which have been cited in superior court judgments.

Scott Atkins

Scott Atkins is an internationally renowned insolvency and restructuring lawyer based in Sydney. He is the head of the firm's Australian risk advisory practice.

Scott is an inaugural Fellow and a member of the Board of INSOL International. He is also Vice President of the Australian Restructuring Insolvency and Turnaround Association (ARITA).

Scott is a trusted adviser to Australia's leading banks and insolvency and restructuring practitioners and has acted on some of the industry's most complex and sensitive banking and insolvency advisory and dispute resolution matters.

Scott is recognised by his peers for his leading expertise in cross-border insolvency, acting on both inbound engagements in Australia and advising Australian clients on outbound engagements in the USA, UK, Cayman Islands, Hong Kong and The Netherlands, among other jurisdictions.

Scott was the Australian delegate on the Advisory Committee on Comparative Law established by the American Bankruptcy Institute as part of its Commission to Study the Reform of Chapter 11 of the US Bankruptcy Code. This resulted in a landmark report for the reform of Chapter 11.





John Martin

John Martin is an insolvency and restructuring partner at Norton Rose Fulbright, specialising in cross-border insolvency. In this field, John has been directly involved in three of the seminal international cases:

- In 2008, he advised the successful appellants in the House of Lords in *Re HIH*, in which Lord Hoffmann identified the "golden thread of universalism" as having been the foundation for cross-border insolvency law.
- In 2012, he advised the successful Australian liquidator of New Cap Re in the Grant proceedings determined jointly with *Rubin v Eurofinance*, in which most of the UK Supreme Court retreated from Lord Hoffmann's embrace of universalism.
- He was also part of the Australian legal team acting for Perpetual Trustees in the so called "flip clause" litigation in the US and the UK arising out of the Lehman bankruptcy.

In June 2016, John was appointed to the Board of the International Insolvency Institute, and he currently serves as Vice President.

In July 2017, John presented a paper, jointly authored with Professor Ros Mason, to the United Nations' 50th Anniversary UNCITRAL Congress in Vienna, titled "Conflict and Consistency in Cross-Border Insolvency Judgments".

Together with restructuring partner Scott Atkins, John has prepared drafts of new insolvency laws for the Republic of Myanmar, and has twice presented to members of the Parliament's Upper House



Justice Jacqueline Gleeson

Jacqueline Sarah Gleeson was appointed to the Federal Court of Australia in April 2014. Her Honour sits in the following National Practice Areas of the Court: Commercial & Corporations, Administrative & Constitutional Law & Human Rights, Admiralty & Maritime.

Her Honour graduated from the University of Sydney with a Bachelor of Arts and a Bachelor of Laws in 1989 and a Master of Laws in 2007. She was an associate to the former Federal Court judge, the Honourable Trevor Morling. Justice Gleeson was admitted to the New South Wales Bar in 1991, leaving the Bar after nine years to become general counsel at the Australian Broadcasting Authority and later a senior executive lawyer for the Australian Government Solicitor. Her Honour returned to the NSW Bar in 2007 and took silk in 2012.

Anne Matthew

Anne Matthew is a lecturer at the School of Law, Queensland University of Technology. Anne's research focuses on innovation, entrepreneurship and regulation. Anne's current research projects include an examination of regulatory approaches to artificial intelligence, and the regulation of micro, small and medium enterprise, particularly those engaged in innovation and entrepreneurship.



Anne is currently finalising her PhD in the regulation of corporate governance in innovative and entrepreneurial enterprise. Anne's PhD thesis engages with economic theory to explore how legal and regulatory frameworks accommodate and encourage entrepreneurship and innovation, access to finance and good corporate governance. Anne is keen to support the ongoing success of start-up culture development and innovation initiatives on campus and participates as an academic mentor in Disrupting Law, an annual 54 hour hackathon in which lawyers and students collaborate to generate new ideas seeking to advance legal practice via technology and innovation. Anne lectures in corporate Law, international commercial law, including international sales law, and international commercial arbitration, and a new unit on artificial Intelligence, robotics and law. Following her admission as a solicitor of the Supreme Court of Queensland in 1993, Anne practised in commercial property, banking, finance and small business advisory.

Diane Chapman

Diane Chapman is admitted as a solicitor of the High and Federal Courts of Australia and the Supreme Court of New South Wales. She is a Founding Fellow of the United Nations Commission for International Trade Law (UNCITRAL) National Co-ordination Committee Australia and a Fellow of the Financial Services Institute of Australasia (FINSIA). Diane has a Masters in Business Administration from the University of Sydney and post-graduate qualifications in Applied Finance, Financial Planning and Legal Practice. She is a Special Counsel with Bannister Law and manages several high-profile Australian class actions and she is a qualified financial planner.



Jennifer Anderson



Jennifer Anderson is a practising solicitor as Special Counsel at the Newcastle office of national law firm Sparke Helmore Lawyers. At this firm Jennifer acts primarily for major landowners including airports and seaports. Jennifer holds a Bachelor of Economics and Bachelor of Laws from University of Sydney and a Master in International Affairs and Diplomacy from UOC & UNITAR. Her Master Thesis was on best practice for a State responding to support communities impacted by climate change rising sea levels.

In addition to roles in private practice including in New York City and Sydney, Jennifer has worked as in-house corporate counsel, as a senior government lawyer and in commercial non-legal roles. Her roles have spanned four continents including in developing economies and rural areas. She has also held office for international charities and is committed to addressing inequality and gender equity. Jennifer has represented LAWASIA on Working Group I MSME at its 31st session in Vienna in October 2018 and 32nd Session in New York City in March 2019.

Justice Brigitte Markovic

The Hon Brigitte Sandra Markovic was appointed a judge of the Federal Court of Australia on 24 August 2015.

From 1988 to 2015, Justice Markovic practised as a solicitor at a national Australian law firm. She was appointed a partner in 1997 and for a period of 4 years (2010 to 2014) was national managing partner of the firm's litigation and dispute resolution department. As a solicitor and partner, Justice Markovic practised in the areas of insolvency, corporations including in relation to regulatory inquiries, commercial and administrative law for a range of clients including in a number of high-profile insolvencies and significant proceedings in the superior courts in Australia.



Justice Markovic graduated from the University of New South Wales in 1988 with degrees of Bachelor of Commerce and Bachelor of Laws.

Stuart Hetherington

Stuart is a partner of Colin Biggers & Paisley and the immediate Past President of the Comité Maritime International (CMI).

Stuart was the Honorary Secretary of the New South Wales Branch of the Maritime Law Association of Australia (then Maritime Law Association of Australia and New Zealand (MLAANZ)) from 1976 to 1981; he was the Secretary of MLAANZ from 1981 to 1985, Vice-President from 1989 to 1991 and President from 1992 to 1994. He was appointed an Executive Councillor of the CMI in 2001 and became its President in 2012. His term of office ceased on 9 November 2018 after his second term of three years. He chaired the CMI International Working Groups that were formed to examine the issues of Places of Refuge and to review the Salvage Convention and has led the team that has resulted in the CMI's work on Judicial Sales being taken up by UNCITRAL.

Stuart has instructed Counsel in cases, shipping casualties and cargo claims in the Privy Council (*Candlewood Navigation Corporation v Mitsui OSK Lines Ltd*); the Supreme Court of the United States (*Norfolk Southern Railway Company v James N Kirby Pty Ltd*) and the High Court (in various cases including *Sanko Steamship Co Ltd v Sumitomo Australia Ltd*); Marine insurance, and Admiralty cases including the arrest and sale of ships. Stuart has practised in the area of maritime law since 1976. He has acted in cases involving casualties around the Australian coast. He is the author of the first published text on the Admiralty Act 1988 in his "Annotated Admiralty Legislation". He has been listed in all the recognised publications, *The Best Lawyers in Australia*, *Doyle's Guide*, *the Legal 500 Asia Pacific*, *Chambers and Partners* and *Who's Who Legal Transport* (2015, 2016, 2017 and 2018).



Catherine Gleeson

Catherine is a barrister at New Chambers in Sydney. She has a BA and LLB from the University of Sydney and a BCL from Oxford University.

Catherine developed a practice in maritime and international trade law on coming to the bar, after several years practising as a solicitor in Sydney and London. She has appeared as junior counsel and unled in a number of maritime and transport matters in the Federal, Supreme and District Courts, and also appears in commercial and insurance matters involving questions of private international law. Catherine is recommended counsel in shipping and transport in several industry guides.

Johanna Taylor

Johanna Taylor is Assistant Director, Legal in the Trade and Investment Law Branch DFAT. In this position, she provides legal advice to the Government on international trade law matters and represents Australia in Geneva on WTO disputes. Johanna has worked on trade policy and international legal issues in DFAT for a decade. Prior to joining DFAT, Johanna held policy roles at the Department of the Prime Minister and Cabinet and the Attorney-General's Department. She has a Bachelor of Arts/Law from the Australian National University.



Melissa-Jane Ford

Melissa Ford is the Principal Legal Officer of the Private International and Commercial Law Section at the Commonwealth Attorney-General's Department. The Private International and Commercial Law Section is Australia's designated National Organ to the Hague Conference on Private International Law and is the Central Authority for the Hague Service and Evidence Conventions.

Melissa is currently working on the implementation of the Hague Conference Choice of Court Convention through a new International Civil Law Bill and preparations for the Hague Conference Judgments Project Diplomatic Conference, scheduled for June 2019. Melissa attended the 3rd and 4th Special Commissions on the Judgments Project and has worked at the Attorney-General's Department since 2009.

Tim Castle

From 1992-2007, Tim was a barrister at Seven Wentworth Chambers for over 15 years and appeared in several leading corporate disputes including the Superleague case, *Hungry Jacks v Burger King*, and the C7 Dispute for Telstra. Prior to that, Tim was a commercial litigation solicitor at Mallesons Stephen Jaques, now King & Wood Mallesons.

Prior to returning to the Bar in 2013, Tim practiced as a partner at specialist corporate law firm Atanaskovic Hartnell, was a Senior Executive Leader in Financial Special Deterrence at ASIC, in-house Counsel at Competitive Foods Australia Pty Ltd, one of the largest restaurant franchisees in Australia, and had a range of other roles whilst acting as a solicitor in his own practice.



In 2013, Tim established, in Australia, the first UNCITRAL National Coordination Committee. Tim has spoken at a number of UNCITRAL and other international conferences on CISG and cross-border insolvency and provided high level advice on a cross-border insolvency issue. Tim has also represented LAWASIA at UNCITRAL Working Group I in relation to the development of a simplified company law for Micro, Small & Medium Enterprises.



Alan Davidson

Dr Alan Davidson has been an academic at the University of Queensland for 2 decades and is a solicitor and barrister. Since 2011 Dr Davidson has participated in UNCITRAL Working Group IV in Vienna and New York, and in 2014 was invited to join its Panel of Experts. He is a Director and Fellow of UNCCA and is its Education Director organising more than 50 law students attendance at UNCITRAL. He is a Fellow of the Institute of International Banking Law and Practice and a member of the Council of International Standby Practices of the Institute. He has been a visiting academic in the USA,

Thailand, Indonesia, Singapore and China. His book *Social Media and Electronic Commerce Law* has been published in 2 editions by Cambridge University Press. He has also published *The Internet for Lawyers* and *The Internet for Accountants* and numerous interactive computer based workbooks and teaching manuals

Abstracts and papers

Special address from the UNCITRAL

Anna Joubin-Bret (Secretary of UNCITRAL)

[The full pre-recorded presentation can be viewed here](#)

Model Law on the Recognition and Enforcement of Insolvency-related Judgments, and current conflict of laws issues in relation to cross-border insolvency

Stewart Maiden QC (Victorian Bar)

UNCITRAL's *Model Law on Recognition and Enforcement of Insolvency-related Judgments* (the MLRE) was adopted in July 2018 and recommended for local enactment by the United Nations General Assembly in December 2018. It seeks to fill a significant gap left by the 1997 *Model Law on Cross-border Insolvency* (MLCBI) and address the uncertainty created by decisions such as *Rubin v Eurofinance Ltd* [2013] 1 AC 236. While the MLRE is yet to be incorporated in the legislation of any state, it is likely to be taken up, at least by many

of the 46 states that have enacted legislation based on the MLCBI. Stewart Maiden QC will explain the origins, importance and operation of the MLRE, describe the interaction between the two Model Laws, and explore the context in which an Australian instantiation of the MLRE would operate.

Provision of assistance by Australia to Myanmar to adopt the UNCITRAL Model Law on Cross-border Insolvency

Scott Atkins and John Martin (Partners, Norton Rose Fulbright)

Over the last two years, Norton Rose Fulbright partners Scott Atkins and John Martin have (as international experts engaged by the Asian Development Bank) been assisting the Union Supreme Court of the Republic of Myanmar in preparing a draft new insolvency law for enactment by Myanmar's parliament. The engagement has involved extensive in country due diligence, consultation with relevant stakeholders, and preparation of both a lengthy policy report and a draft new insolvency law. The objective has been to prepare a draft law that, at the same time, is reflective of international best practice, is capable of working effectively in the current environment in Myanmar, as well as working effectively into the country's future.

In identifying and reflecting best practice in both the policy report and the draft of the law, heavy reliance has been placed on UNCITRAL insolvency texts, including most relevantly UNCITRAL's "Legislative Guide on Insolvency". Additional assistance was obtained from the World Bank's "Principles of Effective Insolvency and Creditor/Debtor Regimes", and the IMF's "Orderly and Effective Insolvency Procedures".

The identification of international best practice also involved a review of international comparative law, a fertile source of information given that most countries in the region (other than Australia) have recently embarked on significant insolvency law reforms so as to modernise their insolvency systems. And along the way, we have had some interesting experiences in persuading conservative institutions with limited historical engagement with foreign systems to embrace the UNCITRAL Model Law on cross border insolvency, and to grapple with the interaction of a new modern insolvency system with established practices such as a preference for the retention of Debtors' Prison

Regional initiatives in cross-border insolvency

Justice Jacqueline Gleeson (Federal Court of Australia)

1 The subject matter of cross border insolvency lends itself to dialogue across jurisdictions. Chapter IV of the Model Law, comprising Articles 25–27, provides for cooperation with foreign courts (and foreign representatives) in the cross-border insolvency matters that are referred to in Article 1 of the Model Law.

2 The Australian judiciary and former members of the judiciary participate in several fora which promote efficiency and effectiveness in cross-border insolvencies. These include the

biannual INSOL International/UNCITRAL/World Bank multinational judicial colloquium on Insolvency in Singapore and associated events; the Judicial Insolvency Network (“JIN”) and the Asian Business Law Institute. In addition, Australian judges regularly speak at legal conferences on topics concerning cross-border insolvency.

3 Justice Gleeson will describe the recent and continuing participation of the Australian judiciary in dialogue on this area of critical economic significance. In particular, her Honour will explain the genesis and work of the JIN, an international group of insolvency judges which aims to provide judicial thought leadership in cross border insolvency and restructuring; to develop best practices in cross border insolvency and restructuring and to facilitate communication and cooperation amongst national courts in cross border insolvency and restructuring matters.

From MSMEs to SMEs, UNCITRAL’s work on Limited Liability Organisations

Diane Chapman (Solicitor, Bannister Law, Sydney)

Part of the mandate of UNCITRAL’s Microfinance Working Group, over the last five years has been developing a cost effective and simplified legal framework for incorporation of micro, small and medium enterprises or (M)SMEs. This free standing legislative framework has now been termed by UNCITRAL as a United Nations Limited Liability Organisation (UNLLO).

[The full presentation notes are available for download here.](#)

UNCITRAL’S UNLLO – Implications and observations for civil society

Jennifer Anderson (Special Counsel, Sparke Helmore Lawyers)

As UNCITRAL’s Working Group I MSME UNLLO legislative guide process progresses, observations for Civil Society including lawyers, international organisations and NGOs can be made. Do we have a corporate structure with the UN’s name on it that Civil Society should encourage States to adopt? What issues should Civil Society be aware of to prepare for UNLLO implementation? Where does UNLLO and technology platforms fit? The presentation will draw out these aspects from ‘between the lines’ of the Working Group’s reports of its work in progress.

Further consideration of the Working Group I MSME UNLLO governance organisation from the perspective of civil society of international organisations, the global NGOs and foundations, universities and the larger social entrepreneurs. Submitted that it is an appropriate time for civil society to be aware of UNLLO and stay informed of it as the Legislative Guide is progressed because relevant civil society facilitates micro and small business which is also the objective of the UNLLO governance initiative. Further submitted

that this has merit even when it is not certain at this point the extent of how the UNLLO Legislative Guide as finalised may address challenges facing micro and small businesses. Comment on UNLLO from the view of civil society concern for persons without formal education to not be disadvantaged, the potential benefit of UNLLO as associated with the United Nations' name and potential for UNLLO to be used across several countries to support the work of international organisations. Concluded civil society can become aware of UNLLO, stay informed and be involved in taking forward UNCITRAL's work.

Contractual Networks: Alternative Business Forms to Corporate Like

Anne Matthew (School of Law, Queensland University of Technology)

This presentation considers the nature of the Italian contratto di rete as a model for allowing small, entrepreneurial and innovative enterprise to form a networked enterprise with limited liability. The contratto di rete allows for the partitioning of business assets via a separate capital fund, where certain assets are nominated for contribution to the fund for use of the business and for the satisfaction of its creditors. Status as a separate legal entity is possible, but not necessary to access limited liability. This model has been taken to the Commission, and put to Working Group I as a possibility for its future work.

The contratto di rete was introduced into Italian law in 2009 with the object of fostering an environment conducive to innovation and entrepreneurship. To date 5,287 contracts are in place involving 31,968 entrepreneurs. In a nutshell, the contratto di rete allows entrepreneurs to enhance their individual capacity by joining collectively in a networked contract. Taking the form of a multiparty networked contract, the contratto di rete enables the smallest of micro enterprises to access international markets and the supply chains of larger, more established entities. This presentation will explore the possibility of these limited liability enterprises in enabling cross border cooperation and access to global supply chains, as well as the more obvious advantages of leveraging pooled of information and services across sectors. Their suitability for Australian entrepreneurial enterprise will be considered.

A Simplified Insolvency Regime Tailored to the Needs of Small Debtors

Michael Murray (Murrays Legal, Sydney)

Anne Matthew (School of Law – Queensland University of Technology)

The insolvency of MSMEs raises particular issue across jurisdictions where insolvency laws are generally focused on larger enterprises involving procedural complexity and cost and where the particular issues raised by MSMEs are not addressed.

A draft text on a simplified insolvency regime is before the next meeting of Working Group V (Insolvency) of UNCITRAL in New York on 28-31 May 2019.

The Commission has asked WGV to offer a range of new and simplified mechanisms for MSME insolvency that take into account the need for them to be “equitable, fast, flexible and cost efficient”.

The importance of the topic lies in the recognition of the impact of MSME insolvency on “job preservation, the supply chain, entrepreneurship and the economic and social welfare of society”. UNCITRAL also notes the “growing recognition of the negative consequences of unresolved financial difficulties for micro and small business debtors that, burdened by old debt, may be discouraged from taking new risks or become trapped in a cycle of debt or driven to the informal sector of the economy”.

Options being considered by WGV include out of court resolutions and simplified court processes, combined treatment of personal and corporate debt, determination of criteria for access and commencement, operation of stays of creditor actions, “zero-asset proceedings”, debtor in possession models and processes of discharge.

The presentation will offer a broad coverage of the issues involved and the options proposed by WGV. A brief comment will be made on Australia’s legal and commercial environment for MSMEs and what features and reform ideas, if any, seek to address their insolvency.

The session will also examine and explain an early possibility put to WGV for a modular approach to MSME insolvency.

[The full paper is available for download here](#)

Judicial Sale of Ships Commentary: Stuart Hetherington (Immediate past chair, Comité of Maritime International, Partner, Colin Biggers and Paisley)

The history of the Comité Maritime International (CMI), with particular emphasis on the International Conventions that it has drafted.

How a judicial sale of ships takes place.

The reasons why the CMI drafted an international instrument on the recognition of Judicial Sales of Ships. The contents of the Instrument that CMI drafted.

The attempts which have been made to have an international organisation take on this work in order to obtain an international convention.

UNCITRAL Working Group VI and the task ahead.

[The full paper is available for download here](#)

Updates from DFAT on Australia's involvement in WTO disputes

Johanna Taylor (Assistant Director, Trade and Investment Law Branch, DFAT)

Update on Australia's current involvement in WTO disputes, including those in which Australia is a complainant (Canada-wine; India-sugar); respondent (Tobacco Plain Packaging (Honduras, Dominican Republic); A4 Copy paper (Indonesia)) and a third party. Brief discussion of the current impasse regarding Appellate Body appointments

Updates from AGD on Judgments Diplomatic Session; Singapore Convention; International Civil Law Bill

Melissa-Jane Ford (Principal Legal Officer, Private International and Commercial Law Section, Australian Government Attorney-General's Department)

Melissa Ford will focus on the harmonisation initiatives of the Attorney-General's Department in the private international law arena. In particular, she will provide an update on: (i) the final stages of negotiation and completion of the Hague Conference on Private International Law's Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, and (ii) domestic implementation of the Hague Conference Convention on Choice of Court Agreements 2005. Additionally, Ms Ford will highlight potential upcoming work on the Singapore Mediation Convention

Updates from WG IV and the UNLAWS program

Dr Alan Davidson (TC Beirne School of Law – The University of Queensland, UNLAWS Director)

In his capacity as Director of the UNLAWS program, Dr Davidson reports on the current status of the program; with more than 50 students attending to date,

As Chair of the UNCCA EAC for WG IV, Dr Davidson reports on the current deliberations; including the status of the Model Law of Electronic Transferable Records (2017) and the progress on a text on Identity Management and Trust Services.

Dr Davidson also reports on his experience spending a week as a researcher at UNCITRAL in Vienna in November 2018 and on the operation of the UNCITRAL Society at UQ, with 27 student participants to date.

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