

INSOL ERA Virtual Meeting 26 January 2022 @ 9.00am GMT

Link: <https://insolinternational.zoom.us/j/83503707832?pwd=YnUveEpIRIUzTUdwWjVKS3h0UldVQOT09>

Meeting ID: 835 0370 7832

Password: 819210

9:00 – 9:05 | Welcome & Introduction

- Prof Juanitta Calitz (Chair, INSOL ASC)
- Dr Eugenio Vaccari (Chair, INSOL ERA)
- Dr David Burdette (Senior Technical Research Officer, INSOL International)

9:05 – 9:20 | *The tax priority in Australian corporate insolvency: A Dworkinian approach* by Dr Catherine Brown - Lecturer, Queensland University of Technology, Australia



In 1988, the Australian General Insolvency Inquiry (Harmer Report) recommended that the principle of *pari passu* should be maintained as a fundamental policy objective underpinning Australian insolvency laws. On this basis, it was recommended that the preferential treatment for Australian taxation debts be abolished.

In the 30 years following the Harmer Report, Australian taxation and insolvency legislation is increasingly complex and inconsistent. As the Australian government grapples with its response to the economic impact of COVID-19, the issue of whether taxation should be given preferential treatment in corporate insolvency will inevitably arise. This paper argues Dworkin's rights thesis and equality theories provide a framework for determining whether any departure from *pari passu* can be justified in the context of Australian taxation and corporate insolvency law.

9:20 – 9:35 | *The Corporate Insolvency and Governance Act 2020: A statute to mitigate the rise in zombie companies in England and Wales?*
by Marcus Greet - Future Trainee Solicitor Jones Day LLP, LLM (KCL), LLB (Essex)

There is a strong negative correlation between the market share of companies that may be classified as “zombie companies” (companies that are unprofitable and rely on loans to survive) and the state of a country’s economy. Where a country’s economy positively correlates with societal well-being, it is evident that zombie companies are undesirable, and their presence should be minimised where possible.



Insolvency frameworks can be effective in minimising the market share of zombie companies. Whilst England and Wales’ framework is considered to be well-equipped to minimise the share of zombie companies and capital sunk within them, some aspects of it may cause the number of zombie companies and the amount of capital sunk within them to increase.

This paper critically analyses the English administration procedure and highlights those deficiencies that – more than others – are contributing to the increasing prevalence in zombie companies and amount of capital sunk within them. This article builds on these findings to investigate whether the Corporate Insolvency and Governance Act 2020 will address the administration’s shortcomings and consequently allow zombie companies to return to profitability or exit the market.

9:35 – 9:50 | *The modern role of insolvency practitioners amidst globalisation and the changing concept of the “professional”*
by Dr Elizabeth Streten - Lecturer, Queensland University of Technology, Australia



A growing volume of literature is currently considering professionals in this era of globalisation and technology. Social and cultural assumptions, which had previously grounded the epithet “professional”, are now subject to unprecedented uncertainty and arguable incompatibility with the contemporary world.

Insolvency practitioners have conceivably been the subject of under-confidence from their regulators, stakeholders and the general public for some time. The question has now become how insolvency practitioners can manage their complex role amidst the ongoing disruption of modern technology, changing social

expectations and the general loss of unquestioning trust and confidence once afforded to the respected class of the “professional”.

9:50 – 10:00 | **Q&A and closing**