# Insolvency and Restructuring jurisdiction

## Introduction

1. This paper is prepared to advance the specialist role of the ICCJs. The recommendation is that the ICCJs share the jurisdiction with HCJs to determine convening and final hearings of schemes of arrangement. There are four parts to this paper. First the importance of specialist insolvency and restructuring judges. Second a brief mention of the international arena where jurisdictions familiar to us have chosen to identify and promote the use of insolvency and restructuring judges. Third, a little about the ICCJs since 2018. Lastly a recommendation.

## Part 1

2. The World Bank Group explained in its 2021 that efficient and predictable insolvency and debt resolution frameworks are key drivers to an economy. It recognised that insolvency did not always provide the best outcome and a need to establish a restructuring regimes. Through its Judicial Training College Program, the World Bank trains judges in insolvency and restructuring law to ensure consistent and expert adjudication.
3. The World Bank's Standards and Codes assessments evaluate countries on the presence and effectiveness of specialist courts as part of their insolvency infrastructure.
4. A 2023 paper from City, University of London argues that specialist courts are essential for balancing creditor and debtor interests, especially in developing economies where generalist judges may lack insolvency expertise. The paper says:

   > "The UK moved a step forward to establishing a specialist insolvency and business court in 2018, when the judicial office of registrar in bankruptcy of the High Court was renamed the Insolvency and Companies Court. This in effect, afforded the Insolvency and Companies Courts complete power to preside over proceedings on bankruptcy, company winding-up, and all other matters in relation to insolvency and restructuring proceedings."

5. The paper explores how specialist courts better navigate redistributive issues and complex restructuring plans, citing UK and US models as benchmarks. It is correct save that the ICC Judges do not hear scheme of arrangement convening meetings, final hearings or Part 26A Plans.
6. In summary, insolvency and restructuring go hand in hand. Where a company becomes unviable it needs to be liquidated but liquidation does not always

provide value. The ICC is a specialist court that the Chancellor can help develop into a leading insolvency and restructuring court.

**Part 2**

7. Other than the UK the main bankruptcy (to use the word in the broad sense to mean insolvency and restructuring) jurisdictions in the world are the United States where Bankruptcy cases are handled by U.S. Bankruptcy Courts in specialized District Courts, and Singapore where the High Court has specialist judges and procedures not dissimilar to our own. There is a growing number of specialist insolvency and restructuring jurisdictions in Europe such as Germany; the Netherlands where insolvency and restructuring cases are heard by specialist divisions; and Denmark where specialist judges handle insolvency and restructuring cases in Copenhagen. Saudi Arabia has redrawn its insolvency and restructuring laws part modelled on US law and part modelled on UK law.
8. These jurisdictions recognise the importance of specialism and bring together insolvency and restructuring.
9. The US is considered by most to be the world leader where the judges hear cases involving individual and business bankruptcies. They pride themselves on specialism which feeds efficient processes for asset protection, debt adjustment, and distribution of property. They are the equivalent of Circuit Judges who are specialist. Appeals from the Bankruptcy Judges lie to the US District Court.

**Part 3**

10. The ICCJs present a valuable addition to the English court system that is open to further development. The calibre of judges recruited into the ICC has matched the changes made by the Insolvency Practice Direction 2018. The Practice Direction provides, save for a few procedural matters such as contempt and freezing orders, the ICCJS with the same jurisdiction as the HCJs. In the first quarter of 2025 the ICCJs had listed 60 trials compared with 80 trials before HCJs.
11. The obvious development that has been overlooked relates to restructuring. Although the ICCJs deal with voluntary Arrangements (a form of restructuring) and Administration (potentially a form of rescue), hear members' schemes of arrangement, and first hearings for insolvent schemes of arrangement the Practice Statement of Part 26 and 26A prohibits their involvement in convening meetings and final sanction meetings.
12. There is no obvious rationale for the limitation. The restriction acts as break on development and diminishes the role. The Practice Statement is at odds with law firm structures that have insolvency and restructuring teams, favours less experienced or academically qualified judges (those not academically trained in insolvency) to hear restructuring, and misses the opportunity to develop the

English specialist court in a manner that is compatible with the leading insolvency and restructuring jurisdictions. We believe that the majority of HCJs would agree.

13. Since 2018 competitions for ICCJs, run by the JAC, requires candidates to demonstrate specialist insolvency and company knowledge and experience. If a candidate is interviewed, insolvency and company law expertise is tested in the situational questioning.
14. Specialist insolvency and restructuring Judges from jurisdictions around the world visit the Rolls Building to see how the ICC Judges conduct insolvency business. They discuss their jurisdictions and sit in hearings with an ICCJ. Recently a Bankruptcy Judge from the Eastern District of New York sat with two ICCJs in the Rolls Building. She commented that the ICC Judges have a similar diet of cases. The exception is that the Eastern District Judges hear and manage restructuring cases.
15. The advantages of upskilling the ICCJs are axiomatic:
    a. The restructuring skills will be embedded in a group of specialist judges which pass the knowledge and skills from one generation of judges to the next.
    b. The variety of work and increase of credibility of an advancing specialist court will help recruit the brightest and best candidates.
16. It may be said that there is a problem with appeals in that the Court of Appeal should hear appeals relating to a final decision made on a claim for a scheme of arrangement. That is easily fixed by (i) a CPR alteration (ii) use of the leap frog procedure or (iii) if it is obvious that a new point of law is being raised or a developing point of law arises the ICCJ should transfer to a HCJ.

**Part 4**

17. The recommendation is that the ICCJs share the jurisdiction to determine schemes of arrangement. The advantage to users is that there will be 24 judges available to hear scheme work rather than 17. Users have already said that they would welcome the change.
18. It is not said that the ICCJ should hear all the final hearings or convening meetings. Even if desirable it would be unachievable with current resources. Resource will naturally reduce the number of convening and final hearings to be heard by a ICCJ.
19. The ICCJs hear all Schemes at the first hearing. At the first hearing the parties can be invited to give an indication of complexity, whether a new point of law is to be raised, or if there is likely to be a contested final hearing. Each of these factors will be used to determine whether the convening and final hearing is to be before a HCJ or ICCJ.

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