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INSOLVENCY & BUSINESS RESCUE

Director, Nastascha Harduth, becomes the first female fellow of INSOL international in SA

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The on-going global financial crisis, recent confirmation by STATSSA that South Africa is in a technical recession and the globalization of business will result in South Africans seeing more informal restructuring and insolvency proceedings than ever before.

As a director within Werksmans Attorneys' Insolvency, Business Rescue & Restructuring Practice Group, Nastascha Harduth has been involved in advising on the informal restructuring of distressed companies, and has also been involved in business rescue proceedings, and both voluntary and compulsory liquidations.

Little wonder then that she enrolled for INSOL International's Global Insolvency Practice Course. INSOL International is a world-wide federation of national associations for accountants and lawyers who specialise in turnaround and insolvency. It currently has over 10,000 members.

The course focusses on the mechanics of cross border insolvencies and how international insolvency issues in a large part of the world are solved. This was an intense course consisting of three modules. The first two modules focussed, amongst other subjects, on informal work-outs alongside INSOL International's Statement of Principles for a Global Approach to Multi-Creditor Workouts, Management and Business Failure, the UNCITRAL Model Law on Cross-border Insolvency Law, Chapter 15 proceedings in the United States, insolvency laws in the United Kingdom, and the European Union Regulation on Insolvency Proceedings. The course also touched on insolvency laws in Brazil, Germany, India, and Canada.

However, what interested Harduth the most were the sessions dealing with Chapter 11 under the United States' Bankruptcy Code, and the Schemes which are used in the United Kingdom to restructure insolvent companies. Asked why, she responded: "*South Africa's business rescue proceedings are very similar to Chapter 11 proceedings in the USA, but section 155 of our Companies Act also offers us the opportunity to restructure companies in a manner very similar to Schemes in the UK*".

Harduth also had to prepare a short paper. Although topics were suggested, she chose to seek permission to write a paper concerning Africa. Her paper was headed "Recognition of Formal Business Rescue Regimes between Member States of the Southern African Development Community". Harduth argues therein that, even though member states of the SADC do not have treaties in place that would enable recognition and enforcement of foreign insolvency proceedings, the principles of comity and convenience means that it should not be ruled out altogether either.

The last Module entailed a simulation which involved a video conference motion before judges of the US and the UK courts, and almost two weeks of negotiations and court proceedings before six judges from five jurisdictions. Harduth recalls that this was the most gruelling Module, but ultimately she achieved an excellent grade for this simulation as her "Brazilian miming company" was the only company in the simulation that was able to restructure its affairs outside of formal insolvency proceedings. Harduth recalls with glee that she did, however, have to keep the "Brazilian Government" at bay by launching an application challenging the constitutionality of its actions. The Brazilian Judge found in favour of Harduth's company.

Asked about the benefits of this course Harduth reported that "*Few enterprises are purely domestic and almost all significant restructurings and insolvencies are multi-jurisdictional. This course has provided me the tools necessary to be successful in the*

new world of global insolvency practice. One of the greatest outcomes of the course has been my development, being surrounded with professionals from around the World."

Having successfully completed this course and having been placed within the top 10 of her class Harduth has, from 1 July 2017, become the first female South African Fellow of Insol International. She is also a member of the committee arranging INSOL International's regional conference in New York next year.

For further information or legal advice regarding Insolvency, Business Rescue and Restructuring, please contact Nastascha Harduth on nharduth@werksmans.com



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