

## *“United We Stand”: Why INSOL Needs an Anti-Fraud Group*

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Interest in fraud investigation and recovery associated with insolvency work has continued to grow amongst the insolvency community. The list of major insolvencies where fraud is a significant factor rolls on - Worldcom, Madoff, Stanford. Elsewhere Juan Ferré has written about Pescanova. These are the tip of the iceberg.

As some of you will know, an informal Anti-Fraud Group within INSOL International was formed at The Hague Congress last year. Similar interest groups exist within other organisations, including INSOL Europe and R3.

The skill base and type of work in which insolvency practitioners and insolvency lawyers are engaged has significant crossover into the forensic and investigations world. Business failure is often accompanied by fraudulent activity. We investigate to preserve and recover assets, to set aside voidable transactions and to ensure that appropriate sanctions are applied to directors and others responsible for fraudulent activity.

The tools available to do this vary from one jurisdiction to another. On appointment, when there is an urgent need to act quickly in another territory, the ability to access quickly a local insolvency expert with forensic investigation experience can save valuable time. Alternatively, insolvency processes such as Court appointed

receivership or provisional liquidation can be used as tools to pursue proceeds of fraud, with investigative powers and judicial support.

Questions for the insolvency practitioner are:

- What are the most appropriate local asset identification and freezing processes in the particular circumstances?
- How to preserve evidence?
- What civil and criminal remedies exist?
- What co-operation and recognition of powers will the external liquidator get from the local Courts?
- How does my claim as insolvency trustee sit with competing claims of defrauded creditors and regulatory prosecutors?
- What is the costs exposure?
- Is there litigation funding available?
- Who can I trust?
- Who can give me urgent practical help in that jurisdiction?

The answer is - members of the Anti-Fraud group. Presently the group is small and far from perfectly formed. There is interest in sharing experience. Suggestions were made for other projects. But it needs more critical mass and diversity. We will publicise it further at the Hong Kong conference. The Tuesday session, Fifty Shades of Greed, will no doubt be of great interest to those involved in this area. Get in touch and join the group. Details of group members will be listed on the INSOL website.

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## *Pescanova: Turbulent waters*

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Founded more than 50 years ago, the Spanish listed company Pescanova, S.A. (“Pescanova”) became a world leader in the fishing sector, with operations in Europe, North and South America, Africa, Asia and Australia. The company was considered a champion in its field and ranked consistently among the most integrated and innovative entities in its sector.

On February 28, 2013, the Chairman of the Board of Directors of Pescanova filed a relevant event with the Capital Markets National Commission (CNMV) announcing that the Board had decided to suspend the formulation of annual accounts. One day later Pescanova submitted a petition to the court in order to receive a protection period of 4 months to negotiate an agreement with its creditors. On March, 12, 2013 Pescanova filed a new relevant event with the CNMV informing about significant discrepancies between the accounting registries and the actual amount of the finance debt. On April 4, 2013, the company submitted a further relevant event to the CNMV announcing that it was considering retaining one of the Big 4 audit firms in order to undergo a thorough forensic analysis of the accounts of the group. Two weeks later KPMG was retained to conduct the forensic investigation. On April 2013 Pescanova opened formal insolvency proceedings and Deloitte was appointed as insolvency administrator. The largest fraudulent insolvency case in the history of Spain had just started.

On July 10, 2013 KPMG issued its forensic report (the “Report”). The main conclusions with respect to the

potential fraud scheme were as follows:

- (a) Pescanova undertook several fraudulent acts seeking to obtain financing and working capital
- (b) Pescanova created a structure of several instrumental companies whose sole purpose was to issue false invoices which were subsequently factored with several financial entities.
- (c) Pescanova obtained banking finance via letters of credit issued by companies of the Pescanova group that did not correspond to actual transactions for the import or export of goods.
- (d) Pescanova issued invoices to real clients with whom no commercial relation existed for a long time and subsequently factorized those invoices with several financial entities to obtain financing.

The result of the necessary adjustments in the accounts of Pescanova due to the fraudulent actions of the company was an increase in the amounts of debts of more than 2.241m€ Year after year the Chairman of the Board and a small number of group executives built up a scheme which allowed them to deceive the auditor, the CNMV and the remaining members of the board as to the actual indebtedness of the whole group. Once the structure started to fail when several banks did not continue factoring lines, the whole group collapsed and creditors owed in excess of 3bn€ now face substantial write downs.

The case is still under investigation by the relevant criminal and civil courts. The outcome of those investigations may be delayed for several years. Currently creditors are negotiating an insolvency plan through which they try to preserve the value of what was one of the largest fishing companies worldwide. 🚫