



INSOLVENCY UPDATE

Today the Senate passed the Cross Border Insolvency Bill 2008, which implements the recommendations of the 2004 Report of the Parliamentary Joint Committee on Corporations and Financial Services regarding cross border insolvencies.

It has been recognised for some time that in the global marketplace, insolvency laws are some of the most important laws which govern market conduct. A good insolvency regime has the effect of enhancing market certainty. It promotes economic stability and growth because market participants can accurately assess credit risk.

Many businesses today have a global presence and therefore their interests go beyond their home jurisdictions. As communication becomes more rapid and sophisticated and information technology enables global trade in goods and services, cross border trade impacts on companies of every size.

Complex issues arise in the context of cross-border insolvency. For example an administrator may only have limited access to assets of the company that are located in another country. There may be special rules which allow local creditors access to local assets before any funds are released to a foreign administration. In other circumstances there may be limited or no recognition of foreign creditors. There can be an inconsistency in the priority of creditors (particularly in relation to employee claims) across different jurisdictions or there may be difficulties for foreign creditors seeking to enforce securities over local assets.

Some of the effects of this legislation are to:

- Enhance co-operation between local and foreign courts and local and foreign insolvency professionals involved in cross-border insolvency cases;
- Create greater legal certainty for trade and investment;
- Provide for efficient administration of cross-border insolvencies to protect the interests of all creditors; and
- Protect and maximize the value of the debtors assets.

Taylor Woodings has experience with overseas assignments in Canada, Indonesia, Malaysia, PNG, New Zealand, the UK, USA and South America and across a broad range of complex and challenging industries and environments.

If we can assist you in this, or any other area of insolvency, please do not hesitate to contact us.

PERTH

Michael Ryan
08 9321 8533
michael.ryan@twcs.com.au

SYDNEY

Quentin Olde
02 8247 8000
Quentin.olde@twcs.com.au

MELBOURNE

Ross Blakeley
03 9604 0600
ross.blakeley@twcs.com.au

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