International Corporate Rescue

Published by:
Chase Cambria Company (Publishing) Ltd
4 Winifred Close
Barnet, Arkley
Hertfordshire EN5 3LR
United Kingdom

Annual Subscriptions:
Subscription prices 2011 (6 issues)
Print or electronic access:
EUR 695.00 / USD 845.00 / GBP 495.00
VAT will be charged on online subscriptions.
For 'electronic and print' prices or prices for single issues, please contact our sales department at:
+ 44 (0) 207 014 3061 / +44 (0) 7977 003627 or sales@chasecambria.com

International Corporate Rescue is published bimonthly.

ISSN: 1572-4638

ARTICLE

The Emerging Framework of Cross-Border Insolvency in and around Australia: Saad Investments, Japan Airlines and Lehman Brothers – Part One[1]

Professor Rosalind Mason, Head of School of Law, Queensland University of Technology, Brisbane, Australia, **Scott Atkins**, Partner, Henry Davis York, Sydney, Australia,[2] and **Stewart Maiden**, Barrister, Owen Dixon Chambers West, Melbourne, Australia[2]

Recent decades have witnessed a global acceleration of legislative and private sector initiatives to deal with Cross-Border insolvency. Legislative institutions include the various national implementations of the Model Law on Cross-Border Insolvency (Model Law) published by the United Nations Commission on International Trade (UNCITRAL).[3] Private mechanisms include Cross-Border protocols developed and utilised by insolvency professionals and their advisers (often with the imprimatur of the judiciary), on both general and ad hoc bases.

The Asia Pacific region has not escaped the effect of those developments, and the economic turmoil of the past few years has provided an early test for some of the emerging initiatives in that region. This two-part article explores the operation of those institutions through the medium of three recent cases.

In this first part, Scott Atkins considers *Ackers v Saad Investments Co Limited (in official liq)*[4] (*Ackers v Saad*), examining the Model Law jurisprudence in Australia since the enactment of the *Cross-Border Insolvency Act 2008* (C'th) (CBIA).

In the second part, Stewart Maiden uses the turnaround of the Japan Airlines group to show how the Model Law was used to protect the value of a complex international business as a going concern. Professor Rosalind Mason discusses the liquidation of Lehman Brothers, which demonstrates how private arrangements can provide solutions to cross-border problems that might be beyond the reach of existing legislation.

Together, those three discussions show how both the Model Law and private initiatives have found a place in assisting the winding up and restructuring of large and complex multinational organisations in the Australian neighbourhood.

A. Saad Investments

The global financial crisis has been in full swing since 2008. Anecdotally, its impact in Australia and many parts of Asia is often said by economic commentators to have been less intense than elsewhere, especially when compared to the economic performance of the US, the UK and much of Europe.[5] That has not, however, insulated the Asia-Pacific region from exposure to a high level of restructuring and workout activity in recent times.

The arrival of the GFC coincided with the introduction in Australia of the CBIA.[6] There has been a rapid uptake by practitioners of the Model Law as introduced by the CBIA. At the time of writing, there have been

Notes

1 The authors presented an earlier version of this article at the INSOL International Academics' Group Meeting in Singapore on 13 March 2011.

2 Scott Atkins and Stewart Maiden are Fellows, INSOL International.

3 According to UNCITRAL, legislation based on the Model Law has been adopted in Australia, Canada, Colombia, Eritrea, Greece, Japan, Mauritius, Mexico, Montenegro, New Zealand, Poland, Republic of Korea, Romania, Serbia, Slovenia, South Africa, the United Kingdom, the British Virgin Islands and the United States of America: UNCITRAL, *Status, 1997 – Model Law on Cross-border Insolvency* (2009) UNCITRAL <www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html> at 21 March 2011.

4 [2010] FCA 1221.

5 See generally: Dr Martin Sahy, 'How Australia has fared during the GFC' (Aug 2009) *InFinance Magazine*; Luci Ellis, 'The Global Financial Crisis: Causes, Consequences and Countermeasures' (speech delivered at Australia in the Global Storm: *A Conference on the Implications of the Global Financial Crisis for Australia and its Region,* Victoria University, 15 April 2009); Guy Debelle, 'The Financial Situation Three Years On' (speech delivered at the *Westpac Macro Strategy Forum*, Sydney, 9 September 2010).

6 The *Cross-Border Insolvency Act 2008* (Cth) received Royal assent on 26 May 2008 and substantially came into effect on 1 July 2008.

four reported applications under the CBIA in Australia.[7] Each application has resulted in the recognition of foreign proceedings as foreign main proceedings under the Model Law in Australia. Each application has also resulted in the Federal Court of Australia making orders for the protection of the estate for the benefit of creditors. In chronological order, the applications to date are: *Hyun-Chul Hur (in his capacity as Foreign Representative of Samsun Logix Corporation) v Samsun Logix Corporation*[8] (recognition of Korean bankruptcy proceeding as a foreign main proceeding); *Re Tucker, Aero Inventory (UK) Ltd v Aero Inventory (UK) Limited*[9] and subsequently *Re Tucker, Aero Inventory (UK) v Aero Inventory (UK) Limited (No. 2)*[10] (recognition of administration of a company under Schedule BI of the UK Insolvency Act as a foreign main proceeding); *Katayama v Japan Airlines Corporation*[11] (foreign proceeding recognition application by the Japanese trustees of the Japan Airlines Corporation group appointed under the Corporate Reorganisation Act of Japan); and *Ackers v Saad.*[12]

The CBIA is a welcome facilitative aid to restructurings and workouts in Australia which has as its hallmarks both formal and informal responses. This is borne out by a review of recent Australian cases. It is best illustrated by an analysis of the Saad Group collapse, culminating in Justice Rares of the Federal Court of Australia making the first pronouncement on the concept of centre of main interest (COMI) as it applies under Australian law. It is but the first sign of the emergence of substantive Australian contributions to the vibrant evolution of Model Law jurisprudence.

The Model Law in Australia

The CBIA incorporates the Model Law as a self-contained schedule to the Act. There are very minor consequential textual variations between it and the original text of the Model Law.[13] The adoption of the Model Law in its near original format promotes consistency in its interpretation and application within Australia when benchmarked against other jurisdictions. The Federal Court of Australia's approach in *Ackers v Saad* is demonstrative of this benefit. That does not, however, mean that there will be homogeneity in outcome when it is applied as that will, in each instance, depend upon the circumstances of its use.

COMI in Australia: Ackers v Saad Investments

In late 2010, Justice Rares of the Federal Court of Australia delivered judgment in Saad Investments, applying the Act. His Honour did so in the context of determining a foreign proceeding recognition application brought in the Federal Court by Cayman Islands official liquidators of Saad Investments. It is the first substantive judgment to consider the meaning of COMI as it applies under the Model Law as adopted in Australia.

In short, *Ackers v Saad* stands for the proposition that:

- swift determination of COMI issues is the primary purpose of the presumption in Article 16(3) of the Model Law which itself is a critical part of the Model Law's infrastructure directed towards avoiding unnecessary delays, preventing prejudice to creditors and upholding the objectives of the Model Law;
- Australian courts, when determining a company's COMI, may have recourse to international jurisprudence on the Model Law; and
- the presumption that a company's COMI is situated in the place of its registered office under Article 16(3) amounts to *prima facie* evidence of a company's COMI.

Unravelling of the Saad Group

The Saad Group is a Saudi Arabia based conglomerate once controlled by Maan Al-Sanea, the 62nd wealthiest billionaire when last rated by *Forbes Magazine* in 2009.[14]

Notes

7 There have been two further developments since the time of writing, First, in *Re Chow Cho Poon (Private Limited)* [2011] NSWSC 300, the Supreme Court of New South Wales provided guidance as to what it means for a court in Australia to cooperate with foreign courts as envisaged by article 25 of the Model Law as adopted in Australia, albeit no orders were made under any provision of the Model Law. Second, in *Lawrence v Northern Crest Investments Limited (in liq)* [2011] FCA 672, the Federal Court of Australia made interim orders under article 19 of the Model Law as adopted in Australia, pending the determination of a recognition application scheduled for hearing on 24 June 2011.

8 [2009] FCA 372.

9 (2009) 76 ACSR 19; [2009] FCA 1354.

10 (2010) 77 ACSR 510; [2009] FCA 1481.

11 [2010] FCA 794.

12 [2010] FCA 1221.

13 The full text may be found at: <www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_travaux.html> visited 7 February 2011.

14 For further background on the status of Mr Maan Al-Sanea see <www.forbes.com/lists/2009/10/billionaires-2009-richest-people_Maan-Al-Sanea_FFP8.html> visited 7 February 2011.

The Saad Group comprised approximately 80 companies scattered internationally. A subsidiary of the Saad Group, namely Saad Investments Company Limited (Saad Investments), the subject of the *Ackers v Saad* case, was incorporated as a holding company in the Cayman Islands in 1990 under the *Companies Law.*[15] Its registered office was in Grand Cayman. Its immediate parent was also Cayman registered. The Saad Group had a particular attraction to the Cayman Islands, incorporating 40 related companies in that jurisdiction.

Saad Investments' business dealings were complex. Saad Investments' books and records were not in Cayman but rather were held and maintained in Switzerland by Saad Financial Services SA, a Swiss company based in Geneva. Mr Al-Sanea and his wife were directors of the Swiss holder of the books and records. Some of Saad Investments' assets were located in Saudi Arabia and captured by a freezing order imposed by the Saudi Arabian Monetary Authority. There were other business dealings, too, which seemingly had no connection to the Cayman Islands.

In 2007, Saad Investments borrowed from a syndicate of banks pursuant to a facility agreement governed by English Law. It was a default under that multi-billion dollar revolving loan facility which resulted in the syndicate issuing a demand on 6 July 2009. Within days of that event, Saad Investments' survival was in serious doubt. In addition, Ahmad Hamad Algosaibi & Brothers Company commenced proceedings against Saad Investments, alleging that it and Mr Al-Sanea had engaged in acts of conspiracy, breach of fiduciary duty, dishonest assistance and knowing receipt. The Court intervened to the aid of those claimants, appointing and imposing a USD 2 billion worldwide freezing order against Saad Investments.

On 18 September 2009, upon the petition of some of Saad Investments' lenders, the Grand Court of the Cayman Islands ordered that Saad Investments be wound up and that its then provisional liquidators be appointed as joint official liquidators. Given the international spread of the Saad group, the liquidators recommended to creditors that an effective liquidation of the group required common appointments across as many jurisdictions as possible.[16] Successful Model Law recognition applications were made in the UK in September 2009[17] and Jersey in July 2010.[18] The Supreme Court of Bermuda made a common law recognition order in June 2010.[19] The liquidators' attempts to seek recognition in Switzerland (albeit not under the Model Law) have, as at the date of writing, failed.

Unsurprisingly, a consequence of that amalgam of circumstances is that Saad Investments' COMI – and in particular, the presumption under Article 16(3) that it is situated in the place of incorporation – ultimately came to be squarely in issue in the Australian proceeding.

On 8 September 2010, Saad Investments' Cayman liquidators applied to the Federal Court in Australia for recognition of the Cayman Island liquidation proceedings. At the time of the recognition application filing in Australia, Saad Investments held valuable equities listed on the Australian Securities Exchange and had outstanding liabilities to the Commissioner of Taxation. The Court granted provisional relief to protect Saad Investments' position under Article 19 and entrusted the administration of the Australian assets of Saad Investments to both the Cayman joint official liquidators and Mr Jahani, a registered liquidator in the Australian office of the Cayman-based liquidators.[20]

A principled approach to COMI

At the final hearing in the Federal Court for recognition of the Cayman Islands proceedings, both the liquidators and the Commissioner of Taxation, being the only Australian based creditor of Saad Investments, drew attention to factors necessary to be weighed by the Court in determining the location of Saad Investments' COMI. That was of course an essential exercise for the purposes of recognising the foreign proceeding as a foreign main proceeding under Article 17.

The legislative scheme of the Model Law as adopted in Australia, as previously observed, is faithful to the original text. Article 16(3) of the Model Law provides that:

> 'In the absence of proof to the contrary, the debtor's registered office or habitual residence, in the case of an individual, is presumed to be the centre of the debtor's main interests.'

Consistent with the approach taken in other jurisdictions which have adopted the Model Law, there is no definition of COMI under the Act. On the contrary, the *Explanatory Memorandum for the Cross Border Insolvency Bill 2008* evinces a deliberate legislative expectation

Notes

15 [2010] FCA 1221 at paragraph 10.
16 [2010] FCA 1221 at paragraphs 20-21.
17 *In Re Saad Investments Company Limited,* High Court of Justice (Chancery Division) Companies Court, Proceeding No 17617 of 2009, 20 August 2009 and 25 September 2009.
18 In the matter of *Saad Investments Company Limited,* Royal Court of Jersey, 23 July 2010.
19 Ex parte *Saad Investments Company Limited (in Caymanian Liquidation)* [8 June 2010] SC (Bda) per Kawaley CJ.
20 *In Re Saad Investments Company Limited,* Federal Court of Australia, NSD 1168 of 2010 per Rares J, 8 September 2010.

that Australian courts would be guided by the considerable body of case law in overseas jurisdictions in interpreting and applying the concept of COMI.[21] It is also a means by which the evolution of Australian law may occur in harmony with international Model Law jurisprudence.

It is important to note at this juncture and for the purposes of the ensuing analysis that the United States Congress enacted Article 16(3) in Chapter 15 of the *United States Bankruptcy Code* (Bankruptcy Code) in slightly different terms. Under §1516(c), 'evidence' to the contrary is required to defeat the presumed COMI, rather than 'proof' as prescribed in Article 16(3). In *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Limited (in provisional liquidation)*,[22] District Judge Sweet found that the rebuttable presumption in §1516(c) did not relieve a petitioner of its burden of proof or the risk of not being able to persuade the Court of facts sufficient to enliven the presumption. Indeed, the substitution of the word 'evidence' in place of the Model Law's standard of 'proof' was intended to clarify that very issue.[23]

A survey of COMI law

The primary issue for determination by the Court in *Ackers v Saad* was to identify the COMI of Saad Investments. To that end, Justice Rares undertook a comprehensive review of the modern development of the concept of COMI, recognising it remains a legal concept in flux.[24]

Justice Rares commenced his analysis by reviewing the evolution of COMI in the Bankruptcy Courts of the US under Chapter 15 of the Bankruptcy Code. His Honour then compared and contrasted the differing approaches of the US and the UK legislatures in adopting and adapting the Model Law in each jurisdiction.

The Court first reviewed the US Bankruptcy Court's interpretation and application of COMI in *Bear Stearns*,[25] both at first instance and on appeal. The decision in *Bear Stearns* is particularly relevant as it too concerned the question of whether a Cayman Islands company had its COMI there or in the US. The ultimate finding in that celebrated case was that the COMI of Bear Stearns was in New York and consequently the Cayman Islands' liquidation proceedings did not qualify as either a foreign main or foreign non-main proceeding under Chapter 15.[26] The essential observations of Judge Lifland in the first instance judgment in *Bear Stearns* and of District Judge Sweet in the subsequent appeal are extracted in the decision of Justice Rares, with a particular focus on the utility of the presumption in §1516(c) of the Bankruptcy Code. Importantly, the observation is made that Chapter 15 promotes predictability and reliability by establishing a simple, objective eligibility requirement for recognition. That is consistent with the purpose and intent of the UNCITRAL Model Law and amongst those countries which have adopted it to the effect that a foreign proceeding should not be entitled to obtain direct access to or assistance from the recognising court, unless the debtor has a sufficient pre-petition economic presence in the place where the foreign proceeding is opened. That is why, in particular, District Judge Sweet found in *Bear Stearns* that the rebuttable presumption in §1516(3) does not relieve a petitioner of its burden of proof or the risk of not being able to persuade the recognising court of the facts concerning its COMI.[27]

Justice Rares reviewed the more recent application of the COMI principles as considered by Judge Markell in *Re Betcorp Ltd.*[28] Judge Markell also comprehensively reviewed the previous US decisions, some English decisions and the European Court of Justice's decision in *Re Eurofood IFSC Ltd.*[29] The jurisprudence as to COMI arising out of those decisions confirms the weight that may be given to a debtor's ascertainable principal place of business for the purposes of locating the debtor's COMI, even when it is not in the country in which the debtor is registered or incorporated.[30]

Judge Markell said (at 291):

> 'Moreover, it is important that the debtor's COMI be ascertainable by third parties ... [the] analysis correctly proceeds on the assumption that COMI is affected not only by what a debtor does, but by what the debtor is perceived as doing.'

Notes

21 Explanatory Memorandum to the Cross Border Insolvency Bill 2008 (Cth), Chapter 1.7.
22 389 BR 325 (SDNY 2008).
23 At pages 333-334.
24 [2010] FCA 1221 at paragraph 32.
25 *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Limited (in provisional liquidation)* 389 BR 325 (SDNY 2008) esp. at 333-334, 336.
26 *In Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Limited* 374 BR 122 (BANKR. S.D.N.Y 2007).
27 *Ackers v Saad* [2010] SCA 1221 at paragraphs 33-35; *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Limited (in provisional liquidation)* 389 BR 325 (SDNY 2008) esp. at 333-334, 336.
28 400 BR 266 (Bankruptcy District of Nevada, 2009).
29 [2006] Ch 508.
30 400 BR 266 (Bankruptcy District of Nevada, 2009) esp. at 289, 291.
31 [2006] Ch 508 esp. at 541-542 [29]-[37].

In the course of his review of the *Bear Stearns* decisions, Justice Rares touched upon the decision of the European Court of Justice in *Re Eurofood IFSC Ltd.*[31] A deeper consideration of that important decision emerges in Justice Rares' consideration of the more recent English Court of Appeal's decision in *Re Stanford International Bank Limited.*[32]

In his quest for clarity as to the proper interpretation and construction of the concept of COMI under the Model Law, Justice Rares was instead left, at least in so far as his review of the US position is concerned, somewhat despondent. Drawing upon a recent extra-judicial view of Judge Allan Gropper, an eminent judge of the United States Bankruptcy Court, Southern District of New York, Justice Rares said,[33] quoting Judge Gropper:[34]

> 'The goal of the drafters of the Model Law and section 1516(c) of the United States Bankruptcy Code of simplifying the process of obtaining an initial order of recognition has not been met, as issues relating to the debtor's centre of main interests have been litigated repeatedly in Chapter 15 cases.'

Having found disappointment in place of enlightenment, Justice Rares turned to the landmark decision in *Re Eurofood IFSC Ltd*. It is well-recognised that the presumption in Article 16(3) of the Model Law is the same as that deriving from Article 3(1) of the European Regulation on Insolvency Proceedings although having less significant consequences. In *Eurofood*, the Court said:[35]

> 'That definition shows that the centre of main interests must be identified by reference to criteria that are both objective and ascertainable by third parties. That objectivity and that possibility of ascertainment by third parties are necessary in order to ensure legal certainty and forseeability concerning the determination of the court with jurisdiction to open main insolvency proceedings. That legal certainty and that forseeability are all the more important in that, in accordance with Article 4(1) of the Regulation, determination of the court with jurisdiction entails determination of the law which is to apply.
>
> It follows that, in determining the centre of the main interests of a debtor company, the simple presumption laid down by the Community legislature in favour of the registered office of that company can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at that registered office is deemed to reflect.'

That line of reasoning and the European Court of Justice's approach was most recently the subject of further consideration by the English Court of Appeal in *Re Stanford International Bank Ltd.*[36] In that case, the English Court of Appeal considered the relevance of the EU Regulation decisions and jurisprudence to the determination of COMI questions arising in the UK and as influenced by the jurisprudence under Chapter 15 of the Bankruptcy Code.

At first instance, Lewison J followed the test for determining COMI as articulated in *Eurofood,* being that, for the presumption to be displaced, the court must be satisfied that the COMI is not in the State in which the debtor's registered office is located and relying upon factors which are objective and ascertainable by third parties.[37] The trial Judge's reliance upon the test in *Eurofood* was challenged, unsuccessfully, in the appeal.

The Court of Appeal accepted that it had been conclusively established that a rebuttal of the presumption as to COMI must rest upon factors which are objective and ascertainable by third parties and which would typically be learned as a result of dealing with the debtor company.[38] The Lord Chancellor observed:[39]

> 'The same expression used in different documents may bear different meanings because of their respective contexts. I can see nothing in the respective contexts of UNCITRAL and the EC Regulation to require different meanings to be given to the phrase COMI. In both of them the phrase is used to identify the proceeding which should take priority, in one form or another, over other similar proceedings taken in other jurisdictions. In both of them the concern is that persons dealing with the debtor should be able to know before insolvency intervenes which system of law would govern the eventual insolvency of their counterparty.'

The Lord Chancellor also noted that while some decisions of the US Bankruptcy Courts may purport to apply

Notes

32 [2010] 3 WLR 941.
33 [2010] FCA 1221 at paragraph 41.
34 Judge Allan L Gropper, 'Chapter 15 of the United States Bankruptcy Code' as published in K E Lindgren, *International Commercial Litigation and Dispute Resolution*, Ross Parsons Centre of Commercial, Corporate and Taxation Law, Publication Series, Sydney 2010 at 149.
35 [2006] Ch 508 at 542 [33]-[34].
36 [2010] 3 WLR 941.
37 [2010] 3 WLR 941 at 958 [30] per Sir Andrew Morritt C; Arden LJ and Hughes LJ at [107], [152] and [159].
38 [2010] 3 WLR 941 at 968-969 [56].
39 [2010] 3 WLR 941 at 968-969 [54].

a slightly different test (a concern seemingly shared by Justice Rares in light of his Honour's observations), the test as formulated by the appellate court in *Re SphinX Ltd*[40] – 'objective factors ascertainable to third parties' – brings the COMI test in the US in line with the test as applied under the EU Regulation.[41] It follows that it is also the test applicable in the UK.

Against this background of common law principles relevant to the interpretation of COMI, Justice Rares considered the purpose and utility of the COMI rebuttable presumption under Article 16(3). Justice Rares expressed the opinion that the presumption under Article 16(3) that a debtor's COMI is in the place of incorporation operates as a facilitative device, enabling the Court to make findings to the point of being *prima facie* evidence. His Honour found that its purpose is to provide a means for dispensing with formal proof while leaving open the possibility that the court may make a contrary finding depending upon the evidence. It must also be understood as a shorthand device to assist courts to determine foreign proceeding recognition applications 'at the earliest possible time' as required by Article 17(3). To permit protracted and technical debate as to the situation of a debtor's COMI is tantamount to misunderstanding one of the key objectives which drives the Model Law, namely speed and efficiency.

In the ultimate distillation of the law of COMI as it has evolved in the US, the UK and Europe, Justice Rares settled upon a formulation of consistent with that in *Re Eurofood* and *Stanford International Bank.* His Honour has stated the test for determining COMI in Australia in the following terms:[42]

> 'Given the importance to international commerce and, to third parties, of having an objective ascertainable basis upon which to commence and decide proceedings that will govern winding up and insolvency of a debtor under the Model Law, in my opinion, the approach adopted in *Eurofood* ... and *Stanford Bank* ... should be followed here ... . That approach leads to a more predictable and orderly international outcome than the less certain approach adopted by some of the Bankruptcy District Courts in the United States ...'

Ackers v Saad is authority in Australia that the test to be applied in determining a debtor's COMI is that set out in *Eurofood.* That is, in determining the COMI of a debtor company, the presumption in favour of the registered office of the debtor may be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exits which is different from that which locating it at that registered office is deemed to reflect by operation of the presumption.

While the international aspirations of Saad Investments propelled its activities and operations to the four corners of the world, on the whole, the Court was not satisfied that the presumption as to COMI in Article 16(3) had been displaced.

Consequently, the Federal Court recognised the proceedings in the Grand Court of the Cayman Islands as foreign proceedings under Article 17(1) and foreign main proceedings under Article 17(2), as Saad Investments was presumed to have its COMI in that jurisdiction. The Court's orders further reflected a finding that the joint liquidators are recognised as foreign representatives for the purposes of Article 2(d). They were conferred, under Article 21(1), with extensive powers which were noted by the Court as being similar to the extensive powers which a liquidator would have if appointed under the *Corporations Act 2001* (C'th).

Comment

The vibrant body of international jurisprudence emerging from the application of the Model Law and, where relevant, the EU Regulation, will have a significant influence and bearing upon the interpretation and application of the Model Law as adopted in Australia. To that extent, the aspirations of UNCITRAL in seeking to achieve harmony in the application and development of the Model Law have found a further foothold in the antipodes with the introduction of the *CBIA.* Reassuringly for regulators, academics, lawyers and practitioners engaged in cross-border insolvency issues, the modest early signs suggest a commitment to consistent application of the Model Law which will promote efficiency and fairness in transnational insolvency cases touching upon Australian interests.

Notes

40 (2007) 371 BR 10.
41 Council Regulation No. 1346/2000.
42 [2010] FCA 1221 at paragraph 49.

International Corporate Rescue

International Corporate Rescue addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialized enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

Alongside its regular features – Editorial, The US Corner, Economists' Outlook and Case Review section – each issue of *International Corporate Rescue* brings superbly authoritative articles on the most pertinent international business issues written by the leading experts in the field.

International Corporate Rescue has been relied on by practitioners and lawyers throughout the world and is designed to help:

- Better understanding of the practical implications of insolvency and business failure – and the risk of operating in certain markets.
- Keeping the reader up to date with relevant developments in international business and trade, legislation, regulation and litigation.
- Identify and assess potential problems and avoid costly mistakes.

For more information about *International Corporate Rescue*, please visit www.chasecambria.com