

From Norman Cowan & Christopher Axford
representing the Integra International/ABL Insolvency &
Business Recovery Unit

CROSS-BORDER INSOLVENCY BY UTILIZING UNCITRAL MODEL LAW: IN RE SAMSUN LOGIX CORPORATION (SAMSUN)



Norman Cowan/Wilder Coe LLP – London, UK/
Member of Integra International
norman.cowan@wildercocoe.co.uk



Christopher Axford/Druces LLP – London, UK/
Member of ABL
c.axford@druces.com

INTRODUCTION

Following the presentation that the Business Restructuring and Insolvency Unit gave at the Dublin Conference, which concentrated on how businesses can move their Centre of Main Interest (COMI) from one jurisdiction to another in order to effect a business reconstruction, we received a large amount of feedback on the topic from the delegates. In that presentation we focused on a European example of a reconstruction of two German subsidiaries of Deutsche Metals involving the UK insolvency process known as Administration.

Continuing with the cross-border theme, which is increasingly topical given the number of companies which are seeking advice on their domestic and overseas operations at present, we have set out below an actual example of a global reconstruction which used the UNCITRAL Model Law on Cross-Border Insolvency ('Model Law') involving multiple jurisdictions in respect of Samsun, a Korean shipping conglomerate that had suffered as a result of the downturn in the shipping industry.

BACKGROUND

On 6 February 2009, Samsun applied for rehabilitation under the 'Korean Debtor Rehabilitation and Bankruptcy Act' ('DRBA'). On 6 March 2009, the Korean Bankruptcy Court made an order commencing Samsun's rehabilitation proceedings and appointed a representative of the management as Receiver to manage the Company's business, subject to the Korean Bankruptcy Court's supervision.

The DRBA provides that the Receiver of a Korean insolvency proceeding has authority to seek recognition of the Korean rehabilitation proceedings. In this instance the Receiver made application in the UK, Australia and US, using the Model Law adopted in those countries, as set out below:

RECOGNITION IN THE UK

On 12 March 2009, the English Court granted recognition to Samsun's Korean rehabilitation proceedings, using the English Model Law, since the Korean proceeding was recognised as a 'foreign main proceeding'.

The Order confirmed that except with the consent of Samsun's Receiver or the permission of the English Court:

- no step may be taken to enforce security over the company's property;
- no step may be taken to repossess goods in the company's possession under a hire purchase agreement;
- no legal process may be instituted or continued against the company, and
- the prohibition of a winding-up order being made against the company.

RECOGNITION IN AUSTRALIA

On 17 April 2009, the Australian Court recognised Samsun's Korean proceeding as a foreign main proceeding which also triggered an automatic stay in respect of any enforcement proceedings.

This granted addition relief, under Australian Model Law, whereby no person may enforce a charge on the property of the company except with the leave of the Court or the consent of Samsun's Receiver.

RECOGNITION IN THE US

On 21 April 2009, the US Bankruptcy Court recognised Samsun's Korean proceeding as a foreign main proceeding which also triggered an automatic stay. However, unlike the British and Australian Model Law, the automatic stay included a stay on enforcement of security interests.

Conclusion

The management of Samsun's rehabilitation foreign proceedings benefited from the Model Law providing uniform recognition as a foreign main proceeding in the UK, US and Australia, resulting in a comprehensive rescue package.

This short example demonstrates the fact that insolvency law, particularly with subsidiaries of larger organisations, will often impact in a number of jurisdictions and will require the co-operation of practitioners in each of those jurisdictions.

Whilst some of the more headline grabbing cases will involve the very largest companies, the procedures used can be tailored to benefit clients and companies of all sizes, and can prove a useful tool in assisting a client's financial survival in these continued difficult times, and are worth bearing in mind when a client is seeking advice.

The Business Restructuring and Insolvency Unit continues to expand, and we look forward to the first meeting of those interested in the Unit later this year, which is open to all interested practitioners. Details of the venue and location will be circulated later in the year.

Anyone interested in attending is asked to contact either Norman Cowan at Wilder Coe LLP or Christopher Axford at Druces LLP on the details overleaf.