Australian article round-up 2011: Insolvency

Continuing the Australian article round-up, readers may be interested in the following three articles raising points about insolvency:

- **Stewart Maiden, 'A comparative analysis of the use of the UNCITRAL Model Law on Cross-border Insolvency in Australia, Great Britain and the United States' (2010) 18 *Insolvency Law Journal* 63:**

UNCITRAL's Model Law on Cross-border Insolvency has been adopted by parliaments in 18 states across six continents. Each separate implementation departs from the archetype for various reasons, principally the necessity to tailor the Model Law to fit domestic law and policy. Model Law Art 8 requires courts to have regard to the international origin of the Model Law and the desirability of uniformity when interpreting local enactments of the Model Law. However, the nuances of the foreign texts, and differences between the suites of insolvency laws of which the texts form part, mean that a study of the text and context of any foreign implementation is required before its impact on the operation of the local enactment can properly be considered. For those reasons, this article compares the implementation of the Model Law in Australia, Great Britain and the United States. It also attempts to assist the reader to understand how courts in each of the three states are likely to deal with problems presented under the Model Law.

- **Lindsay Powers, 'Cross-Border Insolvency: The Austrailan Approach to Ascertaining COMI' (2011) 22 *Journal of Banking and Finance Law and Practice* 64:**

The Cross-Border Insolvency Act 2008 (Cth) (Cross-Border Act) brought to Australia the Model Law on Cross-Border Insolvency (Model Law) adopted by the United Nations Commission on International Trade Law. The spirit of the Model Law is cooperation with, and recognition of, foreign insolvency representatives. Australian courts can grant recognition even if the country of the foreign insolvency representative has not adopted the Model Law. That said, the process of recognition is not simply a "rubber stamp". A court in

Australia hearing the application for recognition must be satisfied that all the preconditions are satisfied and, if they are, what relief should be granted. From the relatively few decided cases under the Cross-Border Act, it is clear that the approach of Australian courts is accommodating, but cautious. In the recent decision Ackers v Saad Investments Co Ltd, the Federal Court undertook a careful examination of what needs to be established to satisfy one of the central concepts of the Model Law: the location of an insolvent company's "centre of main interests" (COMI).

- **Lionel Meehan, 'Cross Border Insolvency Law: Reform and Recent Developments in Light of the JAL Corporate Reorganisation Filing' (2011) 22 *Journal of Banking and Finance Law and Practice* 40:**

Japan Airlines Corporation and certain subsidiaries (together, JAL) filed for corporate reorganisation under the Japanese Corporate Reorganisation Law on 19 January 2010. JAL's filing presents an opportunity for the insolvency community to learn more about both the Japanese Corporate Reorganisation Law and the UNCITRAL Model Law on Cross Border Insolvency (Model Law). The JAL case has generated recognition of JAL's corporate reorganisation proceedings as "foreign main proceedings" in the United States under the American implementation of the Model Law in Ch 15 of the US Bankruptcy Code, in the United Kingdom under the Cross Border Insolvency Regulations 2006, in Australia under the Cross Border Insolvency Act 2008 (Cth), and in Canada under the Companies' Creditors Arrangement Act, RSC 1985, c C-36.