

Book Review



Cross-Border Insolvency - A Commentary on the UNCITRAL Model Law

Look Chan Ho (ed),
Globe Law and Business, 2009
(2nd edition), 425pp

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A review of legal textbooks often closes with the suggestion that every firm should have a copy of the book in its library. Of course, that's easy for reviewers to say - they've already got a free review copy. Financially constrained librarians may be less willing to buy up every enthusiastically-recommended textbook.

In the case of this book, however, I can actually say that, like Victor Kiam, I liked the book so much that I bought it. To be more accurate, I bought a copy of the previous edition, in preparation for an UNCITRAL application that we were

making in the USA. I didn't have a great deal of choice because, as far as I am aware, this is the only textbook dedicated solely to the UNCITRAL Model Law. Nevertheless, having used it, I consider it to be an extremely useful tool.

The book commences with a useful overview of the Model Law and is followed by separate sections on the operation of the Model Law in fourteen of the jurisdictions which have enacted the Model Law. The only enacting jurisdictions which are not specifically addressed are Northern Ireland, Columbia, Eritrea and Slovenia. In addition to case law decided in enacting jurisdictions since the first edition was published (2006), the second edition also contains new sections on Australia, Cayman Islands, New Zealand and South Korea.

The main audience for the book will be insolvency practitioners (and their advisers) appointed to a corporation that operates in more than one country. Even if the corporation's home jurisdiction has enacted the Model Law, it cannot be assumed that the Model Law will operate in the same way in other jurisdictions. As the editor notes in the preface, national legislatures retain freedom as to whether to enact the Model Law verbatim and, accordingly, "*one cannot overemphasise the need to look at how the Model Law is implemented and applied in each local jurisdiction*". Each of the sections on the 14 jurisdictions is authored by a local academic or practitioner and sets out the level of departure from the text of the Model Law. Each section also contains useful information regarding local procedure and jurisprudence, as well as details of how the Model Law operates within and interacts with that jurisdiction's domestic law.

Given the wide coverage of the book, no-one would suggest that it is detailed enough to allow one to make Model Law applications in foreign jurisdictions. Rather, it allows one to identify the key issues that are likely to arise in a foreign Model Law application. As I mentioned above, I acquired my copy of the first edition of this book because I was advising the receivers of an insolvent Australian corporation in relation to litigation that the corporation was facing in the USA. The overview and the section devoted to the USA enabled us to provide preliminary advice to the receivers prior to engaging American lawyers to proceed with a Chapter 15 application.

One matter that became very clear during my recent UNCITRAL experience was the multinational nature of the Model Law regime. As noted above, there may be some differences in the way in which each jurisdiction adopts the Model Law. On the other hand, it is clear that, when it comes to applying the Model Law, national courts pay great attention to how courts in other jurisdictions have interpreted it. This reflects Article 8 of the Model Law, which states that in the interpretation of the Model Law, "*regard is to be had to its international origin and to the need to promote uniformity in its application*". For that reason, this book is also likely to be very useful to advisers on inbound UNCITRAL applications, because judicial developments in other countries may influence how one's domestic courts handle inbound applications and apply the various provisions of the Model Law.

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