

Model Law on Cross-Border Insolvency Cases

CASE TITLE: *Hur v Samsun Logix Corporation* [2009] FCA 372 (17 April 2009)

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Editorial Remarks by Theresa Morgante

Facts:

Under Articles 15,17 and 21 of the *Cross-Border Insolvency Act 1998* (Cth) this matter be recognised as a foreign proceeding therefore final order be made to preserve the defendant's property in the jurisdiction.

The defendant (Samsun) is a ocean freight forwarding service. On 6 March 2009 the Plaintiff (Mr Hur) was appointed receiver for Samsun.

On 13 March 2009, an application was filed for urgent interlocutory relief. Stone J ordered pending a final hearing, no person could enforce a charge against Samsun, further making order pursuant to articles 19 and 21 of the Act. Furthermore under Article 17, the Korean Proceeding be recognised and also Mr Hur has been appointed administrator.

To be compliant with Australian law, advertisements were to be published in accordance with Rule 15A.6 of the *Federal Court (Corporations) Rules 2000* (Cth).

Held:

Jacobson J was satisfied the Korean Proceeding whereby Mr Hur was appointed receiver be recognised in Australia has a foreign proceeding and be recognised as the foreign main proceeding.

As a result, unless leave sought from the court or with the Plaintiffs written consent, article 21 of schedule 1 is to be complied with that a charge on property is not to be enforced, nor can proceedings be brought against or for the inclusion of the property.

To ensure Rule 15A.6 of the *Federal Court (Corporations) Rules 2000* (Cth) be complied with being a notice published in daily newspaper circulating generally in Australia and sending the notice to every Australian creditor known to the plaintiff.