

# Model Law on Cross-Border Insolvency Cases

**CASE TITLE:** *McGrath & Anor as Liquidators of HIH Insurance Ltd* [2008] NSWSC 881 (26 August 2008)

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Editorial Remarks by Theresa Morgante

## **Facts:**

HIH Insurance Ltd (“HIH”) made an application of an issue of examination summonses directed to two persons resident in London. Leave was also granted to serve the summons in the UK and an order they be issued in a letter of request directed to the High Court of Justice of England and Wales.

## **Held:**

The court had considered and put forward rather than an application being made under Australian corporations law with further enforcement in the UK, an application could have been made directly to the English Court under the *UNCITRAL Model Law on Cross Border Insolvency* whereby the court would be exercising independent jurisdiction and would not be in the position of assisting the New South Wales Supreme Court. Note, “*the English court would have immediate and direct jurisdiction to make orders for the obtaining of information concerning HIH’s “assets, affairs, obligations or liabilities” (article 21(1)(d)) of the Model Law set out in schedule 1 of the regulations.*”<sup>1</sup> Furthermore, each country has made the decision that assistance should maintained regardless of the presence of the Model Law.

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<sup>1</sup> *McGrath & Anor as Liquidators of HIH Insurance Ltd* [2008] NSWSC 881 (26 August 2008) at 15