

## ***The Cross Border Insolvency Act 2008***

The *Cross Border Insolvency Act 2008* (the Act) commenced on 1 July 2008.

This means that Australia has adopted the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (UNCITRAL), with the modifications set out in the Act.

- The Act applies to foreign proceedings commenced on or after 1 July 2008 (s20 of the Act).
- Only the Federal Court has jurisdiction under the Act (s10 of the Act).
- The Act is not based on reciprocity. Hence, as a matter of domestic law, a trustee from another country has a right of access to the domestic court, regardless of whether that country also subscribes to the Model Law.
- Legislation based on the UNCITRAL Model Law on Cross-Border Insolvency has been adopted in:  
Australia (2008), British Virgin Islands; overseas territory of the United Kingdom of Great Britain and Northern Ireland (2005), Colombia (2006), Eritrea (1998), Great Britain (2006), Japan (2000), Mexico (2000), Montenegro (2002), New Zealand (2006), Poland (2003), Republic of Korea (2006), Romania (2003), Serbia (2004), South Africa (2000), and the United States of America (2005).
- The *Federal Court (Bankruptcy) Rules 2005* has a Part 14 'Proceedings under the Cross-Border Insolvency Act', setting out procedure for applications under the *Cross-Border Insolvency Act 2008* and relevant forms have been added. The Rules commenced on 30 March 2009.

The *Federal Court (Bankruptcy) Rules 2005* can be found at:

<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200512124?OpenDocument>

Legal and Executive Support  
Secretariat Branch  
April 2009