
Recent Cross-Border Insolvency Cases and What They Mean

Date: 07/01/08

As part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the United States Bankruptcy Code was amended and, among other things, Chapter 15 of the Bankruptcy Code was added to adopt the proposal of the United Nations Commission on International Trade Law regarding cross-border insolvency cases. Chapter 15 replaced Bankruptcy Code Section 304, which, unlike Chapter 15, focused on discretionary and subjective factors in determining whether the bankruptcy court could issue orders to assist administration of a foreign proceeding, rather than on the more simple and objective recognition standard set forth in Chapter 15, which is designed to promote comity and cooperation, as detailed below.

Three recent cases from the United States Bankruptcy Court for the Southern District of New York (two of which have been affirmed at the district court level) have limited the applicability of Chapter 15 to liquidation proceedings in the Cayman Islands for certain types of corporations, but they have not limited the ability of such corporations to seek redress in United States courts, nor have they materially affected the tax and other benefits such corporations receive under Cayman law.