



INTERNATIONAL INSOLVENCY INSTITUTE

Tenth Annual International Insolvency Conference

Rome, Italy

COORDINATION OF MULTINATIONAL CORPORATE GROUP INSOLVENCIES

Enterprise Centre of Main Interests Principles – A Proposal

By

Hon. Samuel L. Bufford
United States Bankruptcy Judge
Los Angeles

June 7-8, 2010

ENTERPRISE CENTRE OF MAIN INTERESTS PRINCIPLES

A PROPOSAL

Hon. Samuel L. Bufford
United States Bankruptcy Judge
Los Angeles, CA

A new enterprise center of main interests (“ECOMI”) system should be adopted for the administration of insolvency cases for enterprise groups and their constituent entities. This system should have the following features:

1. There is a single country (“the home country”) where the ECOMI for the enterprise group is located. The home country is presumptively the proper country for the filing of main insolvency proceedings or cases for each member of the group, wherever the member may have its registered office or main place of business. Each member of the group seeking insolvency relief shall file its own insolvency case. All such cases filed in the home country shall be administratively consolidated unless the home court orders otherwise.

2. Each case for a member of the enterprise group may be filed in the same court in the country where the ECOMI is located (“the home court”). Each such case will be governed by the insolvency law of the home court country, with certain exceptions. Any such case filed in the home court shall be assigned to the same judge for supervision and administration. The assignment of the proper court for the insolvency filings of the enterprise group within the home country should be determined by local law.

3. No main proceeding with respect to such an entity filing its insolvency case in the home country court may be filed or opened in any other country.

4. There shall be a single administrator (e.g., trustee or liquidator) appointed for all of the cases filed for members of the enterprise group in the home court. Similarly, there should be a single officeholder for each other category provided for under the applicable domestic insolvency law. Such officeholders include legal counsel, accountants, restructuring officers, committees of creditors and their professionals, and creditors' representatives (e.g., French law). If local law so provides, any officeholder may consist of an entity or several individuals.

5. Each entity affiliated with the enterprise group shall be eligible to file in the home court. This includes each entity that is partially owned by the enterprise group, provided that the enterprise group (through its constituent entities) owns at least 50% of the ownership interest in such an entity.

6. A recognition procedure, similar to that provided for individual entities under the Model Law, shall be provided for the recognition of the foreign main proceedings of an enterprise group.

7. A secondary (or nonmain) proceeding may be opened for the enterprise group in a country other than that where the home court is located.

8. A secondary (or nonmain) proceeding may be opened for a member of the enterprise group in a country other than that where the home court is located only if that entity has an establishment in that country. Upon the opening of such a secondary proceeding, that proceeding is governed by the law of the country where the secondary proceeding is located.

9. The moratorium of the home country must be respected internationally, except as provided herein. The choice of law principles articulated in InsReg arts. 8-11 and 14 shall apply.

10. Any international dispute respecting the location of the ECOMI country or the application of its moratorium shall be resolved by international arbitration under the New York convention. A special set of procedures shall be developed for use in any such international arbitration to assure a prompt determination of any such dispute.