

## Chapter 15 Recognition: Fairfield Sentry Limited (in Liquidation)

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As well as issuing claims in mistake and restitution in the BVI Commercial Court and the US State Supreme Court, the liquidators of Fairfield Sentry Limited (“the Fund”) also petitioned for and, on 22 July 2010 obtained, Chapter 15 recognition in the United States Bankruptcy Court for the Southern District of New York. This is an interesting development and, as we understand the position from US Counsel, it means that the liquidators should now be able to seek Chapter 7 or Chapter 11 recognition with a view to bringing claw back claims against redeemed investors in the New York Bankruptcy Court pursuant to the Bankruptcy Code (“the Code”). As at the date of this article, the liquidators have yet to seek Chapter 7 or Chapter 11 recognition and no bankruptcy claims have yet been issued.

The purpose of Chapter 15 of the Code is to realise (a) co-operation between the US and foreign Courts and representatives; (b) greater legal certainty for trade and investments; (c) fair and efficient administration of estates; (d) protection and maximization of assets; and (e) facilitation of the rescue of financially troubled businesses. Chapter 15 essentially encompasses the Model Law on Cross-Border Insolvency, which was previously adopted by the United Nations Commission on International Trade Law (UNCITRAL). As an aside, although Part XVIII of the BVI Insolvency Act 2003 dealing with cross-border insolvency also seeks to enact the UNCITRAL Model Law on Cross-Border Insolvency, it has not, as yet, been brought into force. We understand from the Official Receiver, however, that the Financial Services Commission is presently in the process of reconsidering whether to enact these provisions in the near future.

A copy of the Minutes of the Proceedings of the liquidators’ Chapter 15 recognition Petition can be obtained by clicking [here](#)

The following points arising out of the Minutes of the Proceedings are of note:

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Based on these reasons and bearing in mind that “non-recognition where recognition is due may forestall needed inter-nation cooperation,” the Court was prepared to recognise the BVI liquidation proceedings as foreign main proceedings, subject to a further review under sections 1517(d) and 1522(c) of the Code should other contrary factors come to light to indicate that a different holding is warranted. On this basis it was prepared to stay the objector’s purported derivative action, as well as all actions concerning the Fund’s rights and assets. It did, however, recognise and implement a stipulation that the liquidators had entered into with the BLMIS trustee’s adversary proceedings against the Fund, in respect of which the Court recognised that the parties continued to engaged in good faith efforts to facilitate settlement.

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