Page 172 - 185 **DOI:** https://doij.org/10.10000/IJLMH.1111218

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 1

2026

Emerging Trends and Challenges in Cross-Border Insolvency: Case Studies with Multinational Corporations

ABITHA SINGH. J[1]

ABSTRACT

Cross-border insolvency refers to the process of legally adjudicating with respect to debtors, creditors, or assets across multiple jurisdictions. With globalisation, the existing legal frameworks often do not keep pace with the complexities of the insolvency of a multinational enterprise. This paper assesses the important developments in cross-border insolvency from the perspective of doctrinal approaches, especially territorialism and universalism, and increasingly relevant modified universalism which foregrounds judicial cooperation. The study examines the development of important international instruments, including the UNCITRAL Model Law on Cross-Border Insolvency and the EU Insolvency Regulation, as well as domestic regimes in the USA, UK, and India. The case studies of Jet Airways, Lehman Brothers, Videocon, and Evergrande demonstrate the difficulty of cross-border insolvency in practice and identify issues including the COMI determination, the Rule in Gibbs, the public policy exception, and the approach to digital assets. The paper is a call for appropriate adoption of harmonised cross-border insolvency frameworks especially in India, and concludes by articulating that incremental legal convergence in the realm of cross-border insolvency is necessary to provide fair, efficient and predictable outcomes for firms in multinational insolvencies.

Keywords: *Cross-Border Insolvency, Multinational Companies, Insolvency Law, International Bankruptcy, Legal Challenges, Corporate Failure.*

I. INTRODUCTION

The globalization of business means that large corporate groups can operate without any borders at all, with their assets, operations, and creditors dispersed in multiple nations. When a multinational enterprise becomes insolvent, purely domestic insolvency proceedings cannot be relied upon. For example, if purely domestic insolvency proceedings were initiated in Australia, they could result in uncoordinated proceedings in multiple jurisdictions creating competing proceedings and conflicts amongst the creditors, and treating creditors differently. Historically,

[1] Author is an LL.M. student at SRM School of Law, Tamil Nadu, India.

there have been two competing paradigms for dealing with cross-border insolvency. The first paradigm is universalism, with one main insolvency proceeding with a global effect. The second paradigm is territorialism where local civil insolvency proceedings would be required in each country where the assets are located. In recent years, the practice has moved towards something of a middle ground known as modified universalism. Modified universalism operates on the principle that there will be a main insolvency in the debtor's home jurisdiction, but secondary or ancillary proceedings as may be warranted in other jurisdictions. The principle adopted in modified universalism informs instruments such as the UNCITRAL Model Law on Cross-Border Insolvency (1997) and the EU Insolvency Regulation which seek coordinated solutions and mutual recognition.

As pointed out by UNCITRAL and other prominent scholars, insolvency frameworks need to evolve at the same pace as a "truly global economy" where larger insolvencies will almost always have some cross-border components. An effective cross-border insolvency regime will increase predictability and support creditor confidence; ultimately allowing for higher recoveries and better viability for corporate rescue. The UNCITRAL Model Law has been credited with improved efficiency in restructurings by consolidating the processes that would otherwise result in piecemeal asset seizures. The internationalization of corporations and complex corporate groups, as well as transnational investment has ushered in a global framework for recognition, cooperation, and coordination, which is now acknowledged as essential to economic stability. In conclusion, effective cross-border insolvency procedures provide clarity in how a multinational debtor's future will be determined, which will support international trade and investment.

II. International legal frameworks for cross-border insolvency

This chapter describes the main legal regimes that govern cross-border insolvencies, starting with the most widely used UNCITRAL Model Law, and then examining regional and national regimes (EU, USA, UK, Singapore, and the current situation in India).

A. UNCITRAL Model Law on Cross-Border Insolvency (1997)

The Model Law is a non-binding framework for states to implement modern systems for resolving insolvency matters that cross borders. It has been adopted, in whole or in part, by more than 60 states (approximately 63 jurisdictions); Malaysia was the most recent jurisdiction to indicate it will adopt the Model Law in 2025[2].

[2] Scott Butler, UNCITRAL Model Law on Cross-Border Insolvency Continues to Be Adopted, Hall & Wilcox, 28 Feb. 2025, https://hallandwilcox.com.au/news/uncitral-model-law-on-cross-border-insolvency-continues-to-be-

 [ISSN 2581-5369]

A foreign insolvency representative can apply directly to the local court for recognition of a "foreign proceeding". Recognition can be as a foreign main proceeding where the debtor's centre of main interests COMI is in that state or a foreign non-main proceeding where the debtor has some kind of establishment. The recognition of a foreign main proceeding results in an automatic stay of proceedings and an order for relief akin to a local insolvency order. The court has discretion for further relief in additional orders, for example information sharing or turnover of assets[3].

The Model Law inverts the presumption and assumes the debtor's registered office is its COMI unless the opposing party can show that is not the case. COMI is meant to be ascertainable by third parties and creditors in particular and it relates to the location where the debtor routinely administers its interests. Making COMI determinations is critical both for recognition and for determining if a proceeding is a "main" or "non-main" proceeding[4].

B. European Union: Insolvency Regulation

The Recast Insolvency Regulation, governs jurisdiction, recognition, and cooperation for proceedings commenced after 26 June 2017 throughout the European Union except Denmark. Only the courts of the member state where the debtor’s COMI is located can open main proceedings that will automatically be recognized across the EU. COMI is presumed to be the registered office, but the presumption can be rebutted; registered office transfers within three months of filing will be ignored to stop forum shopping. A member state in which the debtor has an establishment may open secondary proceedings, but these are limited to assets located in that member state. The Recast allows for the possibility that such proceeds could be oriented towards rescue as well as allowing the main insolvency practitioner to ask a court to refuse or delay opening secondary proceedings that are not necessary to protect local creditors. Article 36 allows the main practitioner to offer an undertaking to observe local priority rules; if local creditors agree to the undertaking, no secondary proceeding is required. Courts and practitioners must cooperate and may enter into arrangements. The Recast sets out rules for groups of companies. Insolvency practitioners and the courts must cooperate in multiple proceedings against members of a group. A group coordination proceeding may open and a coordinator may prepare a plan; participation in group coordination proceedings is voluntary although it does

adopted/. (Accessed on 08-09-2025, 4.00pm)

3 U.S. Courts, Chapter 15 – Bankruptcy Basics, U.S. Courts, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics. (Accessed on 08-09-2025, 8.30pm)

4 Daniel M.Glosband, & Meredith Mitnick, A Brief Defense of COMI, Goodwin (Feb. 16, 2024), https://www.goodwinlaw.com/en/insights/publications/2024/02/insights-otherindustries-a-brief-defense-of-comi. (Accessed on 09- 09-2025, 3.00 pm)

enhance the chance of coherent group-wide results[5].

C. United States: Chapter 15 of the U.S. Bankruptcy Code

In 2005, Chapter 15 incorporated the principles of the Model Law into U.S. law. A foreign representative may apply for recognition; the bankruptcy court will decide if the proceeding is determined to be either a foreign main proceeding or a foreign non-main proceeding based on the COMI or establishment of the debtor. If recognized as a foreign main proceeding, then the automatic stay arises under §1520 and the representative is permitted to operate the debtor's business.

In Chapter 15, foreign representatives have access to federal and state courts directly and are entitled to seek other forms of relief. Courts in the U.S. are required to cooperate with foreign courts and foreign representatives. Foreign creditors may file and receive notice to the same extent[6].

D. United Kingdom: Post-Brexit Framework and Common Law

The UK enacted the Model Law through the CBIR. Foreign collective judicial proceedings are recognised if the foreign court has control or supervision of the assets of the debtors. Recognition of a foreign proceeding brings an automatic stay and the foreign representative has the same powers as a UK insolvency practitioner. Since Brexit the EU Regulation no longer provides automatic recognition, resulting in a greater number of CBIR filings[7].

Historically, English courts have generally addressed foreign insolvencies in common law on a collaborative basis, utilising principles based on universalism and comity. Cambridge Gas (Privy Council 2006) was a clear example of universalism in action; enforcing a U.S. Chapter 11 plan. Rubin v Eurofinance (UKSC 2012) clarified that a foreign insolvency judgment must meet the usual tests of jurisdiction under common law; and refused to enforce the U.S. avoidance judgment, concluding that there had been no submission by the English defendants to the U.S. proceedings. Rubin also reinforced that common law universalism does not override the traditional rules for enforcement[8].

---

[5] Pietro Franzina, The New European Insolvency Regulation, Conflict of Laws (May 28, 2015), https://conflictoflaws.net/2015/the-new-european-insolvency-regulation/. (Accessed on 09-09-2025, 5.00pm)

[6] U.S. Courts, Chapter 15: Bankruptcy Basics, U.S. Courts, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics. (Accessed on 09-09-2025, 9.30pm)

[7] James Hillman, How Foreign Insolvency Proceedings May Be Recognised in England and Wales, Pinsent Masons (Aug. 5, 2025), https://www.pinsentmasons.com/out-law/analysis/foreign-insolvency-proceedings-england-wales. (Accessed on 10-09-2025, 6.00 pm)

[8] HSF Kramer, UK Supreme Court Refuses to Enforce US Judgment Made in Insolvency Proceedings Against English Resident Defendants, HSF Kramer Notes, 1 Nov. 2012, https://www.hsfkramer.com/notes/litigation/2012-11/uk-supreme-court-refuses-to-enforce-us-judgment-made-in-insolvency-proceedings-against-english-resident-

The number of applications under the CBIR has increased since the EU Insolvency Regulation ceased to apply to the UK and EU member states. Respect to recognition may be refused if the foreign company is solvent or if the proceeding is not collective. The English courts are still adopting common law principles to recognise and assist with the administration of foreign insolvency proceedings, but enforcement of foreign judgments remains restricted under cases like Rubin.

III. INDIAN PERSPECTIVE ON CROSS-BORDER INSOLVENCY

India's experience with cross-border insolvency remains in the early stages of development. The Insolvency and Bankruptcy Code 2016 is only composed of two enabling provisions: section 234 enables the central government to conclude reciprocal arrangements with foreign states, and section 235 allows the National Company Law Tribunal (NCLT) to make letters of request for assistance abroad. Neither of these provisions has been operationalised and so there is currently no guaranteed process for carrying out Indian insolvency proceedings to pursue assets or prevent concurrent foreign proceedings. Foreign insolvency representatives cannot file a direct application to Indian courts, and instead must follow the regular civil proceedings[9]. Cases like Jet Airways illustrate these limitations, the NCLT initially refused to recognize the Dutch trustee in the Netherlands, but on appeal, the National Company Law Appellate Tribunal (NCLAT) recognized the Dutch proceeding, allowed the Dutch administrator to attend creditors' meetings, and ordered cooperation by using a cross-border protocol. Other corporate groups like Videocon encountered similar difficulties when Indian insolvency professionals tried to deal with overseas assets. Judicial creativity has yielded ad hoc solutions, but without a statutory framework, creditors are not guaranteed certainty, and there is a risk that debtors may move assets outside of India[10].

The Insolvency Law Committee, and a Cross-Border Insolvency Rules / Regulations Committee, have created "Part Z," a new part intended to embody the United Nations Commission on International Trade Law Model Law in the Indian regime. Draft Part Z proposed in the committee's summary would apply to corporate debtors only initially and would co-exist with provisions for foreign companies under the Companies Act. Recognition applications could be made by foreign representatives from jurisdictions that have reciprocal arrangements

defendants. (Accessed on 10-09-2025, 8.45 pm)

9 Debaranjan Goswami & Andrew Godwin, "India's Journey Towards Cross-Border Insolvency Law Reform," Asian Journal of Comparative Law, Vol. 19, No. 2, Sept. 2024, pp. 197-215, DOI:10.1017/asjcl.2024.12. (Accessed on 11-09-2025, 6.00pm)

10 Soumya Jain & Sidh Baunthiyal, "Resolving India's Cross-Border Insolvency Concerns: A Comparative Jurisdictional Analysis," NLIU L. Rev. Vol. XIV, Issue I (Jan. 2025): 135-163

with the NCLT, which would determine whether the foreign proceeding was a "foreign main proceeding" (where the centre of main interests (COMI) of the debtor is located) or a "foreign non-main proceeding" (where the debtor has an establishment). The recognition of a foreign main proceeding would automatically impose a stay on the debtor's assets, while the recognition of a foreign non-main proceeding would convey discretionary relief. The committee favored the development of rules on how to assess the COMI that take into account the debtor's financial or record-keeping location. The proposed Part Z suggests cooperation between Indian Courts and foreign Courts or representatives subject to rules on how to do so, and is intended to allow concurrent Indian proceedings where appropriate. Illustratively, the committee proposes that the Model Law be implemented on a reciprocity basis so that it recognizes proceedings from those jurisdictions that recognize our insolvency proceedings. Moreover, the proposed draft keeps public-policy exceptions including giving notice to the central government if recognition may contradict any Indian public policy[11]. Part Z could potentially instill confidence with foreign creditors and investors by aligning India with over sixty jurisdictions that have adopted the model law and by indicating our support for the principle of modified universalism. Notably, however, some critics argue that the reciprocity requirement would undermine the model law; and it would leave open recognition from less than a handful of jurisdictions.

IV. CASE STUDIES OF MULTINATIONAL CORPORATE INSOLVENCIES

A. Jet Airways

Jet Airways, one of the largest airlines in India, began undergoing a corporate insolvency resolution process (CIRP) in India in 2019, in accordance with the Insolvency and Bankruptcy Code (IBC), while at the same time, a Dutch court declared Jet bankrupt in relation to its parked aircraft as well as a minor amount of operations at Schiphol airport. In Jet's appeal to the National Company Law Appellate Tribunal (NCLAT), the NCLAT acknowledged that there were parallel insolvency processes before the two jurisdictions, with the Indian proceeding leading to a resolution of the "debtor in possession" and the Dutch proceeding related to liquidating the aircraft and local assets. In the absence of any cross-border insolvency law in India at the time, the NCLAT directed the Indian resolution professional and the Dutch trustee to develop a cross-border insolvency protocol. The purpose of the protocol was to coordinate the two proceedings and reduce costs and maximize asset value by harmonizing information and actions relating to both proceedings. It recognized India as the primary forum (Centre of

[11] Insolvency Law Committee on Cross-border Insolvency, PRS Legislative Research (Oct. 16, 2018), https://prsindia.org/policy/report-summaries/insolvency-law-committee-cross-border-insolvency. (Accessed on 12-09-2025, 5.00pm)

Main Interest (COMI))and the Netherlands as a secondary proceeding, and it permitted the Dutch trustee to be involved in the committee of creditors' meetings, whilst the sale of aircraft parked in the Netherlands would be dealt with in India. The protocol was sanctioned on 26 September 2019. The Jet Airways experience demonstrates that even without formal statutes, court-endorsed collaboration can prevent conflicting administrations and preserve value, and it served as inspiration for India's draft cross-border regime.

B. Lehman Brothers

The collapse of Lehman Brothers in September 2008 resulted in arguably the most complicated cross-border insolvency in history. More than 130 Lehman entities propagated through more than 80 separate insolvency proceedings across sixteen jurisdictions, each proceeding with its own applicable law in mind, including Chapter 11 in the United States, administration in the United Kingdom, and parallel proceedings in Hong Kong, Singapore, Japan, Australia, and elsewhere. The large number of proceedings complicated matters such as inconsistent sales of assets, intra-group claims and liabilities, and, in some cases, potential double recovery on the part of creditors. The U.S. Bankruptcy Court for the Southern District of New York and the administrators of Lehman Brothers International (Europe) discussed the potential of working collaboratively to try to resolve the various proceedings and establish a Cross-Border Insolvency Protocol. A Reuters report noted at the time that the protocol set out principles for cooperation, the sharing of information, and maintaining asset value, and was intended to provide the participants in the seventy-five pending proceedings an exit from the "morass". The protocol did not have the force of law, but its conclusions did require court approval to be enforceable, and representatives from the U.S., Hong Kong, Singapore, Australia, the Netherlands, and Luxembourg signed the protocol. Researchers have since recognized court-to-court communication, including joint hearings using an audio-visual link, has improved efficiency and reduced costs. The Lehman case also prompted the establishment of guidelines for cross-border insolvency including the Judicial Insolvency Network (JIN) guidelines.

C. Videocon Group

From 2018 to 2020, Videocon Industries Ltd. and its related companies (the Videocon companies) entered into insolvency proceedings under the IBC. The National Company Law Tribunal (NCLT) consolidated the corporate insolvency resolution processes of thirteen Videocon companies applying the principles of "substantial consolidation" because the Videocon companies had commonality in control, directors, assets, and liabilities. What made this case unique was that Videocon had ownership of interests in valuable oil and gas blocks in

Brazil and Indonesia through subsidiaries set up in the Cayman Islands and the British Virgin Islands. In February 2020, the NCLT ordered that the overseas oil businesses of Videocon be included in the Indian insolvency proceedings, which was the first time the NCLT included overseas subsidiaries under local insolvency law. The Economic Times stated that the order directed the inclusion of Videocon's oil businesses in both Brazil and Indonesia, while further noting that the assets included interests in overseas oil blocks owned by arms incorporated in the Cayman Islands and British Virgin Islands. The report referenced counsel as saying that this was the first time that the properties of subsidiaries purchased using the parent's funds were fully included in the insolvency estate. Subsequently, the National Company Law Appellate Tribunal ordered that foreign oil and gas assets be excluded from the insolvency estate but, before the Tribunal order could take effect, the promoters of Videocon applied to the Supreme Court seeking to restrain lenders from dealing with those assets. The Supreme Court refused to entertain the application and noted that the appellate tribunal was already seized of the matter and that it was inappropriate for the Supreme Court to interfere. This situation demonstrates the difficulties India faces when trying to exercise jurisdiction over foreign assets without an official cross-border framework.

D. Evergrande

China Evergrande Group, one of the most indebted real estate developers in the world, went into default on its debt obligations in December 2021.In 2023, Evergrande and numerous affiliates simultaneously filed Chapter 15 petitions in the U.S. Bankruptcy Court for the Southern District of New York. Evergrande sought recognition of restructuring proceedings in Hong Kong and the British Virgin Islands. Essentially, the petitions were designed to give effect in the United States to schemes of arrangement which had been negotiated under Hong Kong law, and give protection to Evergrande against U.S. noteholders while the restructuring unfolded. Evergrande's chapter 15 filings were accompanied by a complex multi-jurisdictional restructuring support agreement that covered Hong Kong, the Cayman Islands, and the British Virgin Islands.Recognition under Chapter 15 would allow the U.S. Court to implement foreign schemes and to recognize Hong Kong proceedings as either foreign main or non-main proceedings, with ability to stay proceedings or implement releases. In January 2024, the Hong Kong court ordered Evergrande to be liquidated after eighteen months of unsuccessful negotiations with offshore creditors. Reuters reported that any potential liquidation is contingent upon the mainland Chinese courts recognising the Hong Kong judgement; recognition means the liquidators could obtain unpledged onshore assets, but the mainland courts can refuse recognition if local creditors would be unfairly disadvantaged or if recognition was contrary to public policy. Legal experts suggested that in the absence of recognition from the mainland, liquidators would need to apply separately to each city where Evergrande has assets. This case highlights the complexity of cross-border restructurings that involve mainland China, Hong Kong and western jurisdictions where Hong Kong does not have a statutory model-law regime and uses common-law principles, unsurprisingly, mainland courts only recognise foreign orders as part of a pilot scheme in only a few cities.

V. EMERGING TRENDS AND CHALLENGES IN CROSS-BORDER INSOLVENCY

Digitalization, new modes of business, and geopolitical changes are transforming cross-border insolvency work. The digital era offers both unique opportunities and risks. Many debtors in insolvency have online businesses; they have intangible digital assets and encrypted keys that make asset tracing or valuing assets difficult, and raise data-protection concerns . When insolvency involves online transactions, it can create jurisdictional challenges, and it may not always be clear to the courts which jurisdiction's laws govern or the location of the asset[12].

A second trend relates to the increasing number of insolvencies involving enterprise groups. Multinational groups frequently operate with interdependent subsidiaries spread across many jurisdictions; separate proceedings in different jurisdictions may lead to conflicting outcomes and may also destroy value. In response to this issue, the UNCITRAL Model Law on Enterprise Group Insolvency (MLEGI) was adopted in 2019. The preamble of the MLEGI states that it is intended to provide effective mechanisms to resolve group insolvencies through court and insolvency representative co-operation, provide a court-approved group-wide solution, and protect creditors' interests[13].

The adoption of this statute in the United Kingdom demonstrates key aspects of MLEGI: they provide mechanisms for coordinated insolvency processes amongst group companies while preserving each company's separate legal personality, and they focus on procedural coordination instead of substantive consolidation. Yet, its real effects will remain limited until more jurisdictions adopt MLEGI[14]. Experiences from group cases, such as Lehman Brothers and Videocon, show us that, despite sometimes fraught ad hoc negotiations and involving

---

[12] Sibongile Gobile, Olanrewaju Awoyemi & Bisi Ogunwale, Cross-Border Insolvencies in the Digital Age: Challenges and Opportunities for International Bankruptcy Law, Int'l Journal of Multidisciplinary Research & Growth Evaluation, Vol. 5, Issue 4, 1393-1400 (July-Aug. 2024). (Accessed on 12-09-2025, 8.00 pm)

[13] UNCITRAL, Model Law on Enterprise Group Insolvency (Advance Pre-Published Version), U.N. Commission on International Trade Law (May 2023). (Accessed on 13-09-2025, 6.00 pm)

[14] Kate Stephenson, UK to Implement UNCITRAL Model Law on Enterprise Group Insolvency; Decision on "Article X" of Judgments Model Law to Follow, Kirkland & Ellis LLP, July 10, 2023, https://www.kirkland.com/publications/kirkland-alert/2023/07/uk-to-implement-uncitral-model-law-on-enterprise-group-insolvency. (Accessed on 13-09-2025, 9.30pm)

judicial creativity, group value can be preserved. But a statute provides a framework and makes coordination more predictable.

Judicial cooperation has developed in complexity. The UNCITRAL Model Law on Cross-Border Insolvency (1997) requires maximum cooperation between courts and proposes various approaches to facilitate this cooperation such as coordination of concurrent proceedings, protocols for communication, and joint hearings. Practices have developed in the form of multilateral guidelines. Articles express the principle that proactive communication between courts at an early stage can avoid duplication of proceedings and costs and that joint hearings or protocols for communication make outcomes more consistent for creditors. The Judicial Insolvency Network (JIN) guidelines that have been adopted in courts across many jurisdictions provide protocols for direct communication, protocols for joint hearings, and protocols for cooperation courts encourage insolvency administrators to agree to these protocols in respect to concurrent proceedings. These initiatives represent modified universalism cooperation without mutuality of legal regimes and contribute to judicial diplomacy[15].

While things have improved, there are still big issues. The issue of COMI, the centre of main interests, is still not clear. While COMI is used for jurisdiction for a foreign main proceeding, it can be manipulated by the debtor to get better forum jurisdiction. The European Insolvency Regulation (Recast) prevents this by displacing the presumption of a debtor's registered office as the COMI if the office moves within the three months prior the proceedings. This prevents "bad" forum shopping. Outside of the EU, forum shopping and COMI disputes still generate litigation and lead to delays. The recognition and enforcement of foreign insolvency judgments is a further challenge we face. Some jurisdictions, as in England, still apply the rule in Gibbs, which means that group companies with a subsidiary can incur a local law contract that cannot be compromised by foreign insolvency proceedings. This feature of the law means the debtor must run parallel schemes, or a separate English scheme to bind their English-law creditors, creating challenges for global restructurings further complicated when the company or a bank has political sensitivities as a state may ringfence local assets or exempt certain sections from cross-border regimes.

Emerging markets may be inexperienced or lack legislation on cross-border cooperation, creating uncertainty in defaults by their corporations. In the case of China’s Evergrande

[15] Scott Atkins, Enhancing Efficiency and Rescue Outcomes in Cross-Border Insolvency Matters: The Role of Multilateral Cooperation Protocols and Judicial Diplomacy, Norton Rose Fulbright, International Corporate Rescue, Vol. 20, Issue 3 (2023), https://www.nortonrosefulbright.com/en-me/knowledge/publications/f4646bdf/enhancing-efficiency-and-rescue-outcomes-in-crossborder-insolvency-matters. (Accessed on 14-09-2025, 4.45pm)

liquidation, offshore creditors will need to recognize the default in many mainland courts (and PRC courts have the ability to apply public-policy exceptions). Climate-related distress and the COVID-19 pandemic have introduced new waves of cross-border cases, and the bankruptcies of airlines and crypto-exchanges highlight the difficulties in assets being distributed across jurisdictions and the need for recognition frameworks.

In conclusion, cross-border insolvency is trending in the direction of a more technologically integrated framework, group-wide solutions, and cooperation amongst courts, but lingering issues regarding COMI, enforcement, public policy, and uneven acceptance of international frameworks limit the ability to obtain predictability. The key strategies for policymakers and practitioners to improve cross-border insolvency remains refining recognition mechanisms, adopting local statutes comparable to the MLEGI, and facilitating court -to-court cooperation to obtain more uniform and efficient outcomes in an interconnected global economy.

VI. Conclusion

Cross-border insolvency has shifted from an afterthought of legal practice into the core of global trade. New regimes with modified universalism allow for reorganization and alternation of debtor's provisions, a system that dockets proceedings in a debtor's home forum, and potentially, additional actions if those provisions are supported by other measures. UNCITRAL Model Law on Cross-border Insolvency and its implementation in Chapter 15 of the U.S. Bankruptcy Code are both examples of this; requiring courts to cooperate, recognize foreign main proceedings based on where the debtor's Centre of Main Interests (COMI) is located, and to facilitate asset-maximization. In materials on this topic, it is not uncommon to see these new modified universalism provisions found to be the "dominant approach," as they balance the rectangle of universal collection and distribution of assets with limited territorial exceptions; and respected judges like Lord Sumption calling for modified universalism a "golden thread" of public-interest, ensuring a global business can be wound up based on a worldwide jurisdiction. Nevertheless, challenges remain. Determining COMI can be contested; the rule in Gibbs which says that English-law debts can only be compromised in English courts; and, the movement towards adopting model laws is sporadic. UNCITRAL's 2018 Model Law on Recognition and Enforcement of Insolvency Related Judgments sought to eliminate inconsistent enforcement of foreign insolvency orders and provide a streamlined framework for recognition. However, take-up has been slow. For more emerging economies like India, recommendations have been made to adopt the Model Law, but legislative developments remain stalled. The emergence of digital assets introduces further difficulties, by way of liquidators now needing to trace cryptocurrency in multiple jurisdictions, resulting in courts issuing novel orders to seize or preserve decentralized assets. In totality, cross-border insolvency law is heading towards improved cooperation and modified universalism, however, for it to work fully, model laws need to be adopted more widely, doctrines of territoriality such as the rule in Gibbs need to be eliminated, and reform needs to be made to fit newer asset classes.

******

VII. References

1. Scott Butler, UNCITRAL Model Law on Cross-Border Insolvency Continues to Be Adopted, Hall & Wilcox, 28 Feb. 2025, https://hallandwilcox.com.au/news/uncitral-model-law-on-cross-border-insolvency-continues-to-be-adopted/.
2. U.S. Courts, Chapter 15 – Bankruptcy Basics, U.S. Courts, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics.
3. Daniel M.Glosband, & Meredith Mitnick, A Brief Defense of COMI, Goodwin (Feb. 16, 2024), https://www.goodwinlaw.com/en/insights/publications/2024/02/insights-otherindustries-a-brief-defense-of-comi.
4. Pietro Franzina, The New European Insolvency Regulation, Conflict of Laws (May 28, 2015), https://conflictoflaws.net/2015/the-new-european-insolvency-regulation/.
5. U.S. Courts, Chapter 15: Bankruptcy Basics, U.S. Courts, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics.
6. James Hillman, How Foreign Insolvency Proceedings May Be Recognised in England and Wales, Pinsent Masons (Aug. 5, 2025), https://www.pinsentmasons.com/out-law/analysis/foreign-insolvency-proceedings-england-wales.
7. HSF Kramer, UK Supreme Court Refuses to Enforce US Judgment Made in Insolvency Proceedings Against English Resident Defendants, HSF Kramer Notes, 1 Nov. 2012, https://www.hsfkramer.com/notes/litigation/2012-11/uk-supreme-court-refuses-to-enforce-us-judgment-made-in-insolvency-proceedings-against-english-resident-defendants.
8. Debaranjan Goswami & Andrew Godwin, "India's Journey Towards Cross-Border Insolvency Law Reform," Asian Journal of Comparative Law, Vol. 19, No. 2, Sept. 2024, pp. 197-215, DOI:10.1017/asjcl.2024.12.
9. Soumya Jain & Sidh Baunthiyal, "Resolving India's Cross-Border Insolvency Concerns: A Comparative Jurisdictional Analysis," NLIU L. Rev. Vol. XIV, Issue I (Jan. 2025): 135-163
10. Insolvency Law Committee on Cross-border Insolvency, PRS Legislative Research (Oct. 16, 2018), https://prsindia.org/policy/report-summaries/insolvency-law-committee-cross-border-insolvency.

11. Sibongile Gobile, Olanrewaju Awoyemi & Bisi Ogunwale, Cross-Border Insolvencies in the Digital Age: Challenges and Opportunities for International Bankruptcy Law, Int'l Journal of Multidisciplinary Research & Growth Evaluation, Vol. 5, Issue 4, 1393-1400 (July-Aug. 2024).

12. UNCITRAL, Model Law on Enterprise Group Insolvency (Advance Pre-Published Version), U.N. Commission on International Trade Law (May 2023).

13. Kate Stephenson, UK to Implement UNCITRAL Model Law on Enterprise Group Insolvency; Decision on "Article X" of Judgments Model Law to Follow, Kirkland & Ellis LLP, July 10, 2023, https://www.kirkland.com/publications/kirkland-alert/2023/07/uk-to-implement-uncitral-model-law-on-enterprise-group-insolvency#:~:text=The%20Government%20intends%20to%20legislate.

14. Scott Atkins, Enhancing Efficiency and Rescue Outcomes in Cross-Border Insolvency Matters: The Role of Multilateral Cooperation Protocols and Judicial Diplomacy, Norton Rose Fulbright, International Corporate Rescue, Vol. 20, Issue 3 (2023), https://www.nortonrosefulbright.com/en-me/knowledge/publications/f4646bdf/enhancing-efficiency-and-rescue-outcomes-in-crossborder-insolvency-matters.

*****