

---

## CROSS-BORDER INSOLVENCY AND THE CASE FOR ADOPTION OF THE UNCITRAL MODEL LAW IN INDIA

---

Bhavya Sahu, Lovely Professional University

### ABSTRACT

Corporate debtors are increasingly operating across jurisdictions as a result of the globalization of trade and finance. Complex procedural and substantive difficulties arise when dealing with cross-border insolvency concerns, such as recognition of foreign proceedings, coordination of remedy, access for international representatives and creditors, and court collaboration. The UNCITRAL Model Law on Cross-Border Insolvency (1997), sometimes known as the "Model Law," is a practical, extensively used framework intended to reduce ambiguity and promote collaboration. Although India has not implemented a comprehensive Model Law-based regime, the government has examined a Draft "Part Z" that is mostly based on the Model Law and the Insolvency and Bankruptcy Code, 2016 ("IBC") contains limited cross-border instruments (particularly Sections 234–235). This essay discusses the main points of the Model Law, evaluates India's present legal system and case law (using the Jet Airways and Videocon episodes as examples). To make adoption feasible in the Indian context, the report ends with useful legislative and regulatory proposals.

## INTRODUCTION

The assets, creditors, personnel, and contracts of a contemporary corporate enterprise sometimes span several nations. When financial difficulty turns into insolvency, cross-jurisdictional friction can result in lower recovery, forum shopping, and longer resolution times—all of which run counter to the IBC's primary goals of prompt resolution and value maximization. By offering a standard procedural architecture for recognition and collaboration in cross-border bankruptcy proceedings, the UNCITRAL Model Law was specifically created to resolve these coordination issues. It has been implemented (sometimes with revisions) in several jurisdictions, with observable results, including decreased litigation, simplified cross-border asset realization, and clearer expectations for creditors. A Model Law framework is urgently needed in India due to the country's growing outbound investment by Indian corporations, complicated group insolvency proceedings involving overseas subsidiaries, and the business necessity of ensuring international creditors and investors of predictable cross-border treatment. This essay makes the case that adoption, through a suitably modified IBC Part backed by rules and IBBI regulations, will preserve India's important policy decisions while producing quantifiable advantages.

### **The UNCITRAL Model Law on Cross-Border Insolvency: A Global Framework**

The Model Law on Cross-Border bankruptcy was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1997 to assist nations in creating efficient procedures for handling bankruptcy cases involving many countries. It seeks to increase predictability in trade and investment, foster collaboration between courts and insolvency professionals, and guarantee the equitable and effective handling of cross-border insolvencies.

The Model Law is based on four fundamental principles: Recognition, which categorises foreign insolvency proceedings as either "foreign main" or "foreign non-main" based on the debtor's centre of main interests (COMI); Relief, which offers automatic or discretionary remedies like moratoriums and asset protection; Cooperation and Coordination, which requires cooperation between domestic and foreign courts and insolvency administrators; and Access, which permits foreign representatives to approach domestic courts directly.

### **Purpose and Core Elements**

When a debtor has assets or creditors in many states, the Model Law (1997, Guide to Enactment

updated 2013) offers a procedural framework to help states cope with cross-border bankruptcy. Access (by foreign representatives to local courts), recognition (of foreign actions as "main" or "non-main"), relief (provisional and remedial help), and collaboration (between courts and administrators) are its four key components. The Model Law places a strong emphasis on adaptability; rather than imposing a single substantive insolvency regime, it offers instruments for mutual aid and coordination, such as automatic relief upon recognition, discretion for further relief, and channels for judicial authorities to communicate and work together. Policy justifications and optional provisions (such as reciprocity requirements and public policy exclusions) are explained in the Guide to Enactment. Thus, the Model Law permits useful cross-border results while striking a balance between comity and home sovereignty.

### **India's Current Framework: IBC, Sections 234–235, and Draft Part Z**

Two specific clauses pertaining to cross-border problems are included in the IBC (2016): In order to implement the Code and apply its provisions to assets located outside of India, the Central Government is authorised by Section 234 to engage into agreements with foreign governments.

In some circumstances, Section 235 permits the adjudicating authority to send letters of request to foreign courts. Unlike the Model Law, these provisions are limited and mostly executive/reciprocity orientated; they do not provide a complete recognition/relief mechanism. Doctrinal ambiguity has resulted from Indian courts (NCLT/NCLAT and higher courts) addressing foreign aspects through the employment of equitable principles and other procedural authorities. The Insolvency Law Committee (ILC), which was established by the Ministry of Corporate Affairs, acknowledged the gap and, on October 16, 2018, recommended to the IBC a draft "Part Z" that was closely modelled on the UNCITRAL Model Law with adjustments made to address Indian policy and public interest issues. The proposed Part Z allowed for rules and regulations to operationalise the Part, defined "foreign representative," offered mandatory and discretionary relief, and anticipated recognition processes. Nevertheless, no comprehensive Part Z has been incorporated into the IBC as of this writing.

### **Judicial Practice and Problem Cases: Jet Airways & Videocon**

**Prominent bankruptcy cases have filled in the practical gaps:** The challenges that arise when bankruptcy is initiated in several countries were made clear by Jet Airways' CIRP. The adjudicatory procedure in India was complicated by international creditors and foreign actions;

resolution experts from several jurisdictions established cross-border protocols, but the lack of a legislative recognition framework led to procedural uncertainty and delay. Indian tribunals considered the consolidation and inclusion of international companies' assets to maintain value in the Videocon group's insolvency procedures. To incorporate foreign assets or guide administrators, courts invoked equitable jurisdiction; nonetheless, the results varied. A recurrent topic is highlighted in both episodes: Indian courts and insolvency experts have demonstrated innovation and a readiness to collaborate globally, yet uneven results are possible due to the absence of a legislative, predictable framework.

### **International Experience: Why the Model Law Works**

The Model Law has been included into the national insolvency laws of the United States, Singapore, and the United Kingdom. The Insolvency, Restructuring and Dissolution Act of Singapore serves as an example of how a jurisdiction might become a centre for cross-border restructuring with a defined statutory process for recognition and collaboration. Coordinated relief between domestic and international actions is also made possible by U.S. Chapter 15 and U.K. procedural regulations, which lower litigation and increase recoveries.

### **Case for Adoption in India: Substantive Arguments**

Legal clarity, value maximisation, reciprocity, a decrease in forum shopping, and an improvement in India's international investment climate would all result from the Model Law's adoption. It would enable Indian liquidators and resolution specialists to approach international courts for assistance, guaranteeing an equitable and open procedure for all parties involved.

### **Comparative Perspective: Global Adoption of the Model Law**

The UNCITRAL Model Law has achieved widespread international recognition due to its balanced design. In 2005, it was formed in the US under Chapter 15 of the Bankruptcy Code. Procedures for identifying overseas proceedings and integrating them with domestic matters are outlined in Chapter 15. In order to guarantee equitable distribution, U.S. courts stressed the need of judicial cooperation and coordination throughout jurisdictions in *In re Yukos Oil Co.* (2006).

Through the Cross-Border Insolvency Regulations, 2006, the UK put the Model Law into effect, guaranteeing that foreign actions would be recognised as long as they adhered to public

policy restrictions. Under the Insolvency, Restructuring and Dissolution Act of 2018, Singapore embraced it, establishing itself as a cross-border restructuring centre in Asia. These countries demonstrate that adoption of the Model Law enhances international cooperation, improves predictability for creditors, and increases foreign investment confidence.

### **Challenges and Safeguards for Implementation in India**

Despite its advantages, implementing the Model Law in India requires careful adaptation. Managing reciprocity, safeguarding institutional readiness, and defending public policy objectives are among the difficulties. To protect national interests and avoid arbitrarily rejecting foreign proceedings, the public policy exemption should be strictly specified. To recognise states that treat India similarly, reciprocity must be used flexibly. Building judicial capability is essential. The National Company Law Appellate Tribunal (NCLAT) and the NCLT need to become knowledgeable about international insolvency. To address problems pertaining to foreign exchange and financial transactions, cooperation with authorities such as the RBI and SEBI is crucial. Transparency might also be improved by creating a common database of acknowledged foreign representatives and proceedings.

### **Adapting the Model Law to India: Suggested Changes & Protections**

Strong public policy exclusions, practical reciprocity requirements, explicit COMI (Centre of Main Interests) presumptions, regulations for foreign representatives, and comprehensive procedural norms for collaboration with financial regulators such as the RBI and SEBI are all elements that India should modify from the Model Law.

### **Roadmap for Implementation: Legal and Regulatory Actions**

- Adopt Part Z of the IBC in accordance with the proposal prepared by the Insolvency Law Committee.
- To provide operational clarity, draft and notify rules and IBBI regulations.
- Develop training programs to increase judicial ability.
- Implementation pilot with important commercial partners.

- Work with the RBI and SEBI to coordinate inter-regulatory initiatives.
- Conduct judicial and professional training programs to build capacity for handling cross-border insolvency cases.
- Encourage the use of standardized cross-border insolvency protocols and communication guidelines between courts.

## **CONCLUSION**

India is at a crossroads: while its domestic bankruptcy framework has significantly enhanced corporate resolution procedures, it is still lacking in regard to cross-border issues. The expenses of the existing ad hoc method are brought to light by the global commercial realities and the experiences of Jet Airways and Videocon. An established, adaptable, and globally recognised procedural framework that may be customised to meet India's requirements is provided by the UNCITRAL Model Law. The next natural step is legislative action backed by operational guidelines and regulatory involvement.

## References

UNCITRAL Model Law on Cross-Border Insolvency, U.N. Comm'n on Int'l Trade Law, 1997.

Insolvency and Bankruptcy Code, No. 31 of 2016 (India), §§ 234–235.

Report of the Insolvency Law Committee on Cross-Border Insolvency, Ministry of Corporate Affairs, Government of India (2018).

Jet Airways (India) Ltd. v. State Bank of India, NCLAT, Company Appeal (AT) (Insolvency) No. 707 of 2019.

In re Yukos Oil Co., 321 B.R. 396 (Bankr. S.D. Tex. 2006).

Singapore Insolvency, Restructuring and Dissolution Act, 2018.

United States Bankruptcy Code, Chapter 15, 11 U.S.C. §§ 1501–1532 (2005).

Cross-Border Insolvency Regulations, 2006, S.I. 2006/1030 (U.K.).