CROSS-BORDER INSOLVENCY: HARMONIZATION, JURISDICTIONAL APPROACHES AND CREDITOR PROTECTION

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ABSTRACT

Cross-border insolvency presents significant challenges arising from differences in national insolvency laws, jurisdictional rules, creditor priorities, and mechanisms for recognizing and coordinating foreign proceedings. This article undertakes a comparative legal analysis of the approaches adopted by the European Union, United States, United Kingdom, and India, with particular emphasis on the principles of Centre of Main Interests (COMI), automatic stay, distribution of assets, forum shopping, and comity in the recognition of foreign insolvency proceedings. The study finds that the EU provides a relatively integrated framework based on mutual recognition, while the United States and United Kingdom combine statutory mechanisms with judicial cooperation and principles of international comity. India, by contrast, continues to face significant uncertainty because Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 do not provide a comprehensive framework for cross-border insolvency in the absence of reciprocal arrangements. The comparative analysis demonstrates that fragmented procedures may result in parallel proceedings, inconsistent treatment of creditors, asset dissipation, and increased costs. The article therefore recommends that India adopt a comprehensive cross-border insolvency framework based on the UNCITRAL Model Law, with clear rules on COMI, recognition, relief, cooperation, and coordination of concurrent proceedings, while incorporating appropriate safeguards for domestic creditors and public policy.

Keywords: Cross-Border Insolvency, Centre of Main Interests (COMI), UNCITRAL Model Law, International Comity and Insolvency and Bankruptcy Code, 2016.

Introduction

Cross-border insolvency presents significant legal and practical challenges, as debtors, creditors, and assets are often located across multiple jurisdictions.[1] Differences in national insolvency laws and judicial practices frequently result in inconsistent outcomes, legal uncertainty, and increased costs.[2] Although international instruments such as the UNCITRAL Model Law on Cross-Border Insolvency, 1997 have promoted greater harmonization, important differences remain in their interpretation and implementation. The central debate in cross-border insolvency concerns the competing principles of universalism and territorialism. While universalism advocates a single insolvency proceeding with worldwide effect, territorialism permits each State to administer assets within its own jurisdiction. The internationally accepted principle of modified universalism seeks to reconcile these approaches by recognizing a foreign main proceeding while permitting limited local proceedings where necessary. Nevertheless, divergent judicial interpretations, public policy exceptions, and forum shopping continue to impede the effective administration of cross-border insolvencies.

The importance of addressing these issues is illustrated by major cross-border insolvency cases such as *Lehman Brothers*, *Nortel Networks*, and *Jet Airways*, which exposed the risks of fragmented proceedings, conflicting judicial decisions, and significant value erosion arising from inadequate international coordination.[3] Recognizing these challenges, UNCITRAL has observed that inconsistent approaches to cross-border insolvency impede business rescue, hinder the efficient administration of insolvency proceedings, and discourage international investment.[4] In the absence of a harmonized legal framework, debtors and creditors may engage in forum shopping by seeking jurisdictions that provide strategic advantages, thereby undermining the equitable treatment of creditors. Although the European Insolvency Regulation contains safeguards against abusive COMI manipulation, differences in national laws continue to create uncertainty in cross-border insolvency practice.[5] Against this

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[1] Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, para 1, p.19 (2014).

[2] Jay Lawrence Westbrook, A Global Solution to Multinational Default, Michigan Law Review, Vol. 98 (7) 2000, p.2279.

[3] In re Lehman Brothers Holdings Inc., 422 B.R. 407 (Bankr. S.D.N.Y. 2010); Nortel Networks Corp. (Re), 2015 ONCA 681 (Can. Ont. C.A.); State Bank of India v. Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Nov. 5, 2019).

[4] UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2 (2014); Bob Wessels, International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 27-36 (5th ed. 2022).

[5] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast), recitals 5 & 29 and arts. 3-4; John A.E. Pottow, Greed and Pride in International

background, this study undertakes a comparative analysis of the legal frameworks governing cross-border insolvency in the European Union, the United States, the United Kingdom, and India. It examines key principles, including the determination of the Centre of Main Interests (COMI), recognition of foreign proceedings, judicial cooperation, automatic stays, asset distribution, and the role of comity and reciprocity. By comparing these jurisdictions, the study identifies areas of convergence and divergence and proposes measures to strengthen international cooperation, legal certainty, and the effective resolution of cross-border insolvencies.[6]

International Frameworks for Cross-Border Insolvency

UNCITRAL Model Law and Global Standards

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 has become the principal international framework for harmonizing cross-border insolvency proceedings. It establishes a uniform mechanism for the recognition of foreign insolvency proceedings and judicial cooperation based on the principles of access, recognition, relief, and coordination.[7] The Model Law distinguishes between a foreign main proceeding**,** commenced in the State where the debtor has its COMI, and a foreign non-main proceeding, initiated in a State where the debtor maintains an establishment.[8] Recognition of a foreign main proceeding triggers automatic relief, including a stay of creditor actions and asset transfers, while interim relief may be granted pending recognition.[9] Reflecting the principle of modified universalism, the Model Law promotes a single primary insolvency proceeding supported by coordinated assistance from other jurisdictions.[10] As of 2026, it has been adopted in more than sixty jurisdictions, including the United States, the United Kingdom, Canada, Australia, Singapore, and Japan. Its implementation has enhanced legal certainty, streamlined recognition procedures, facilitated

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Bankruptcy: The Problems of and Proposed Solutions to "Local Interests", 104 Mich. L. Rev. 1899, 1906-15 (2006).

[6] Regulation (EU) 2015/848; 11 U.S.C. §§ 1501-1532 (Chapter 15); Cross-Border Insolvency Regulations 2006, SI 2006/1030 (U.K.); Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235 (India); Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (Oct. 2018).

[7] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2283-89 (2000); UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2, at 12–20 (2014).

[8] UNCITRAL Model Law on Cross-Border Insolvency arts. 2(b), 2(c), 16–17 (1997); John A.E. Pottow, Procedural Incrementalism: A Model for International Bankruptcy, 45 Va. J. Int'l L. 935, 953-61 (2005).

[9] UNCITRAL Model Law on Cross-Border Insolvency arts. 19-21 (1997); Ian F. Fletcher, Insolvency in Private International Law 426-45 (2d ed. 2005).

[10] Bob Wessels, International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 111-46 (5th ed. 2022); Jay Lawrence Westbrook, Universal Priorities, 33 Tex. Int'l L.J. 27 (1998).

cross-border asset recovery, promoted equal treatment of foreign creditors, and reduced duplicative proceedings, thereby improving the efficiency and predictability of multinational insolvency administration.[11]

Centre of Main Interests (COMI): A Comparative Analysis

The Centre of Main Interests (COMI) is the principal jurisdictional connecting factor in cross-border insolvency, determining the forum for the debtor's main insolvency proceeding. Under the EU Insolvency Regulation, COMI is defined as the place where the debtor administers its interests on a regular basis in a manner ascertainable by third parties. A debtor's registered office is presumed to be its COMI, although this presumption may be rebutted where objective evidence demonstrates that the debtor's actual management and business operations are conducted elsewhere. To discourage abusive forum shopping, the Recast Regulation denies the benefit of this presumption where the registered office has been transferred within three months prior to the commencement of insolvency proceedings. The European Court of Justice has consistently emphasised that COMI must be determined on the basis of objective and externally verifiable factors. In Eurofood IFSC Ltd**.**, the Court highlighted the importance of creditor expectations, while Interedil identified factors such as the location of management, principal assets, and business operations. More recently, Galapagos confirmed that a genuine relocation of COMI may be recognised, provided it reflects an actual transfer of economic activity rather than an attempt to manipulate jurisdiction.[12]

The United States adopts a substantially similar approach under Chapter 15 of the Bankruptcy Code. Although COMI is not expressly defined, a foreign main proceeding is recognised only where it is pending in the State of the debtor's COMI. U.S. courts undertake a fact-intensive assessment, considering the location of management, headquarters, assets, principal business operations, and creditors' reasonable expectations. Decisions such as In re SPhinX Ltd**.** and In re OAS S.A. demonstrate that U.S. courts prioritise the debtor's actual centre of administration over its place of incorporation, thereby preventing artificial COMI claims and reinforcing the principle of substance over form.[13] The United Kingdom continues to apply the COMI concept

[11] Jason J. Kilborn, Twenty-Five Years of the UNCITRAL Model Law on Cross-Border Insolvency, 31 Int'l Insolvency Rev. 303 (2022).

[12] Case C-341/04, Eurofood IFSC Ltd., EU:C:2006:281; Case C-396/09, Interedil Srl v. Fallimento Interedil Srl, EU:C:2011:671; Case C-723/20, Galapagos BidCo. S.à r.l., EU:C:2022:262.

[13] 11 U.S.C. § 1502(4); In re SPhinX, Ltd., 351 B.R. 103 (Bankr. S.D.N.Y. 2006); In re OAS S.A., 533 B.R. 83 (Bankr. S.D.N.Y. 2015).

through the Cross-Border Insolvency Regulations 2006, which implement the UNCITRAL Model Law. Although no longer bound by the EU Insolvency Regulation following Brexit, English courts continue to regard European COMI jurisprudence as persuasive authority. They have recognised legitimate COMI relocations where supported by genuine commercial activity while remaining alert to abusive forum shopping designed to prejudice creditors.[14]

In India, the Insolvency and Bankruptcy Code, 2016 does not presently recognise the concept of COMI, and jurisdiction is determined primarily by the debtor's registered office. Nevertheless, the proposed adoption of the UNCITRAL Model Law would introduce COMI as the principal jurisdictional test for recognising foreign proceedings. The Jet Airways litigation illustrates the practical importance of this concept, with Indian courts effectively treating India as the debtor's principal insolvency forum despite parallel proceedings in the Netherlands. The introduction of clear statutory COMI guidelines would enhance certainty, reduce jurisdictional conflicts, and align India's cross-border insolvency regime with internationally accepted standards.[15]

Automatic Stay

The automatic stay (moratorium) is a fundamental feature of insolvency law, preventing creditors from commencing or continuing enforcement actions against the debtor and thereby preserving the insolvency estate for collective resolution. In cross-border insolvency, the principal issue is whether a stay granted in one jurisdiction can be recognized and enforced in another. The UNCITRAL Model Law addresses this by providing that recognition of a foreign main proceeding automatically triggers a stay against individual creditor actions and execution proceedings in the recognizing State under Article 20, while provisional relief may be granted before recognition under Article 19.[16] This reflects the principle of modified universalism, whereby the foreign main proceeding is supported through domestic judicial assistance rather than replaced by parallel local proceedings. The recognition of the Korean rehabilitation proceeding in Hanjin Shipping illustrates this approach, where U.S. courts prevented creditors

[14] Cross-Border Insolvency Regulations 2006, SI 2006/1030 (U.K.); Cambridge Gas Transportation Corp. v. Official Committee of Unsecured Creditors of Navigator Holdings plc, [2006] UKPC 26, [2007] 1 A.C. 508.
[15] Insolvency and Bankruptcy Code, No. 31 of 2016 (India); Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (2018); State Bank of India v. Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Nov. 5, 2019).
[16] UNCITRAL Model Law on Cross-Border Insolvency arts. 19-21 (1997); UNCITRAL, Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation 154-177 (2014).

from arresting the debtor's vessels after Chapter 15 recognition.[17]

The European Union adopts the broadest approach to cross-border moratoria. Under the EU Insolvency Regulation (Recast), the opening of main insolvency proceedings in one Member State is automatically recognized throughout the Union, and the effects of the insolvency including the stay of creditor actions extend across all Member States without the need for separate recognition.[18] Nevertheless, limited exceptions protect secured creditors, set-off rights, and local interests, while secondary proceedings may still be opened where the debtor maintains an establishment. The Regulation therefore balances universal recognition with territorial safeguards, thereby reducing parallel litigation while preserving legitimate domestic interests.[19] The United States adopts a more restrained approach through Chapter 15 of the Bankruptcy Code. Recognition of a foreign main proceeding automatically activates the relief available under 11 U.S.C. § 1520, whereas provisional relief may be granted before recognition under § 1519 where immediate protection is required.[20] Unlike Chapter 11, however, Chapter 15 has no worldwide extraterritorial effect; its stay is confined to assets and proceedings within U.S. jurisdiction, with any additional relief remaining discretionary under § 1521. Consequently, foreign representatives often seek supplementary injunctions to extend the practical effect of the foreign moratorium, particularly in relation to contractual *ipso facto* clauses and asset administration.[21] The United Kingdom, through the Cross-Border Insolvency Regulations 2006 (CBIR), similarly implements the Model Law. Recognition of a foreign main proceeding ordinarily results in a stay equivalent to that available in domestic insolvency proceedings, while recognition of a foreign non-main proceeding confers only discretionary relief.[22] English courts generally support foreign insolvency proceedings but retain discretion to refuse relief where it conflicts with fundamental principles of English law, including public policy, mandatory set-off rights, or established common-law doctrines such as the Rule in Gibbs.[23]

[17] In re Hanjin Shipping Co., 2016 WL 6679487 (Bankr. D.N.J. Sept. 6, 2016); Jay Lawrence Westbrook, Chapter 15 at Last, 79 Am. Bankr. L.J. 713 (2005).
[18] Regulation (EU) 2015/848 arts. 19-21.
[19] Reinhard Bork & Kristin van Zwieten eds., Commentary on the European Insolvency Regulation arts. 34-38 (Oxford Univ. Press 2022).
[20] 11 U.S.C. §§ 1519-1521 (2024); In re ABC Learning Centres Ltd., 445 B.R. 318 (Bankr. D. Del. 2010).
[21] Collier on Bankruptcy 1521.01–1521.08 (16th ed. 2025); John A.E. Pottow, Procedural Incrementalism: A Model for International Bankruptcy, 45 Va. J. Int'l L. 935 (2005).
[22] Cross-Border Insolvency Regulations 2006 (U.K.), regs. 17–21.
[23] HIH Casualty & General Insurance Ltd., [2008] UKHL 21; Rubin v. Eurofinance SA, [2012] UKSC 46.

In India**,** the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 operates only within the territorial jurisdiction of Indian courts and has no automatic cross-border effect.[24] Consequently, foreign assets remain vulnerable to enforcement unless foreign courts voluntarily cooperate. This limitation became evident in Videocon Industries, where overseas assets could not be effectively protected, and in Jet Airways, where the NCLAT relied on a court-approved Cross-Border Insolvency Protocol based on principles of cooperation rather than statutory authority.[25] The Insolvency Law Committee (2018) therefore recommended adopting the UNCITRAL Model Law to enable recognition of foreign main proceedings and extend the benefit of an automatic moratorium to assets located in India, thereby minimizing conflicts arising from parallel proceedings.[26] Comparatively**,** the EU provides the strongest system of automatic cross-border recognition, while the United States and the United Kingdom adopt the Model Law's recognition-based framework that confines relief to the recognizing jurisdiction. India remains a territorial regime, relying primarily on judicial cooperation and comity in the absence of dedicated cross-border insolvency legislation. The adoption of the Model Law would substantially improve legal certainty by enabling coordinated stays, reducing parallel proceedings, and strengthening international insolvency cooperation.

Priority of Claims and Distribution of Assets

The priority of claims and distribution of assets remain among the most difficult issues in cross-border insolvency because national insolvency laws prescribe different orders of payment for creditors. Although the principle of modified universalism seeks to ensure a single and coordinated distribution, differences in domestic priority rules frequently result in parallel proceedings and inconsistent recoveries.

The European Union addresses this challenge through the Recast Insolvency Regulation, which adopts the principle of lex concursus, whereby the law of the Member State opening the main insolvency proceedings governs the administration and distribution of the debtor's estate.[27] Nevertheless, the Regulation permits the opening of secondary proceedings in States where the

[24] Insolvency and Bankruptcy Code, 2016, §§ 14, 234-235.
[25] State Bank of India v. Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT); Videocon Industries Ltd. v. State Bank of India, CP (IB) No. 02/BB/2020 (NCLT Mumbai).
[26] Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (2018).
[27] Regulation (EU) 2015/848 arts. 7, 34-52; Reinhard Bork & Kristin van Zwieten eds., Commentary on the European Insolvency Regulation (2022).

debtor has an establishment, allowing local assets to be distributed under domestic priority rules. While this protects local creditors, it fragments the insolvency estate and increases procedural complexity. To promote equality among creditors, the Regulation incorporates creditor participation and hotchpot mechanisms, preventing double recovery across concurrent proceedings.[28] The coordinated allocation of assets in Nortel Networks illustrates how judicial cooperation can mitigate conflicts arising from multiple insolvency proceedings.[29] The United States adopts a more centralized approach under Chapter 15**.** Rather than commencing a separate distribution proceeding, U.S. courts generally entrust domestic assets to the foreign representative for administration in the foreign main proceeding, provided that the interests of local creditors are adequately protected.[30] However, courts retain discretion to refuse or condition such relief where foreign distribution would prejudice U.S. creditors or contravene public policy. In exceptional cases, §1521(b) authorizes the application of U.S. bankruptcy priorities to locally administered assets. Chapter 15 further incorporates a statutory hotchpot rule under §1532, ensuring that creditors receiving distributions abroad do not obtain disproportionate recoveries in concurrent U.S. proceedings.[31]

The United Kingdom follows a similar philosophy under the Cross-Border Insolvency Regulations 2006 and traditional common-law principles of modified universalism. English courts generally facilitate a single worldwide distribution and may apply either English or foreign insolvency law when assisting designated foreign proceedings under Section 426 of the Insolvency Act 1986.[32] In HIH Casualty & General Insurance Ltd., the House of Lords permitted English assets to be remitted for distribution under Australian insolvency law, emphasizing fairness and efficient global administration.[33] Nevertheless, English courts continue to preserve domestic legal principles, particularly through the Rule in Gibbs and the public policy limitations affirmed in Rubin v. Eurofinance SA, which may restrict the recognition of foreign insolvency discharges affecting English-law obligations.[34]

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[28] Regulation (EU) 2015/848 arts. 45-49; Bob Wessels, International Insolvency Law (5th ed. 2022).
[29] Nortel Networks Corp. (Re), 2015 ONCA 681; Nortel Networks Inc., 532 B.R. 494 (D. Del. 2015).
[30] 11 U.S.C. §§ 1521–1522; In re ABC Learning Centres Ltd., 445 B.R. 318 (Bankr. D. Del. 2010).
[31] 11 U.S.C. §§ 1521(b), 1532; In re Qimonda AG, 737 F.3d 14 (4th Cir. 2013).
[32] Insolvency Act 1986, § 426 (U.K.); Cross-Border Insolvency Regulations 2006
[33] HIH Casualty & General Insurance Ltd., [2008] UKHL 21; Roy Goode, Principles of Corporate Insolvency Law (5th ed. 2018).
[34] Insolvency and Bankruptcy Code, 2016, § 53; Videocon Industries Ltd. v. State Bank of India, CP (IB) No. 02/BB/2020 (NCLT Mumbai); Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (2018).

In India**,** the Insolvency and Bankruptcy Code, 2016 prescribes a statutory waterfall under Section 53, establishing the order of priority among insolvency resolution costs, secured creditors, employees, unsecured creditors, government dues, and other stakeholders. However, the Code contains no comprehensive mechanism governing the distribution of assets located outside India. Consequently, overseas assets may be administered under foreign insolvency laws, leading to inconsistent treatment of creditors and fragmented recoveries. The Videocon Group insolvency demonstrated these practical limitations, as foreign assets could not be effectively integrated into the Indian insolvency process. Recognizing these deficiencies, the Insolvency Law Committee (2018) recommended adoption of the UNCITRAL Model Law, which would facilitate coordinated asset administration, ensure equal treatment of foreign creditors, and prevent double recovery through cooperation between concurrent proceedings. Until such reforms are implemented, India's distribution regime remains predominantly territorial. Overall, the comparative analysis demonstrates that while the EU balances universalism with territorial protection through secondary proceedings, the United States and United Kingdom generally favour centralized distribution under the foreign main proceeding, subject to public policy safeguards. India, by contrast, continues to follow a territorial model because of the absence of a statutory cross-border insolvency framework. The adoption of the UNCITRAL Model Law would significantly strengthen India's ability to coordinate international asset distribution and promote equitable treatment of creditors across jurisdictions.

Forum Shopping and COMI Shifts

Forum shopping in cross-border insolvency refers to the strategic selection of a jurisdiction that offers more favourable insolvency laws or procedures. This may involve relocating the debtor's Centre of Main Interests (COMI), incorporating in another jurisdiction before insolvency, or initiating proceedings in a preferred forum. While strategic forum selection may facilitate efficient restructuring, abusive forum shopping can undermine creditor expectations, legal certainty, and the principle of equal treatment.

The European Union addresses forum shopping through the Recast Insolvency Regulation by establishing rebuttable presumptions regarding COMI, restricting last-minute transfers of a debtor's registered office, and requiring jurisdiction to be objectively ascertainable by creditors. The Regulation also limits the premature commencement of secondary proceedings to prevent procedural abuse.[35] The Court of Justice of the European Union, held that any COMI relocation must reflect a genuine transfer of the debtor's principal administration and be objectively verifiable by third parties, particularly creditors.[36] More recently, the *Galapagos* decision confirmed that a genuine COMI shift is permissible even shortly before insolvency proceedings, provided it satisfies the objective criteria under the Regulation, thereby balancing restructuring flexibility with safeguards against abusive forum shopping.[37] In the United States, forum shopping primarily concerns the choice of bankruptcy venue, particularly between jurisdictions such as Delaware and the Southern District of New York. In cross-border cases, foreign debtors may seek Chapter 15 recognition or commence Chapter 11 proceedings by establishing a minimal U.S. connection, as U.S. bankruptcy jurisdiction requires only the existence of property within the United States.[38] The willingness of U.S. courts to facilitate foreign restructurings where jurisdiction and restructuring objectives justify relief.[39] Nevertheless, U.S. courts generally defer to foreign main proceedings under the principle of international comity and may dismiss Chapter 11 petitions filed solely for tactical advantage under the doctrine of bad-faith filing.[40] The United Kingdom has traditionally been regarded as a preferred restructuring forum because of its sophisticated insolvency regime and pragmatic judicial approach. English courts recognize COMI shifts where they reflect genuine commercial activity and are transparent to creditors rather than artificial attempts to obtain a favourable forum.[41] The High Court accepted that a legitimate transfer of COMI to England for restructuring purposes was not objectionable where supported by commercial reality.[42]

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[35] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast), arts. 3, 4 & 38, recitals 5, 28-30, 2015 O.J. (L 141) 19; Reinhard Bork & Kristin van Zwieten eds., Commentary on the European Insolvency Regulation arts. 3–4 (Oxford Univ. Press 2022).

[36] Eurofood IFSC Ltd., Case C-341/04, ECLI:EU:C:2006:281; Interedil Srl v. Fallimento Interedil Srl, Case C-396/09, ECLI:EU:C:2011:671; Bob Wessels, International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 252–279 (5th ed. 2022).

[37] Galapagos BidCo S.à r.l., Case C-723/20, ECLI:EU:C:2023:31; Reinhard Bork & Kristin van Zwieten eds., Commentary on the European Insolvency Regulation arts. 3–4 (Oxford Univ. Press 2022).

[38] 11 U.S.C. §§ 109(a), 1501–1532 (2024); Collier on Bankruptcy ¶¶ 109.01, 1501.01 (Richard Levin & Henry J. Sommer eds., 16th ed. 2025); Jay Lawrence Westbrook, Chapter 15 at Last, 79 Am. Bankr. L.J. 713, 717–26 (2005).

[39] In re Suntech Power Holdings Co., 520 B.R. 399 (Bankr. S.D.N.Y. 2014); In re Avanti Communications Group PLC, 582 B.R. 603 (Bankr. S.D.N.Y. 2018); Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2295–2308 (2000).

[40] In re Bemarmara Consulting A.S., 2015 WL 6164953 (Bankr. S.D. Fla. Oct. 20, 2015); In re Creative Finance Ltd., 543 B.R. 498 (Bankr. S.D.N.Y. 2016); Collier on Bankruptcy ¶ 1112.07 (Richard Levin & Henry J. Sommer eds., 16th ed. 2025).

[41] Regulation (EU) 2015/848, art. 3 & recitals 5, 28–30; Eurofood IFSC Ltd., Case C-341/04; Interedil Srl, Case C-396/09.

[42] Re Collins & Aikman Europe SA, [2006] EWHC 1343 (Ch); Bob Wessels, International Insolvency Law 252–279 (5th ed. 2022); Reinhard Bork, Corporate Insolvency Law: A Comparative Textbook 337–346 (Oxford Univ. Press 2020).

Although Brexit ended automatic recognition under the EU Insolvency Regulation, English schemes of arrangement and restructuring plans continue to attract international debtors, with recognition now depending upon private international law and foreign recognition regimes.[43]

In India, forum shopping has so far been relatively limited because Indian corporate debtors generally cannot access foreign insolvency proceedings without substantial overseas assets or business operations. Moreover, foreign insolvency proceedings presently receive no automatic recognition under the Insolvency and Bankruptcy Code, 2016.[44] The *Jet Airways (India) Ltd.* case nevertheless demonstrated how foreign creditors may initiate parallel proceedings abroad where they perceive delays or uncertainty in India, prompting the NCLAT to approve a Cross-Border Insolvency Protocol based on judicial cooperation and modified universalism.[45] Recognizing these challenges, the Insolvency Law Committee (2018) recommended adopting the UNCITRAL Model Law based on the COMI principle to reduce parallel proceedings, discourage forum shopping, and promote coordinated cross-border insolvency administration. However, the proposed reciprocity requirement may continue to influence forum selection and limit recognition of certain foreign proceedings.[46]

Comity and Recognition (Reciprocal Enforcement)

Comity is the principle under which courts recognize and assist foreign judicial proceedings out of mutual respect and international cooperation rather than legal obligation. In cross-border insolvency, it facilitates the recognition of foreign proceedings, enforcement of insolvency orders, and cooperation between courts and insolvency representatives.

The UNCITRAL Model Law, as implemented in the United States through Chapter 15 of the Bankruptcy Code, places comity at the centre of cross-border insolvency. Chapter 15 promotes cooperation between domestic and foreign courts, while §§ 1507 and 1509 authorize U.S. courts to grant assistance to foreign representatives. Recognition may be refused only where it

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[43] Companies Act 2006 (U.K.), pts. 26 & 26A; Virgin Atlantic Airways Ltd., [2020] EWHC 2376 (Ch); Look Chan Ho (ed.), Cross-Border Insolvency: Principles and Practice 285–320 (Sweet & Maxwell 2016).

[44] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235 (India); Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency 8–18 (Oct. 2018).

[45] State Bank of India v. Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Nov. 5, 2019); Jet Airways (India) Ltd., Bankruptcy No. C/09/571160 FT RK 19/830 (District Court of Noord-Holland, Netherlands 2019).

[46] Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency 39–72 (Oct. 2018); UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2 (2014); Bob Wessels, International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 165–201 (5th ed. 2022).

is manifestly contrary to U.S. public policy under § 1506.[47] he U.S. Bankruptcy Court recognized and enforced a Canadian restructuring plan, emphasizing judicial deference and international cooperation.[48] By contrast, *In re Toft* illustrates the narrow application of the public policy exception, where recognition was denied because the requested relief conflicted with fundamental U.S. privacy rights. These decisions demonstrate that Chapter 15 strongly favours comity without requiring reciprocity.[49]

The United Kingdom has traditionally recognized foreign insolvency proceedings through both common law and the Cross-Border Insolvency Regulations 2006 (CBIR). The Privy Council adopted a broad approach to international comity, although this was subsequently qualified by the UK Supreme Court held that comity cannot override the ordinary rules governing the enforcement of foreign judgments.[50] Nevertheless, English courts continue to assist foreign officeholders under the CBIR and common law where consistent with public policy and the statutory framework. Again reaffirmed that common-law assistance remains available within defined limits and does not depend upon reciprocity.[51] Unlike the United States and the United Kingdom, the European Union relies on a system of automatic mutual recognition established by the Recast Insolvency Regulation rather than discretionary judicial comity. Insolvency proceedings commenced in one Member State are recognized throughout the EU as a matter of legal obligation. Recognition of proceedings originating from non-EU States, however, remains subject to the domestic laws of individual Member States or applicable international agreements. Consequently, national courts may continue to rely on private international law and principles of comity when dealing with third-country insolvency proceedings. The growing influence of the UNCITRAL Model Law has gradually shifted many European jurisdictions away from a purely territorial approach towards greater international cooperation.[52]

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[47] 11 U.S.C. §§ 1501(a), 1506, 1507, 1509 (2024); H.R. Rep. No. 109-31, pt. 1, at 105-10 (2005); UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2 (2014), Guide 13-20.

[48] In re Metcalfe & Mansfield Alternative Investments, 421 B.R. 685, 696–99 (Bankr. S.D.N.Y. 2010); Jay Lawrence Westbrook, Chapter 15 at Last, 79 Am. Bankr. L.J. 713, 724–34 (2005).

[49] In re Toft, 453 B.R. 186, 196–201 (Bankr. S.D.N.Y. 2011); 11 U.S.C. § 1506 (2024); Collier on Bankruptcy 1506.01-1507.03 (Richard Levin & Henry J. Sommer eds., 16th ed. 2025).

[50] Cambridge Gas Transportation Corp. v. Official Committee of Unsecured Creditors of Navigator Holdings plc, [2006] UKPC 26, [2007] 1 A.C. 508; Rubin v. Eurofinance SA, [2012] UKSC 46, [2013] 1 A.C. 236.

[51] Cross-Border Insolvency Regulations 2006, SI 2006/1030 (U.K.); Singularis Holdings Ltd. v. PricewaterhouseCoopers, [2014] UKPC 36, [2015] A.C. 1675; Look Chan Ho (ed.), Cross-Border Insolvency: Principles and Practice 89-135 (Sweet & Maxwell 2016).

[52] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast), arts. 19-33 & recitals 22-25, 2015 O.J. (L 141) 19; Reinhard Bork & Kristin van Zwieten eds., Commentary on the European Insolvency Regulation arts. 19–33 (Oxford Univ. Press 2022); Bob Wessels,

In India, cross-border insolvency continues to follow a predominantly territorial approach due to the absence of a comprehensive statutory framework. Although Section 13 of the Code of Civil Procedure, 1908 provides for recognition of certain foreign judgments, insolvency orders such as moratoria and discharge orders do not receive automatic recognition. Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 contemplate cooperation through reciprocal agreements, but no such arrangements are presently in force. Consequently, Indian courts have relied upon judicial comity and inherent powers, where the NCLAT approved a Cross-Border Insolvency Protocol and recognized the Dutch insolvency representative to facilitate coordinated proceedings.[53] The Insolvency Law Committee (2018) subsequently recommended adopting the UNCITRAL Model Law to establish a statutory framework based on COMI, recognition, and judicial cooperation. The proposed Indian framework incorporates a reciprocity requirement, reflecting a cautious approach to recognizing foreign insolvency proceedings. While intended to ensure reciprocal treatment of Indian proceedings abroad, this requirement may limit international cooperation and reduce the effectiveness of the Model Law. Greater judicial coordination could also be achieved through adoption of the Judicial Insolvency Network (JIN) Guidelines, which provide internationally accepted standards for court-to-court communication, joint hearings, information sharing, and coordinated administration of cross-border insolvency proceedings.[54]

Conclusion

Cross-border insolvency has evolved into a cooperative legal framework founded on the principles of modified universalism, judicial cooperation, and international comity. The comparative analysis of the European Union, the United States, the United Kingdom, and India demonstrates increasing convergence in core principles, including COMI-based jurisdiction, recognition of foreign proceedings, cooperation between courts, and coordinated administration of multinational insolvencies. The UNCITRAL Model Law and the EU Insolvency Regulation have significantly contributed to this harmonization by providing a

International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 393-425 (5th ed. 2022).

[53] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235 (India); Code of Civil Procedure, No. 5 of 1908, § 13 (India); State Bank of India v. Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Nov. 5, 2019); Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (Oct. 2018).

[54] Judicial Insolvency Network, Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (2016); UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2 (2014); Bob Wessels, International Insolvency Law: Part I Global Perspectives on Cross-Border Insolvency Law 735-760 (5th ed. 2022).

common framework that enhances efficiency, legal certainty, and creditor protection. Despite these developments, important differences remain in relation to reciprocity, public policy exceptions, recognition of foreign judgments, and the treatment of local creditors. These divergences continue to create challenges, including parallel proceedings, inconsistent judicial outcomes, and opportunities for forum shopping. Judicial decisions such as Lehman Brothers, Nortel Networks, HIH Insurance, and Jet Airways illustrate that effective cross-border insolvency depends not only on legislative frameworks but also on judicial cooperation and practical coordination among courts.

For India, the absence of a comprehensive cross-border insolvency regime under the Insolvency and Bankruptcy Code, 2016 highlights the need for legislative reform. The proposed adoption of the UNCITRAL Model Law would strengthen India's ability to recognize foreign proceedings, facilitate cooperation with foreign courts, and improve the efficient administration of multinational insolvencies while safeguarding domestic interests. the future of cross-border insolvency lies in greater international harmonization supported by effective judicial cooperation and balanced domestic safeguards. A legal framework based on the principles of the UNCITRAL Model Law will promote certainty, reduce jurisdictional conflicts, and facilitate the orderly resolution of multinational insolvencies. As international commerce continues to expand, strengthening cross-border insolvency cooperation will remain essential to ensuring efficient insolvency administration, protecting stakeholder interests, and maintaining confidence in the global financial system.