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## BEYOND FRAGMENTATION: BUILDING EFFECTIVE CROSS-BORDER INSOLVENCY COORDINATION

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### ABSTRACT

Cross border insolvency regimes are fraught with jurisdictional Obstacles as the law pertaining to different countries is in conflict in the interest of creditors, the distribution of assets, and the enforcement of such laws. Although international harmonisation attempts such as the UNCITRAL Model Law and the EU Insolvency Regulation have provided a framework for international cooperation in the procedure of insolvency, the differences between the countries persist. The high-profile cases of Lehman Brothers, FTX, and Jet Airways have highlighted the lacuna in the regulation of multinational corporate groups.

Whilst India's system of insolvency is sound domestically due to the Insolvency and Bankruptcy Code, it suffers from similar issues of insufficient global harmonization tools with other jurisdictions. The latest reforms suggest that new coordination tools will be developed that, if successfully implemented, have the potential to make India a leader in relation to Asian cross-border insolvency resolution issues. The changing framework of global trade and the rise of digital assets require an advanced harmonization system and sophisticated tools of judicial cooperation to handle the increasing complexity of international corporate collapses.

**Keywords:** Cross-border Insolvency, UNCITRAL Model Law, Global Trade, Insolvency and Bankruptcy Code, International Coordination.

## UNDERSTANDING CROSS-BORDER INSOLVENCY

The financial giant Lehman Brothers, which operated through 650 companies in more than 40 jurisdictions, collapsed in 2008, exposing the disastrous effects of fragmented insolvency laws.<sup>1</sup> The 2022 FTX coin crash resulted in \$8 billion shortfall across more than 130 affiliated companies, underscoring the inadequacies of established regulatory frameworks in addressing contemporary digital finance.<sup>2</sup> The above scenarios illustrate a fundamental legal paradox: Although global integration promotes business activity, insolvency regulations are rooted in territorial sovereignty, leading to redundant proceedings, asset confiscation, and creditor inequality.

Cross-border bankruptcy happens when a debtor's assets, debts, or creditors are in more than one jurisdiction. This means that private international law principles like comity, jurisdiction, and the recognition of foreign judgments come into play.<sup>3</sup> Precisely, economic interdependence advances through interconnected supply chains, financial systems, and online platforms; these incidents have become more frequent and require international processes to prevent deadlock and restore trust.

## FOUNDATIONAL CONCEPT

As per Black's Law Dictionary "insolvency" means the incapacity to settle obligations as they arise in the normal course of business, or a state in which liabilities surpass asset values, prompting judicial processes to safeguard creditor interests and facilitate orderly distribution.<sup>4</sup> Cross-border insolvency broadens this notion to encompass cases involving debtors linked to multiple jurisdictions, including assets, operations, creditors, or claims governed by disparate legal systems, thus engendering unavoidable conflicts with private international law principles related to jurisdiction, applicable law, and judgment enforcement.<sup>5</sup>

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<sup>1</sup>*In re Lehman Bros. Holdings Inc.*, No. 08-13555, 3 REPORT OF ANTON R. VALUKAS, EXAMINER 15–47 (Bankr. S.D.N.Y. Mar. 11, 2010); Ian Fletcher, *The Lehman Brothers Collapse: Lessons for International Insolvency Law Reform*, 19 INT'L INSOLVENCY REV. 93 (2010).

<sup>2</sup>*In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. 2022). John J. Ray III, *First Interim Report of the Chapter 11 Debtors*, No. 22-11068 (Bankr. D. Del. Nov. 17, 2022).

<sup>3</sup>IAN F. FLETCHER, INSOLVENCY IN PRIVATE INTERNATIONAL LAW 3–12 (2d ed. 2005).

<sup>4</sup>BLACK'S LAW DICTIONARY 938 (11th ed. 2019).

<sup>5</sup>IAN F. FLETCHER, INSOLVENCY IN PRIVATE INTERNATIONAL LAW 3–12 (2d ed. 2005); ADRIAN BRIGGS, PRIVATE INTERNATIONAL LAW IN ENGLISH COURTS 478–502 (2014); Irit Mevorach, *On the Road to Universalism: A Comparative and Empirical Study of the UNCITRAL Model Law on Cross-Border Insolvency*, 12 EUR. BUS. ORG. L. REV. 517 (2011).

Territorialism and universalism are two doctrinally opposed systems. The traditional theory of territorialism is founded on absolute sovereignty, views every country as an independent entity and allows domestic courts to decide cases and distribute resources without interference from outside parties. This method, common in early 20th-century insolvency practices, allegedly safeguards local economies and creditors, yet ultimately engenders disorder.<sup>6</sup> Universalism, in contrast, proposes a singular, principal process focused on the debtor's Centre of Main Interests (COMI), with effects acknowledged universally by mutual recognition, thus enhancing asset management and fair distribution. This paradigm, which gained importance due to harmonisation efforts post-1970s, is based on the COMI concept derived from Continental jurisprudence and incorporated into frameworks such as the EU Insolvency Regulation (Recast) 2015.

In *Re Eurofood IFSC Ltd.*,<sup>7</sup> the European Court of Justice determined that the Centre of Main Interests (COMI) must be objectively identifiable by third parties to avert forum shopping, with the presumption of the registered office often remaining valid until there has been a relocation during the prior three months.

Broad concerns in private international law are reflected in this conceptual conflict. Nevertheless, the apparent inclination toward universalism supports a legal principle isolation reduces the maximisation of collective value in a connected society.

## INDIA'S REGULATORY APPROACH

India's involvement in cross-border insolvency exemplifies a tension between ambitious reform and measured incrementalism, significantly transformed by the Insolvency and Bankruptcy Code 2016 (IBC), which amalgamated various antiquated statutes into a cohesive, creditor-focused framework prioritising expeditious resolution.<sup>8</sup> As of October 2025, the IBC has enabled the recovery of more than 5,000 distressed companies; however, its cross-border provisions, Sections 234 and 235, are underdeveloped, granting the Central Government the authority to negotiate bilateral enforcement treaties and issue letters rogatory to foreign courts,

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<sup>6</sup>CHARLES POOR KINDLEBERGER, *THE WORLD IN DEPRESSION 1929–1939*, at 146–153 (1973); AUREL SCHUBERT, *THE CREDIT-ANSTALT CRISIS OF 1931* (1991).

<sup>7</sup>*Case C-341/04, Eurofood IFSC Ltd.*, 2006 E.C.R. I-3813, ¶¶ 33–37.

<sup>8</sup>Insolvency and Bankruptcy Code, 2016, Statement of Objects and Reasons, No. 31, Acts of Parliament, 2016 (India).

dependent on reciprocal guarantees.<sup>9</sup> Regrettably, many provisions remain inactive, as preliminary Memoranda of Understanding (MOUs) with the United Kingdom and Singapore are hindered by administrative delays.

The 2018 report from the Insolvency Law Committee, supported the incorporation of UNCITRAL principles to IBC chapters advocating that where assets are located within the country or jurisdiction is applicable; foreign administrators must apply for recognition before the National Company Law Tribunal (NCLT), with the registered office's Centre of Main Interests (COMI) assessed using a rebuttable presumption that is further clarified by central administration indicators.<sup>10</sup>

The Insolvency and Bankruptcy Code (Amendment) Bill 2025 has taken the place of the previously proposed 2021 Draft Rules. This legislation grants rulemaking authority for cross-border administrations, definitions of COMI, and group coordination, thereby aligning India with more of the jurisdictions that follow the Model Law.<sup>11</sup>

Judicial activism has inevitably closed these gaps. The *Jet Airways* ruling recognised foreign COMI via protocol, a principle that resonated in *Videocon Industries Ltd v SEBI*, where international parental guarantees were integrated into the Indian resolution framework.<sup>12</sup> The Biju's Global Holdings Pte Ltd controversy exposed irreconcilable conflicts between domestic Corporate Insolvency Resolution Processes (CIRP) and Chapter 11 filings in the United States, leading to asset freezes and split litigation. Due to the NCLAT's erred emphasis on domestic timelines, creditors were not treated fairly.<sup>13</sup>

As evidenced by Tata Group affiliates, doctrinal shortcomings persist; an unclear COMI creates predictive ambiguity; the absence of collective insolvency mechanisms impedes conglomerate rehabilitations; the narrow scope of reciprocity leaves out crucial non-signatory nations; and the IBC's mandatory 330-day CIRP deadline conflicts with the Model Law's flexibility, endangering early suboptimal outcomes.<sup>14</sup> The full implementation of the 2025 Amendment

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<sup>9</sup>Insolvency and Bankruptcy Code, 2016, §§ 234–235, No. 31, Acts of Parliament, 2016 (India).

<sup>10</sup>Id. At 67–89

<sup>11</sup>Insolvency and Bankruptcy Code (Amendment) Bill 2025 (India) s 59C

<sup>12</sup>*Jet Airways (India) Ltd. v. State Bank of India*, (2019) 259 Comp Cas 139 (NCLAT); *Videocon Indus. Ltd. v. SEBI*, (2021) ibclaw.in 28 NCLAT, ¶¶ 12–19.

<sup>13</sup>*In re Byju's Global Holdings Pte Ltd.*, (NCLT Bangalore 2024); Sumant Batra & Aashna Sharma, *Cross-Border Insolvency Challenges: The Byju's Conundrum*, 3 IND. J. INSOLVENCY L. 234 (2024).

<sup>14</sup>Umakanth Varottil, *India's Cross-Border Insolvency Framework: Ambitions and Reality*, 32 INT'L INSOLVENCY REV. 178, 192–201 (2023).

might strengthen the NCLT within the Judicial Insolvency Network.

## INTERNATIONAL PATHWAYS

Numerous multilateral instruments place more emphasis on judicial cooperation and procedural facilitation than on harmonising substantive law have been produced as a result of the effort to achieve coherence in cross-border insolvency. The United Nations Commission on International Trade Law created the UNCITRAL Model Law on Cross-Border Insolvency which is a well-known and flexible framework for use at home. With over 62 states and 65 jurisdictions adopting the Model Law by October 2025, a procedural framework that reduces jurisdictional conflicts without enforcing creditor hierarchies or reorganisation methodologies has been established.<sup>15</sup>

The UNCITRAL Model Law on International Commercial Arbitration (1985), amended in 2006, delineates essential terminology in Article 2: a “foreign main proceeding” refers to collective judicial or administrative actions within the jurisdiction of the centre of main interests (COMI) for reorganisation or liquidation. Article 20 offers automatic provisional relief while Article 21 gives discretionary authority for specific remedies like debtor exams or asset turnover.<sup>16</sup>

Article 25, fundamental to effective collaboration, mandates that courts and insolvency administrators provide optimal cooperation, encompassing direct cross-border discussions devoid of formal conventions.<sup>17</sup> Public policy exclusions under Article 6 permit refusal where recognition contravenes essential domestic principles. The U.S. courts utilise it judiciously to foster comity, as evidenced in *InRe Toft*.<sup>18</sup>

The European Union's Insolvency Regulation (EU) establishes a binding framework that requires automatic recognition of main proceedings among Member based on the Centre of Main Interests (COMI), thereby eliminating petitions and generating universal effects, with secondary proceedings confined to local assets.<sup>19</sup> It introduces innovations in group

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<sup>15</sup>UNCITRAL, Status: UNCITRAL Model Law on Cross-Border Insolvency (1997) [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency/status](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status) accessed 5 January 2026.

<sup>16</sup> *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, arts. 2, 20, 21, U.N. Sales No. E.14.V.2 (2014).

<sup>17</sup>*Id.* Art. 25.

<sup>18</sup>*In re Toft*, 453 B.R. 186, 194–196 (Bankr. S.D.N.Y. 2011); LOOK CHAN HO, CROSS-BORDER INSOLVENCY: PRINCIPLES AND PRACTICE 156–167 (2016).

<sup>19</sup>Council Regulation 2015/848, arts. 3, 19–20, 2015 O.J. (L 141) 19 (EU).

coordination procedures without obligatory consolidation and a centralised European e-justice insolvency register for public disclosure, thereby improving transparency and deterring opportunistic relocations, as demonstrated in *In Re German Celtic Bank*.<sup>20</sup>

Supplementing these legal frameworks are extrajudicial procedures, notably the Judicial Insolvency Network (JIN) Guidelines (2016), a voluntary coalition of over 60 courts from 25 jurisdictions facilitating information exchange and protocol harmonisation.<sup>21</sup> This occurred in *Re Ezra Holdings Ltd.*<sup>22</sup> where coordinated administrator orders expedited asset realisations across jurisdictions.

## CONTEMPORARY PRACTICES

The last five years have seen a significant evolution in cross-border insolvency, driven by post-pandemic challenges, environmental demands, and technological disruptions that have both challenged and outperformed preexisting frameworks. Recognised as an essential principle, judicial cooperation has proven essential in filling legislative gaps. The NCLAT's appellate intervention established a ground-breaking "Cross-Border Insolvency Protocol," and granted spectator rights to the Dutch administrator in India's Committee of Creditors.<sup>23</sup> Moreover, the crypto currency bankruptcies have adversely affected cross-border insolvency law, making COMI evaluations and asset localisation harder than before.

Group insolvencies, or corporate group restructurings, continue to be a doctrinal deficiency, hindered by the lack of enforceable consolidation tools. The prolonged *Re Nortel Networks Corp*<sup>24</sup>. The dispute, which involved 80,000 creditors in six jurisdictions and a \$7.3 billion distribution, highlighted the challenges of fragmented adjudications by using an ad hoc multi-jurisdictional protocol rather than a formal mandate.<sup>25</sup> UNCITRAL's Model Law on Enterprise Group Insolvency (2019) provides instruments for coordinated planning. However, as criticised in *Leder v. Nortel Networks Inc.*, it fails to achieve significant consolidation and instead leaves

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<sup>20</sup>*Id.* arts. 56–77; *In re German Celtic Bank*, [2020] SGHC 94

<sup>21</sup>JUDICIAL INSOLVENCY NETWORK, GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS (2016).

<sup>22</sup>*In re Ezra Holdings Ltd.*, [2017] SGHC 283; *Modular Protocol for Multi-Jurisdictional Insolvency (Gibraltar Protocol 2014)*; *In re HIH Royal Marine (UK) Ltd.*, [2006] BPIR 1192.

<sup>23</sup>BOB WESSELS, INTERNATIONAL INSOLVENCY LAW 287–314 (4th ed. 2019).

<sup>24</sup>*In re Nortel Networks Corp.*, (2015) 527 F.T.R. 1

<sup>25</sup>Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 MICH. L. REV. 2276, 2304–2315 (2000).

resolutions up to drawn-out discussions.<sup>26</sup>

Simultaneously, environmental demands have generated “green” restructuring frameworks, wherein climate restrictions give rise to global claims. In April 2025, a notable development occurred in Asia when the Singapore High Court acknowledged an Indian Corporate Insolvency Resolution Process (CIRP) as a “foreign main proceeding” under its Model Law implementation, designating the Resolution Professional as “foreign representative” and providing ancillary relief marking a doctrinal milestone for Indo-Singaporean comity.

## WAY FORWARD

In spite of enhancements, cross-border insolvency faces many problems that make it less efficient and fair. A major worry is the abuse of COMI, in which debtors set up fake businesses in places where they won't be watched and make it harder for third parties to trust them.<sup>27</sup> Digital assets are more complicated, which makes it harder to figure out where they came from and how to use them as evidence in court because they can be used anywhere in the world.<sup>28</sup> Moreover, enforcement asymmetries enable non-reciprocal states to undertake parallel measures, obscuring assets and hindering creditor recovery.<sup>29</sup>

To resolve these issues, policy proposals for India advocate for the prompt enactment of the UNCITRAL Model Law via the 2024 revisions, incorporating precise definitions of COMI, recognition protocols, and automatic relief mechanisms to deter forum shopping.<sup>30</sup> India must prioritise drafting bilateral treaties with essential trading partners, including the United Kingdom and the United Arab Emirates, to establish reliable enforcement mechanisms<sup>31</sup>. Being involved in the Judicial Insolvency Network would additionally foster substantive judicial

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<sup>26</sup>*Leder v. Nortel Networks Inc.*, [2013] ONCA 609; *UNCITRAL Model Law on Enterprise Group Insolvency* (2019).

<sup>27</sup>Irit Mevorach, *The Home Country of a Multinational Enterprise Group: Reconstructing the Connecting Factor of "Centre of Main Interests"*, 6 J. INT'L BANKING & FIN. L. 346, 352–355 (2010); Lynn M. LoPucki, *The Case for Cooperative Territoriality in International Bankruptcy*, 98 MICH. L. REV. 2216, 2240–2245 (2000).

<sup>28</sup>Kelvin F.K. Low & Eliza Mik, *Cryptocurrency Insolvency and Conflicts of Law*, 39 J. BUS. L. 447, 455–460 (2023); Karen E.C. Levy et al., *Blockchain and Insolvency: Challenges and Opportunities*, 42 YALE J. ON L. & TECH. 89, 102–108 (2024).

<sup>29</sup>Andrew Godwin & Andrew Schmulow, *Enforcement Challenges in Cross-Border Insolvency*, 41 U.N.S.W. L.J. 567, 578–583 (2022); BOB WESSELS, *INTERNATIONAL INSOLVENCY LAW* 445–467 (4th ed. 2019).

<sup>30</sup>Insolvency and Bankruptcy Code (Amendment) Bill, 2025, § 59C, Bill No. [X] of 2025, Acts of Parliament, 2025 (India); *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, arts. 2, 15–17, 20–21, U.N. Sales No. E.14.V.2 (2014); *INSOLVENCY LAW COMM., REPORT ON CROSS-BORDER INSOLVENCY* 78–92 (2018).

<sup>31</sup>INSOLVENCY LAW COMM., *supra* note 5, at 93–105; MINISTRY OF CORPORATE AFFAIRS, *CONSULTATION PAPER ON BILATERAL TREATIES FRAMEWORK* 12–25 (2024).

communication and the development of protocols, which would enhance international cooperation.<sup>32</sup> India's capabilities would be improved by the establishment of specialised tribunals with expertise in international law and cross-border restructurings.<sup>33</sup>

Improving group insolvency procedures by implementing legally binding consolidation procedures within UNCITRAL models may help to reduce fragmentation in corporate structures that are closely linked.<sup>34</sup> Digital assets' arrangement within insolvency estates would be clarified by establishing standardised custody guidelines and forensic procedures.<sup>35</sup> Enhancing joint hearing arrangements, modelled after the Gibraltar Protocol, will furnish courts with streamlined templates for collaboration.<sup>36</sup> Ultimately, integrating environmental, social, and governance criteria into COMI assessments and restructuring strategies would harmonise insolvency with contemporary regulatory norms.<sup>37</sup>

## CONCLUSION

Cross-border insolvency law has experienced a significant evolution from a focus on territorial conflicts to a model of Universalist cooperation, driven by UNCITRAL's procedural frameworks, judicial collaboration, and emerging digital challenges. Jet Airways, FTX, and the 2025 Singapore-India recognition are examples of successful pathways and technological and protocol advancements that make recoveries previously unachievable, but they also highlight enduring gaps in group consolidations, digital assets, and implementation inequalities.<sup>38</sup>

Despite being effective domestically, India's Insolvency and Bankruptcy Code<sup>39</sup> faces

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<sup>32</sup>JUDICIAL INSOLVENCY NETWORK, GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS ¶¶ 8–15 (2016); INSOLVENCY LAW COMM., *supra* note 5, at 106–112.

<sup>33</sup>Umakanth Varottil, *India's Cross-Border Insolvency Framework: Ambitions and Reality*, 32 INT'L INSOLVENCY REV. 178, 195–198 (2023); INSOLVENCY LAW COMM., *supra* note 5, at 113–120.

<sup>34</sup> UNCITRAL Model Law on Enterprise Group Insolvency, arts. 18–24 (2019); Sarah Paterson & Reinhard Dammann, [Title], [Vol] [JOURNAL] 570–578; Jennifer L. Payne, *Cross-Border Schemes of Arrangement and Forum Shopping*, 14 EUR. BUS. ORG. L. REV. 563, 580–585 (2014).

<sup>35</sup> Kevin Davis, *Digital Assets and Bankruptcy: A Primer*, 98 AM. BANKR. L.J. 67, 85–92 (2023); Low & Mik, *supra* note 3, at 462–468; FINANCIAL STABILITY BOARD, REGULATION, SUPERVISION AND OVERSIGHT OF CRYPTO-ASSET ACTIVITIES AND MARKETS 34–45 (2023).

<sup>36</sup> *Modular Protocol for Multi-Jurisdictional Insolvency (Gibraltar Protocol 2014)*, ¶¶ 7–12; JUDICIAL INSOLVENCY NETWORK, *supra* note 7, ¶¶ 16–22.

<sup>37</sup> *Modular Protocol for Multi-Jurisdictional Insolvency (Gibraltar Protocol 2014)*, ¶¶ 7–12; JUDICIAL INSOLVENCY NETWORK, *supra* note 7, ¶¶ 16–22.

<sup>38</sup>*Jet Airways (India) Ltd. v. State Bank of India*, *supra* note 22; *In re FTX Trading Ltd.*, *supra* note 23; *In re [Case Name Pending]*, [2025] SGHC, *supra* note 31.

<sup>39</sup>Insolvency and Bankruptcy Code, 2016, Statement of Objects and Reasons, No. 31, Acts of Parliament, 2016 (India); 1 BANKRUPTCY LAW REFORMS COMM., THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE (2015).



difficulties abroad, endangering its prospects for expansion. By assimilating the Model Law and innovating Asian paradigms, India can convert vulnerabilities into leadership. In a borderless market, insolvency adjudication must reflect that freedom is equitable, efficient, and universal. The resolution is found not in the gloom of sovereignty, but in the illumination of partnership.