

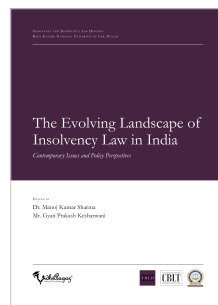
CHAPTER 12

Charting Coherent Cross-Border Insolvency: Addressing Judicial Cooperation and Legal Gaps in India's Adoption of the UNCITRAL Model Law

Harshit Pastariya and Sitasma Dahal

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CHAPTER 12

Charting Coherent Cross-Border Insolvency: Addressing Judicial Cooperation and Legal Gaps in India's Adoption of the UNCITRAL Model Law

HARSHIT PASTARIYA* AND SITASMA DAHAL**

India is on the cusp of enacting a cross-border insolvency framework aligned with the UNCITRAL Model Law on Cross-Border Insolvency 1997. This imminent development promises to facilitate the recognition of foreign insolvency proceedings within India. However, the need arises to investigate whether supplementary mechanisms, beyond the Model Law, are essential for addressing cross-border insolvency matters effectively.

Currently, the Insolvency and Bankruptcy Code ("IBC") does not clearly address foreign creditors' rights to initiate insolvency proceedings before the National Company Law Tribunal ("NCLT"). The article posits that foreign representatives could leverage India's commercial courts under common law principles to fill this void, emphasising the need for Indian courts to adopt a proactive and cooperative stance. Furthermore, the study critically evaluates the role of judicial cooperation in operationalising the Model Law, drawing lessons from international best practices.

Although India is set to adopt the Model Law, it is crucial to assess whether an additional basis for recognising and assisting cross-border insolvency proceedings in India is necessary. This is important for several reasons: first, the Model Law is not intended to be the sole pathway for foreign creditors seeking remedies under domestic law; second, in cases where neither the 'Centre of Main Interests' nor an establishment of the debtor is in India, common law jurisdiction may be required to provide assistance and cooperation; and third, India's framework will rely on reciprocity, which might exclude some countries. An independent basis for recognition in India could, therefore, be advantageous for those countries not meeting reciprocity requirements.

Keywords: Judicial cooperation, Draft Z, UNCITRAL Model Law, cross-border insolvency, international insolvency laws.

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1 INTRODUCTION

In today's interconnected global economy, the complexity of insolvency often transcends national boundaries,¹ posing problems that call for international cooperation and harmonised legal frameworks. An important step in improving the nation's insolvency system is India's Insolvency and Bankruptcy Code ("IBC"), 2016.² However, the IBC remains silent on the rights of foreign creditors to initiate the Corporate Insolvency Resolution Process ("CIRP") before the National Company Law Tribunal ("NCLT").³ The demand for efficient cross-border bankruptcy procedures has also grown as more Indian companies conduct business across several jurisdictions.⁴

The 1997 Model Law on Cross-Border Insolvency ("Model Law") of the United Nations Commission on International Trade Law ("UNCITRAL") offers a systematic approach to addressing cross-border insolvency issues.⁵ It places a strong emphasis on international court coordination, recognition, and collaboration. By offering a uniform legal framework that promotes collaboration between various legal systems, the Model Law aims to improve cross-border bankruptcy remedies. Given the increasing complexity of India's insolvency landscape in a globalised economy, engagement with the Model Law is more relevant than ever. While the IBC has reformed domestic insolvency, aligning with the Model Law poses challenges—particularly in ensuring effective judicial cooperation. Its successful implementation will require a nuanced understanding of global best practices alongside India's judicial framework.

The rapid advancement of commercial technology and globalisation has expanded cross-border trade beyond large multinational corporations; today, businesses of all sizes operate across jurisdictions and engage with varied legal frameworks.⁶ When multinational companies become insolvent, this creates complex legal challenges across borders; in the

¹ Lakshmikumaran & Sridharan Attorneys & Manasa Tantravahi, *Cross-Border Insolvency – the Ever-Evolving Framework*, <https://www.lakshmisri.com/insights/articles/cross-border-insolvency-the-ever-evolving-framework/> (last visited July 4, 2025).

² The Insolvency and Bankruptcy Code, 2016.

³ Sadhika Sethi & Rajat Srivastava, *Cross-Border Insolvency: The Indian Legal Regime vs. Rest of the World*, 3 INDIAN J. INTEGRATED RSCH. L. (2022), <https://ijirl.com/wp-content/uploads/2022/07/CROSS-BORDER-INSOLVENCY-THE-INDIAN-LEGAL-REGIME-V-REST-OF-THE-WORLD.pdf> (last visited July 4, 2025).

⁴ Lakshmikumaran & Sridharan Attorneys, *India Proposal to Recognise Cross-Border Insolvency*, LAKSHMISRI (2024), <https://www.lakshmisri.com/insights/articles/india-proposal-to-recognise-cross-border-insolvency/> (last visited July 4, 2025).

⁵ UNCITRAL Model Law on Cross-Border Insolvency, G.A. Res. 52/158, U.N. GAOR, 52d Sess., Supp. No. 49, U.N. Doc. A/RES/52/158 (Jan. 30, 1998); *see also* Edward Adams & Jason Fincke, *Coordinating Cross-Border Bankruptcy: How Territorialism Saves Universalism*, 15 COLUM. J. EUR. L. 43 (2009), https://scholarship.law.umn.edu/faculty_articles/828/ (last visited Aug. 7, 2025).

⁶ IAN F. FLETCHER, *INSOLVENCY IN PRIVATE INTERNATIONAL LAW* (2005), <https://academic.oup.com/book/51788> (last visited July 4, 2025).

absence of a clear framework for cross-border insolvency resolution, uncoordinated legal proceedings in separate jurisdictions frequently arise,⁷ as demonstrated in recent cases such as *Jet Airways*⁸ and *Videocon*.⁹ To address these issues,¹⁰ it is imperative that insolvency laws be harmonised across nations, and the Model Law provides a useful framework for accomplishing this goal.¹¹

As businesses become increasingly global, they are more likely to encounter complex cross-border insolvency challenges. Countries that have established clear and coherent rules for dealing with such situations are better positioned to navigate these complexities effectively.¹² Essentially, the IBC does not allow for the *automatic recognition* of any Indian bankruptcy proceedings in other countries, even if overseas creditors are permitted to file claims against a domestic corporation.¹³ As a result, ‘*recognition*’ refers to the court’s capacity to recognise and accept a foreign judgment’s legal significance within its territorial jurisdiction.¹⁴ There are three main points that need to be addressed when dealing with cross-border bankruptcy: which legislation should be applied; who has the authority to oversee the insolvency process; and how are decisions claiming control over assets enforced.¹⁵ Furthermore, there is a great deal of confusion surrounding India’s current cross-border bankruptcy

⁷ Hannah L. Buxbaum, *Rethinking International Insolvency: The Neglected Role of Choice-of-Law Rules and Theory*, 36 STAN. J. INT’L L. 23 (2000), <https://www.repository.law.indiana.edu/facpub/395/> (last visited July 4, 2025).

⁸ Jet Airways (India) Ltd. v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT July 26, 2019).

⁹ State Bank of India v. Videocon Indus. Ltd., 2019 SCC OnLine NCLT 745.

¹⁰ Donna McKenzie, *International Solutions to International Insolvency: An Insoluble Problem?*, 26 U. BALT. L. REV. 1 (1994), <https://scholarworks.law.ubalt.edu/ublr/vol26/iss3/4/> (last visited July 4, 2025).

¹¹ ReedLaw, *The Need for a Cross-Border Insolvency Framework Under IBC*, REEDLAW (2016), <https://www.reedlaw.in/articles/the-need-of-cross-border-insolvency-framework-under-ibc> (last visited July 4, 2025).

¹² Ryan Halimi, *Analysis of the Three Major Cross-Border Insolvency Regimes* (University of Chicago Law School, 2017), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1046&context=international_immersion_program_papers (last visited July 17, 2025).

¹³ MINISTRY OF FIN., ECONOMIC SURVEY 2021–22 ¶¶ 4.66–4.68 (2022); Saloni Khaitan, *Recognition of Cross-Border Insolvency Cases in India: Analysis of the Proposed Draft Text*, 3 INDIAN J. INTEGRATED RSCH. L. 1 (2023), <https://ijirl.com/wp-content/uploads/2023/02/RECOGNITION-OF-CROSS-BORDER-INSOLVENCY-CASES-IN-INDIA-ANALYSIS-OF-THE-PROPOSED-DRAFT-TEXT-.pdf> (last visited July 4, 2025).

¹⁴ Saloni Khanderia, *The Hague Conference on Private International Law’s Proposed Draft Text on the Recognition and Enforcement of Foreign Judgments: Should South Africa Endorse It?*, 63 J. AFR. L. 413 (2019), <https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/hague-conference-on-private-international-laws-proposed-draft-text-on-the-recognition-and-enforcement-of-foreign-judgments-should-south-africa-endorse-it/A1D2D3EAAE50F6D9BC4B633CC74CD7FA> (last visited July 2, 2025).

¹⁵ Ran Chakraborti, *Key Issues in Cross-Border Insolvency*, 30 NAT’L L. SCH. INDIA REV. 119 (2018), <https://www.jstor.org/stable/pdf/26743940.pdf> (last visited July 4, 2025).

relief framework.¹⁶ Specifically, there is uncertainty about whether international insolvency-related judgments and orders would be recognised and enforced.¹⁷

Effective cross-border insolvency cooperation is based on *reciprocity*,¹⁸ which balances judicial comity and sovereign interests by guaranteeing that foreign courts provide recognition and relief only where a reciprocal framework is in place.¹⁹ In order to foster mutual respect and reduce the risk of unilateral enforcement, the Model Law leaves enacting States free to require reciprocity in assistance, as several have done.²⁰ However, the absence of clear reciprocity clauses in India's IBC may make it more difficult to recover assets and may reduce the willingness of foreign courts to accept Indian insolvency proceedings.²¹ Reciprocity-requiring jurisdictions, such as Canada and Singapore, exhibit improved creditor confidence and judicial cooperation.²² India's insolvency framework would be in line with global best practices and enable more predictable cross-border insolvency outcomes if reciprocity were incorporated into it.²³

Examining the function of judicial collaboration in putting the Model Law into practice in India is the goal of this paper. This study examines the relevance of foreign practices to the Indian context by analysing comparative jurisprudence. The knowledge acquired will not only add to the current discussion on insolvency law but will also provide useful suggestions for improving judicial collaboration and bringing India's insolvency system into compliance with international norms. According to the IMF,²⁴ a strong bankruptcy system is essential to preventing financial crises, and the World Bank²⁵ has emphasised that courts

¹⁶ Andrew Godwin, Risham Garg & Debaranjan Goswami, *Cross-Border Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common Law Jurisdiction Relevant?*, 32 INT'L INSOLVENCY REV. 228 (2023), <https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1500> (last visited Aug. 4, 2025).

¹⁷ Dhananjay Kumar & Gautam Sundaresh, *Indian Insolvency Regime Without Cross-Border Recognition – A Task Half Done?*, CYRIL AMARCHAND MANGALDAS BLOG (May 16, 2017), <https://corporate.cyrilamarchandblogs.com/2017/05/indian-insolvency-regime-without-cross-border-recognition-task-half-done/>.

¹⁸ Keith D. Yamauchi, *Should Reciprocity Be a Part of the UNCITRAL Model Cross-Border Insolvency Law?*, 16 INSOL INT'L INSOLVENCY REV. 145, 146 (2007), <https://onlinelibrary.wiley.com/doi/pdf/10.1002/ir.151>.

¹⁹ UNCITRAL Model Law on Cross-Border Insolvency arts. 1, 6, U.N. Doc. A/RES/52/158 (1997); LOOK CHAN HO, CROSS-BORDER INSOLVENCY: A COMMENTARY ON THE UNCITRAL MODEL LAW 123 (4th ed. 2017); Jay L. Westbrook, *Universalism, Territorialism, and the New International Bankruptcy Code*, 60 AM. BANKR. L.J. 255, 277 (1986).

²⁰ UNCITRAL Model Law art. 6(1).

²¹ Insolvency and Bankruptcy Code, 2016.

²² AbitibiBowater Inc. (*Re*), 2012 ONSC 2869 (Can.); *Re OUE Lippo Healthcare Ltd.*, [2017] SGHC 285.

²³ IMF, RESOLVING CROSS-BORDER INSOLVENCY: ISSUES AND CHALLENGES (2019).

²⁴ INT'L MONETARY FUND, ORDERLY AND EFFECTIVE INSOLVENCY PROCEDURES (1999), <https://www.imf.org/external/pubs/ft/orderly/> (last visited July 13, 2025); INT'L MONETARY FUND, REPORT OF THE WORKING GROUP ON INTERNATIONAL FINANCIAL CRISES (1998), <https://www.imf.org/external/np/g22/ifcrep.pdf> (last visited July 15, 2025).

²⁵ WORLD BANK, EAST ASIA: RECOVERY AND BEYOND (2000), <https://documents1.worldbank.org/curated/en/484571468770740075/pdf/East-Asia-recovery-and-beyond.pdf> (last visited July 4, 2025); WORLD BANK, PRINCIPLES FOR EFFECTIVE INSOLVENCY AND CREDITOR/DEBTOR REGIMES (2021), <https://documents1.worldbank.org/>

are crucial to maintaining the effectiveness of such a regime. The automatic recognition of Indian insolvency proceedings in foreign jurisdictions is currently not holistically addressed by the IBC—a gap that needs to be filled.

2 THE UNCITRAL MODEL LAW: AN OVERVIEW

The Model Law is a well-recognised framework designed to address cross-border insolvency concerns on a global scale. More than 50 countries—including major economies such as the United States, the United Kingdom, and Singapore—have adopted it. The Model Law aims to facilitate the recognition of foreign insolvency proceedings, promote cooperation between courts across jurisdictions, and provide mechanisms for the coordination of cross-border insolvency cases.

It was developed in response to the need for a robust framework to address the increasing number of cross-border insolvency issues. It was designed to be adopted and incorporated into domestic legislation by individual states, enabling them to manage cross-border insolvency issues while preserving the integrity of their local insolvency laws. A fundamental premise of the Model Law is that cross-border solutions should complement, not undermine, domestic legal frameworks.²⁶

The Model Law incorporates a set of consistent rules that support ‘*modified universalism*’ standards.²⁷ These rules address the following topics: first, access to courts and foreign representatives; second, collaboration between foreign courts and representatives in any proceedings;²⁸ third, recognition of foreign proceedings; and fourth, the extent of relief that can be granted.²⁹ A state can create a cooperative framework by allowing the enforcement of international laws alongside domestic law, where one jurisdiction handles primary proceedings while other countries handle supplemental or secondary proceedings. Both main and non-main interest foreign proceedings are recognised under Article 17.³⁰ The main proceedings are held in the nation where the insolvent debtor has its centre of main interests,

curated/en/391341619072648570/pdf/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf (last visited July 4, 2025).

²⁶ Sefa M. Franken, *Cross-Border Insolvency Law: A Comparative Institutional Analysis*, 34 OXFORD J. LEGAL STUD. 97 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2047399 (last visited July 4, 2025).

²⁷ Kent Anderson, *The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience*, 21 U. PA. J. INT’L ECON. L. 680 (2000); IAN F. FLETCHER, *INSOLVENCY IN PRIVATE INTERNATIONAL LAW* ¶ 1.12; Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 MICH. L. REV. 2276 (2000).

²⁸ Lynn M. LoPucki, *Cooperation in International Bankruptcy: A Post-Universalist Approach*, 84 CORNELL L. REV. 696 (1999), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2754&context=clr> (last visited July 15, 2025).

²⁹ *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325 (S.D.N.Y. 2008).

³⁰ UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment* art. 17, U.N. Doc. A/CN.9/442 (1997); Rosa M. Lastra, *Cross-Border Bank Insolvency: Legal Implications in the Case of Banks Operating in Different Jurisdictions in Latin America*, 6 J. INT’L ECON. L. 79 (2003).

while the non-main proceedings are established in countries where the insolvent debtor has an establishment.³¹

India stands to significantly improve the predictability and efficiency of its cross-border insolvency framework by adopting the Model Law. Important concepts such as '*foreign main proceedings*' and '*foreign non-main proceedings*,'³² which the legislation creates, empower courts to determine the appropriate jurisdiction when insolvency proceedings are initiated in multiple countries. This framework can help streamline asset recovery for both domestic and international creditors, reduce the risk of conflicting judicial decisions, and curb malpractices such as *asset fragmentation* and *forum shopping*.³³

3 INDIAN SCENARIO & THE HALF-MARCHED PATH

India's insolvency regime has undergone a significant transformation in recent years.³⁴ The IBC, 2016, which came into effect on December 15, 2016,³⁵ consolidated various laws governing insolvency and bankruptcy for individuals, partnerships, and corporate entities into a single, comprehensive framework.³⁶ While the IBC was a milestone for domestic insolvency, its cross-border provisions remain limited. Adopting the Model Law could unify India's approach to multinational bankruptcies, but slow legislative progress reflects challenges in aligning with the global insolvency framework.³⁷

This deficiency became particularly apparent in high-profile cases like *Jet Airways* and *Videocon*, where Indian courts had to rely on ad hoc judicial decisions to manage cross-border insolvency issues. These cases underscore the pressing need for India to establish a comprehensive legal framework—one that can address the complexities of multinational insolvency in a systematic and predictable manner.

³¹ Rongeeet Poddar, *Cross-Border Insolvency in India: The National Company Law Appellate Tribunal Paves the Way*, INDIA-CORPLAW (Sept. 30, 2019), <https://indiacorplaw.in/2019/09/30/cross-border-insolvency-india-national-company-law-appellate-tribunal-paves-way/>; see also Lastra, *supra* note 30.

³² UNCITRAL Model Law on Cross-Border Insolvency, G.A. Res. 52/158, U.N. GAOR, 52d Sess., Supp. No. 49, U.N. Doc. A/RES/52/158 (Jan. 30, 1998).

³³ Wolf-Georg Ringe, *Insolvency Forum Shopping, Revisited*, in *SHORT STUDIES IN PRIVATE INTERNATIONAL LAW* 1 (V. Lazić ed., 2019); Michael Edwards, *Preventing Forum Shopping in International Insolvency Cases*, MICHALEDWARDS.UK (2022); Kaustubh Kumar, *Forum Shopping in Insolvency Law: Comparative Insights and India's Potential*, MONDAQ.COM (2024).

³⁴ NISHITH DESAI ASSOCIATES, *INTRODUCTION TO CROSS-BORDER INSOLVENCY* (2020), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Introduction-to-Cross-Border-Insolvency.pdf (last visited July 4, 2025).

³⁵ The Insolvency and Bankruptcy Code, 2016.

³⁶ Poorva Sharma, *Crossing Borders in Bankruptcy: India's Leap into Global Insolvency Law*, CCL, NLUO (May 21, 2024); Jitin Boolchandani, *Cross-Border Insolvency: Present Framework, Model Law & Emerging Issues from Banking Perspective* (Indian Institute of Banking & Finance, 2023).

³⁷ MINISTRY OF CORP. AFF., *REPORT OF THE COMMITTEE ON CROSS-BORDER INSOLVENCY* (2018), https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf (last visited July 2, 2025).

In the insolvency proceedings of *Jet Airways (India) Limited*, the NCLT in Mumbai expressly stated that, while insolvency proceedings against the corporate debtor had already been initiated before the Noord-Holland District Court, “there is no provision and mechanism in the I&B Code, at this moment, to recognise the judgment of an insolvency court of any Foreign Nation. Thus, even if the judgment of a Foreign Court is verified and found to be true, still, sans the relevant provision in the I&B Code, we cannot take this order on record.”³⁸

The Dutch Court Administrator and Resolution Professional subsequently came to an agreement on a ‘Cross-Border Insolvency Protocol’ in compliance with the National Company Law Appellate Tribunal’s (“NCLAT”) directives. Under the protocol, India was recognised as the centre of main interests (“COMI”), while the Dutch proceedings were classified as non-main insolvency proceedings. The Resolution Professional and the Dutch Court Administrator agreed on terms of cooperation, with the exception that the Dutch Administrator would only observe the Committee of Creditors (“CoC”) meetings. In line with this, the NCLAT permitted the Administrator to attend CoC sessions solely as an observer, so as to prevent any overlap of authority.³⁹

Similarly, press reports on the bankruptcy of Videocon Industries indicated that the company had asked the NCLT to include its foreign assets in the ongoing corporate bankruptcy resolution process.⁴⁰ In a significant ruling, the NCLT allowed Videocon’s overseas companies to be included in India’s corporate bankruptcy resolution procedure. However, the tribunals are handling such cases on a case-by-case basis, given that India does not yet have a well-defined framework for cross-border bankruptcy.

4 JUDICIAL COOPERATION IN THE IMPLEMENTATION OF THE MODEL LAW

Judicial cooperation is vital for effective cross-border bankruptcy.⁴¹ By promoting the implementation of foreign decisions, accelerating court-to-court communication, and acknowledging international proceedings, the Model Law facilitates effective coordination among courts globally. For India, effective implementation depends on robust judicial

³⁸ NISHITH DESAI ASSOCIATES, INTRODUCTION TO CROSS-BORDER INSOLVENCY (2020), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Introduction-to-Cross-Border-Insolvency.pdf (last visited July 4, 2025).

³⁹ *Id.*

⁴⁰ Bhavya Dilipkumar, *Videocon Requests NCLT to Include Overseas Oil Assets in Insolvency Process*, ECON. TIMES (Aug. 22, 2019), <https://economictimes.indiatimes.com/industry/banking/finance/videocon-requests-nclt-to-include-overseas-oil-assets-in-insolvency-process/articleshow/70779728.cms>.

⁴¹ Jianli Song & Bing Cheng, *International Judicial Cooperation in Cross-Border Bankruptcy*, in FOREIGN-RELATED COMMERCIAL DISPUTES RESOLUTION IN CHINA 29 (2024); Basil Raju & Jyotirmoy Banerjee, *Cross-Border Insolvency: The Need for a Comprehensive Framework in India*, 4 INT’L J. HUM. RTS. L. REV. (2024).

collaboration both domestically and internationally. This section examines the Model Law's judicial cooperation mechanisms, India's challenges, and lessons drawn from other countries.

4.1 Inherent Power of Common Law Courts

Common law nations have long recognised that courts possess an inherent capacity to assist other courts or parties in cases of insolvency.⁴² The foundation of this authority is the comity principle, a concept with deep historical roots that remains relevant today. Hong Kong serves as an example of the importance of this authority in countries without specific domestic laws pertaining to cross-border insolvency.⁴³ The inherent authority may nonetheless be important even in cases where legislative procedures for cross-border insolvency exist.⁴⁴

An early example of judicial aid in overseas bankruptcy proceedings was demonstrated in the seminal case of *Solomons v. Ross*,⁴⁵ where English courts permitted Amsterdam trustees to recover garnished assets in England. While the court's reasoning was not entirely clear, later decisions highlighted the principle of comity as the basis for such recognition. This approach aligns with the principle of modified universalism, which seeks to harmonise global insolvency proceedings.

Courts have acknowledged the detrimental effects of parallel insolvency proceedings, highlighting the *universality principle* that encourages equitable treatment for all creditors.⁴⁶ In the *Cambridge Gas Transportation Corp* case, it was recognised that the creditor pool and the bankruptcy procedure overall benefit from preventing disjointed insolvency proceedings. Lord Hoffmann reaffirmed the principle of a single, comprehensive bankruptcy procedure to prevent any creditor from improperly benefiting from jurisdictional advantages.⁴⁷

The use of inherent authority is guided by the modified universalism principle, which has been embraced in a number of jurisdictions, including the United States and the United Kingdom. This principle permits judicial discretion while integrating international asset distribution and collection. For example, the United States applied a modified universalism

⁴² Andrew Godwin, Timothy Howse & Ian Ramsay, *The Inherent Power of Common Law Courts to Provide Assistance in Cross-Border Insolvencies: From Comity to Complexity*, 26 INT'L INSOLVENCY REV. 5 (2017), <https://onlinelibrary.wiley.com/doi/10.1002/iir.1267> (last visited July 4, 2025).

⁴³ Andrew Godwin & Charles Zhen Qu, *Cross-Border Insolvency Law in Hong Kong: Recognition of Foreign Schemes of Arrangement*, 30 INT'L INSOLVENCY REV. 1 (2021), <https://onlinelibrary.wiley.com/doi/10.1002/iir.1421> (last visited July 4, 2025).

⁴⁴ Michael Crystal, *'The Golden Thread': Universalism and Assistance in International Insolvency*, JERSEY & GUERNSEY L. REV. 1 (July 2011), https://www.jerseylaw.je/publications/jglr/Pages/JLR1102_Crystal.aspx (last visited July 4, 2025).

⁴⁵ *Solomons v. Ross*, (1764) 1 H Bl 131, as cited in *Folliott v. Ogden*, (1789) 1 H Bl 123.

⁴⁶ *In re African Farms Ltd*, [1906] TS 373, 377 (S. Afr.).

⁴⁷ *Cambridge Gas Transp. Corp. v. Official Comm. of Unsecured Creditors of Navigator Holdings Plc*, [2006] UKPC 26.

approach in *Maxwell Communication Corporation*, striking a balance between judicial discretion and global wealth distribution.⁴⁸

The inherent power derives from the doctrine of ancillary liquidation, applicable when a court recognises itself as an ancillary jurisdiction while a foreign court manages the principal proceedings.⁴⁹ This doctrine typically designates the place of incorporation as the venue for principal proceedings, unless compelling evidence suggests otherwise.⁵⁰ The common law approach in the UK follows a trend that requires a statutory or common law foundation before aid may be provided.⁵¹ According to Lord Hoffmann's ruling in *Re HIH*,⁵² common law courts may choose to support international liquidators even if doing so goes against regional preferred creditor laws.⁵³ A preferred creditor regime is established in India under the Companies Act, 2013.⁵⁴

Indian courts may follow domestic preference regimes owing to the uncertainty surrounding the implementation of Lord Hoffmann's approach, which might restrict the utility of inherent power.⁵⁵ The cardinal principle is that relief granted by foreign representatives must have a legal basis under domestic laws or the law of the main proceedings' jurisdiction.⁵⁶ Courts are expected to pursue aggregate welfare benefits despite minor differences in outcomes.⁵⁷

Courts may hesitate to support foreign insolvency proceedings without a clear prospect of company recovery or creditor benefit. For instance, Australia's New South Wales Supreme Court declined to provide assistance in a UK cross-border case, citing doubts about its advantage to creditors or the debtor.⁵⁸ The inherent authority is nonetheless an important judicial doctrine, particularly in light of the limitations of the Indian Code of Civil Procedure in bankruptcy cases.⁵⁹

⁴⁸ *Re HIH Casualty & Gen. Ins. Ltd*, [2008] 1 WLR 852.

⁴⁹ Godwin, Howse & Ramsay, *supra* note 42.

⁵⁰ *Re Opti-Medix Ltd* (in liquidation), [2016] SGHC 108 (Sing.).

⁵¹ Adrian Walters, *Modified Universalism & the Role of Local Legal Culture in the Making of Cross-Border Insolvency Law*, OXFORD BUSINESS LAW BLOG (Dec. 21, 2017), <https://blogs.law.ox.ac.uk/business-law-blog/blog/2017/12/modified-universalism-role-local-legal-culture-making-cross-border>.

⁵² *Re HIH Casualty & Gen. Ins. Ltd*, [2008] 1 WLR 852.

⁵³ *Re Alitalia Lince Aeree Italiane SpA*, [2011] EWHC 15 (Ch).

⁵⁴ The Companies Act, 2013, § 326.

⁵⁵ Godwin, Howse & Ramsay, *supra* note 42; Godwin & Qu, *supra* note 43.

⁵⁶ *Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300 (Tex. App. 2009).

⁵⁷ Walters, *supra* note 51; Jay L. Westbrook, *Theory and Pragmatism in Global Insolvencies: Choice of Law and Choice of Forum*, 65 AM. BANKR. L.J. 457 (1991).

⁵⁸ Paul Apáthy, *Recognition of UK Part A1 Moratorium Process Rejected by NSW Supreme Court*, HERBERT SMITH FREEHILLS (2021), <https://www.herbertsmithfreehills.com/notes/apac-rti/2021-07/recognition-of-uk-part-a1-moratorium-process-rejected-by-nsw-supreme-court> (last visited July 4, 2025).

⁵⁹ Sudhaker Shukla & Kokila Jayaram, *Cross-Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL* (IBBI), <https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf> (last visited July 4, 2025).

4.2 Role of Indian Courts: A Case-Law Perspective

Cross-border insolvency cases involve intricate challenges due to varying jurisdictional laws. Historically, the Gibbs rule from *Gibbs & Sons v. La Société Industrielle et Commerciale des Métaux*⁶⁰ has limited English courts' recognition of foreign insolvency discharges. Despite criticism, this rule has persisted in English law, highlighting the need for re-evaluation. These complexities are further compounded by the need for debtors to manage liabilities in multiple jurisdictions.

In India, the first cross-border insolvency case was *P. MacFadyen & Co.* in 1908, which set a precedent for the global distribution of assets involving English and Madras courts.⁶¹ This early case demonstrated the judiciary's role in cross-border insolvency in the absence of specific legislation. In 2019, *SBI v. Jet Airways (India) Ltd.*⁶² became a landmark case. The Dutch-appointed Bankruptcy Administrator sought recognition of parallel insolvency proceedings in the Netherlands before the Mumbai Bench of the NCLT. Initially, the NCLT rejected this request, citing that Sections 234 and 235 of the IBC,⁶³ which govern cross-border insolvency, had not yet been enacted. Consequently, the NCLT deemed the Dutch proceedings null and void.

The NCLAT reversed the NCLT's ruling on appeal by the Bankruptcy Administrator. The NCLAT facilitated a cross-border insolvency protocol based on the Model Law's principles and allowed collaboration between the Dutch Administrator and the Indian Resolution Professional. This protocol acknowledged the Netherlands as the jurisdiction for non-primary insolvency proceedings and India as the COMI. Although the judiciary's proactive approach to cross-border insolvency is demonstrated in this instance, such rulings remain uncommon and are usually handled on a case-by-case basis, given the absence of a comprehensive cross-border insolvency framework.

In August 2019, the NCLT allowed the consolidation of 13 Videocon Group companies under the principle of '*substantial consolidation*,' marking a significant development in Indian insolvency law.⁶⁴ Following an insolvency application by SBI, the NCLT approved consolidating the group companies to maximise asset value, relying on US and UK jurisprudence despite the IBC's lack of explicit group insolvency provisions. In February 2020, it extended this to four foreign subsidiaries, sparking concerns over the IBC's extraterritorial reach.

⁶⁰ *Gibbs & Sons v. La Société Industrielle et Commerciale des Métaux*, (1890) 25 QBD 399 (UK).

⁶¹ *P. MacFadyen & Co.*, [1908] 1 KB 675 (UK).

⁶² *State Bank of India v. Jet Airways (India) Ltd.*, CP No. 2205 (IB)/MB/2019 (NCLT).

⁶³ The Insolvency and Bankruptcy Code, 2016, §§ 234–235.

⁶⁴ *State Bank of India v. Videocon Indus. Ltd.*, 2019 SCC OnLine NCLT 745.

In November 2019, the US bankruptcy court recognised an Indian insolvency proceeding in *SBI v. SEL Mfg. Co. Ltd.*⁶⁵ as a “foreign main proceeding” under Chapter 15 of the US Bankruptcy Code.⁶⁶ This recognition followed the US adoption of the Model Law in 2005 to streamline cross-border insolvency. The court held that the Indian proceedings aligned with international standards and did not violate US public policy, thereby granting the foreign representative appropriate relief.⁶⁷

For successful implementation of the Model Law, India must strengthen judicial capacity, establish clear communication channels with foreign courts, and apply public policy exceptions sparingly. Judicial training should be introduced to familiarise judges with the Model Law, global best practices, and relevant foreign legal systems. India should also establish specialised cross-border insolvency benches, akin to those in the US and Singapore, led by experienced judges. Alongside adoption of the Model Law, judicial training, and institutional reform, this would boost India’s capacity to handle complex cases and reinforce its global insolvency standing.

5 COMPARATIVE JURISPRUDENCE: LESSONS FROM OTHER JURISDICTIONS

Many governments have ratified the Model Law, yet judicial attitudes, economic interests, and legal traditions all influence how it is implemented. This section provides an analytical summary of how major nations—including Singapore, the United Kingdom, the United States, Japan, Canada, and France—have adopted the Model Law, highlighting the advantages and difficulties that each jurisdiction encounters.

5.1 Singapore: Shift Toward Universalism

The “3Cs”—communication, coordination, and cooperation—are highly valued in Singapore’s insolvency framework, as they are essential to the Model Law’s successful execution.⁶⁸ Historically, Singapore adopted a territorial stance on bankruptcy, giving local creditors priority.⁶⁹ With the adoption of the Model Law in March 2017, Singapore shifted to a universalist framework, in keeping with its status as a major global financial centre. Singapore’s adoption of the Model Law aligns with its strategic goal of attracting foreign businesses and enhancing international cooperation in insolvency matters.⁷⁰ By doing so, it has

⁶⁵ Company Petition (IB) No. 114 of 2017 (NCLT Chandigarh).

⁶⁶ The United States Bankruptcy Code, 1978, § 1502(4).

⁶⁷ *Id.* § 1520.

⁶⁸ Justice Kannan Ramesh, *Speech Delivered at the First Meeting of ASEAN Insolvency Judges* (Supreme Court of Singapore, Nov. 19, 2024), <https://www.judiciary.gov.sg> (last visited July 4, 2025).

⁶⁹ Halimi, *supra* note 12.

⁷⁰ Companies Act (Cap. 50, 2006 Rev. Ed.), sch. 10 (Sing.) (inserted by Companies (Amendment) Act 2017).

positioned itself as a leading jurisdiction for cross-border bankruptcy, reflecting the global trend toward greater collaboration in resolving transnational insolvencies.

Singapore's evolution shows that it has deliberately shifted its insolvency policy from a protectionist to an integrationist model, which fits with its broader economic goal of becoming a global financial hub. This shift in approach aligns with UNCITRAL's objectives, yet Singapore's courts remain flexible and practical, focusing on cooperation with creditors and facilitating the judicial process. For example, in *Re OUE Lippo Healthcare Ltd* [2017] SGHC 285, the courts demonstrated a willingness to assist with foreign cases in a manner consistent with Model Law principles.⁷¹ Singapore's adoption also aligns with the ASEAN framework on cross-border insolvency, demonstrating the region's commitment to legal collaboration.⁷² This approach reduces the inherent tension between universalism and territorialism by building trust among creditors across borders without completely displacing domestic legal rights.⁷³ The institutional support for the "3Cs" thus represents the most effective balance between international cooperation and local legal sovereignty, consistent with best practices in international insolvency law and UNCITRAL legislative guides.⁷⁴

5.2 United Kingdom: Post-Brexit Realities

The English courts' development of the *doctrine of comity* from the late 18th century onwards accelerated the advancement of cooperation by encouraging courts to communicate with one another and form cooperative relationships through shared cases with other jurisdictions.⁷⁵ The UK's approach to cross-border insolvency has been complicated by Brexit, which ended the automatic recognition of UK insolvency proceedings in the European Union (EU) as of December 31, 2020.⁷⁶ The UK has retained certain elements of the European Insolvency Regulation (EIR) through the Insolvency (Amendment) (EU Exit) Regulations

⁷¹ *Re OUE Lippo Healthcare Ltd*, [2017] SGHC 285.

⁷² ASEAN SECRETARIAT, ASEAN CROSS-BORDER INSOLVENCY FRAMEWORK (2018).

⁷³ LOOK CHAN HO, CROSS-BORDER INSOLVENCY: A COMMENTARY ON THE UNCITRAL MODEL LAW 210–15 (4th ed. 2017).

⁷⁴ UNCITRAL, *Legislative Guide on Insolvency Law*, U.N. Doc. A/CN.9/476 (2005).

⁷⁵ *Macaulay v. Guar. Tr. Co. of N.Y.*, (1927) 40 TLR 99 (UK); *Re Vocalion (Foreign) Ltd*, [1932] 2 Ch 196 (UK); *Banque Indosuez SA v. Ferromet Res. Inc.*, [1993] BCLC 112 (UK); *Re BCCI (No 10)*, [1997] Ch 213 (UK); *Re Impex Servs. Worldwide Ltd*, [2004] BPIR 564 (UK); *Re Matheson Bros.*, (1884) 27 Ch D 225 (UK); *Re English, Scottish & Australian Chartered Bank*, [1893] 3 Ch 385 (UK).

⁷⁶ Kangs Solicitors, *Cross-Border Insolvency: The Effects of Brexit* (Mar. 20, 2025), <https://www.kangssolicitors.co.uk/news-insights/cross-border-insolvency/> (last visited July 1, 2025).

2019,⁷⁷ but these provisions no longer guarantee mutual recognition between UK and EU courts.⁷⁸

After Brexit, the UK has reasserted its national procedural autonomy, which has diminished the pre-Brexit regulatory coherence of the EIR. This return to discretionary recognition heightens the risk of jurisdictional conflicts and forum shopping, forcing courts to rely heavily on the doctrine of comity and equitable principles as developed in *Cambridge Gas Transportation Corp. v. Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26.⁷⁹ In addition, the lack of clarity regarding COMI determinations after Brexit means that courts must scrutinise evidence more closely, which could increase the cost and complexity of multinational bankruptcies.⁸⁰ This legal fragmentation not only creates greater legal uncertainty but also threatens the UK's status as a leading centre for cross-border insolvency practice, making it harder to strike the right balance between sovereignty and international cooperation in a globalised economy.⁸¹ The UK government's continued reliance on the Cross-Border Insolvency Regulations 2006, which give effect to the Model Law, also seeks to mitigate disruption, but its effectiveness remains subject to judicial interpretation and political developments.⁸²

As a result, UK insolvency proceedings must now be recognised on a case-by-case basis in EU countries, increasing the likelihood of parallel proceedings and complicating the determination of COMI.⁸³ This legal fragmentation poses significant challenges for businesses operating across both jurisdictions.

5.3 United States: Chapter 15 and Selective Cooperation

The United States adopted the Model Law in 2005, integrating it into Chapter 15 of the US Bankruptcy Code.⁸⁴ Chapter 15 facilitates cooperation between US courts and foreign jurisdictions by granting foreign representatives access to US courts. However, the US applies conditional recognition, meaning courts are not required to defer to foreign decisions and often prioritise the protection of domestic creditors. While Chapter 15 has expanded

⁷⁷ The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019, SI 2019/1459 (UK).

⁷⁸ Kai Zhang, Philip Morgan & Judie Rinearson, *Post-Brexit: Significant Changes to UK Cross-Border Payments Regulation, FINTECH AND BLOCKCHAIN LAW WATCH* (July 1, 2021); J.P. Morgan, *The Impact of Brexit on UK–EU Cross-Border Payments* (2020).

⁷⁹ *Cambridge Gas Transp. Corp. v. Official Comm. of Unsecured Creditors of Navigator Holdings Plc*, [2006] UKPC 26.

⁸⁰ Mark Brandes, *Cross-Border Insolvency and Brexit: Challenges Ahead*, 29 INT'L INSOLVENCY REV. 143 (2020).

⁸¹ UNCITRAL SECRETARIAT, MODEL LAW ON CROSS-BORDER INSOLVENCY: LEGISLATIVE GUIDE 67 (2020).

⁸² Cross-Border Insolvency Regulations 2006, SI 2006/1030 (UK).

⁸³ Corporate Insolvency and Governance Act 2020, c. 12 (UK).

⁸⁴ Bankruptcy Abuse Prevention and Consumer Protection Act, 2005 (US Code), ch. 15.

international cooperation, US courts remain cautious about relinquishing control over domestic assets, particularly when foreign distribution priorities differ from those under US law.⁸⁵

The selective deference in Chapter 15 reveals a tension in the law between international comity and the protection of US creditors. Courts closely scrutinise foreign proceedings to ensure compliance with US public policy as set out in 11 U.S.C. § 1506.⁸⁶ The case *In re Vitro S.A.B. de C.V.*, 701 F.3d 1031 (5th Cir. 2012), illustrates the courts' caution in guarding against foreign bankruptcy plans that differ substantially from US equitable distribution principles.⁸⁷ This approach aligns with Westbrook's concept of "*conditional universalism*," which balances cooperation with the preservation of domestic legal sovereignty.⁸⁸ The US reliance on a robust "public policy exception" also makes automatic recognition more difficult and illustrates the broader challenge of reconciling divergent national insolvency priorities within a fragmented international legal system.⁸⁹ Scholars further note that courts across different circuits apply varying methodologies, indicating that the law is not always applied consistently.⁹⁰ Legislative commentators call for nuanced reforms to improve predictability without sacrificing core protections.⁹¹

5.4 Japan: A Hybrid Approach

Japan's bankruptcy rules were originally based on strict territorial principles, but the 1999 Civil Rehabilitation Law revisions introduced aspects of universalism for outbound claims.⁹² Japan has enacted four statutes related to insolvency and bankruptcy.⁹³ Through the Law on Recognition of and Assistance in Foreign Insolvency Proceedings (LRAF), which guarantees equal treatment for foreign creditors and facilitates the recognition of foreign insolvency proceedings, Japan has since aligned its framework with the Model Law.⁹⁴ Japan's

⁸⁵ John J. Chung, *The Retrogressive Flaw of Chapter 15 of the Bankruptcy Code: A Lesson from Maritime Law*, 17 DUKE J. COMP. & INT'L L. 253 (2007), <https://scholarship.law.duke.edu/djcil/vol17/iss2/1/> (last visited July 4, 2025).

⁸⁶ 11 U.S.C. § 1506 (2024).

⁸⁷ *In re Vitro S.A.B. de C.V.*, 701 F.3d 1031 (5th Cir. 2012).

⁸⁸ Jay L. Westbrook, *The New International Bankruptcy and the Problem of Universalism*, 60 AM. BANKR. L.J. 255, 261–65 (1986).

⁸⁹ Grant M. Hayden, *Chapter 15 and the Public Policy Exception*, 38 AM. BANKR. INST. J. 22 (2019).

⁹⁰ Charles J. Tabb, *Inconsistent Application of Chapter 15: An Empirical Study*, 92 AM. BANKR. L.J. 305 (2018).

⁹¹ Stephen J. Lubben, *Reforming Chapter 15*, 88 AM. BANKR. L.J. 451 (2014).

⁹² Bankruptcy Law, Law No. 71 of 1922, arts. 1, 126, 127, 132 (Japan).

⁹³ Hasanhō [Bankruptcy Law], Law No. 71 of Apr. 25, 1922; Wagiho [Composition Law], Law No. 72 of Apr. 25, 1922; Shohō [Commercial Code], Law No. 48 of 1899; Kaishakoseiho [Corporate Reorganization Law], Law No. 172 of June 7, 1952.

⁹⁴ Hideo Horikoshi, *Japan's New Corporate Reorganization Law*, 38 INT'L LAW. 855 (2004), <https://scholar.smu.edu/til/vol38/iss3/16/> (last visited July 4, 2025).

cautious attitude to international bankruptcy cooperation is reflected in its continued use of territorial principles for inbound claims.⁹⁵

Japan's hybrid model strikes a balance between tradition and contemporary insolvency requirements, reflecting a cautious incrementalism toward universalism. The Model Law's objectives are supported by the LRAF's facilitation of the recognition of foreign proceedings, but—as evidenced by Tokyo District Court decisions that give precedence to local creditors' rights—judicial practice frequently maintains territorial protections.⁹⁶ This two-pronged strategy demonstrates Japan's commitment to “soft universalism,” which limits inbound claims due to domestic policy concerns while permitting cooperation primarily for outbound insolvencies.⁹⁷ Legal scholars highlight this reticence as a cultural and institutional response to preserving economic stability and creditor confidence within a historically risk-averse framework.⁹⁸ Thus, Japan's gradual adoption of the Model Law serves as an example of the difficulties in bringing deeply ingrained national insolvency cultures into compliance with international standards.⁹⁹ Furthermore, Japanese corporate governance practices and creditor structures—including keiretsu networks—have influenced judicial conservatism in cross-border insolvency cooperation.¹⁰⁰

5.5 Canada: Modified Universalism

With its Bankruptcy and Insolvency Act (BIA) and Companies' Creditors Arrangement Act (CCAA), Canada adopted the Model Law,¹⁰¹ demonstrating a modified universalist stance.¹⁰² Canadian rules provide for the recognition of foreign proceedings even in cases where there is no physical establishment in the foreign jurisdiction, reflecting a broader embrace of international insolvency concepts.¹⁰³ To safeguard domestic interests, Canadian courts retain their discretion when awarding remedies.¹⁰⁴ This adaptability, which preserves

⁹⁵ Raj Bhala, *International Dimensions of Japanese Insolvency Law*, MONETARY & ECON. STUD. (2001), <https://www.imes.boj.or.jp/research/papers/english/me19-1-5.pdf> (last visited Aug. 7, 2025).

⁹⁶ Tokyo District Court decisions on recognition of foreign proceedings (2015).

⁹⁷ Toshiyuki Kono & Shinjiro Takagi, *Japan's Experience with the UNCITRAL Model Law*, in *CROSS-BORDER INSOLVENCY: A COMMENTARY ON THE UNCITRAL MODEL LAW* 400, 405–10 (Look Chan Ho ed., 2d ed. 2017).

⁹⁸ Koji Tanaka, *Territoriality vs. Universalism in Japanese Insolvency Law*, 24 INT'L INSOLVENCY REV. 289 (2015).

⁹⁹ U.N. COMM'N ON INT'L TRADE L., UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW (2005).

¹⁰⁰ Shinya Ikeda, *Keiretsu and Cross-Border Insolvency: Implications for Japanese Law*, 17 ASIA PAC. J. INSOLVENCY & RESTRUCTURING 85 (2018).

¹⁰¹ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3; Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.).

¹⁰² Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, § 48(1) (Can.); Marcela Ouatu, *Modified Universalism for Cross-Border Insolvencies: Does It Work in Practice?* (2014) (LL.M. thesis, University of British Columbia).

¹⁰³ Philippe H. Bélanger & Neil A. Peden, *The Changing Framework Relating to the Recognition of Cross-Border Insolvencies in Canada and the United States*, ANN. REV. INSOLVENCY L. 203 (2005).

¹⁰⁴ Alfonso Nocilla, *Canadian Cross-Border Insolvency Law and the Triumph of 'Modified Universalism': A Retrospective*, INT'L INSOLVENCY REV. (Oct. 3, 2024), <https://doi.org/10.1002/iir.1549>.

judicial oversight of bankruptcy proceedings, demonstrates Canada's dedication to global collaboration.

An advanced version of modified universalism is exemplified by Canada's model, which embraces international cooperation while clearly maintaining the discretion required to safeguard domestic creditors and legal principles.¹⁰⁵ Prominent cases such as *AbitibiBowater Inc. (Re)*, 2012 ONSC 2869,¹⁰⁶ showcase Canadian courts' readiness to acknowledge foreign insolvency proceedings without physical establishment, indicating a forward-thinking approach in line with UNCITRAL's policy goals. Judicial discretion, however, prevents excessive intrusion on domestic insolvency sovereignty by ensuring that recognition and aid are not granted without consideration for equity.¹⁰⁷ Canada is able to balance the competing demands of globalisation and national legal autonomy thanks to this balanced approach, which is reinforced by the dual legislative framework of the CCAA and BIA.¹⁰⁸ Academics point to Canada's developing legal system as an example of how to balance local creditor protections with universalism.¹⁰⁹

5.6 France: Strong Territorialism

France continues to place a high priority on a territorial approach to insolvency, asserting jurisdiction based on where a company's COMI is located.¹¹⁰ French courts maintain a protective attitude toward local creditors and are reluctant to recognise international bankruptcy proceedings unless certain requirements are fulfilled.¹¹¹ Despite its participation in international agreements and regulations, France's insolvency laws remain primarily territorial in nature, prioritising domestic economic protection over global collaboration.

By defending protectionist creditor frameworks and opposing the dilution of national jurisdictional authority, France's adherence to territorialism demonstrates a *sovereign-centric* insolvency policy. The cautious judicial recognition of foreign proceedings—which is frequently dependent on rigorous adherence to procedural safeguards and creditor protection—is reflected in the French Commercial Code and jurisprudence, including rulings from the *Tribunal de Commerce de Paris*.¹¹² Scholars attribute this position to the French civil law tradition's emphasis on state sovereignty and codified territorial jurisdiction, which makes

¹⁰⁵ *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (Ont. C.A.).

¹⁰⁶ *AbitibiBowater Inc. (Re)*, 2012 ONSC 2869 (Ont. Sup. Ct. J.).

¹⁰⁷ Jennifer A. Whaley, *Modified Universalism in Canadian Insolvency Law*, 30 CAN. BUS. L.J. 255 (2010).

¹⁰⁸ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (Can.); Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.).

¹⁰⁹ Adams & Fincke, *supra* note 5.

¹¹⁰ Decree No. 85-1388 of Dec. 27, 1985, art. 1 (Fr.).

¹¹¹ PAUL J. OMAR, CROSS-BORDER INSOLVENCY LAW AND PRACTICE IN FRANCE (2002).

¹¹² Tribunal de Commerce de Paris, Ordonnance (2017).

integration with Model Law universalism more challenging.¹¹³ Even though France was party to the EU Insolvency Regulation prior to Brexit, its insolvency jurisprudence continues to be marked by caution when dealing with foreign proceedings, which restricts international cooperation and increases the likelihood of parallel insolvency proceedings.¹¹⁴ French doctrine emphasises the “*ordre public*” exceptions, which shield domestic creditors from foreign insolvency plans deemed contrary to national economic interests.¹¹⁵

6 CONCLUSION

“The lack of such regimes has often resulted in inadequate and uncoordinated approaches to cross-border insolvency that are not only unpredictable and time-consuming in their application, but lack both transparency and the tools necessary to address the disparities and, in some cases, conflicts that may occur between national laws and insolvency regimes. These factors have impeded the protection of the value of the assets of financially troubled businesses and hampered their rescue.”¹¹⁶

In the absence of a strong cross-border bankruptcy framework, asset protection and company rescue have been hampered by erratic, time-consuming, and disorganised methods. India’s system continues to face cross-border bankruptcy challenges despite the IBC 2016, because it lacks a defined structure and relies on ad hoc judicial rulings—raising uncertainty for foreign creditors and businesses. Implementing the ILC’s proposed provisions could improve judicial cooperation, enhance India’s international reputation, facilitate cross-border bankruptcy proceedings, and increase foreign direct investment.¹¹⁷ Adopting the Model Law is not without its challenges, however, particularly given the intricacy of bilateral agreements addressed by IBC Sections 234 and 235.¹¹⁸ A single framework such as the Model Law could help streamline these processes.

¹¹³ Comité Maritime International, *Answers of the Association Française du Droit Maritime* (2018), <https://comitemaritime.org/wp-content/uploads/2018/05/French-MLA-Cross-border-insolvency.pdf> (last visited Aug. 7, 2025).

¹¹⁴ European Insolvency Regulation, Regulation (EU) 2015/848 (recast).

¹¹⁵ Alexis Hojabr & Saam Golshani, *In Review: Insolvency Law, Policy and Procedure in France*, LEXOLOGY (2023); Gilles Cuniberti & Antonio Leandro, *Article 33: Public Policy*, in *THE EUROPEAN INSOLVENCY REGULATION AND IMPLEMENTING LEGISLATIONS* 394 (2024).

¹¹⁶ U.N. COMM’N ON INT’L TRADE L., UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW, PART THREE 83–111 (2012), <https://www.un-ilibrary.org/content/books/9789210557160c004/read> (last visited July 11, 2025).

¹¹⁷ CROSS-BORDER INSOLVENCY RULES COMM., REPORT ON THE RULES AND REGULATIONS FOR CROSS-BORDER INSOLVENCY RESOLUTION (2020), <https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83d0138211640994127c27.pdf> (last visited July 5, 2025).

¹¹⁸ *Resolving Global Defaults: Is India Ready for a Cross-Border Insolvency Framework?*, CIVILDAILY (n.d.), <https://www.civildaily.com/resolving-global-defaults-is-india-ready-for-a-cross-border-insolvency-framework-2/> (last visited July 5, 2025).

The Model Law provides a solution, but it excludes financial institutions—a significant gap in today’s interconnected economy.¹¹⁹ India should therefore consider aligning with Financial Stability Board (FSB) norms for financial institutions alongside adopting the Model Law. A phased reform approach—starting with harmonising domestic practices with global standards and progressing toward full integration—would be ideal. Transitional steps could include pilot projects and bilateral cooperation agreements with key jurisdictions.¹²⁰ A hybrid framework that combines the Model Law with other strategies, particularly for the financial sector, is well-suited to the Indian context. Successful implementation necessitates judicial collaboration, which calls for training, legislative amendments, and conformity with international standards.

The proposed cross-border insolvency provisions raise concerns about whether they are intended to be the sole mechanism for recognition and assistance. However, interpreting them as exclusive would conflict with Article 5 of the draft law. This article underscores the value of preserving Indian courts’ inherent common law powers to recognise and aid foreign insolvency proceedings. Therefore, even after the adoption of the Model Law, India retains several avenues for cross-border insolvency recognition and assistance—as doing so is in the interest of justice.

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¹¹⁹ Shuai Guo, *Cross-Border Resolution of Financial Institutions: Perspectives from International Insolvency Law* (III Prize in International Insolvency Studies, 2018), https://www.iiiglobal.org/file.cfm/12/docs/2018_silver_shuai_guo.pdf (last visited July 5, 2025).

¹²⁰ IRIT MEVORACH, *THE FUTURE OF CROSS-BORDER INSOLVENCY: OVERCOMING BIASES AND CLOSING GAPS* (2018), <https://doi.org/10.1093/oso/9780198782896.001.0001>.