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CROSS-BORDER INSOLVENCY IN INDIA: A COMPARATIVE STUDY WITH THE UNCITRAL MODEL LAW

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) has transformed India's domestic insolvency landscape but remains structurally silent on the complexities of cross-border insolvency. As Indian corporations increasingly operate across multiple jurisdictions, the Code's two skeletal provisions, Sections 234 and 235, have proven woefully inadequate. High-profile insolvencies such as Jet Airways, BYJU's, and Go Airlines have exposed the absence of a coherent statutory framework, forcing courts into ad hoc improvisation while creditor value dissipates and resolution timelines stretch. This paper critically examines the theoretical foundations of cross-border insolvency, India's existing statutory void, the architecture of the UNCITRAL Model Law on Cross-Border Insolvency, 1997, and its global adoption. It then analyses Draft Part Z; India's proposed but yet unnotified legislative response, identifying its strengths and critical lacunae. The paper argues that immediate enactment of a modified but faithful adoption of the UNCITRAL Model Law, accompanied by institutional reform at the NCLT, is both legally achievable and commercially necessary.

Keywords: *Cross-Border Insolvency, IBC 2016, UNCITRAL Model Law, Draft Part Z, COMI.*

I. INTRODUCTION

In an era of accelerating globalisation, the failure of a corporation rarely confines itself to a single legal system. When a multinational enterprise becomes insolvent, its creditors may span continents, its assets may be lodged in a dozen jurisdictions, and courts in several countries may simultaneously claim authority over its estate. The legal challenge this poses is not merely procedural, it goes to the heart of how national legal systems interact, cooperate, or collide in managing shared commercial crises.

Cross-border insolvency, in its essence, arises whenever the insolvency of a corporate debtor has a foreign element, foreign creditors, foreign assets, foreign obligations, or concurrent

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foreign proceedings.[1] As Professor Ian Fletcher observed, cross-border insolvency is "a situation where insolvency circumstance in some way or the other transcend the confines of a single legal system, and where a single set of domestic insolvency law provisions cannot be exclusively applied without giving due regard to the issues raised by the foreign elements of the case."[2] The three paradigmatic scenarios are: a debtor with creditors in multiple jurisdictions pressing their claims; a debtor with assets spread across borders that individual creditors might seize; and a debtor subject to simultaneous insolvency proceedings in more than one jurisdiction.

India, as the world's fifth-largest economy and a rapidly internationalising business destination, is squarely in the path of these challenges. The Insolvency and Bankruptcy Code, 2016 (IBC) was rightly celebrated as a landmark consolidation of India's fragmented insolvency law, improving recovery rates, reducing non-performing assets, and ascending the World Bank's Ease of Doing Business rankings.[3] Yet the IBC's treatment of cross-border insolvency consists of precisely two provisions, Section 234, empowering bilateral agreements with foreign governments, and Section 235, providing for letters of request to foreign courts, neither of which has ever been operationalised. Not a single bilateral agreement under Section 234 has been notified. The void is total.

The consequences have been visible and painful. In the Jet Airways insolvency, Indian courts could not formally recognise Dutch proceedings over the airline's European assets; coordination proceeded on a voluntary, ad hoc basis with no statutory grounding. In the BYJU's insolvency, proceedings proliferated across India and the United States without any mechanism for coordination, consuming resources and producing conflicting orders. In Go Airlines, the absence of a moratorium extension to foreign assets allowed aircraft repossession abroad that foreclosed a going-concern resolution. In each case, the message was the same: India's insolvency law is not equipped for the global scale on which its companies now operate.

The legislative response, Draft Part Z, proposing a new chapter to the IBC based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997, has been recommended by the Insolvency Law Committee (ILC) in 2018, refined by the Cross-Border Insolvency Rules/Regulations Committee (CBIRC) in 2020, announced by the Finance Ministry in 2022, and remains, as of the date of this writing, unnotified. The framework exists. The consensus

[1] Bornali Roy, *"Cross border insolvency: A New Regime*", Mondaq, (2017).
[2] M. Bogdan, Ian F. Fletcher, "*Insolvency in Private International Law: National and International Approaches"*, 69(4) Nordic Journal of International Law 527-528 (2000).
[3] Insolvency Law Committee, "*Report of the Insolvency Law Committee"* (October 2018), Ministry of Corporate Affairs, Government of India.

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exists. Only the political will to enact it is missing.

This paper proceeds as follows. Part II examines the theoretical polarity between territorialism and universalism that underpins all cross-border insolvency law. Part III analyses India's existing statutory framework and its judicial application in major cases. Part IV outlines the architecture and global adoption of the UNCITRAL Model Law. Part V critically examines Draft Part Z's strengths and deficiencies. Part VI concludes with recommendations for reform.

II. TERRITORIALISM, UNIVERSALISM, AND THE SEARCH FOR A MIDDLE PATH

Any coherent discussion of cross-border insolvency must engage with the foundational theoretical tension between two competing visions of how the insolvency of a multinational debtor should be managed: territorialism and universalism.

A. Territorialism and the Gibbs Rule

Territorialism rests on the premise that each state's courts have authority only over assets and persons within their borders. Applied to insolvency, this means that where a debtor has assets in multiple countries, each country conducts its own insolvency proceedings under its own law, without being bound by outcomes elsewhere. The intellectual backbone of the territorial approach in the common law world is the Gibbs Rule, derived from the nineteenth-century English principle that a debt governed by a particular system of law can only be discharged under that same system.[4] A foreign insolvency decree, no matter how properly conducted, cannot extinguish the rights of a creditor whose debt is governed by the law of a different jurisdiction.

Territorialism is not without principled defenders. It protects local creditors who extended credit in reliance on local law and have legitimate expectations that local courts will adjudicate their claims. It preserves state sovereignty over assets within the state's borders. It limits the systemic risks of cross-border fraud: a successful manipulation of proceedings in one jurisdiction affects only the assets located there, rather than assets globally. And it avoids the problematic assumption that all jurisdictions' insolvency systems meet some uniform standard of fairness.

Its weaknesses, however, are profound. Territorial proceedings are inherently partial: they can only administer the debtor's local assets, leaving the global estate fragmented. Creditors in

[4] Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux (1890) 25 QBD 399.

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different jurisdictions receive disparate treatment, violating the fundamental insolvency principle of equal treatment of equally situated creditors. Debtors can exploit jurisdictional gaps to conceal or dissipate assets. And the multiplication of proceedings across jurisdictions massively increases costs and extends timelines, destroying value that might otherwise be available for distribution.

B. Universalism

Universalism proposes the opposite: a single global insolvency proceeding, administered under the law of one jurisdiction, typically the debtor's home state or centre of main interests (COMI), whose effects are given full recognition by all other countries. The universalist vision is coherent and administratively elegant. It maximises asset preservation, prevents forum shopping, ensures equal creditor treatment, and reduces transaction costs. Courts in all countries would defer to the single proceeding, facilitating a collective and efficient resolution of the insolvent estate.[5]

The difficulty is that pure universalism requires a degree of international trust and legal harmonisation that no existing system approaches. To ask courts in India to give binding effect to proceedings conducted under US bankruptcy law, or vice versa, requires confidence that the foreign system meets standards of procedural fairness, creditor protection, and public policy compatibility. Such confidence cannot be assumed; it must be earned through track record, and in many instances, it simply does not exist.

C. Modified Universalism: The Operative Middle Ground

The dominant modern approach, reflected in both academic scholarship and legislative practice, is modified universalism: a pragmatic framework that aspires to the efficiency of universalism while preserving sufficient national control to protect domestic creditors and public policy. Under modified universalism, the jurisdiction where the debtor has its COMI conducts main insolvency proceedings, and other jurisdictions are expected to cooperate with and give effect to those proceedings but retain the right to open secondary proceedings where local creditors require protection and to refuse recognition where recognition would be manifestly contrary to domestic public policy.[6]

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 is the most successful

[5] Jay Lawrence Westbrook, *"A Global Solution to Multinational Default*", 98 Michigan Law Review 2276 (2000).
[6] Ian F. Fletcher, *"Insolvency in Private International Law: National and International Approaches"* (Oxford Private International Law Series, 2005).

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codification of modified universalism in international law. Its adoption in over sixty countries, including the United States, the United Kingdom, Singapore, Japan, and Australia, has created a de facto international framework for cross-border insolvency cooperation, even in the absence of a binding multilateral treaty. India's adoption of the Model Law, through enactment of Draft Part Z, would align it with this global framework.

III. CROSS-BORDER INSOLVENCY UNDER THE IBC: THE STATUTORY VOID

A. Sections 234 and 235: An Inadequate Architecture

The IBC's cross-border insolvency provisions are confined to two enabling sections. Section 234 empowers the Central Government to enter into bilateral agreements with foreign governments, enabling reciprocal enforcement of insolvency orders. Section 235 permits the NCLT to issue letters of request to courts in countries with which India has such agreements, seeking assistance in insolvency proceedings.[7]

Both provisions share a fundamental structural deficiency: they are entirely bilateral and entirely contingent on executive action. The operative phrase in Section 234, "may enter into an agreement", has, as of the date of writing, never been acted upon. Not a single bilateral agreement has been notified. As a result, Section 235 is equally inoperative: letters of request can only be issued to countries with which bilateral arrangements exist, and no such countries have been designated.

Even if bilateral agreements were notified, the bilateral model is structurally insufficient for a world of multilateral trade. As commentators have observed, the process of entering into separate bilateral agreements is time-consuming and costly and would inadvertently lead to inconsistency in cross-border insolvency law across countries.[8] Moreover, neither section provides for automatic recognition of foreign insolvency proceedings, no extension of the IBC's moratorium to foreign assets, no standing for foreign representatives to approach Indian courts directly, and no framework for court-to-court cooperation. They are, in short, empty vessels.

B. Judicial Improvisation: Jet Airways and Beyond

In the absence of a statutory framework, Indian courts have been forced to improvise. The results have been admirable in their creativity but unreliable in their outcomes, as the following

[7] The Insolvency and Bankruptcy Code, 2016, §§ 234-235.
[8] Sara Jain, *"Cross-Border Insolvency Under IBC"*, Shardul Amarchand Mangaldas (2021).

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major cases illustrate.

In the Jet Airways insolvency, India's first significant cross-border case, two European banks had initiated bankruptcy proceedings in the Netherlands before the Indian CIRP began, resulting in the appointment of a Dutch Administrator over the airline's European assets. When the Dutch Administrator approached the NCLT seeking recognition and a stay of Indian proceedings, the NCLT's response was blunt: the Dutch proceedings were "a nullity in India" and Dutch courts could not have jurisdiction over an Indian-registered company.[9] The NCLAT, on appeal, reversed this position and directed the parties to cooperate and enter a formal protocol. The resulting Cross-Border Insolvency Protocol of September 2019, the first of its kind in India, designated India as the COMI, coordinated the parallel proceedings, and provided for information sharing. The resolution plan was ultimately approved in June 2021.

The Jet Airways outcome was remarkable but fragile. The Protocol's authority rested entirely on the NCLAT's ad hoc direction, not on any statutory provision. Had either party declined to cooperate, there was no legal mechanism to compel compliance. The entire exercise demonstrated that a framework that depends on voluntary good faith is not a framework at all.[10]

Go Airlines presented a starker failure. When the NCLT admitted the CIRP application, the moratorium under Section 14 of the IBC was supposed to stay enforcement proceedings against the airline's assets. However, the moratorium had no extraterritorial effect: lessors of aircraft stationed abroad repossessed those aircraft, which were the airline's primary operating assets. The absence of any mechanism to extend the moratorium to foreign assets effectively foreclosed a going-concern resolution before it could begin.

The BYJU's insolvency brought yet another dimension: conflicting proceedings between Indian NCLT proceedings initiated by creditors and US Chapter 11 proceedings filed by the US subsidiary's management, with neither jurisdiction having a mechanism to coordinate with the other. The competing proceedings consumed resources and management attention over an extended period, illustrating the costs of jurisdictional fragmentation in a case where speed of resolution was critical to value preservation.[11]

Across all these cases, a consistent pattern emerges. The absence of a statutory cross-border insolvency framework does not merely create inconvenience, it destroys value. It extends timelines, fragments estates, disenfranchises creditors, and enables strategic exploitation of jurisdictional gaps by debtors and individual creditors.

[9] State Bank of India v Jet Airways (India) Ltd, [2019] NCLT Mumbai Order dated 20 June 2019.
[10] Jet Airways (India) Ltd v State Bank of India, [2019] NCLAT Order dated 26 September 2019; Cross-Border Insolvency Protocol, 26 September 2019.
[11] In re BYJU's Alpha Inc, Case No. 24-10140, United States Bankruptcy Court, District of Delaware (2024).

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IV. THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY, 1997

A. Architecture and Core Pillars

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, represents the most successful international instrument for managing multinational insolvency cases. It does not create a single universal insolvency proceeding, nor does it harmonise substantive insolvency law. Instead, it provides a procedural framework, a shared vocabulary and architecture, through which courts of different countries can coordinate, cooperate, and give effect to each other's proceedings. The Model Law is built on four pillars: access, recognition, relief, and cooperation.

Access: Article 9 of the Model Law confers direct access on foreign representatives, that is, administrators, liquidators, and resolution professionals appointed in foreign insolvency proceedings, to approach courts in the enacting state directly, without the need to establish separate domestic proceedings or route applications through domestic insolvency professionals. This right of direct access is foundational: without it, a foreign representative seeking to protect assets in a jurisdiction or participate in proceedings there would face procedural barriers that could render coordination practically impossible.[12]

Recognition: The Model Law's recognition framework, set out in Articles 15 through 17, distinguishes between foreign main proceedings, pending in the jurisdiction where the debtor has its Centre of Main Interests (COMI), and foreign non-main proceedings, pending where the debtor has a mere establishment. Recognition of a foreign proceeding triggers consequences that differ significantly between the two categories. Recognition as a foreign main proceeding is to be granted expeditiously, without examination of the merits of the underlying proceedings, and triggers mandatory consequences including an automatic stay.[13]

Relief: The Model Law provides both interim relief (available between the filing of a recognition application and the recognition determination) and post-recognition relief. For foreign main proceedings, recognition triggers a mandatory automatic stay of individual enforcement actions against the debtor's assets and suspension of the right to transfer or encumber those assets. Additional discretionary relief under Article 21 includes examination of witnesses, delivery of information about assets, and the entrusting of administration to the foreign representative.[14]

[12] UNCITRAL Model Law on Cross-Border Insolvency, Art. 9 (1997).
[13] Id., Arts. 15-17.
[14] Id., Arts. 19-21.

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Cooperation: Articles 25 through 27 require courts and insolvency administrators to cooperate "to the maximum extent possible" with foreign courts and representatives. Cooperation may take any appropriate form, including direct court-to-court communication, sharing of information, and, critically, the approval of insolvency protocols coordinating concurrent proceedings. This provision, Model Law Article 27(d), is the statutory basis for the kind of protocol used in Jet Airways and, in a functional framework, would have given that protocol binding legal effect rather than merely moral authority.[15]

B. The COMI Concept

The Centre of Main Interests (COMI) concept is the architectural keystone of the Model Law's recognition framework. The jurisdiction of the debtor's COMI determines whether foreign proceedings are recognised as main or non-main, with major consequences for the automatic stay and the extent of relief. The Model Law provides a presumption that the debtor's registered office is its COMI, subject to rebuttal.

Different jurisdictions have developed different approaches to COMI determination. EU courts, following the European Court of Justice's ruling in In re Eurofood IFSC Ltd, emphasise objective ascertainability: COMI should be identifiable by third parties and correspond to the place where the company conducts the regular administration of its interests on a habitual basis. US courts under Chapter 15 have adopted a "nerve centre" approach derived from the Supreme Court's Hertz decision, locating COMI at the headquarters from which the company is directed and controlled. Singapore has adopted a facilitative "legitimate nexus" standard. The divergences between these approaches mean that even in a Model Law world, COMI determination can generate significant litigation, underscoring the importance of a clear legislative standard.[16]

C. Global Adoption: Lessons from Key Jurisdictions

The Model Law has been adopted across diverse legal systems, each adapting it to local conditions with varying degrees of fidelity. The experiences of the United States, United Kingdom, Singapore, and Japan offer important lessons for India.

The United States adopted the Model Law through Chapter 15 of the Bankruptcy Code in 2005, replacing the prior discretionary mechanism of Section 304. Chapter 15 has generated a sophisticated body of case law on COMI, the scope of automatic stays, and the relationship

[15] Id., Arts. 25-27.
[16] In re Eurofood IFSC Ltd, Case C-341/04, [2006] ECR I-3813 (ECJ); Hertz Corp v Friend, 559 US 77 (2010).

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between US proceedings and foreign proceedings. US courts have been consistent in their application of the recognition framework and have developed case law on COMI temporality, the question of at what date COMI is assessed, that India must resolve in its own framework.[17]

The United Kingdom, through the Cross-Border Insolvency Regulations 2006, supplemented the Model Law with pre-existing common law cooperation doctrines. The House of Lords' articulation in In re HIH Casualty and General Insurance Ltd of English law's universalist aspiration, that courts should cooperate with the country of principal liquidation to ensure all assets are distributed under a single system, remains a landmark statement of the modified universalist philosophy. Post-Brexit, the UK has lost the benefit of the EU Insolvency Regulation and its detailed coordination mechanisms, making the common law and CBIR framework more important than ever.[18]

Singapore's transformation into a premier international restructuring hub is the most instructive precedent for India. Prior to 2017, Singapore's cross-border framework was limited; after the Companies (Amendment) Act 2017 and the Insolvency, Restructuring and Dissolution Act 2018 (IRDA), Singapore adopted the Model Law with additional mechanisms including super-priority rescue financing, pre-packaged insolvency schemes, and enhanced moratorium provisions. Singapore also initiated the Judicial Insolvency Network (JIN) in 2016, developing guidelines for direct court-to-court communication and joint hearings that now bind courts in the US, UK, Australia, and elsewhere. The JIN Guidelines operate on a "soft law" basis: no legislative amendment is required for a court to commit to following them.[19]

Japan offers the most directly relevant comparative model for India. A civil law jurisdiction that adopted the Model Law in 2001 through the Act on Recognition and Assistance for Foreign Insolvency Proceedings (RAFIP), Japan modified the framework significantly to accommodate local legal traditions. RAFIP concentrates all cross-border insolvency proceedings in the Tokyo District Court, building specialised expertise in a single forum. It protects secured creditors from automatic stays, reflecting Japanese secured lending practice. And it allows the court to appoint a Japanese legal professional as substitute representative where the foreign representative cannot communicate in Japanese. The Japanese model demonstrates that principled departures from the Model Law text, informed by legitimate domestic concerns, are

[17] In re Betcorp Ltd, 400 BR 266 (Bankr. D. Nev. 2009); In re Sunac China Holdings Ltd, Case No. 22-11644 (Bankr. S.D.N.Y. 2022).
[18] In re HIH Casualty and General Insurance Ltd [2008] UKHL 21; Cross-Border Insolvency Regulations 2006 (SI 2006/1030).
[19] Insolvency, Restructuring and Dissolution Act 2018 (Singapore); JIN Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (2016).

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entirely compatible with the Model Law's spirit.[20]

V. INDIA'S DRAFT PART Z: PROMISES, GAPS, AND CONTRADICTIONS

A. Overview and Structure

Draft Part Z, proposed by the ILC in its October 2018 report and refined by the CBIRC in June 2020, would insert a new chapter into the IBC dedicated to cross-border insolvency for corporate debtors. It adopts the four-pillar structure of the Model Law, access, recognition, relief, and cooperation, and represents a significant conceptual advance over the current Sections 234 and 235.[21] The CBIRC Report elaborated the proposed regulatory architecture, addressing procedural requirements, fee structures, and institutional arrangements.

Draft Part Z's scope is deliberately limited. It applies only to corporate debtors under the IBC and does not extend to personal insolvency, partnership firms, or individual guarantors. This limitation reflects the ILC's phased approach to reform. Notably, it also does not extend to the Pre-Packaged Insolvency Resolution Process (PIRP) introduced in 2021, a gap that post-dates the Draft's formulation but creates a perverse incentive: MSME debtors with international operations are excluded from cross-border protection precisely because PIRP, their preferred resolution mechanism, is not covered.[22]

B. Key Strengths

Draft Part Z's most significant advance is the recognition framework in Clauses 14 through 17, which establishes the main/non-main distinction and provides for expeditious recognition without merits examination. The three-month look-back period for the registered office presumption, borrowed from the EU Insolvency Regulation, is a sensible anti-forum-shopping measure, preventing debtors from engineering their COMI by transferring their registered office to a favourable jurisdiction shortly before insolvency.[23]

The automatic stay following recognition of a foreign main proceeding, the interim relief provisions protecting estates during the recognition application period, and the cooperation provisions of Clauses 19 through 22 collectively provide the statutory infrastructure that the

[20] Act on Recognition of and Assistance for Foreign Insolvency Proceedings (Japan, 2000); Jain and Baunthiyal, *"Cross-Border Insolvency in India: A Comparative Analysis"* (2022).
[21] Cross-Border Insolvency Rules/Regulations Committee, Report of the CBIRC (June 2020), IBBI, Government of India.
[22] The Insolvency and Bankruptcy Code (Amendment) Act, 2021 (Introducing Pre-Packaged Insolvency Resolution Process).
[23] Council Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (Recast Regulation), Art. 3(1).

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Jet Airways NCLAT tried to create through judicial direction but could not ground in statute. The right of foreign representative access in Clause 8 would have made the Dutch Administrator's participation in the Jet Airways proceedings straightforward rather than requiring appellate intervention.

C. Critical Deficiencies

Draft Part Z's departures from the Model Law introduce a number of significant gaps that will predictably generate litigation and undermine the framework's effectiveness.

Reciprocity Requirement: The most consequential departure is Draft Part Z's adoption of a reciprocity-based approach. While the Model Law does not require reciprocity as a condition for recognition, its benefits are available to proceedings from any jurisdiction, Draft Part Z limits its application to jurisdictions notified by the Central Government. This means the framework does not automatically apply to any country with which India has significant commercial relationships, requiring executive action for each country before any foreign representative can access the framework. This replaces the IBC's current void not with a functioning framework but with a functioning framework contingent on a future notification that may never come.[24]

Expanded Public Policy Exception: Article 6 of the Model Law empowers the enacting state to refuse recognition where it would be "manifestly contrary" to public policy, a deliberately narrow standard that the UNCITRAL Guide instructs courts to apply restrictively. Draft Part Z formulates a significantly broader public policy exception, drawing on India's general tradition of broad public policy review in private international law contexts. The risk is that Indian courts will deploy the public policy exception as a routine first resort rather than a genuine last resort, effectively re-territorialising a universalist framework through the back door.[25]

COMI Temporality: Perhaps the most technically significant gap is Draft Part Z's complete silence on the temporal question: at what point in time is the debtor's COMI to be assessed? Two principal approaches have emerged internationally. The American "filing approach" determines COMI at the date the recognition petition is filed in the receiving jurisdiction. The European "commencement approach" determines COMI at the date the foreign proceeding was commenced, preventing debtors from engineering their COMI between the commencement of foreign proceedings and the filing of the recognition application. The UNCITRAL Guide

[24] Insolvency Law Committee Report 2018, supra note 3, Draft Part Z, Clause 2.
[25] UNCITRAL, Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (2013), para. 89.

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endorses the commencement approach as the better safeguard against forum shopping.[26] Draft Part Z's silence means that every recognition application before the NCLT will have to relitigate this foundational question from scratch, generating inconsistent outcomes.

Foreign Representative Access and the Bar Council Restriction: Draft Part Z does not address whether foreign representatives, who are typically foreign legal practitioners or administrators, face restrictions under India's legal services regime. The Supreme Court's ruling in Bar Council of India v. A.K. Balaji restricts the practice of law in India to persons enrolled in the Bar. A foreign administrator seeking to appear before the NCLT or give evidence on the debtor's affairs might be met with an objection that this constitutes "practice of law" requiring Indian enrolment. Draft Part Z should expressly clarify that foreign representatives exercising their statutory access rights are not "practising law" within the meaning of the Advocates Act.[27]

Institutional Infrastructure: Draft Part Z creates legal architecture without institutional infrastructure. The CBIRC itself recommended investment in human and organisational capacity at the NCLT. Cross-border insolvency cases require specialised expertise in international insolvency law, foreign legal systems, and complex cross-border asset tracing that the NCLT's current generalist insolvency judges may not possess. Without specialised benches, a cross-border insolvency register, and a designated portal for foreign representative access, the legal framework will remain difficult to operate in practice.[28]

VI. CONCLUSION: ENACT, REFORM, AND BUILD

India's cross-border insolvency reform is caught in a well-documented paradox: the framework exists, the analysis is exhaustive, the recommendations are clear, and yet the legislation remains unnotified. The Eradi Committee identified the gap in 2000. The Bankruptcy Law Reforms Committee called cross-border insolvency "the next frontier" in 2015. The ILC produced a credible draft in 2018. The CBIRC refined it in 2020. The Finance Minister announced reform in 2022. As of 2026, the rules remain unnotified and the courts improvise.

The case for immediate enactment rests on three pillars. First, India's companies are global. Jet Airways, BYJU's, Videocon, Go Airlines, these are not edge cases. They represent the ordinary reality of Indian business in the twenty-first century. The cost of the void is concrete and measurable in each case: value destroyed, timelines extended, creditors harmed, investors deterred. Second, the international framework is ready. The UNCITRAL Model Law provides

[26] Id., para. 132; In re Millennium Global Emerging Credit Master Fund, 458 BR 63 (Bankr. S.D.N.Y. 2011).
[27] Bar Council of India v A.K. Balaji, (2018) 5 SCC 379.
[28] CBIRC Report 2020, supra note 21, Chapter 6 (Institutional Infrastructure Recommendations).

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a tested, adaptable template. The experiences of the US, UK, Singapore, and Japan demonstrate that adoption, even with significant local modifications, generates better outcomes than the territorial default. Third, India's strategic interests demand it. A country that aspires to be a global financial centre and an attractive destination for foreign investment cannot offer insolvent-debtor protection that evaporates at its borders.

The path forward requires action on three fronts. Legislatively, Draft Part Z should be enacted without further delay, with amendments addressing the reciprocity requirement (which should be replaced by a presumption of applicability subject to executive restriction, not a presumption of non-applicability subject to executive notification), the COMI temporality gap (expressly adopting the commencement approach), the broadened public policy exception (restoring the Model Law's "manifestly contrary" standard), the foreign representative access issue, and the exclusion of the Pre-Packaged Insolvency Resolution Process.

Institutionally, the NCLT must develop specialised cross-border insolvency benches, concentrated, following the Japanese model, in two or three major centres rather than distributed across all sixteen benches. The IBBI should establish a publicly accessible cross-border insolvency register modelled on the EU's mandatory register under the Recast Regulation. India should commit to following the JIN Guidelines for court-to-court communication, which the NCLAT can do today, without waiting for legislative amendment, as an exercise of judicial leadership that costs nothing and signals India's seriousness to foreign courts.

Diplomatically, India should pursue proactive engagement with its major trading partners, the United States, the United Kingdom, Singapore, the UAE, Japan, to develop a network of mutual recognition arrangements that go beyond mere notifications under a reciprocity clause, towards the kind of genuine cooperation that the Model Law framework enables when adopted in good faith.

India is at a pivotal point. It can continue reacting case-by-case, improvising protocols where statute should speak, watching value dissipate in cases where coordination would have preserved it. Or it can take the proactive step of enacting a framework that has been designed, debated, and approved, and join the sixty-plus countries that have already chosen the latter path. The void in Indian insolvency has persisted long enough. The time for enactment is now.