
ADVENT OF CROSS-BORDER INSOLVENCY IN INDIA

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ABSTRACT

Cross-border insolvency is a pivotal issue in today's globalized economy, where businesses operate across multiple jurisdictions creating complex financial and legal interdependencies. India, as a fast-growing economy and a significant player in international trade faces increasing challenges in addressing insolvency cases involving foreign elements. This paper explores the evolution of India's insolvency framework, highlighting the limitations of the current provisions under the Insolvency and Bankruptcy Code, 2016 in handling cross-border cases. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency has been proposed to bridge these gaps, and this paper delves into the recommendations of the Insolvency Law Committee including the introduction of Draft Part Z and the Insolvency and Bankruptcy (Cross-Border Insolvency) Rules, 2020.

While significant opportunities exist, such as enhanced investor confidence, alignment with global standards, etc., challenges like jurisdictional coordination, public policy concerns, the absence of provisions for enterprise group insolvencies, etc., persist. This paper provides a detailed analysis of these issues and suggests a strategic way forward, emphasizing legislative clarity and capacity building with international cooperation. Lastly, by implementing a robust cross-border insolvency framework, India can position itself as a global leader in insolvency resolution and foster trust among international stakeholders.

Keywords: Cross-Border Insolvency, UNICITRAL Model Law, Insolvency and Bankruptcy Code, 2016, Draft Part Z, Insolvency Law Committee.

1. Introduction

The advent of cross-border insolvency marks a significant development in the globalized economy where businesses and investments transcend national boundaries. As globalization continues to shape the world's economic landscape, corporations often operate across multiple countries creating a web of interdependent financial relationships. This interconnectedness of growth and expansion increases the risk of financial distress spreading beyond borders. When companies with international operations face insolvency, the process of resolving their financial difficulties becomes significantly more complex requiring the coordination of legal systems with different sections of stakeholders that exist in variant jurisdictions.

Cross-border insolvency addresses the challenges posed by these transnational scenarios by providing a mechanism to ensure the orderly and equitable resolution of financial distress. It involves dealing with situations where debtors have assets or creditors in more than one country necessitating cooperation between different legal systems to maximize value, protect stakeholders' rights, and avoid duplication of efforts. In the words of Professor Ian Fletcher "*Cross-Border Insolvency refers to instances in which insolvency circumstances cross the borders of a single legal system and where the provisions of domestic insolvency law cannot be applied without taking into account the issues raised by the foreign elements of the case.*¹" An effective framework for cross-border insolvency is, therefore, essential to maintain investor confidence, encourage foreign direct investment, and promote economic stability in an increasingly interconnected world.

India, as one of the fastest-growing economies, has witnessed a surge in Foreign Direct Investment and multinational operations. With the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, the country undertook a paradigm shift in its insolvency regime aiming to resolve insolvency cases in a time-bound and efficient manner.²

1.1. Overview of Insolvency Framework in India

India's insolvency framework has undergone significant transformation over the years.

¹ Vaibhav Sangam Mishra & Janmejay Singh, *Alternative Dispute Resolution & Its Comparative Study with India and USA*, 1 JUS CORPUS L.J. 78 (2021).

² Dr. Seema Surendran & Ashik G. Swamy, *Cross-Border Insolvency in India: A Legal Study*, 3 Int'l J. Hum. Soc. Sci. & Mgmt. 493, 493-97 (2023).

Before the IBC, the insolvency process was governed by a patchwork of laws, including the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, etc.³ This fragmented approach often led to prolonged resolution timelines and reduced creditor recoveries which in return resulted in the inefficiencies during the financial distress.

The introduction of the IBC marked a turning point by consolidating and amending the existing insolvency laws into a single comprehensive framework. The IBC prioritizes the revival of viable businesses and the orderly liquidation of the unviable ones. The IBC establishes a dual-purpose insolvency mechanism- Firstly, it aims to support and educate debtors enabling them to make sound business decisions and prevent potential failures; Secondly, it focuses on rehabilitating financially distressed corporate entities by helping them regaining stability and continuing operations.⁴ However, the current scope of the IBC predominantly addresses domestic insolvency issues and is limited to handling insolvent entities within India. Expanding this framework to include cross-border elements is crucial for aligning with global insolvency practices and managing cases involving international stakeholders.⁵ The Code is structured into five key parts, each addressing distinct aspects of the insolvency process.

Part No.	Part Details
Part I	Preliminary -outlines the Code's objectives, definitions, and guiding principles, establishing a foundation for the resolution framework.
Part II	Insolvency Resolution and Liquidation for Corporate Persons -focuses on corporate insolvency, detailing the processes for resolving financial distress in companies and Limited Liability Partnerships (LLPs), including the Corporate Insolvency Resolution Process (CIRP) and liquidation procedures.
Part III	Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms -governs the insolvency and bankruptcy processes for individuals and

³ Nicole Mecca, *Riding the Wave: Fairness for Foreign Investors in India's Impending Insolvency Tsunami*, 27 Fordham J. Corp. & Fin. L. 317 (2022).

⁴ Manasi Lad-Gudhate, *Cross-Border Insolvency*, 53 Chartered Sec'y 67 (Apr. 2023).

⁵ Abhishek Saxena, *Cross-Border Insolvency: Breaking Down the Indian Insolvency and Bankruptcy Code, 2016*, Mondaq (July 15, 2016), <https://www.mondaq.com/india/InsolvencyBankruptcyRe-structuring/506600/Cross-Border-Insolvency-Breaking-Down-The-Indian-Insolvency-And-Bankruptcy-Code-2016>.

	partnerships, offering mechanisms like fresh start processes, debt recovery, and bankruptcy adjudication.
Part IV	Regulation of Insolvency Professionals, Agencies and Information Utilities -provides for the regulation and oversight of insolvency professionals, agencies, and information utilities, ensuring the professional execution of insolvency processes.
Part V	Miscellaneous -including penalties, cross-border insolvency (currently in development), and the Code's overriding effect on conflicting laws.

1.2. IBC and Cross-Border Insolvency

Currently, there are two provisions in the Code that assist Cross-Border Insolvency:

a) **Section 234:** Agreements with foreign countries. –

(1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, including a personal guarantor of a corporate debtor, as the case may be, situated at any place in a country outside India with which reciprocal arrangements have been made, shall be subject to such conditions as may be specified.

b) **Section 235:** Letter of request to a country outside India in certain cases. –

(1) Notwithstanding anything contained in this Code or any law for the time being in force if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquidator or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234, he may make an application to the Adjudicating Authority that evidence

or action relating to such assets is required in connection with such process or proceeding.

(2) The Adjudicating Authority on receipt of an application under sub-section (1) and, on being satisfied that evidence or action relating to assets under sub-section (1) is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a court or an authority of such country competent to deal with such request.

However, these two provisions are not enough to cover the subject of cross-border insolvency in India wholesomely. The failures of these provisions can be summarized as follows:

- **Absence of Bilateral Agreements:** Since the enactment of the IBC, no significant reciprocal arrangements have been finalized with foreign governments, rendering Section 234 ineffective in practice.
- **Practical Challenges in Implementation:** The mechanism of issuing letters of request to foreign courts under Section 235 has faced procedural hurdles and limited success due to the lack of established protocols for international cooperation.
- **Reliance on Bilateral Treaties:** The dependence on bilateral agreements has proven to be a slow and uncertain process, ill-suited to address the dynamic and urgent nature of cross-border insolvency cases.
- **Incompatibility with Modern Insolvency Practices:** The framework does not align with globally recognized mechanisms like the UNCITRAL Model Law on Cross-Border Insolvency, leading to inefficiencies and inconsistencies in handling transnational insolvency matters.⁶
- **Underutilization of Provisions:** Both Sections 234 and 235 have remained largely unutilized, highlighting the gap between legislative intent and practical applicability.

These failures underscore the need for India to adopt a more robust and universally accepted framework to effectively address the complexities of cross-border insolvency cases. The landmark case of *Jet Airways India Ltd. v. SBI*⁷ exemplifies the pressing need for a robust framework to address insolvency cases involving multiple jurisdictions. This case saw

⁶ Nishal Makharia, *The Dire Need for an Elaborate Framework for Cross-Border Insolvency in India*, IBC Laws (Jan. 3, 2025), <https://ibclaw.in/the-dire-need-for-an-elaborate-framework-for-cross-border-insolvency-in-india-by-nishal-makharia/?print=pdf>.

⁷ *Jet Airways (India) Ltd. v. SBI*, 2019 SCC OnLine NCLAT 385.

simultaneous insolvency proceedings in India and the Netherlands, underscoring the complexities inherent in cross-border insolvency.⁸ While celebrated as a significant precedent, the case also reveals the necessity of promptly establishing governing principles and operational rules to manage such situations effectively.

2. International Legal Framework for Cross-Border Insolvency

The need for standardized international protocols became evident as cross-border trade expanded. Efforts to address these challenges gained momentum with the adoption of international treaties and model laws. Notably, the United Nations Commission on International Trade Law (UNCITRAL) introduced the Model Law on Cross-Border Insolvency in 1997, providing a template for countries to develop consistent and harmonized legal frameworks. This model law emphasizes cooperation by recognizing the foreign proceedings, and protecting the creditors' interests that may serve as a cornerstone for modern cross-border insolvency practices.

2.1. UNCITRAL Model Law on Cross-Border Insolvency

Recognizing the challenges posed by globalization and the interconnectedness of modern economies, the Model Law serves as a template for countries to adopt consistent principles in their domestic legal systems.

The Model Law is built on five key principles⁹ that form its foundation:

1. **Access (Articles 9-12):** The Model Law grants foreign insolvency representatives direct access to domestic courts, enabling them to seek assistance in managing the debtor's assets within the jurisdiction. This ensures seamless integration of international insolvency efforts.
2. **Recognition (Articles 15-24):** The Model Law establishes a process for recognizing foreign insolvency proceedings. It distinguishes between main proceedings (centered on the debtor's primary business location) and non-main proceedings (where the debtor

⁸ Harshith Sai Boddu, *Need for International Harmonization of Cross-Border Insolvency Laws: Challenges and Prospects*, *SCC Online Blog* (Apr. 19, 2024), <https://www.sconline.com/blog/post/2024/04/19/need-for-international-harmonisation-of-cross-border-insolvency-laws/>.

⁹ Ishita Das, *The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016*, 45 *J. of Insolvency & Restructuring* 2 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/0256090920946519>.

has significant assets or operations). Recognition ensures that foreign proceedings are given due respect and legal effect within the domestic framework.

3. **Relief (Articles 19-22):** Upon recognition of foreign proceedings, domestic courts are empowered to provide appropriate relief, such as imposing a stay on creditor actions or facilitating asset distribution, to support the objectives of the foreign proceedings. This relief is critical in maintaining the value of the debtor’s estate and ensuring equitable treatment of creditors.
4. **Cooperation (Articles 25-27):** The Model Law emphasizes collaboration between domestic and foreign courts, as well as between insolvency practitioners. It encourages the sharing of information and coordinated decision-making to ensure efficient and fair resolution of transnational insolvency cases.
5. **Coordination (Articles 28-32):** In cases involving concurrent insolvency proceedings in multiple jurisdictions, the Model Law provides guidelines for coordinating these proceedings. This includes mechanisms to manage conflicts of jurisdiction and ensure a unified approach to asset distribution.

In India, cross-border insolvency has traditionally been governed by ad hoc measures and bilateral treaties, with limited success. The absence of a comprehensive framework under the IBC has highlighted the need for adopting the UNCITRAL Model Law to address the growing complexities of cross-border insolvency cases in a globalized economy.

2.2. Key Features of the UNCITRAL Model Law

The key features of the UNCITRAL Model Law with brief explanation-

Articles	Explanation
Article 1-2	<p>Purpose: Facilitates cooperation in cross-border insolvency cases, enhances legal certainty, and protects creditors and debtors.</p> <p>Scope: Applicable to cases involving foreign insolvency proceedings and recognizes terms such as "foreign proceeding" (judicial/administrative proceedings for debtor insolvency) and "foreign representative" (individual/entity administering the debtor's estate).</p>

Jurisdiction and Key Provisions (Articles 3-8)	
Article 3: International Obligations of the State	<ul style="list-style-type: none"> • Ensures that the MLCBI does not override international treaties or agreements that the state is a party to. • Promotes alignment with existing obligations under international law.
Article 4: Competent Authority	<ul style="list-style-type: none"> • Designates the domestic court or authority responsible for dealing with requests under the MLCBI. • Ensures clarity on which body handles cross-border insolvency matters.
Article 5: Authorization of Insolvency Representative	<ul style="list-style-type: none"> • Permits insolvency representatives in local proceedings to act in a foreign state, as per its laws. • Encourages active cross-border cooperation by domestic representatives
Article 6: Public Policy Exception	<ul style="list-style-type: none"> • Allows a state to refuse actions or recognition under the MLCBI if it is contrary to the country’s public policy. • Provides a safeguard to protect sovereignty and domestic interests.
Article 7: Additional Assistance	<ul style="list-style-type: none"> • Encourages courts to grant broader cooperation and assistance, beyond the provisions of the MLCBI, if allowed under local laws. • Ensures flexibility to meet the needs of specific cases.
Article 8: Interpretation	<ul style="list-style-type: none"> • Mandates uniform interpretation of the MLCBI to ensure consistency with its international nature. • Courts must consider the law’s global purpose and promote harmonization.
Access of Foreign Representatives to Local Courts (Articles 9-14)	
Article 9: Right of Direct Access	<ul style="list-style-type: none"> • Grants foreign representatives the right to directly access local courts without needing to meet the strict procedural requirements imposed on foreign parties (e.g., no need for local registration).

	<ul style="list-style-type: none"> • Simplifies the process for initiating or intervening in local insolvency proceedings.
Article 10: Limited Jurisdiction	<ul style="list-style-type: none"> • Foreign representatives can directly seek remedies for cross-border insolvency matters but do not gain broad legal authority within the domestic legal framework. • Their rights are confined to what is essential for handling the debtor’s assets and interests.
Article 11: Participation in Local Proceedings	<ul style="list-style-type: none"> • Authorizes foreign representatives to participate in ongoing domestic insolvency proceedings on behalf of the debtor. • Examples include submitting claims, challenging decisions, or collaborating with local representatives for the fair administration of the estate.
Article 12: Access of Foreign Creditors	<ul style="list-style-type: none"> • Ensures non-discrimination by allowing creditors in foreign insolvency proceedings to lodge claims in domestic insolvency cases. • They are treated equally with domestic creditors, subject to national rules on claim priorities
Article 13: Rights of Foreign Creditors	<ul style="list-style-type: none"> • Protects the procedural rights of foreign creditors, ensuring they have the same opportunities as domestic creditors to present evidence and defend their interests. • Exceptions: Creditors may face restrictions under domestic laws concerning priority or secured claims.
Article 14: Notification to Foreign Creditors	<ul style="list-style-type: none"> • Mandates that domestic authorities provide adequate and timely notice to foreign creditors regarding local insolvency proceedings.
Recognition of Foreign Proceedings and Relief (Articles 15-24)	
Article 15: Application for	<ul style="list-style-type: none"> • A foreign representative may apply for recognition of foreign insolvency proceedings in domestic courts.

<p>Recognition of Foreign Proceedings</p>	
<p>Article 16: Presumptions Concerning Recognition</p>	<p>Automatic recognition if evidence establishes that:</p> <ul style="list-style-type: none"> • The foreign proceeding qualifies as either a main or non-main proceeding. • The foreign representative has authority to act. • Presumes the validity of certified documents unless proven otherwise.
<p>Article 17: Decision on Recognition</p>	<p>Courts determine if the foreign proceeding qualifies as:</p> <ul style="list-style-type: none"> • Foreign Main Proceeding: The debtor’s center of main interests (COMI) is in the foreign jurisdiction. • Foreign Non-Main Proceeding: The debtor has an establishment (business operations or assets) in the foreign jurisdiction. • Recognition grants specific rights, such as an automatic stay on creditor actions (for main proceedings).
<p>Article 18: Subsequent Information</p>	<ul style="list-style-type: none"> • The foreign representative must notify domestic courts of significant changes in the foreign proceedings, such as status updates or additional insolvency cases.
<p>Article 19: Provisional Relief Pending Recognition</p>	<p>Courts may grant urgent interim relief before formal recognition, including:</p> <ul style="list-style-type: none"> • Staying individual creditor actions. • Freezing debtor assets. • Suspending disposal of assets.
<p>Article 20: Effects of Recognition of a</p>	<p>Recognition triggers automatic relief for foreign main proceedings, including:</p>

<p>Foreign Main Proceeding</p>	<ul style="list-style-type: none"> • Suspension of creditor actions and enforcement proceedings. • Protection of the debtor’s assets from transfers or encumbrances.
<p>Article 21: Relief for Recognized Proceedings</p>	<p>Courts may provide additional discretionary relief, such as:</p> <ul style="list-style-type: none"> • Turning over debtor assets to the foreign representative. • Coordinating asset distribution between jurisdictions. • Safeguarding creditor and debtor interests.
<p>Article 22: Protection of Creditor and Debtor Interests</p>	<ul style="list-style-type: none"> • Relief granted must balance the protection of all stakeholders. • Courts may impose conditions or modify relief to avoid prejudice to creditors or the debtor.
<p>Article 23: Power of Foreign Representatives to Act</p>	<ul style="list-style-type: none"> • Recognized foreign representatives can initiate domestic insolvency proceedings or take legal actions to preserve the debtor’s assets.
<p>Article 24: Intervention by Foreign Representatives</p>	<ul style="list-style-type: none"> • Foreign representatives may intervene in local insolvency or other proceedings concerning the debtor, ensuring alignment with international insolvency goals.
<p>Cooperation Between Courts and Representatives (Articles 25-27)</p>	
<p>Article 25: Cooperation and Direct Communication</p>	<p>Domestic courts must cooperate with foreign courts and representatives. Methods of Cooperation may include:</p> <ul style="list-style-type: none"> • Direct communication between courts (without requiring intermediaries). • Coordinating hearings or sharing relevant information.

	<ul style="list-style-type: none"> • Issuing orders or decisions that complement foreign proceedings.
Article 26: Ways of Cooperation	<p>Outlines practical ways to achieve cooperation:</p> <ul style="list-style-type: none"> • Appointment of a person/authority to act as a liaison between courts. • Approval or implementation of coordination agreements (protocols).
Article 27: Cooperation Between Representatives	<p>Requires domestic insolvency practitioners to cooperate with Foreign representatives handling the same debtor. Cooperation may involve:</p> <ul style="list-style-type: none"> • Information exchange on debtor assets, claims, or proceedings. • Joint strategies for asset recovery and distribution. • Harmonizing plans for restructuring or liquidation.
Concurrent Proceedings (Articles 28-32)	
Article 28: Commencement of Local Proceedings	<ul style="list-style-type: none"> • Local (domestic) insolvency proceedings can be initiated even if a foreign proceeding has already been recognized. • However, such proceedings must be limited to local assets or business operations unless the foreign proceeding is a non-main proceeding.
Article 29: Coordination of Main and Non-Main Proceedings	<p>If both foreign main proceedings (based on the debtor’s COMI) and non-main proceedings (based on significant local business operations) exist:</p> <ul style="list-style-type: none"> • Relief measures granted under the foreign main proceeding should be aligned with local proceedings to avoid conflicts. • Courts ensure decisions in non-main proceedings respect the overall global restructuring or liquidation strategy.

<p>Article 30: Rules on Payment and Distribution</p>	<ul style="list-style-type: none"> • Creditors who receive payment in a foreign proceeding cannot claim the same amount in local proceedings. • Prevents double recovery by creditors and ensures fair distribution of the debtor’s assets globally.
<p>Article 31: Coordination of Local and Foreign Representatives</p>	<ul style="list-style-type: none"> • Domestic courts must facilitate cooperation between the local insolvency representative and foreign representatives to: • Align asset management strategies. • Share relevant information. • Avoid duplicative or conflicting claims
<p>Article 32: Preservation of Local Laws</p>	<ul style="list-style-type: none"> • Domestic proceedings and decisions must still respect local insolvency laws. • Cross-border coordination is encouraged, but domestic courts retain jurisdiction to prioritize local rules and protect local creditors if necessary.

3. Proposed Framework for Cross-Border Insolvency in India

The UNCITRAL Model law became the blueprint of cross-border insolvency in India as it is very well evident from the Sections 234 and 235 of the IBC. “The report of The Advisory Group on Bankruptcy Laws, under the chairmanship of Dr N. L. Mitra, is one of the most comprehensive studies dealing with cross-border insolvency in India.”¹⁰ In recent times, the Insolvency Law Committee (ILC) is the prominent body that propagandas cross border insolvency in India. One Foundational Report in March 2018 and two Reports of October 2018 and May 2020 respectively have been issued by ILC addressing the growing need for a structured framework in India. These reports analyze existing gaps, propose solutions, and lay the groundwork for adopting international best practices like the UNCITRAL Model Law.

¹⁰ Id at 6.

3.1. The Foundational Report- March 2018

The **March 2018 Report**¹¹ by the ILC was a foundational document that addressed various aspects of the IBC including the critical need for a framework to handle cross-border insolvency. Recognizing the increasing globalization of businesses and the growing number of cross-border insolvency cases, the report provided a thorough analysis of the gaps in the existing insolvency regime and offered recommendations for improvement. The highlights of the Report:

- a) **Need for a Cross-Border Insolvency Framework:** The ILC acknowledged the absence of a comprehensive mechanism for dealing with cross-border insolvency under the IBC. Therefore, it emphasized that a robust cross-border insolvency framework is critical for ensuring efficient resolution of multinational insolvency cases.
- b) **Recommendation to Adopt the UNCITRAL Model Law:** The ILC recommended adopting the UNCITRAL Model Law on Cross-Border Insolvency, 1997, as a legislative framework to address the complexities of cross-border insolvency.
- c) **Proposed Features of the Cross-Border Insolvency Framework from UNCITRAL Model Law:**
 - **Direct Access:** Foreign insolvency representatives should have direct access to Indian courts to initiate or participate in insolvency proceedings.
 - **Recognition of Foreign Proceedings:** The framework should distinguish between main and non-main foreign proceedings, with clear criteria for recognition based on the debtor's Center Of Main Interests (COMI)¹².
 - **Relief and Cooperation:** Courts should have the authority to grant interim and post-recognition relief to ensure the protection of assets and equitable treatment of creditors.
 - **Coordination of Proceedings:** Mechanisms should be established to manage

¹¹ Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Mar. 26, 2018), at 13, available at <http://www.mca.gov.in/>.

¹² Archit Bhadani, *Cross-Border Insolvency with Reference to the 'Centre of Main Interest'* (2022), <https://ibclaw.in/cross-border-insolvency-with-reference-to-the-centre-of-main-interest-by-archit-bhadani/>.

concurrent insolvency proceedings in different jurisdictions.

- d) **Public Policy Exception:** To safeguard national interests, the ILC suggested incorporating a public policy exception, allowing courts to refuse recognition or assistance if it contravenes India's public policy.
- e) **Exclusion of Financial Service Providers:** Due to the complexities involved in resolving such entities and their systemic importance.

The Report marked the beginning of a structured approach to addressing cross-border insolvency in India.¹³ By providing actionable recommendations, the report set the stage for future discussions and legislative developments aimed at integrating a robust and globally aligned framework into the IBC.

3.2. The October 2018 Report

The report aimed to provide a detailed blueprint for incorporating cross-border insolvency provisions under the IBC. It sought to address critical aspects such as the recognition of foreign proceedings, cooperation between domestic and foreign courts, and the coordination of concurrent proceedings.¹⁴ By recommending the inclusion of these provisions, the report¹⁵ aimed to enhance India's ability to resolve insolvency cases involving multinational entities efficiently and fairly, while aligning with global best practices. To prevent misuse, the report suggested safeguards such as ensuring that foreign creditors are not given preferential treatment over domestic creditors and granting courts the discretion to protect domestic interests.¹⁶

The recommendations laid out in the October 2018 report not only aimed to fill existing legal gaps but also positioned India as a more attractive destination for international investment by providing legal certainty and fostering confidence among foreign stakeholders. This marked a

¹³ Navigating the labyrinth: Cross-border Insolvency regime in India. Moiz Rafique, Abhishek Sadhwani. 17 May 2024. <https://www.barandbench.com/law-firms/view-point/navigating-the-labyrinth-cross-border-insolvency-regime-in-india>.

¹⁴ Divyanshu Kumar, *Cross Border Insolvency Regime in India: Draft Part Z vis-à-vis the UNICITRAL Model Law*, Vol. I (2022), <https://www.hpnl.ac.in/PDF/91fc2473-f106-48e8-bd4f-a3d0efeae78e.pdf>.

¹⁵ Ministry of Corporate Affairs, *Cross Border Insolvency Report* (Oct. 22, 2018), https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf.

¹⁶ Bharucha & Partners, *The Need for a Robust Cross-Border Insolvency Regime in India*, <https://www.lexology.com/library/detail.aspx?g=b79bca9b-e993-465f-8690-6f79d549cc7a>.

significant milestone in India's journey toward creating a comprehensive, globally harmonized insolvency regime.

To implement the recommendations of the October 2018 Report, the ILC proposed the insertion of Part Z into the IBC. Part Z outlines the legal provisions and procedures for handling cross-border insolvency cases in India. By incorporating these provisions, **Draft Part Z** aims to create a transparent and efficient framework for cross-border insolvency in India. "This will:

- **Enhance Investor Confidence:** Foreign investors and creditors will benefit from greater legal certainty and protection, encouraging investment in India.
- **Reduce Jurisdictional Conflicts:** The provisions align domestic laws with international practices, minimizing disputes over jurisdiction.
- **Strengthen Cooperation:** Facilitating cooperation between Indian and foreign courts ensures a holistic approach to resolving insolvency cases."¹⁷

While Draft Part Z addresses several gaps, it is not without challenges. Notably, it does not provide a framework for enterprise group insolvency, where multiple related entities within a group face financial distress.¹⁸ This limitation may complicate the resolution of complex cases involving multinational corporate groups. Additionally, successful implementation depends on the capacity of Indian courts and authorities to handle the intricacies of cross-border cases effectively.

Draft Part Z represents a pivotal reform in India's insolvency regime, aligning it with global standards and addressing the challenges posed by transnational insolvency cases. While it lays the foundation for a robust cross-border insolvency framework, its success will depend on addressing existing limitations and adapting to evolving global practices. Adoption of Draft Part Z will not only enhance India's legal infrastructure but also solidify its position as a competitive player in the global economy.

4. The Cross Border Insolvency Rules/Regulations Committee (CBIRC)

In January 2020, the Ministry of Corporate Affairs (MCA) established the CBIRC to draft rules

¹⁷Aakanksha Singh, *Critical Analysis of Cross-Border Insolvency in India: The UNCITRAL Model & Need for a Reform*, Feb. 9, 2022, <https://www.tcclr.com/post/critical-analysis-of-cross-border-insolvency-in-india-the-uncitral-model-need-for-a-reform>.

¹⁸ Id at 6.

and regulations for implementing Part Z.¹⁹ The CBIRC submitted its report titled “Report on the rules and regulations for cross-border insolvency resolution” to the MCA in June 2020, which was subsequently opened for public consultation in November 2021 to evaluate the proposed law's impact on individuals' rights.²⁰ This Report stated about the Insolvency and Bankruptcy (Cross-Border Insolvency) Rules, 2020 to operationalize Draft Part Z if and when it is enacted into the IBC.²¹ The key highlights of the Report were:

- **“Framework for Recognition of Foreign Proceedings:** The report emphasized the importance of recognizing foreign insolvency proceedings to provide a unified approach for resolving cross-border cases. It delineated the process for determining whether a proceeding qualifies as a **foreign main proceeding** or a **foreign non-main proceeding**, as outlined in the Model Law.
- **Guidelines for Cooperation and Coordination:** The report proposed clear mechanisms for cooperation between domestic and foreign courts and insolvency practitioners. It underscored the need for effective communication protocols to facilitate the smooth exchange of information and reduce jurisdictional conflicts.
- **Relief Measures and Moratorium:** The CBIRC recommended granting interim relief and moratoriums upon the recognition of foreign proceedings. These measures were intended to protect the debtor’s assets and ensure equitable treatment of creditors while preventing any detrimental actions during the insolvency process.
- **Concurrent Proceedings and Asset Distribution:** Recognizing the complexities of concurrent insolvency proceedings in different jurisdictions, the report provided guidelines for coordinating these cases. It stressed the need for a balanced approach to asset distribution, ensuring fairness to both domestic and foreign creditors.
- **Safeguards for Domestic Interests:** The report highlighted the importance of safeguarding India’s public policy and domestic interests.”²²

The report underscored the importance of implementing Draft Part Z, modeled on the UNCITRAL Model Law on Cross-Border Insolvency, 1997, to enhance India's ability to

¹⁹ Varsha Aithala, *Report of the Cross-Border Insolvency Committee, June 2020: A Primer*, Jan. 17, 2022, <https://www.nls.ac.in/blog/report-of-the-cross-border-insolvency-committee-june-2020-a-primer/>.

²⁰ Id.

²¹ Cyril Amarchand Mangaldas, *Cross-border Insolvency Tools*, <https://www.cyrilshroff.com/wp-content/uploads/2020/09/Cross-border-insolvency-tools-CAM-Thought-Leadership-Article.pdf>.

²² Vinod Kothari, *Cross-Border Insolvency in India: A Long Due Dream*, Feb. 2022, <https://vinodkothari.com/2022/02/cross-border-insolvency-in-india-a-long-due-dream/>.

handle transnational insolvency cases. The recommendations from the public consultation process were expected to refine the proposed framework before its formal introduction as an amendment to the IBC. A draft bill incorporating cross-border insolvency provisions was expected to be introduced in Parliament. However, progress has been slow due to competing legislative priorities and the complexity of drafting a globally aligned framework. The proposed framework remains under consideration, with the government emphasizing its importance in strengthening India's insolvency regime.

5. Challenges and Opportunities in implementing Cross-Border Insolvency Framework in India

The introduction of a cross-border insolvency framework in India presents both significant challenges and promising opportunities. As the country progresses toward adopting globally recognized practices, understanding these factors is essential for ensuring the framework's success.

5.1. Opportunities:

- **Alignment with Global Standards:** Adopting a cross-border insolvency framework based on the UNCITRAL Model Law would align India with international best practices enhancing its reputation as a business-friendly destination.
- **Increased Foreign Investment:** A clear and predictable framework for resolving cross-border insolvency cases will instil confidence among foreign investors, fostering greater Foreign Direct Investment in India.
- **Efficient Asset Recovery:** The framework enables better cooperation between jurisdictions, leading to more efficient tracing and recovery of assets across borders.²³ This ensures maximum value realization for stakeholders.
- **Judicial Cooperation:** The framework fosters mutual respect and cooperation between Indian courts and their foreign counterparts, leading to faster resolution of insolvency cases.
- **Development of Expertise:** Implementing cross-border insolvency provisions will encourage the development of specialized skills among insolvency professionals, enhancing the overall quality of insolvency practice in India.

²³ Id at 6.

- **Stronger Legal Framework:** The framework will help build a more robust legal structure capable of addressing the complexities of globalization, benefiting India's economy in the long term.²⁴

5.2. Challenges:

- **Coordination Between Jurisdictions:** Effective implementation of cross-border insolvency requires seamless cooperation between Indian courts and foreign jurisdictions.²⁵ However, differences in legal systems, procedures, and languages often create barriers to coordination.
- **Public Policy Concerns:** India's courts and policymakers may encounter difficulties in striking a balance between recognizing foreign proceedings and protecting domestic interests.²⁶ The public policy exception in the UNCITRAL Model Law, while necessary, could lead to ambiguities and delays.
- **Treatment of Enterprise Groups:** The current framework primarily focuses on individual companies and does not address the complexities of insolvency within enterprise groups. Coordinating insolvency resolutions across interconnected entities in multiple jurisdictions remains a critical gap.
- **Lack of Precedents:** India has limited experience in handling cross-border insolvency cases under a unified framework.²⁷ The absence of precedents may result in uncertainties during the early implementation phase.
- **Capacity Building:** Judges, insolvency professionals, and other stakeholders need training to understand and apply cross-border insolvency laws effectively. Capacity building is essential to avoid procedural inefficiencies and errors.²⁸
- **Resistance from Domestic Stakeholders:** Domestic creditors and stakeholders might resist cross-border proceedings due to concerns over losing priority or control over asset distribution.

²⁴ Dr. Hari Krishna Karri, Nithya Ramachandran, & Dr. P. Siva Reddy, *Global Financial Resilience: Assessing Opportunities and Challenges in Cross-Border Insolvency Under the Paradigms of Universalism and Territorialism*, <https://www.ijirem.org/DOC/9-global-financial-resilience-assessing-opportunities-and-challenges-in-cross-border-insolvency-under-the-paradigms-of-universalism-and-territorialism.pdf>.

²⁵ *Cross-Border Insolvency*, <https://www.maheshwariandco.com/blog/cross-border-insolvency/>.

²⁶ Ran Chakrabarti, *Key Issues in Cross-Border Insolvency*, 30 *Nat'l L. Sch. India Rev.* 119 (2018), <https://www.jstor.org/stable/26743940>.

²⁷ *Id.*

²⁸ *Id.* at 24.

- **Delays in Legislative Process:** Despite the recommendations of the CBIRC and the preparation of Draft Part Z, delays in enacting the provisions into law hinder progress and leave cross-border insolvency cases unresolved.²⁹

While challenges exist in implementing a cross-border insolvency framework, they are surmountable with careful planning, legislative clarity, and stakeholder engagement. The opportunities presented by such a framework—ranging from increased global trust to more efficient insolvency processes—far outweigh the hurdles, making it an essential step for India in a globalized economic landscape.

6. Conclusion

The adoption of a cross-border insolvency framework under the IBC is a significant step toward aligning India's insolvency regime with global best practices. To ensure its success, legislative action must be prioritized. The expedited enactment of Draft Part Z will provide a comprehensive framework for addressing cross-border insolvency cases. Simultaneously, provisions must be developed to deal with the insolvency of enterprise groups, a gap not currently covered by the framework. Robust rules and regulations, such as the finalization of the Insolvency and Bankruptcy (Cross-Border Insolvency) Rules, 2020, are essential to provide procedural clarity for stakeholders.

Capacity building among key players, such as judges and insolvency professionals, is equally critical. Specialized training programs will equip judicial authorities to handle the complexities of cross-border insolvency cases, while certifications and practical training for insolvency professionals will ensure efficient implementation of the framework. Awareness campaigns targeting stakeholders, including creditors, debtors, and foreign investors, can help foster acceptance and understanding of the new framework.

Strengthening international cooperation is another vital aspect. India should actively pursue bilateral arrangements with major trading partners to complement the UNCITRAL Model Law framework. Establishing formal channels for collaboration between Indian and foreign courts will foster trust and streamline the resolution of transnational insolvencies. Participation in

²⁹ Debaranjan Goswami & Andrew Godwin, *India's Journey Towards Cross-Border Insolvency Law Reform*, *Asian J. of Comp. L.* (Sept. 26, 2024), <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/indias-journey-towards-crossborder-insolvency-law-reform/358135F0BED9AA9375F21913BAB56A73>.

international forums like UNCITRAL and INSOL International will also help India stay abreast of global developments and contribute to the evolution of international insolvency standards.

By implementing these measures, India can create a fair and efficient cross-border insolvency framework. This will enhance its reputation as a favorable jurisdiction for international business and strengthen its position in the global economic landscape. With a strategic and collaborative approach, India can successfully address the challenges of cross-border insolvency and build a resilient and investor-friendly insolvency regime.