

# Exploring the Cross-Border Insolvency Laws: A Comparative Study of India and International Perspectives

## Abstract

Cross-border insolvency involves complex legal challenges that arise when a debtor's assets and liabilities span multiple jurisdictions. The lack of a comprehensive law to deal with such beyond-borders disputes in insolvency can have an undesirable impact on the enterprise, local or foreign creditors, recognition of law or jurisdictions, enforcement of foreign decisions, and many more. In the global context, the United Nations has adopted the Model Law on Cross-Border Insolvency (MLCBI) which has been implemented by various nations like, the United States, the United Kingdom, the Republic of Korea, Japan, Poland, etc. in their domestic laws to create uniformity in administering cross-border insolvency proceedings. This is a guiding document to resolve the legal complexities in cross-border insolvency to the adoptive countries, such as, conflict of laws, determination of assets of debtors, determination of main proceedings, relief provisions and many more. In India, Cross-Border Insolvency proceedings are initiated under the Insolvency and Bankruptcy Code (IBC), 2016. This paper highlights the MLCBI from an Indian Perspective with reference to the IBC, as India's regulatory framework for cross-border insolvency. Additionally, the paper examines the paradigm shift after the implementation of this MLCBI in the Indian Insolvency Framework in the IBC concerning the proceedings in resolving such international insolvency cases in India. This paper will contribute to how countries like the other countries that have implemented the MLCBI in their legal realm while handling such transnational insolvency disputes.

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## 1 | Introduction

With the emergence of the globalization phenomenon, the period up to the end of the 19th century was marked by an exceptional economic expansion and global integration.<sup>[1]</sup> The business entities have shown their keen interest in extending their business beyond their home jurisdictions. It has accelerated its growth in international trade and investment in recent decades, which has led to the integration of economies. However, amid the global financial crisis, beginning in 2008, numerous challenges emerged in stabilizing the global financial markets and economies.<sup>[2]</sup> Consequently, large cross-border operating enterprises have experienced financial distress, resulting in an increasing number of cross-border insolvency cases. However, it has numerous legal challenges due to the lack of uniformity in domestic insolvency laws. These issues encompass determining which country's insolvency laws should be applied in adjudicating such transnational insolvency disputes, where the primary proceeding should commence, how to designate the main jurisdiction for such cases, and various other considerations. Therefore, the United Nations have tried to tackle such issues and to bring uniformity and harmony among the countries, introduced the "UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), 1997", in the global forum. It has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues. Numerous countries such as the United States, the United Kingdom, Japan, the Republic of Korea, Poland, etc. have taken initiatives to implement the principles of this model in their domestic laws for insolvency. However, India has not adopted this model law. In India, cross-border insolvency disputes are resolved under the "Insolvency and Bankruptcy Code (IBC),

<sup>1</sup> International Monetary Fund, *Globalization: A Framework for IMF Involvement*, March 2002. <https://www.imf.org/external/np/exr/ib/2002/031502.html>. [accessed: 15.12.2024].

<sup>2</sup> Annika Wolf, "A Global Cross-border Insolvency Framework for Financial Institutions" *EUI Working Paper*, No. 1 (2015): 1-3.

2016” under Sections 234 and 235. The enactment of this Code has introduced significant modifications in governing financially distressed entities, resulting in benefits to India’s economic landscape.

### 1.1. Meaning Cross-Border Insolvency and its Paradox

Cross-border insolvency occurs when an insolvent debtor/entity has assets and/or creditors located in multiple nations.<sup>[3]</sup> Domestic insolvency proceedings are initiated by domestic laws that identify the debtors’ assets, liquidate those assets, and protect creditors’ rights. But in the circumstances of cross-border insolvency, the complexities of choosing the laws; choosing the jurisdictions; demarcating the foreign main proceedings for the insolvent debtor/entity or the foreign non-main proceedings; protecting the local and domestic creditors, assets distributions; the applicability of reciprocity law; the right of the insolvency administrator (domestic) to commence proceedings and access the assets of the foreign country; the recognition of the claims of local creditors in a foreign administration; the recognition and enforcement of foreign administration decisions, and many more.

### 1.2. Theories of Cross-Border Insolvency

The theories of Cross-Border Insolvency are the approaches to initiate and deal with the cross-border insolvency proceedings. Particularly, there are two traditional major approaches territorialism and universalism. The first approach provides that the proceedings will be separately dealt with in the countries involved in the proceedings, which deny extraterritorial effect on the insolvency administration, where the insolvent debtor has its assets.<sup>[4]</sup> The later approach provides that the proceedings will be dealt with uniformity and the main jurisdiction of the proceeding will be based on the determination of the “Centre of the Main Interests (COMI).”<sup>[5]</sup> Universalism is

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<sup>3</sup> Ministry of Finance, Department of Economic Affairs 157, *Economic Survey 2021-2022* (Government of India, January 2022)

<sup>4</sup> Sefa M. Franken, “Cross-Border Insolvency Law: A Comparative Institutional Analysis” *Oxford Journal of Legal Studies*, No. 34 (2014): 102.

<sup>5</sup> Ibidem.

based on the theory of market symmetry.<sup>[6]</sup> This approach has many positive impacts such as, reducing costs of multiple proceedings, maximizing the debtor's assets, being beneficial to all the stakeholders, giving effect to the principles of equity, and many more.<sup>[7]</sup> The Modified Universalism or mixed models of these theories (territorialism and Universalism) is the third approach, which is now becoming prevalent in the present time. In this approach, it becomes fairer to all creditors if there is both unitary and universal liquidation, for example, the EU Insolvency Regulation.<sup>[8]</sup> Other approaches are “cooperative territorialism (advocated by LoPucki)” and “universal proceduralism (advocated by Janger)”.<sup>[9]</sup>

## 2 | Methodology

This research paper is purely based on doctrinal research methodology that employs primary data sources, such as, legislations, reports, case laws, etc. and secondary data sources, includes, books, articles, and online sources. It has also attempted to make comparative analysis of cross-border insolvency laws between India and various other countries. The research gap is the MLCBI's application and effectiveness across different jurisdictions, particularly in the Indian context as the commencement of such cross-border insolvency proceedings brings up numerous legal complexities that require comprehensive and extensive regulations to ensure its efficient resolution.

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<sup>6</sup> Jay Lawrence Westbrook, “A Global Solution to Multinational Default” *Michigan Law Review*, No. 7 (2000): 2277.

<sup>7</sup> Ibidem, 2284-2286.

<sup>8</sup> Bob Wessels, “Modified universalism in European cross-border insolvency?” 9 January 2019. <https://bobwessels.nl/blog/2019-01-doc3-modified-universalism-in-european-cross-border-insolvency/>. [accessed: 28.1.2025].

<sup>9</sup> Neil Hannan, *Cross-Border Insolvency The Enactment and Interpretation of the UNCITRAL Model Law* (Springer, 2017), 3.

### 3 | About UNCITRAL Model Law on Cross-Border Insolvency

UNCITRAL adopted the Model Law on 30 May 1997 and subsequently provided the “Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency.” The “International Bar Association (IBA)” and the “International, International Association of Restructuring, Insolvency and Bankruptcy Professionals. (INSOL)” have also exerted to enact this law.<sup>[10]</sup> The main purpose of MLCBI is to resolve the conflicts between domestic legal systems that result in the waste of valuable resources, to address the legal obstacles in accessing domestic courts, to remove the unequal treatment between foreign and domestic creditors, to provide for coordination and cooperation, and many more.<sup>[11]</sup> It provides a legislative framework that can be adopted by countries with modifications to suit the domestic context of the enacting jurisdiction. It has been adopted by 60 countries with 63 jurisdictions’ until now.<sup>[12]</sup> It provides a mechanism to coordinate cross-border insolvencies and is designed to be adopted by nations. It also supports “market symmetry” in a global economy, which means, “the requirement that some systems in a legal regime must be symmetrical with the market, covering all or nearly all transactions and stakeholders in that market with respect to the legal rights and duties embraced by those systems.”<sup>[13]</sup> Recently, it has completed twenty-five years in 2022, since its enactment. Along with this Model Law, there are, “UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective; Case Law on UNCITRAL Texts (CLOUT); Model Law on Enterprise Group Insolvency with Guide to Enactment (2019); Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment (2018)”.

<sup>10</sup> Ibidem,10.

<sup>11</sup> Ronald J. Silverman, “Advances in Cross-Border Insolvency Cooperation: the UNCITRAL Model Law on Cross-Border Insolvency,” *ILSA Journal of International & Comparative Law*, No. 6 (2000): 267.

<sup>12</sup> United Nations Commission On International Trade Law, *Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)*. [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency/status](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status). [accessed: 29.1.2025].

<sup>13</sup> Felicity Deane, Rosalind Mason, “The UNCITRAL Model Law on Cross-border Insolvency and the Rule of Law” *International Insolvency Review*, No. 25 (2016): 139.

### 3.1. Key notions of UNCITRAL Model Law on Cross-Border Insolvency (MLCBI)

This law addresses the core issues of cross-border insolvency cases with the below guiding notions in the Preamble of the Model Law Guide.<sup>[14]</sup>

- i. **Access:** The first notion is access to the foreign or domestic courts that open the proceedings/and the participation of professionals (whether local or foreign) and creditors (whether local or foreign) in the insolvency proceedings/and the commencement of insolvency proceedings against the insolvent debtor/entity.
- ii. **Recognition:** The second notion is the recognition of the foreign or domestic proceedings, which enables the courts to determine relief.
- iii. **Cooperation:** Third notion is cooperation between the insolvency professionals (whether local or foreign) and the courts of the country initiating the proceedings.
- iv. **Coordination:** The fourth notion is coordination in the conduct of concurrent proceedings in different jurisdictions where the proceedings are opened. The main purpose of this principle is to ensure a smooth and amicable resolution of the proceedings.
- v. **Equal Protection:** The fifth notion is to ensure equal protection of the claims of all creditors (whether local or foreign), including other persons (interested) and debtors, and effective administration of such insolvencies.
- vi. **Maximizing Assets:** The sixth notion is to maximise the assets of the insolvent debtor and distribute them equally to satisfy the claims of all creditors (whether local or foreign).

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<sup>14</sup> The UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, 2013, Preamble.

### 3.2. Legal Provisions under the Model Law to Initiate the Cross-Border Insolvency

The analysis of the legal provisions is discussed below:

- i. **Competent Court:** The court (foreign court/domestic court) controls or supervises the cross-border proceeding against the insolvent debtor/entity.<sup>[15]</sup> The court is required to cooperate with the foreign courts or foreign representatives for the smooth functioning of the proceedings<sup>[16]</sup>.
- ii. **Application:** A Foreign representative and creditors are entitled to apply directly to a court to commence a proceeding.<sup>[17]</sup> A foreign representative/ foreign creditor is entitled to participate in a proceeding on recognition of a foreign proceeding. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed accompanied by the certified copy of the decision; a certificate from the foreign court affirming the existence of the foreign proceeding and the appointment of the foreign representative; any other evidence acceptable to the court.<sup>[18]</sup>
- iii. **Recognition of Proceedings:** Recognition of the main foreign proceeding is relevant to the commencement of the proceeding concerning the debtor's assets, rights, obligations or liabilities. The main proceedings are those in which the debtor had its COMI at the time the foreign proceedings were commenced.
- iv. **Relief:** The court may, at the request of the foreign representative, grant provisional relief after the commencement of the proceedings if such relief is urgently needed to protect the debtor's assets or the interests of the creditors.<sup>[19]</sup>
- v. **Cooperation:** The court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or thoroughly.<sup>[20]</sup> The court is entitled to communicate directly

<sup>15</sup> UNCITRAL MLCBI GEI, Article 2(e) 7 4.

<sup>16</sup> UNCITRAL MLCBI GEI, Article 9.

<sup>17</sup> UNCITRAL MLCBI GEI, Article 15

<sup>18</sup> UNCITRAL MLCBI GEI, Article 15 (2).

<sup>19</sup> UNCITRAL MLCBI GEI, Article 19.

<sup>20</sup> UNCITRAL MLCBI GEI, Article 25(1).

with, or to request information or assistance directly from, foreign courts or foreign representatives.<sup>[21]</sup> The forms of cooperation can be through communication, monitoring the debtor's assets; appointment person by the court; implementing any agreement concerning coordination; and coordination during concurrent proceedings.<sup>[22]</sup>

- vi. Concurrent Proceedings: The court shall seek cooperation and coordination during proceedings.<sup>[23]</sup>
- vii. Public Policy: The court is empowered to refuse any action if it is contrary to the public policy of the state.<sup>[24]</sup>

However, the MLCBI has some ambiguity in enforcing the insolvency judgments.<sup>[25]</sup>

## 4 | Cross-Border Investment Scenario in Indian Context

In the global context, India is an emerging economy that has shown resilience and tremendous potential for growth. Over the recent decades, India has witnessed cross-border trade activities and transnational investment, and globalization has been an important catalyst for entails these activities. Additionally, the factors that attract such huge international investments in India can be due to many factors such as implementing strong commercial foundations and initiating new reformations which bring a paradigm shift to establish its position in the global market such as the enactment of IBC of 2016.<sup>[26]</sup> Further, India's "Gross Domestic Product (GDP)" growth is to fall within the range of "6.3% to 6.8%" for the "Financial Year (FY)" 2026 as

<sup>21</sup> UNCITRAL MLCBI GEI, Article 25(2).

<sup>22</sup> UNCITRAL MLCBI GEI, Article 27.

<sup>23</sup> UNCITRAL MLCBI GEI, Article 27-32.

<sup>24</sup> UNCITRAL MLCBI GEI, Article 6.

<sup>25</sup> Irit Mevorach, "Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?" *European Business Organization Law Review*, No. 22 (2021): 306.

<sup>26</sup> Ministry of Finance, Department of Economic Affairs 107, *Economic Survey 2024-25* (Government of India, January 2025).



anticipated by the economic survey for 2024-25.<sup>[27]</sup> From the period of April 2000 to September 2024, the cumulative “Foreign Direct Investment (FDI)” inflows into India have reached a milestone of the “USD 1 trillion” threshold<sup>[28]</sup>, primarily attributed to various initiatives of the Government for a more favourable business environment and loosened FDI regulations<sup>[29]</sup>. Following the pandemic crisis in India, initiatives such as Aatmanirbhar Bharat, Make in India and Digital India<sup>[30]</sup> have gained momentum to encourage investments from domestic and foreign stakeholders.

These observations suggest that the country’s GDP and FDI are linked to the increasing multinational enterprises and their collective involvement in global investment and commercial operations. This trend indicates the rise in global trade activities and the consequent intensification of international business competition. However, sometimes due to operational factors across the nations and the presence of assets and creditors from various countries, they suffer financial issues leading to an inability to meet their financial obligations. Consequently, cross-border insolvency proceedings are initiated.

#### 4.1. Legal Provisions of Cross-Border Insolvency in Insolvency and Bankruptcy Code 2016

In India, prior to 2016, there was no such comprehensive insolvency legislation to resolve the cross-border insolvency disputes. However, the inclusion of provisions to deal with such cross-border insolvency cases in a comprehensive insolvency law had been discussed in the “Justice Eradi Committee, 2000 – Report of the High-Level Committee on Law Relating to Insolvency and Winding up of Companies 2000” and the “N.L. Mitra Committee Report, 2001- Report of the Expert Committee on Legal Aspects of Bank Frauds”. Currently, the Insolvency and Bankruptcy Code (IBC), 2016 is the only domestic law that handles an insolvent enterprise proceeding within the country or outside of the country. The IBC has only two sections

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<sup>27</sup> Ministry of Finance, *Economic Survey 2024-25*, 33.

<sup>28</sup> Ibidem, 107.

<sup>29</sup> “Foreign Direct Investment” India Brand Equity Foundation January, 2025. <https://www.ibef.org/economy/foreign-direct-investment>. [accessed: 31.1.2025].

<sup>30</sup> Ministry of Finance, *Economic Survey 2024-25*, 199.

that deal with cross-border insolvency, which are provided under Sections 234 and 235. The first provision authorizes the Central Government to establish bilateral pacts with foreign nations to address issues related to transnational insolvency<sup>[31]</sup> and the subsequent provision indicates that if the resolution professional/ liquidator/ bankruptcy trustee believes that the corporate debtor possesses assets/ guarantor beyond the borders, they can issue a letter of request to a court or relevant competent body of that nation.<sup>[32]</sup> At present, the IBC does not have a standard instrument for the restructuring of companies involving cross-border jurisdictions.

The “Jet Airways (India) Ltd. Case”<sup>[33]</sup>, became the first Indian company to experience transnational insolvency and sparked discussions on international insolvency procedures. The proceedings had been already initiated against the insolvent debtor before a District Court in the Netherlands. During the proceedings, the “National Company Law Tribunal (NCLT)”, Mumbai emphasized the lack of a cross-border regulatory framework and consequently, made concern on acknowledgment on recognition of the foreign court’s judgment in India in the absence of provisions in IBC in recognition.<sup>[34]</sup> Further, on appeal, the “National Company Law Appellate Tribunal (NCLAT)” recognized the Dutch proceedings.<sup>[35]</sup> It also directed to the CoC of Jet Company to consider the prospect of cooperating with the Dutch administrator.<sup>[36]</sup> Subsequently, the proceedings of group insolvency have been initiated in “State Bank of India v. Videocon Industries Ltd.”<sup>[37]</sup> and the NCLT consolidated 13 out of the 15 companies. In the absence of provisions for group insolvency, the NCLT interpreted various provisions of the IBC and amicably handled the proceedings against the group. It has enforced the NCLT to try and interpret various sections of IBC in such a manner as to accommodate and allow consolidation of the processes as well as ease the initiation process against the group.

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<sup>31</sup> The Insolvency and Bankruptcy Code, Act No. 31 of 2016, Section 234.

<sup>32</sup> IBC, Section 235.

<sup>33</sup> Jet Airways (India) Ltd v State Bank of India and Ors (NCLAT) Company Appeal (AT) (Insolvency) No 707 of 2019.

<sup>34</sup> Ministry of Finance, *Economic Survey 2021-2022*, 157&1 158.

<sup>35</sup> Debaranjan Goswami and Andrew Godwin, “India’s Journey towards Cross-Border Insolvency Law Reform”, *Asian Journal of Comparative Law*, No. 19 (2024): 198.

<sup>36</sup> State Bank of India v Videocon Industries Limited & Ors MA-1306/2019.

<sup>37</sup> State Bank of India v. Videocon Industries Ltd, M.A 2385/2019 in C.P. (IB)-02/MB/2018 (2019).

## 4.2. Reports on Implementation UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) in Indian Insolvency Law

This issue of implementing Model Law is not new, and many committees involved in developing Insolvency Law recommended its inclusion in the law. However, with the initiations of cross-border and group cross-border insolvency proceedings in India, the “Insolvency Law Committee (ILC)” in 2018 tried to propose a Draft, namely, “Draft Z”<sup>[38]</sup>, that highlighted the importance of adopting the MLCBI in the IBC with certain changes to frame robust cross border insolvency framework. It applies exclusively to corporate debtors only and emphasizes a dual approach to the insolvency of companies from other countries.<sup>[39]</sup> Further, the Central Government has the authority to exempt certain entities from the application of the draft. Moreover, it recommended that the MLCBI adoption may be initially adopted on a reciprocity basis, nevertheless, there can be future review and modification of the draft for emerging business activity. Furthermore, it addressed different issues such as COMI; relief provisions; consideration of violation of public policy; incorporation of the “Judicial Insolvency Network (JIN)” for cooperation and coordination purposes, and many more.<sup>[40]</sup>

Furthermore, in 2020, the “Cross Border Insolvency Rules/Regulations Committee (CBIRC)” aimed to propose guidelines necessary for the execution of the ILC Report.<sup>[41]</sup>

- i. The committee studied different typologies of the cases of cross-border insolvency. Cross-border insolvency occurs when a company based in India has obligations, properties, or business activities in foreign countries, or when a company from another nation possesses debts, assets, or conducts operations within India. The procedures for winding up foreign companies are outlined in the Companies Act 2013. It establishes a dual approach, first to address the transnational

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<sup>38</sup> Ministry of Corporate Affairs Government of India 14, *Report of Insolvency Law Committee on Cross Border Insolvency* (Government of India, October 2018).

<sup>39</sup> Shikha “India’s”, 330-332.

<sup>40</sup> Shikha, “India’s”, 330-332.

<sup>41</sup> Ministry of Corporate Affairs, *Report on the Rules and Regulations for Cross-border Insolvency Resolution* (Government of India, June 2020).

insolvency of foreign entities by Part Z and second to provide winding up of foreign entities under the Act of 2013.<sup>[42]</sup>

- ii. It advocated for the NCLT to determine COMI from the date of commencement, representing the location where a corporate debtor primarily conducts its business operations and is easily recognizable to external stakeholders (taking into account multiple factors).<sup>[43]</sup>
- iii. It also implies that the foreign representatives regarding accessing the NCLT and other pertinent bodies of India for collaboration under Part Z and additionally, must apply to IBBI.<sup>[44]</sup>
- iv. It suggested that Indian IPs must notify IBBI for engaging with the insolvency procedures and systems of a foreign nation.
- v. It stated that the AA should provide Interim and Discretionary relief.
- vi. It recommended that the Government establish protocols to interact between the Adjudicating Authority (AA) and foreign courts as well as to implement the JIN Guidelines.<sup>[45]</sup>

These two reports have shown the importance of MLCBI in IBC with minute changes. However, it has not been adopted in the Indian Insolvency law till now.

## 5 | Cross-Border Insolvency Laws in Various Countries Adopting MLCBI

### i) United Kingdom:

Statute Name: “The Cross Border Insolvency Regulations, 2006”.

This Act is implemented in Great Britain (England/Wales + Scotland). It provides that this Law applies to the assistance of a foreign court/foreign representative under this law or assistance in a foreign state in respect of

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<sup>42</sup> CBIRC, 24.

<sup>43</sup> CBIRC, 31.

<sup>44</sup> CBIRC 43.

<sup>45</sup> CBIRC, 65.

a corporate debtor or assistance by creditors/interested persons requesting the commencement under this insolvency law.<sup>[46]</sup> A foreign representative is entitled to apply directly to a court in Great Britain.<sup>[47]</sup> The court shall not grant/modify/ensure cooperation or coordination any relief, or modify any relief already granted, or provide any co-operation or coordination, if it is prohibited by the “Part 7 Companies Act 1989, Part 3 Financial Markets and Insolvency (Settlement Finality) Regulations 1999, Part 3 Financial Collateral Arrangements (No. 2) Regulations 2003; or inconsistent rights of a collateral taker under Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003”.<sup>[48]</sup> If does not infringe the above-mentioned provision, the foreign representative will get relief after recognition of the foreign proceeding.<sup>[49]</sup> Further, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under British insolvency law. The court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a British insolvency office holder. Furthermore, it provides provision for coordination if concurrent proceedings commenced against the same debtor.

## ii) United States of America:

Statute Name: “Chapter 15 of the Bankruptcy Code, 2005”.

This legislation has adopted the principles of the MLCB<sup>[50]</sup>: promoting cooperation, legal certainty, fair and efficient administration, protecting the creditors’ interest and other interested stakeholders including the debtor; maximizing the value of the debtor’s assets; and protecting investment and preserving employment.<sup>[51]</sup> Under this chapter, an ancillary case is initiated when a foreign representative files a petition for recognition of

<sup>46</sup> The Cross Border Insolvency Regulations, 2006, Article 1(1) of Schedule 1 Chapter I.

<sup>47</sup> CBIR, [Article 9 of Schedule 1 Chapter II.

<sup>48</sup> CBIR, Article 1 (4) of Schedule 1 Chapter I,

<sup>49</sup> CBIR, Article 21 of Schedule 1 Chapter I.

<sup>50</sup> Official Website of the US Government, *Chapter 15-Bankruptcy Basics*. <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics>. [accessed 4.2.2025].

<sup>51</sup> Chapter 15 of the Bankruptcy Code, 11 U.S.C. § 1501.

a foreign proceeding.<sup>[52]</sup> U.S. courts grant foreign representatives immediate access to resolve such disputes.<sup>[53]</sup> The court has the power to designate a foreign proceeding as either a foreign main proceeding or a foreign non-main proceeding.<sup>[54]</sup> U.S. courts have the authority to grant to issue preliminary relief immediately after recognizing the petition<sup>[55]</sup> and this can lead to a stay on other proceedings.<sup>[56]</sup> Additionally, it allows foreign creditors the right to participate in U.S. bankruptcy cases and prohibits unfair treatment of foreign creditors (except certain foreign government and tax claims subject to the treaty).<sup>[57]</sup> It encourages cooperation and communication with foreign judicial authorities or representatives.<sup>[58]</sup> It also provides guidelines for cooperation when a case has been filed under the Code with the foreign representative and for the coordination of multiple foreign cases.<sup>[59]</sup>

## 6 | Discussion & Findings

At present, the cross-border provisions in the Insolvency and Bankruptcy Code in India are not enough to deal with Cross-Border Insolvency, as it does not provide enough gateways to participate in foreign proceedings. There are only two processes through which such proceedings can be initiated, however, initiating such process to resolve the proceedings raises concerns, like more waste of resources, reciprocity issues, uneven distribution of assets, and substantial unequal recognition of local and foreign creditors. Further, it also does not specifically provide access to foreign main proceedings, recognition of such proceedings, enforcement of the decision of such proceedings, and coordination and cooperation of the foreign courts and domestic courts. Furthermore, the existing IBC provisions are prone to

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<sup>52</sup> Chapter 15 of the BC, 11 U.S.C. § 1504.

<sup>53</sup> Chapter 15 of the BC, 11 U.S.C. § 1509

<sup>54</sup> Chapter 15 of the BC, 11 U.S.C. § 1517.

<sup>55</sup> Chapter 15 of the BC, 11 U.S.C. § 1519.

<sup>56</sup> Chapter 15 of the BC, 11 U.S.C. § 1520.

<sup>57</sup> Chapter 15 of the BC, 11 U.S.C. § 1513.

<sup>58</sup> Chapter 15 of the BC, 11 U.S.C. § 1525.

<sup>59</sup> Chapter 15 of the BC, 11 U.S.C. §§ 1529 – 1530.

delay with entering agreements with other nations is time-consuming.<sup>[60]</sup> This results in the ambiguity of creditors, debtors, and other stakeholders' claims. The current IBC framework needs modification to deal with Cross-Border insolvency. Furthermore, under IBC, while foreign creditors file claims against the local enterprise, on the other hand, it fails to recognize insolvency proceedings in foreign jurisdictions.<sup>[61]</sup> The findings imply the significance of MLCBI in the Indian legislative framework for the smooth functioning of legal proceedings, business beyond borders and to achieve economic sustainability. When compared to other jurisdictions, India's approach to cross-border insolvency appears less robust and more fragmented. There is a strong correlation between the lack of comprehensive legislation and the inefficiency of handling cross-border insolvency cases in India. The cross-border insolvency laws of the U.S.A. and the U.K. show that they have very exhaustive regulations to settle transnational disputes. Their laws demonstrate clarity in addressing access and recognition of foreign main proceedings, relief measures, emphasizing creditors' claims, and numerous additional aspects.

## 7 | Conclusion

In India, the "Insolvency and Bankruptcy Code (IBC)" has successfully revitalized the insolvency regime. It has effectively tackled the rising issue of non-performing assets problem in India. Additionally, it has improved the economic condition by introducing credit discipline in the market of the global field. Further, it has been attracting foreign investment opportunities. It has also introduced time-bound resolution approach for insolvency disputes. Therefore, there has been considerable advocacy for incorporating MLCBI into Indian law to resolve the challenges relating to cross-border insolvency presently faced by the multinational enterprises. The adoption of the MLCBI will undoubtedly have a positive impact on addressing transnational insolvency cases; however, it must be still regulated by the Insolvency and Bankruptcy Board of India (IBBI). However, it can be seen that only a small number of nations have included this Model law in their

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<sup>60</sup> Ministry of Finance, *Economic Survey 2021-2022*, 157 & 158.

<sup>61</sup> Ibidem.

domestic law, Besides, the Model Law required modifications with the time as it has already completed twenty-eight years in 2025 from the date of its adoption. The Model law has various gaps like defining – public policy, reciprocal arrangements with non-adoptive nations, and many more. Nevertheless, if India adopts it, then India needs to have a considerable eye on its implementation. As, it is worth noting that even after implementing the MLCBI, the cross-border insolvency laws of the U.S.A. and U.K. have faced many judicial challenges. These countries are continually developing new judicial arrangements to address the emerging issues relating to the current business landscapes.

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