

Bridging Jurisdictions: Cross-Border Insolvency in The Gift City Paradigm

This article examines the critical need for harmonizing the Indian Insolvency and Bankruptcy Code, 2016 (IBC), with the UNCITRAL Model Law on Cross-Border Insolvency in the context of GIFT City (India's International Financial Services Centre). While the IBC has strengthened India's domestic insolvency architecture, its cross-border insolvency framework remains underdeveloped. Entities operating in GIFT City will inevitably interact with foreign creditors, own assets abroad, and face multijurisdictional claims. Against this backdrop, the article analyses lacunae in India's present cross-border insolvency regime, reviews comparative jurisdictions, and proposes to incorporate the Part Z as suggested by the Insolvency Law Committee. Further, the article also identifies the challenges for the implementation of the proposed framework.



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INTRODUCTION

Globalization has woven economic, financial, and corporate activities across borders, making it common place for companies to access foreign capital, hold assets abroad, or operate via subsidiaries in multiple jurisdictions. When such a company becomes insolvent, its liabilities and assets scatter across national frontiers, putting domestic insolvency regimes to a test. In India, the Insolvency and Bankruptcy Code, 2016 (IBC), ushered in a time-bound, creditor-driven, institutional architecture geared toward domestic corporate recovery. However, its capacity to handle cross-border insolvency is limited: Sections 234 and 235 allow judicial assistance or enforcement of foreign orders in constrained fashion, but the IBC does not fully adopt the procedural principles embodied in the UNCITRAL Model Law.

India's GIFT City (Gujarat International Finance Tec-City), established as the country's first International Financial Services Centre (IFSC) in 2015, aims to position India as a global financial hub. Despite its progressive regulatory ecosystem, the absence of a dedicated cross-border insolvency framework remains a major impediment to achieving this vision. Entities located in GIFT City will invariably engage in cross-border lending, foreign investments, and hold overseas assets or borrowings. Without a predictable, internationally credible insolvency regime that can reconcile foreign proceedings, preserve asset value, and coordinate jurisdictional claims, GIFT City's ambition as a global financial hub would suffer.

CROSS BORDER INSOLVENCY FRAMEWORK

India's existing framework depends on bilateral agreements¹ for cooperation with foreign courts. The provisions with regard to cross border insolvency under IBC have limited effect. **Section 234 of IBC**² enables the Central Government to enter into agreements with other nations, while **Section 235 of IBC**³ allows Indian courts or tribunals to communicate with foreign courts in order to manage assets lying outside India. This approach suffers from inconsistency, as treaties vary in scope and often fail to provide mutual recognition of insolvency proceedings. In the case of *Jet Airways Ltd. v. State Bank of India & Anr.*,⁴ the NCLAT had to coordinate with Dutch insolvency authorities to set up an ad-hoc cross border insolvency protocol to manage parallel proceedings, showing the need for a comprehensive and structured legal framework.

The absence of a statutory mechanism for recognition of foreign decrees or judgments results in procedural delay and unpredictability. In the case of *Stanbic Bank Ghana Ltd. v. Rajkumar Impex Pvt. Ltd.*,⁵ where the NCLT accepted a Section 7 application based on a foreign decree, but held that it lacked power to enforce that foreign decree in India. Such anomalies make clear the necessity of a uniform cross border insolvency regime in India.

Recognising these gaps, the Government of India set up the Insolvency Law Committee (ILC), which in 2018⁶ recommended adoption of UNCITRAL Model Law based on cross-border insolvency. The ILC proposed a draft Part Z (proposed cross border insolvency framework) to the IBC intended to provide a legal basis for handling cases that have assets and creditors in multiple countries. It is based on the UNCITRAL Model Law and governs applications for recognition of foreign insolvency proceedings. It aims to provide clarity and facilitate proceedings for cross border insolvency cases involving corporate debtors. In 2020, the Cross Border Insolvency Rules Committee (CBIRC) was formed which proposed rules and regulations to implement Part Z.

¹ Standing Committee on External Affairs, Report on India and Bilateral Investment Treaties, PRS Legislative Research (Sept. 10, 2021), <https://prsindia.org/policy/report-summaries/india-and-bilateral-investment-treaties>

² § 234, Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016).

³ § 235, Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016).

⁴ *Jet Airways (India) Ltd. v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT).*

⁵ *Stanbic Bank Ghana Ltd. v. Rajkumar Impex Pvt. Ltd., Company Petition No. 557 (IB) (NCLT).*

⁶ *Insolvency Law Committee, Report of Insolvency Law Committee on Cross-Border Insolvency, Ministry of Corporate Affairs, Government of India, (Oct 16, 2018), https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf.*

THE PROPOSAL OF PART Z AND THE UNCITRAL MODEL LAW

The UNCITRAL Model Law on Cross-Border Insolvency (1997) provides a procedural framework to facilitate coordination, recognition, access, and relief among contracting states in cross-border insolvency cases. It does not override substantive national law; instead it creates a harmonized procedural overlay enabling courts and insolvency representatives across jurisdictions to cooperate efficiently. The Model Law establishes four key pillars. First, access allows foreign representatives or creditors to apply to domestic courts in the enacting state. Second, recognition categorizes foreign proceedings as 'main' or 'non-main,' triggering prescribed relief. Third, relief or assistance empowers courts to grant interim and permanent measures. Fourth, cooperation/coordination mandates communication and protocol negotiation between different jurisdictions' courts and insolvency professionals. A critical concept is the centre of main interest (COMI), which helps identify the jurisdiction best suited to supervise the main insolvency process. The Model Law's balanced approach seeks to promote modified universalism, coordinated global resolution without subsuming each jurisdiction's sovereignty or substantive rules.

The ILC's proposed Part Z is a concrete effort to bridge the gap between India's cross border insolvency laws and the UNCITRAL Model Law. Part Z introduces a mechanism to recognize the insolvency of foreign jurisdiction similar to main and non-main proceedings underneath Articles 15-17 of the UNCITRAL model law⁷. Part Z contains provisions for direct communication between domestic courts and foreign courts as well as foreign bankruptcy practitioners which is borrowed from Articles 25-27 of the UNCITRAL Model Law.⁸ It aims to address the discrepancies under IBC by introducing clear legal mechanisms for recognising foreign insolvency proceedings and enhancing cooperation between courts in cross border insolvency cases.

COMPARATIVE ANALYSIS OF INTERNATIONAL CROSS BORDER INSOLVENCY PRACTICES

The United States, the United Kingdom and Singapore have implemented system aligned with the UNCITRAL-CBI.⁹ Chapter 15 of the U.S. Bankruptcy Code¹⁰ provide anti-insolvency protection for cross border insolvency cases. It enables US courts to recognize foreign insolvency proceedings, grant cooperation relief and allocate assets. The key feature is the use of COMI (Centre of Main Interest) which distinguishes the main proceedings from the non-main proceedings.

The UNCITRAL Model Law on Cross-Border Insolvency (1997) provides a procedural framework to facilitate coordination, recognition, access, and relief among contracting states in cross-border insolvency cases.

In the United Kingdom, the Cross-Border Insolvency Regulations, 2006¹¹ allow recognition of foreign insolvency proceedings and promote international comity. Before Brexit, the UK also operated under the EU's Recast Insolvency Regulation (2015), which introduced automatic recognition, uniform COMI rules, and streamlined coordination of cross-border proceedings.¹²

Singapore has adopted the UNCITRAL Model Law through amendments to its Companies Act (2017).¹³ Singaporean courts have recognized foreign proceedings, limited themselves to preserving local assets, and cooperated with foreign courts in cross-border liquidation. Unlike India, Singapore contemplates using arbitration or alternative dispute resolution to resolve international insolvency disputes, which can reduce litigation delays.

The UNCITRAL Model Law provides the basis for courts to provide the reliefs to include a stay of creditor's actions and the handing over of the assets to the representatives of a foreign jurisdiction. A proposed Part Z of the IBC in India that seeks to introduce these concepts would provide certainty on the issue of COMI and accurately address the issue of foreign main versus non-main proceedings.¹⁴

GIFT CITY: INDIA'S GATEWAY TO GLOBAL INSOLVENCY SOLUTIONS

GIFT City as an IFSC is structurally designed to host companies that engage in international financial services, cross-border capital flows, and global investment structures. Entities under IFSC are likely to borrow from foreign creditors, hold foreign assets, or have liabilities in multiple jurisdictions. In such a regime, the absence of reliable cross-border insolvency rules may directly undermine the viability of GIFT City as a premium global financial

hub. Sophisticated foreign creditors and investors will demand legal certainty, effective recourse, and predictable coordination across jurisdictions.¹⁵

Moreover, GIFT City's semi-autonomous regulatory architecture, under the International Financial Services Centres Authority (IFSCA), justifies a bespoke insolvency regime that is interoperable with India's domestic law but better calibrated to international norms. In absence of a coherent cross-border mechanism, disputes could fracture across IFSC and onshore courts, conflicting orders could emerge, and assets could be dissipated or stranded. Thus the GIFT City setting demands a cross-border insolvency framework which (i) assures predictability for foreign stakeholders, (ii) safeguards value across jurisdictions, (iii) integrates seamlessly with onshore IBC cases, and (iv) offers efficient, expert resolution machinery.

⁷ Article 15-17, UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/RES/52/158 (1997).

⁸ Article 25-27, UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/RES/52/158 (1997).

⁹ *Advocating for Cross-Border Insolvency in IFSCs: A Comparative Perspective*, NLIU CBCL Research, 2025, <https://cbcl.nliu.ac.in/insolvency-law/advocating-for-cross-border-insolvency-in-the-ifsc-a-comparative-perspective/>.

¹⁰ Chapter 15 of the U.S. Bankruptcy Code 11 U.S.C. §§ 1501-1532 (2018).

¹¹ Cross-Border Insolvency Regulations 2006, SI 2006/1030 (U.K.).

¹² Kanade, T.M., Patil, S., Joseph, J. and Shirsat, C.M.A., 2024. Navigating Cross-Border Insolvency: Legal Frameworks, Challenges and Future Directions in a Globalized Economy. *Asian Journal of Advances in Research*, 7(1), pp.128-132.

¹³ Companies (Amendment) Act 2017 (No. 15 of 2017) (Sing.).

¹⁴ Rout, I., 2021. Universalism v. Territorialism: A plethora of issues in cross border insolvency across jurisdictions and local laws. *Indian JL & Legal Rsch.*, 2, p.1.

¹⁵ Igbinenikaro, E. and Adewusi, A.O., 2024. Developing international policy guidelines for managing crossborder insolvencies in the digital economy. *International Journal of Management & Entrepreneurship Research*, 6(4), pp.1034-1048.

Section 240C of the proposed IBC Amendment Bill, 2025,¹⁶ introduces a significant reform aimed at enhancing India's framework for cross border insolvency. This provision empowers the Central Government to establish comprehensive rules for managing cross border insolvency cases, including the designation of special benches and the adaptation of existing laws to facilitate international cooperation and coordination in insolvency matters. The alignment of GIFT City's regulations with the proposed provision of Section 240C could enhance its attractiveness as a destination for IFSC by providing a clear and structured approach to handle cross border insolvency cases.

The inclusion of arbitration and mediation within the insolvency ecosystem could enhance procedural efficiency. Arbitration offers confidentiality, speed, and enforceability under the New York Convention, while mediation promotes negotiated restructuring solutions. Differentiating between core insolvency issues (non-arbitrable) and non-core issues (arbitrable) can help strike a balance between judicial oversight and private resolution, following global best practices seen in Singapore and the U.S.

The lack of a comprehensive CBI framework undermines GIFT City's status as a competitive IFSC. Potential investors and financial institutions may hesitate to establish operations in GIFT City due to concerns over the resolution of cross-border insolvency issues. Without clear legal provisions for cross-border insolvency, GIFT City cannot offer the certainty and predictability that international investors seek. This legal uncertainty can impede the growth and development of GIFT City as a global financial hub.

The legal certainty and cross-border coherence by the proposed framework will serve to bolster creditor confidence, encourage participation of foreign investors in GIFT City, and thereby reinforce India's position in the global financial market.

IMPLEMENTATION CHALLENGES AND SAFEGUARDS

Implementing a robust cross-border insolvency framework in India poses challenges.¹⁷

- i. Absence of a formal cross-border insolvency framework - India has yet to adopt the UNCITRAL Model Law on Cross Border Insolvency. This omission means that Indian Courts and insolvency professionals lack a standardized mechanism for recognizing and assisting foreign insolvency proceedings, leading to inefficiency in managing cross border insolvency. The bilateral agreements are ineffective due to absence of any concluded treaties. Therefore, there is no reciprocity framework under Indian Law for cross border insolvency matters.
- ii. Jurisdictional and Procedural Complexities - Without a formal CBI framework, Indian courts often face difficulties in coordinating with foreign jurisdictions, especially when dealing with assets or creditors located abroad. This lack of coordination can lead to conflicting decisions and delays in the resolution process. The absence of a clear legal framework for recognizing foreign

insolvency proceedings complicates the enforcement of foreign judgments and orders in India. This uncertainty can deter foreign creditors and investors from engaging in the Indian market. The framework should provide for recognition of foreign awards for relief to be granted.

- iii. Institutional Capacity and Expertise - Indian insolvency professionals and courts may lack the specialized knowledge and experience required to handle complex cross-border insolvency cases. This gap in expertise can result in suboptimal outcomes and prolonged proceedings. To effectively manage cross-border insolvency cases, there is a need for training and capacity building among Indian insolvency professionals and judicial authorities. This would enhance their ability to navigate the complexities of international insolvency matters.¹⁸
- iv. Coordination and Information Sharing - The incorporation of effective cross border insolvency requires seamless cooperation between domestic and foreign courts, insolvency professionals and creditors. The differences in procedures, legal framework and technology create barriers. Communication protocols, data exchange platforms and joint decision making frameworks are often weak. There is a need to set up institutional mechanisms to coordinate cross border insolvency matters, standardise forms and maintain a registry of foreign proceedings.
- v. Domestic Stakeholder Concerns and Public Policy Safeguards - Domestic creditors or authorities may resist recognising foreign proceedings fearing erosion of priority, loss of control. It is important to balance foreign creditor rights with public policy which requires a proper cross border insolvency framework, to provide protection for creditor rights and ensure transparency and equitable treatment of all creditors to maintain investor confidence.

CONCLUSION

India's current cross-border insolvency framework is fragmented and out-dated. To transform into a global financial hub, India must adopt the proposed Part Z of the IBC, rooted in the UNCITRAL Model Law, to ensure recognition, reciprocity, and coordination in international insolvency cases. GIFT City can serve as regulatory incubator for these reforms, testing advanced mechanisms such as arbitration-based restructuring and foreign proceeding recognition. A robust, harmonized cross border insolvency framework will not only safeguard investor interests but also enhance India's credibility as a jurisdiction capable of managing complex international financial distress an essential step toward making GIFT City the Singapore of the West.

The incorporation of alternative dispute-resolution mechanisms, specifically arbitration and mediation into the framework of cross-border insolvency proceedings shall, without doubt, enhance the overall efficiency and expeditiousness of such processes. This will, in turn, foster a more favourable legal environment for all stakeholders, encourage broader participation in transnational insolvency regimes and strengthen India's standing in the international financial marketplace.

¹⁶ § 240C, *Insolvency and Bankruptcy Code (Amendment) Bill, 2025*.

¹⁷ *The Complexity and Legal Challenges in Cross-Border Insolvency in India**, *International Journal of Innovative Research and Legal Studies* (2025), [https://ijirl.com/https://ijirl.com/wp-content/uploads/2025/04/THE-COMPLEXITY-AND-LEGAL-CHALLENGES-IN-CROSS-BORDER-INSOLVENCY-IN-INDIA.pdf].

¹⁸ Mannan, M., 2015. *The prospects and challenges of adopting the UNCITRAL model law on cross-border insolvency in South Asia (Bangladesh, India and Pakistan)* (Doctoral dissertation, Universiteit Leiden).