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# Comparative Analysis of Cross-Border Insolvency and Arbitration in India and European Union: Balancing Coordination, Conflicts, and Cooperation

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## ABSTRACT

*This article compares the legal frameworks and approaches to cross-border insolvency and arbitration in India and the European Union. Both jurisdictions have established protocols to facilitate resolution of disputes involving entities operating across multiple legal systems. India's framework emphasised around the Insolvency and Bankruptcy Code and Arbitration and Conciliation Act, which provide for recognition of foreign proceedings and cooperation with foreign courts. The EU regime includes regulations governing insolvency and arbitration within member states, ensuring automatic recognition and enforcement. While India has adopted the UNCITRAL Model Law on cross-border insolvency, recognition remains discretionary. The EU framework mandates cooperation between insolvency practitioners and courts. Both systems address conflicts, though the EU provides more coordination mechanisms. Recent reforms in both regions aim to strengthen cooperation and resolution of issues like conflicting jurisdiction. However, challenges persist in uniform application across diverse legal systems and resolving external conflicts. A comparative analysis provides insights on approaches and opportunities for continued harmonization in managing complex cross-border disputes.*

## KEYWORDS

*Insolvency, Arbitration, Conciliation, Legal systems, UNCITRAL model, Cross-Border, European Union*

## INTRODUCTION

In an increasingly interconnected global economy, businesses often operate across multiple jurisdictions, leading to complex legal scenarios in

cases of insolvency and arbitration disputes. Cross-border insolvency and arbitration require careful coordination, effective conflict resolution, and robust cooperation mechanisms to ensure fair and efficient resolution. This article delves into the intricacies of these legal challenges, exploring how different jurisdictions tackle them while emphasizing the need for harmonization and collaboration.

Cross-border insolvency occurs when a financially distressed entity has assets, creditors, or operations spanning multiple jurisdictions. In such cases, resolving insolvency proceedings becomes intricate due to conflicting legal systems, diverse creditor rights, and jurisdictional complexities. Jurisdictions worldwide have developed frameworks to address these challenges, often drawing inspiration from international models like the UNCITRAL Model Law on Cross-Border Insolvency<sup>1</sup>.

One of the primary hurdles in cross-border insolvency is ensuring the recognition and enforcement of foreign insolvency proceedings. Jurisdictions like India and the European Union have enacted legislation to streamline this process. India's Insolvency and Bankruptcy Code (IBC)<sup>2</sup> incorporates the UNCITRAL Model Law, facilitating recognition of foreign proceedings. Similarly, the European Union's European Insolvency Regulation (EIR)<sup>3</sup> mandates automatic recognition of insolvency proceedings across member states, promoting efficiency and consistency.

Conflicts often arise in cross-border insolvency cases due to discrepancies in legal systems, creditor priorities, and jurisdictional disputes. Resolving these conflicts requires mechanisms for harmonization and cooperation. India's IBC emphasizes principles of

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<sup>1</sup> United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency). (last visited January 12, 2024).

<sup>2</sup> Insolvency and Bankruptcy Board of India, <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>. (last visited February 4, 2024).

<sup>3</sup> INSOL Europe, <https://www.insol-europe.org/technical-content/european-insolvency-regulation-eir>. (last visited February 6, 2024).

comity and cooperation, empowering courts to appoint coordinating insolvency practitioners and facilitating communication with foreign counterparts<sup>4</sup>. Similarly, the EU's EIR and EIR Recast establish procedures for determining the "centre of main interests" (COMI) and resolving conflicts between parallel insolvency proceedings.

Effective cooperation is crucial for the successful resolution of cross-border insolvency and arbitration disputes. Jurisdictions worldwide have established networks and frameworks to facilitate communication and information exchange among insolvency practitioners and courts. In India, mechanisms for cooperation with foreign courts are enshrined in the IBC, encouraging dialogue and collaboration in cross-border cases. Similarly, the EU operates networks like the European Insolvency Practitioners' Network (EIPN) and the European Judicial Network (EJN), fostering cooperation and coordination among member states<sup>5</sup>.

Cross-border insolvency and arbitration present multifaceted challenges that require a nuanced and collaborative approach. While jurisdictions like India and the EU have made strides in developing legal frameworks and mechanisms to address these challenges, ongoing cooperation, conflict resolution, and coordination efforts are essential. By fostering dialogue, promoting best practices, and enhancing international cooperation, stakeholders can navigate the complexities of cross-border insolvency and arbitration more effectively, ensuring fair and efficient outcomes for all parties involved.

### **CROSS-BORDER INSOLVENCY: MAJOR LEGAL FRAMEWORKS**

Cross-border insolvency - when a debtor has assets or creditors in multiple jurisdictions - poses complex challenges. Three major legal frameworks

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<sup>4</sup> Insolvency and Bankruptcy Board of India, <https://ibbi.gov.in/uploads/resources/783a7a063499e21c0165fd151f936431.pdf>. (Last visited January 12, 2024).

<sup>5</sup> European Judicial Network, <https://www.ejn-crimjust.europa.eu/ejn2021/InfoAbout/EN> (last visited February 4, 2024).

aim to facilitate efficient and equitable resolution: the UNCITRAL Model Law, EU Council Regulation, and US Chapter 15 adoption of the UNCITRAL Model<sup>6</sup>.

The UNCITRAL Model Law was drafted in 1997, the UNCITRAL Model Law encourages cooperation between jurisdictions handling cross-border insolvencies<sup>7</sup>. It addresses access, recognition, relief, and cooperation/coordination between courts and representatives. Nations can selectively adopt provisions. Recognition is generally discretionary, allowing courts to consider public policy. The “centre of main interests” (COMI) - a debtor’s headquarters - determines if a proceeding is “main” or “non-main.” However, definitions are vague<sup>8</sup>.

The EU Council Regulation was adopted in 2000, the EU Regulation automatically governs insolvencies in EU nations (except Denmark)<sup>9</sup>. It mandates recognition of proceedings once effective, limiting judicial discretion. The COMI corresponds to a debtor’s headquarters, presumed to be their registered office. Secondary proceedings can address local assets. Liquidators’ powers extend across borders.

US Chapter 15’ incorporates parts of the UNCITRAL Model<sup>10</sup>. Foreign representatives apply for discretionary recognition, denied only for manifest public policy conflicts. The COMI “centre of main interests”

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<sup>6</sup> Vikash Kumar Singh, *Arbitration in India: Recent Developments and Key Challenges*, Volume 11, Issue 7, IJCRT, July 2023, <https://ijcrt.org/papers/IJCRT2307247.pdf> (last visited February 4, 2024).

<sup>7</sup> United Nations Commission on International Trade Law, [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency) (last visited February 8, 2024).

<sup>8</sup> United Nations Commission on International Trade Law, [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml\\_recognition\\_gte\\_e.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml_recognition_gte_e.pdf) (last visited February 6, 2024).

<sup>9</sup> EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000R1346> (last visited February 4, 2024).

<sup>10</sup> United States Courts, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics> (last visited February 5, 2024).

anchors analysis to filing date<sup>11</sup>.

Mandatory recognition works best within close-knit jurisdictions like the EU. Discretion allows flexibility for changing international relations, as the US employs. Defining the COMI remains an issue. Equitable creditor treatment and relief are goals. The EU may allow creditors to challenge jurisdiction. Frameworks balance cooperation with sovereignty concerns across borders. Continued evolution aims for efficient, predictable cross-border resolutions.

The UNCITRAL Model Law on Cross-Border Insolvency has helped standardize insolvency processes globally through recognition of foreign proceedings. While recognition is important, court cooperation has also been instrumental in achieving consistent outcomes for creditors. Cooperation can avoid duplicative processes when assets and creditors span jurisdictions.

Court communication and cooperation are especially valuable early in proceedings to potentially avoid parallel cases. Even when parallel cases occur, cooperation reduces costs through joint hearings and consistent rulings. Notable successes include the Maxwell, Nortel, and Lehman Brothers cases where cooperation protocols streamlined over 75 cross-border proceedings<sup>12</sup>.

Frameworks like the ALI/III Guidelines and EU Judge Co Principles provide templates for cooperation<sup>13</sup>. In Asia-Pacific, the influential JIN Guidelines complement the Model Law by establishing principles for court communication, joint hearings, and coordination protocols tailored to each cross-border case. Over 15 courts have adopted the JIN Guidelines.

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<sup>11</sup> *Ibid.*

<sup>12</sup> Scott Atkins, *Enhancing efficiency and rescue outcomes in Cross-border Insolvency matters, The role of multilateral cooperation protocols and judicial diplomacy*, 6J AUS. PUB, (2023).

<sup>13</sup> Bob Wessels, *ALI-III Global Principles for Cooperation in International Insolvency Cases 2012*, 8J III, (2017)

Bilateral agreements between courts also facilitate cooperation, such as recent protocols between Singapore-Malaysia and Singapore-Korea. However, multilateral frameworks like the Model Law and JIN Guidelines have broader application given the global nature of many insolvencies.

Judicial exchange programs led by INSOL, UNCITRAL and the World Bank additionally promote cooperation by building relationships and a common understanding of insolvency systems. This increases the likelihood courts will recognize foreign proceedings and seek harmonized outcomes benefitting creditors. Widespread adoption of the Model Law, JIN Guidelines and other cooperation frameworks in Asia-Pacific will further advance efficient and consistent management of cross-border insolvencies throughout the region.<sup>14</sup>.

### **EUROPEAN UNION CROSS-BORDER INSOLVENCY PROTOCOLS**

This document discusses cross-border insolvency protocols, which are agreements entered into by insolvency practitioners to facilitate cooperation and coordination in cases where insolvency proceedings have been opened in multiple jurisdictions concerning the same debtor or corporate group. Such protocols have developed as a tool in international insolvency law and practice to address issues that arise when proceedings are opened in different countries.

The European Insolvency Regulation (EIR) provides the legal framework for cross-border insolvencies within the EU. It is based on the concept of “modified universalism,”<sup>15</sup> which accepts that multiple proceedings may be opened while establishing a main proceeding with

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<sup>14</sup> P. Misra, *Cross-border Corporate Insolvency Law in India: Dealing with Insolvency in Multinational Group Companies—Determining Jurisdiction for Group Insolvencies*. 45(2) J. Vikalpa, 93-103, (2020), <https://doi.org/10.1177/0256090920946267>.

<sup>15</sup> Devi Shah, Alexandra Wood, *Cross border insolvency- an overview of the current EU legal framework*, MAYER BROWN, (Feb. 6, 2024, 10.30PM) <https://www.mayerbrown.com/en/insights/publications/2020/12/cross-border-insolvency-an-overview-of-the-current-eu-legal-framework-and-the-impact-of-a-no-deal-brexite-on-uk-eu-cross-border-insolvencies-under-the-recast-regulation>.

global effects. The EIR introduces duties of cooperation, coordination, and communication between courts and insolvency practitioners involved in parallel proceedings<sup>16</sup>. However, it does not define these duties in detail or provide for remedies in case of non-compliance.

The EIR recognizes the use of protocols and encourages the development of best practices based on international standards. While not defining protocols, it provides a legal basis for their use by expressly mentioning them in relation to the duties of cooperation, coordination, and communication. Protocols developed as a tool in international practice prior to the EIR to address coordination issues arising in specific cross-border cases.

Key principles that have emerged from international practice and soft law instruments regarding protocols include comity and independence of courts, as well as cooperation between insolvency practitioners. Protocols are generally agreed to by practitioners with court approval but do not bind courts as non-parties. They aim to facilitate cross-border management through ad hoc harmonization of procedural rules. Standard features of protocols include administration of proceedings, applicable law, communication/notice procedures, and allocation of responsibilities among courts and practitioners.

Protocols commonly address coordination of main and secondary proceedings, stays of proceedings, claims verification/admission processes, transaction avoidance actions, rights of access for foreign parties, and dispute resolution mechanisms. They may determine priority between proceedings, recognize foreign stays, clarify applicable law issues, establish communication frameworks, and allocate specific responsibilities or issues to certain courts/practitioners. The overarching goals are to promote efficiency, maximize value, prevent conflicts, and

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<sup>16</sup> *Ibid.*

facilitate restructuring where possible.

In the EU, protocols could help address gaps left in the EIR regarding details of cooperation/communication duties. They provide flexibility to tailor coordination to case-specific needs within the existing legal framework. However, civil law traditions in some EU states may present challenges for the concept. Overall, protocols have become an established tool in complex cross-border insolvency cases to organize cooperation between jurisdictions based on principles of comity and modified universalism. The EIR recognizes their potential role in developing best practices for multi-state insolvency administration within Europe.

### **CROSS-BORDER CORPORATE INSOLVENCY LAW IN INDIA**

The landscape of cross-border corporate insolvency law in India is a complex and evolving field, reflecting the challenges of managing insolvency proceedings for multinational enterprise (MNE) groups that operate across multiple jurisdictions. The globalization of business operations has led to an increase in the number of companies that have assets, operations, and creditors in more than one country, necessitating a legal framework that can effectively address the insolvency of such entities. India, with its growing economy and increasing integration into the global market, has been facing the need to develop and refine its insolvency laws to cater to the complexities of cross-border insolvencies.

The Insolvency and Bankruptcy Code (IBC), introduced in 2016, marked a significant step forward in India's approach to insolvency and bankruptcy, providing a consolidated framework for resolving insolvencies in a time-bound manner<sup>17</sup>. However, the IBC primarily focuses on domestic insolvency proceedings, with limited provisions for dealing with

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<sup>17</sup> India Code, [https://www.indiacode.nic.in/handle/123456789/2154?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2154?sam_handle=123456789/1362) (last visited February 4, 2024).

cross-border insolvency issues. This gap in the legal framework poses challenges when it comes to MNE groups that have a presence in India as well as other countries, as there may be conflicts between the insolvency laws of different jurisdictions, leading to uncertainty and potential delays in the resolution of insolvency cases.

One of the key challenges in cross-border insolvency proceedings is determining the jurisdiction under which the insolvency should be processed. Various criteria, such as the place of incorporation, the location of the company's main assets, or the centre of its main interests (COMI), have been used to determine jurisdiction. The COMI, in particular, has emerged as a preferred criterion in many jurisdictions because it aims to reflect the company's actual operational headquarters and is believed to offer a more realistic picture of the company's economic activities.

However, the application of the COMI concept can be complex and is subject to manipulation, as companies may attempt to shift their COMI to more favourable jurisdictions in anticipation of insolvency proceedings. This practice, known as forum shopping, can undermine the fairness and efficiency of insolvency proceedings and disadvantage creditors who may find themselves subject to a legal regime that offers them less protection. Furthermore, the lack of a uniform international legal framework for cross-border insolvency proceedings complicates the resolution of such cases. While the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency has been adopted by several countries to provide a basis for cooperation and coordination between jurisdictions, India has yet to adopt this model law<sup>18</sup>. The absence of such a framework in India means that cross-border insolvency cases are often resolved through ad hoc arrangements, which may not always

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<sup>18</sup> United Nations Commission on International Trade Law  
<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/judicial-perspective-2013-e.pdf> (last visited February 4, 2024).

ensure the best outcomes for all stakeholders.

In light of these challenges, there is a growing recognition of the need for India to enhance its legal framework for cross-border insolvency. This would involve not only adopting international standards, such as the UNCITRAL Model Law<sup>19</sup>, but also developing specific provisions within the IBC to address the unique challenges of cross-border insolvency. Such reforms would help to provide greater clarity and predictability in the resolution of cross-border insolvency cases, ensuring that the rights and interests of all stakeholders, including creditors, employees, and shareholders, are adequately protected.

The development of an effective legal framework for cross-border corporate insolvency in India is crucial for managing the complexities of insolvency proceedings for MNE groups. By aligning its laws with international best practices and addressing the specific challenges of cross-border insolvency, India can enhance the efficiency and fairness of its insolvency proceedings, thereby supporting the stability and growth of its economy in an increasingly interconnected global market.

The determination of the appropriate forum for insolvency proceedings hinges on various jurisdictional tests, each with its own set of advantages and limitations. These tests include the place of incorporation, asset/activity-based tests, and the Centre of Main Interest (COMI).

- **Place of Incorporation Test:** Traditionally, the place of incorporation has been a straightforward criterion for determining jurisdiction. It offers predictability and simplicity, as the place of incorporation is a matter of public record. However, this test may not always reflect the economic reality of modern MNEs, which often have their primary operations and assets in jurisdictions different from where they are incorporated. This disconnect can lead to

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<sup>19</sup> *Ibid.*

inefficiencies and complications in addressing the insolvency effectively, especially when the interests of creditors and other stakeholders are spread across multiple jurisdictions.

- **Asset/Activity-Based Test:** This test considers the jurisdiction where the company's assets are located or where its main activities are conducted. While this approach is more aligned with the economic realities of the company's operations, it can result in fragmented insolvency proceedings if the company's assets and activities are spread across several countries. This fragmentation can increase the complexity and cost of insolvency proceedings, potentially diminishing the value of the debtor's estate available for distribution to creditors.
- **Centre of Main Interest (COMI):** The COMI test has gained prominence in international insolvency law as a means to determine jurisdiction. It seeks to identify the jurisdiction with which the company has the closest economic ties, typically where the company's operational headquarters are located. The COMI test aims to consolidate insolvency proceedings in a single jurisdiction, enhancing efficiency, reducing legal uncertainty, and promoting the equitable treatment of creditors. However, determining COMI can be challenging, as it involves assessing various factors such as the location of the company's central administration, the perception of third parties, and the company's economic activities. Moreover, the potential for "forum shopping" exists, where companies might manipulate their COMI to favor a more lenient insolvency regime.

Each of these jurisdictional tests has its role in the landscape of cross-border insolvency, with the choice of test having significant implications for the efficiency, fairness, and outcome of insolvency proceedings. The limitations of the place of incorporation and asset/activity-based tests underscore the growing preference for the COMI test, which, despite its challenges, offers a more holistic approach to

determining jurisdiction in line with the complexities of global business operations. Nonetheless, the effectiveness of any jurisdictional test depends on the specific circumstances of the insolvency case and the overarching goal of achieving a fair, efficient resolution that respects the interests of all stakeholders involved.

The Centre of Main Interest (COMI) emerges as the preferred jurisdictional test for determining the appropriate forum for cross-border insolvency proceedings, primarily due to its focus on the operational reality of multinational enterprise (MNE) groups. Unlike other tests that may rely on formalistic or easily manipulated criteria, the COMI test seeks to identify the jurisdiction most closely connected to the debtor's main business activities. This approach aligns with the economic substance of the MNE's operations, offering a more accurate and fairer basis for insolvency proceedings. By considering factors such as the location of the company's headquarters, where key decisions are made, and where the company conducts its primary business activities, the COMI test ensures that insolvency proceedings are conducted in a jurisdiction that genuinely reflects the company's operational centre. This relevance to the company's actual business practices not only facilitates more efficient and effective insolvency proceedings but also enhances predictability and fairness for creditors and other stakeholders involved.

The challenges arising from multinational enterprises (MNEs) seeking jurisdiction in control countries such as the US, UK, and Singapore without a genuine connection pose significant issues for the Centre of Main Interest (COMI) principle. In these scenarios, MNEs may strategically choose these control countries to initiate insolvency proceedings, despite lacking substantial operational or economic ties to these jurisdictions. This strategic manoeuvring undermines the integrity of the COMI principle, which aims to ensure that insolvency proceedings occur in the jurisdiction most closely aligned with the debtor's main

business activities. The exploitation of control countries not only complicates the determination of the true COMI but also introduces complexities and challenges in achieving fair and efficient cross-border insolvency resolutions.

The practice of multinational enterprises (MNEs) seeking jurisdiction in control countries such as the US, UK, and Singapore, without a genuine connection to these locations, presents significant challenges to the principle of the Centre of Main Interest (COMI). This principle is designed to ensure that insolvency proceedings are conducted in the jurisdiction most closely connected to the debtor's main business activities, reflecting the economic reality of the enterprise's operations. However, when MNEs strategically choose jurisdictions based on favourable insolvency laws or outcomes, rather than genuine operational ties, it undermines the COMI principle's intent.

This strategic behaviour, often termed "forum shopping," can distort the fairness and efficiency of insolvency proceedings. It may lead to situations where creditors and other stakeholders are disadvantaged by proceedings taking place in a jurisdiction that bears little relation to the MNE's actual business activities. Moreover, it challenges the predictability and stability of international insolvency law, as the choice of jurisdiction becomes influenced by tactical considerations rather than substantive connections.

Such practices not only complicate the determination of a debtor's COMI but also erode trust in the international insolvency framework. They highlight the need for clearer guidelines and stricter enforcement mechanisms to ensure that the COMI principle serves its purpose of aligning insolvency proceedings with the true locus of an enterprise's economic activities, thereby promoting fairness, efficiency, and predictability in cross-border insolvencies.

Determining jurisdiction in cross-border insolvency cases, especially when the parent company is located outside India but possesses significant assets or creditors within the country, or when the entire multinational enterprise (MNE) group faces insolvency, introduces a myriad of complexities. These scenarios challenge the conventional frameworks and tests used to ascertain jurisdiction, highlighting the intricacies of aligning legal proceedings with the economic realities of global business operations.

When a parent company is based abroad but has substantial assets or creditors in India, the question arises as to which jurisdiction's laws should prevail. The primary concern here is ensuring that the interests of local creditors are adequately protected while also considering the global strategy for the MNE's insolvency resolution. This situation becomes even more complicated if the insolvency proceedings in the parent company's home country do not recognize the claims of creditors based in India, leading to potential conflicts of law and interests.

Furthermore, the insolvency of an entire MNE group adds another layer of complexity. In such cases, multiple insolvency proceedings may occur simultaneously in different jurisdictions, each with its own set of laws and procedures. This can result in inefficiencies, increased costs, and the potential for conflicting rulings that may hinder the equitable treatment of creditors and the optimal resolution of the group's insolvency. The challenge lies in coordinating these proceedings to achieve a unified approach that respects the legal frameworks of all involved jurisdictions while aiming for the best possible outcome for the MNE group and its stakeholders.

These complexities underscore the need for international cooperation and the adoption of legal frameworks that facilitate the recognition and coordination of cross-border insolvency proceedings. Such frameworks would help in managing the jurisdictional challenges posed by

the global nature of modern business operations, ensuring that insolvency resolutions are conducted fairly, efficiently, and in a manner that reflects the interconnectedness of today's economic landscape.

### **INTERNATIONAL COOPERATION & WAY FORWARD**

The trend of international cooperation and the development of protocols between courts of different jurisdictions represent significant advancements in managing cross-border insolvency cases effectively. As businesses increasingly operate on a global scale, insolvency cases often span multiple countries, each with its own legal system and insolvency laws. This complexity necessitates a coordinated approach to ensure fair and efficient outcomes for all parties involved.

International cooperation among courts is facilitated through formal agreements and informal networks that enable the sharing of information, recognition of foreign proceedings, and coordination of concurrent insolvency cases. These collaborative efforts are crucial in addressing the challenges posed by the global nature of modern business operations, allowing for a more unified and streamlined approach to cross-border insolvencies.

The development of protocols in cross-border insolvency cases serves as a practical tool to guide the cooperation between courts and insolvency practitioners. Protocols can outline procedures for communication, coordination, and even the consolidation of proceedings, providing a clear framework for managing complex international cases. They help in minimizing conflicts of law, reducing legal costs, and ensuring the equitable treatment of creditors across jurisdictions.

One notable example of international cooperation in insolvency proceedings is the adoption of the UNCITRAL Model Law on Cross-Border

Insolvency by several countries<sup>20</sup>. This model law provides a legal framework to facilitate the recognition of foreign insolvency proceedings and cooperation between courts. It represents a significant step towards harmonizing cross-border insolvency laws and enhancing the efficiency and effectiveness of international insolvency resolutions.

In conclusion, the increasing trend of international cooperation and the development of protocols are pivotal in addressing the complexities of cross-border insolvency cases. By fostering collaboration between jurisdictions and establishing clear guidelines for managing such cases, these efforts contribute to more predictable, fair, and efficient outcomes for multinational enterprises and their stakeholders in the face of insolvency.

### **CONCLUSION**

Adopting the COMI test and focusing on operational headquarters for determining jurisdiction in cross-border insolvency cases represents a significant opportunity for India to modernize its insolvency framework. By aligning with international best practices, India can enhance the predictability, fairness, and efficiency of its insolvency proceedings. This alignment not only benefits the domestic economy by attracting foreign investment and promoting business confidence but also positions India as a responsible and cooperative player in the global economic system. Implementing these recommendations requires careful planning and collaboration among lawmakers, the judiciary, and the business community, but the potential benefits for India's insolvency framework and its integration into the global economy are substantial.

Cross-border insolvency and arbitration are complex legal areas that require coordination, cooperation, and conflict resolution mechanisms to

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<sup>20</sup> Harold Burman and Jay Lawrence Westbrook, *United Nations Commission on International Trade Law: Model Law on Cross-Border Insolvency*, 36J, JSTOR, CUP, 1386-1398 (1997).

facilitate efficient resolution of disputes involving entities operating across multiple jurisdictions. India and the European Union (EU) have developed protocols and frameworks to address these challenges, albeit with differences in approach and implementation. A comparative analysis of the protocols in these regions reveals both similarities and disparities in their approaches to cross-border insolvency and arbitration.

### ***Legal Framework***

India's legal framework for cross-border insolvency and arbitration primarily revolves around the Insolvency and Bankruptcy Code (IBC) and the Arbitration and Conciliation Act. The IBC provides a comprehensive regime for resolving insolvency issues, including provisions for cooperation with foreign courts and recognition of foreign proceedings.

The EU's legal framework includes the European Insolvency Regulation (EIR) and the recast version (EIR Recast), which governs insolvency proceedings within the EU member states. Additionally, the EU has directives and regulations concerning arbitration, such as the EU Arbitration Directive and the Brussels Regulation, which address jurisdictional issues and recognition of arbitral awards within the EU.

### ***Recognition and Enforcement***

India has made significant strides in recognizing foreign insolvency proceedings through the adoption of the UNCITRAL Model Law on Cross-Border Insolvency. The IBC provides a mechanism for the recognition of foreign proceedings and cooperation with foreign courts.

The EU's EIR and EIR Recast establish a framework for the automatic recognition of insolvency proceedings across EU member states. Additionally, the Brussels Regulation facilitates the recognition and enforcement of arbitral awards within the EU.

### ***Cooperation and Coordination***

**India:** The IBC mandates cooperation and coordination between Indian courts and foreign courts handling parallel insolvency proceedings. However, the effectiveness of such cooperation may vary depending on the jurisdiction and the willingness of foreign courts to reciprocate.

The EU's framework emphasizes cooperation and coordination among insolvency practitioners and courts across member states through mechanisms like the European Insolvency Practitioners' Network (EIPN) and the European Judicial Network (EJN). These networks facilitate communication and information exchange to streamline cross-border insolvency proceedings.

### ***Conflicts Resolution***

Conflicts in cross-border insolvency cases in India may arise due to differences in legal systems, priorities of creditors, and jurisdictional issues. The IBC provides mechanisms for resolving conflicts, including the appointment of a coordinating insolvency practitioner and the application of principles such as comity and cooperation.

The EIR and EIR Recast include provisions for resolving conflicts between insolvency proceedings in different member states, such as the determination of the centre of main interests (COMI) and the principle of mutual recognition<sup>21</sup>.

### ***Recent Developments and Challenges***

India has witnessed several amendments and judicial interpretations to the IBC to address emerging issues and enhance the effectiveness of cross-border insolvency proceedings. However, challenges remain regarding the uniform application of cross-border insolvency principles and the resolution of conflicts with jurisdictions outside the purview of the

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<sup>21</sup> Francisco Garcimartin, *The EU Insolvency Regulation Recast: Scope and Rules on Jurisdiction*, UAM, 32 (2016).

### UNCITRAL Model Law.

The EU has been working on further harmonizing its insolvency framework through initiatives such as the European Commission's proposal for a new directive on preventive restructuring frameworks. However, challenges persist in ensuring consistent interpretation and application of EU insolvency laws across member states, particularly in cases involving complex cross-border structures.

In conclusion, while both India and the EU have established protocols and frameworks to address cross-border insolvency and arbitration, there are notable differences in their legal regimes, mechanisms for recognition and enforcement, cooperation and coordination efforts, conflict resolution mechanisms, and ongoing challenges. A comparative analysis provides insights into the strengths, weaknesses, and areas for improvement in each jurisdiction's approach to managing cross-border insolvency and arbitration issues.