



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

CROSS-BORDER INSOLVENCY: LEGAL CHALLENGES, GLOBAL FRAMEWORKS, AND THE INDIAN PERSPECTIVE

Yash Patidar¹, Adarsh Tiwari², Srajal Sharma³

National Law Institute University, Bhopal

ABSTRACT :

Companies that trade across borders tend to fail across borders, and the law has been slow to follow them. This article examines the legal framework for cross-border insolvency at the international level and in India. It considers the UNCITRAL Model Law on Cross-Border Insolvency 1997 and the EU Insolvency Regulation (Recast), and traces how India's territorial approach under the Companies Acts of 1956 and 2013 gave way, only in part, to the Insolvency and Bankruptcy Code 2016. It then follows the reform effort from the Insolvency Law Committee's report of 2018 to section 240C, inserted by the Insolvency and Bankruptcy Code (Amendment) Act 2026, and tests the present position against the Jet Airways protocol. The article argues that section 240C settles whether India will have a cross-border regime but not what that regime will contain, and it identifies the points on which the forthcoming rules will matter most.

Keywords: cross-border insolvency; UNCITRAL Model Law; centre of main interests; Insolvency and Bankruptcy Code; section 240C; India

I. INTRODUCTION

A company that fails usually takes others down with it. Lenders go unpaid, suppliers carry bad debts, employees lose their jobs, and where the company is large the effects can reach the wider economy. Indian lawmakers took the point seriously when they enacted the Insolvency and Bankruptcy Code 2016 (IBC), which consolidated the law on the insolvency of companies, partnerships and individuals and imposed time limits on the resolution process.¹

The IBC was written chiefly with domestic failure in mind, yet large businesses seldom operate within a single jurisdiction. They hold assets in several countries, borrow from lenders in several more, and incorporate subsidiaries wherever tax, regulation or commercial convenience points. When such a business becomes insolvent the questions multiply. Which court should open proceedings? Whose law decides the ranking of creditors? May an office-holder appointed in one country deal with assets located in another? Cross-border insolvency law exists to answer these questions.

Without coordination the usual outcome is a set of parallel proceedings. Each court protects the creditors and assets within its own reach, judgments conflict, creditors race to seize whatever lies within their jurisdiction, and the estate shrinks while the litigation continues. The difficulty is institutional as much as doctrinal, since it turns on how far courts are willing to defer to one another and how far legislatures allow them to.

The need is real for India. Indian groups have acquired businesses overseas, foreign lenders and investors have placed large sums in Indian companies, and a growing number of distressed debtors have assets, creditors or subsidiaries in more than one country. A regime that cannot deal with such a debtor is a gap in investor protection as well as in insolvency law. Yet India's statutory provision has been slight. The IBC contains two sections on the subject: section 234 allows the Central Government to enter into reciprocal agreements with other countries, and section 235 lets an adjudicating authority send a letter of request to a foreign court where assets are located in a country with which such an arrangement exists.² Both depend on treaties, and in practice they have achieved little.³

The Insolvency Law Committee (ILC), constituted by the Ministry of Corporate Affairs in 2017, recommended in 2018 that India adopt the UNCITRAL Model Law on Cross-Border Insolvency 1997, a framework built on access, recognition, relief and cooperation.⁴ Parliament has now passed the

¹ Insolvency and Bankruptcy Code 2016 (India) (Act 31 of 2016).

² IBC (n 1) ss 234–235.

³ Ministry of Corporate Affairs, *Report of the Insolvency Law Committee on Cross Border Insolvency* (16 October 2018) <https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf> accessed 4 October 2026 (ILC Report).

⁴ ILC Report (n 3).

Insolvency and Bankruptcy Code (Amendment) Act 2026, which inserts a new section 240C empowering the Central Government to make rules on the subject.⁵ At the time of writing, however, the section has not been brought into force and no rules have been made.⁶

This article examines how the problem has been handled internationally and in India, and what the 2026 amendment does and does not settle. Part II outlines the theoretical choice between universalism and territorialism. Parts III and IV examine two models, the UNCITRAL Model Law and the EU Insolvency Regulation. Parts V to VIII turn to India: the territorial inheritance of the Companies Acts, the limited provisions of the IBC, the reform process that led to section 240C, and the Jet Airways protocol, which remains the principal attempt to manage a cross-border case without statutory support. Part IX considers the difficulties that remain and Part X makes recommendations for the rules still to be framed. The law is stated as at 4 October 2026.

II. UNIVERSALISM AND TERRITORIALISM

Every regime for cross-border insolvency sits somewhere between two positions. Under pure universalism, one court, normally that of the debtor's home jurisdiction, administers the whole estate under a single law and a single scheme of priorities, and other states defer to it. The attraction is plain: one process, one distribution, and no race for assets. Westbrook's defence of the model rests on this efficiency argument and on the claim that a single process maximises the value of the estate for creditors as a whole.⁷ Pure territorialism takes the opposite view. Each state administers the assets within its borders under its own law, largely for the benefit of its own creditors. It offers certainty to local creditors and spares courts the need to trust foreign systems, but it invites the asset race and fragmentation that cross-border insolvency law is meant to prevent.

Few writers defend either position in its pure form. LoPucki argued that universalism assumes a similarity and mutual trust between legal systems that does not exist, and that it lets debtors choose a favourable home forum; he proposed instead a system of cooperative territoriality, in which each state keeps control of local assets but works with others.⁸ Most working regimes follow what is called modified universalism. One proceeding is treated as the main proceeding and the others are coordinated with it, while each state keeps the power to refuse cooperation on grounds of public policy and to protect local creditors. English courts have described modified universalism as the golden thread of their approach to cross-border insolvency since the eighteenth century.⁹ The qualifications to the principle are where most of the working law is to be found.¹⁰

India's inherited position was closer to territorialism, as Part V shows. For a legislature choosing a model today, the real questions are practical ones. How automatic should recognition be? How is the debtor's home jurisdiction to be identified? What protection should local creditors receive, and what should happen where the debtor belongs to a corporate group spread across several states? The Model Law and the EU Regulation answer these questions differently, and the differences bear directly on the choices open to India.

III. THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

A. Purpose and structure

The Model Law was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted on 30 May 1997 in response to the growing number of insolvencies spanning several jurisdictions.¹¹ It does not try to unify substantive insolvency law. Its aim is a balanced and flexible procedural framework that promotes cooperation between courts and insolvency practitioners in different states while respecting the differences between national regimes. The Guide to Enactment summarises the scheme under four heads: access, recognition, relief and cooperation.¹²

B. Access and recognition

Article 9 gives a foreign representative the right to apply directly to a court of the enacting state, which removes the older need for diplomatic channels or letters rogatory. Article 13 adds that foreign creditors have the same rights as local creditors in the enacting state's own insolvency proceedings.¹³

⁵ Insolvency and Bankruptcy Code (Amendment) Act 2026 (India) (Act 6 of 2026), s 71 (inserting s 240C into the IBC).

⁶ See Part VII below.

⁷ Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 Mich L Rev 2276.

⁸ Lynn M LoPucki, 'Cooperation in International Bankruptcy: A Post-Universalist Approach' (1999) 84 Cornell L Rev 696.

⁹ *Re HIH Casualty and General Insurance Ltd* [2008] UKHL 21, [2008] 1 WLR 852 [30] (Lord Hoffmann).

¹⁰ See generally Ian F Fletcher, *Insolvency in Private International Law* (2nd edn, OUP 2005).

¹¹ UNCITRAL Model Law on Cross-Border Insolvency (adopted 30 May 1997) UN Doc A/52/17, annex I (Model Law).

¹² UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (UN 2014) (Guide to Enactment).

¹³ Model Law (n 11) arts 9 and 13.

Recognition is dealt with in articles 15 to 17. The court must decide whether the foreign proceeding falls within the definition in article 2(a) and, if so, whether it is a foreign main proceeding, taking place in the debtor's centre of main interests (COMI), or a foreign non-main proceeding, taking place where the debtor has only an establishment.¹⁴ Where the requirements are met, article 17(1) provides that the proceeding shall be recognised. The court's general ground for refusing to act is article 6, under which it may decline to take an action governed by the Model Law if the action would be manifestly contrary to the public policy of the enacting state.¹⁵

C. The centre of main interests

COMI is central to recognition and relief, yet the Model Law does not define it. Article 16(3) supplies a rebuttable presumption that the debtor's registered office is its COMI.¹⁶ The presumption has been tested often. In *Eurofood IFSC Ltd*, decided under the EU Regulation then in force, the Court of Justice held that it could be rebutted only by factors that are objective and ascertainable by third parties, and that the mere fact that a subsidiary's economic choices are controlled by a parent in another state is not enough.¹⁷ In *Interedil* the Court added that the location of the debtor's assets and contracts is relevant but, on its own, insufficient.¹⁸ Courts applying the Model Law itself have reached similar results. In *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd* the US Bankruptcy Court refused to recognise the Cayman Islands liquidations of two funds as either main or non-main proceedings, because the funds' real activity lay in the United States and they had no establishment in the Cayman Islands; the District Court affirmed.¹⁹ Place of incorporation or of liquidation, in other words, does not by itself decide the matter.

D. Relief

Once a proceeding is recognised the Model Law provides for mandatory and discretionary relief. Article 19 permits interim relief between the filing of an application and the decision on recognition, so that assets are preserved in the meantime. On recognition of a foreign main proceeding, article 20 operates automatically: individual actions and enforcement against the debtor's assets are stayed and the debtor's right to transfer or encumber assets is suspended. Article 21 adds a range of discretionary relief, including entrusting the administration or realisation of local assets to the foreign representative. These powers are limited by article 22, which requires the court to be satisfied that the interests of creditors and other interested persons, including the debtor, are adequately protected.²⁰

The Model Law has limits that matter to any adopting state. In *Rubin v Eurofinance SA* the UK Supreme Court held that the Model Law, as enacted in Great Britain, deals with the recognition of foreign proceedings and the relief that follows, and does not create special rules for enforcing judgments given in the course of foreign insolvency proceedings; the ordinary common law rules on enforcement of foreign judgments continued to apply.²¹ A state that adopts the Model Law should therefore decide separately how it will treat orders made in recognised proceedings, such as orders setting transactions aside.

E. Cooperation and adoption

Articles 25 to 27 require courts and insolvency administrators to cooperate directly with their foreign counterparts. The forms of cooperation listed in article 27 include the communication of information, coordination of the administration of the debtor's assets, approval of agreements on the conduct of the proceedings, and coordination of concurrent proceedings. Articles 28 to 32 supplement this with rules for concurrent proceedings, including article 32, under which a creditor paid in one proceeding cannot receive a further distribution in another until creditors of the same rank have been paid proportionately.²² In practice cooperation is often organised through protocols agreed between office-holders and approved by the courts concerned.²³ The best-known early example is the protocol signed from May 2009 by representatives of Lehman Brothers entities in the United States and several other countries.²⁴ The Jet Airways protocol discussed in Part VIII is a much smaller instance of the same technique.

¹⁴ Model Law (n 11) arts 2(b), 2(c) and 2(f).

¹⁵ Model Law (n 11) arts 6 and 17(1).

¹⁶ Model Law (n 11) art 16(3).

¹⁷ Case C-341/04 *Eurofood IFSC Ltd* [2006] ECR I-3813, paras 33–37.

¹⁸ Case C-396/09 *Interedil Srl, in liquidation v Fallimento Interedil Srl* [2011] ECR I-9915, para 53.

¹⁹ *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd* 374 BR 122 (Bankr SDNY 2007), affirmed 389 BR 325 (SDNY 2008).

²⁰ Model Law (n 11) arts 19–22.

²¹ *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236.

²² Model Law (n 11) arts 25–32.

²³ UNCITRAL, *Practice Guide on Cross-Border Insolvency Cooperation* (UN 2010).

²⁴ Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies (2009).

Adoption has been steady. UNCITRAL's records show that 62 States, in a total of 65 jurisdictions, have used the Model Law and its Guide in reforming their law, though the extent of adoption varies with national legal traditions and policy.²⁵ The United States enacted it as chapter 15 of the Bankruptcy Code in 2005, the United Kingdom through the Cross-Border Insolvency Regulations 2006, Australia through the Cross-Border Insolvency Act 2008 and Singapore, in its present form, through the Insolvency, Restructuring and Dissolution Act 2018.²⁶ The variation is worth noticing. Some enacting states have added reciprocity conditions, which the Model Law itself does not contain. South Africa's Cross-Border Insolvency Act 2000 applies only to states designated by the Minister of Justice, and more than twenty years after enactment it was reported still not to be in operation because no designation had been made.²⁷ That experience is relevant to the design of section 240C, discussed in Part VII.

IV. THE EUROPEAN UNION INSOLVENCY REGULATION

A. Jurisdiction and applicable law

Unlike the Model Law, which is soft law that states enact voluntarily, the Insolvency Regulation is binding. The recast Regulation applies directly in all Member States except Denmark and displaces national law on the matters it covers.²⁸ Its jurisdictional rule rests on COMI, which article 3(1) defines as the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. As under the Model Law, the registered office is presumed to be the COMI, but the Regulation adds a safeguard against forum shopping: the presumption applies only if the registered office has not moved to another Member State in the three months before the request to open proceedings.²⁹ A court dealing with a recently relocated company must therefore examine the facts instead of relying on the presumption.

The Regulation sets a single conflict-of-laws rule, the *lex fori concursus*. Under article 7 the law applicable to insolvency proceedings and their effects is that of the Member State in which the proceedings are opened. That law decides when proceedings may be opened and against whom, what falls within the estate (including assets acquired after opening), the powers of the insolvency practitioner, the ranking of claims and distribution of proceeds, and the effect of insolvency on current contracts and on actions by individual creditors.³⁰ The result is that in a main proceeding the law of the COMI state governs the debtor's assets throughout the Union.

That rule is qualified by articles 8 to 18, which apply the law of the place of the asset (*lex situs*) or the law governing the contract (*lex contractus*) instead. They protect third parties' rights in rem, set-off, reservation of title, contracts relating to immovable property, employment contracts, and purchasers who relied on public registers, among other matters.³¹ These are not loopholes. Their function is to protect the expectations of those who dealt with the debtor under a particular law, and the internal market depends on that protection.

B. Recognition

Recognition under the Regulation is automatic. Under article 19, a judgment opening insolvency proceedings in one Member State is recognised in all others from the moment it takes effect in the state of opening, so that a practitioner appointed in one state can act in another without further formality. Refusal is possible only under article 33, where recognition would be manifestly contrary to the public policy of the state concerned.³² The Court of Justice made clear in *Eurofood* that the exception must be applied narrowly. It also showed that the exception has teeth: the Court accepted that the Irish court could refuse to recognise an Italian decision opening main proceedings where that decision had been taken in disregard of the debtor's fundamental right to be heard.³³

²⁵ 'Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)' (UNCITRAL) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> accessed 4 October 2026.

²⁶ 11 USC §§ 1501–1532; Cross-Border Insolvency Regulations 2006, SI 2006/1030; Cross-Border Insolvency Act 2008 (Cth); Insolvency, Restructuring and Dissolution Act 2018 (Singapore).

²⁷ Cross-Border Insolvency Act 42 of 2000 (South Africa); C Ras, 'The Future of Cross-Border Insolvency Act 42 of 2000 in View of Developments Elsewhere' (LLM mini-dissertation, University of Pretoria 2014); 'South Africa Lagging Behind When It Comes to Cross-Border Insolvency' (LexAfrica, 11 February 2022) <<https://lexafrica.com/2022/02/south-africa-lagging-behind-when-it-comes-to-cross-border-insolvency/>> accessed 4 October 2026.

²⁸ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) [2015] OJ L141/19 (EIR Recast).

²⁹ EIR Recast (n 28) art 3(1).

³⁰ EIR Recast (n 28) art 7.

³¹ EIR Recast (n 28) arts 8–18.

³² EIR Recast (n 28) arts 19 and 33.

³³ *Eurofood* (n 17) paras 62–68.

C. Secondary proceedings, groups and third countries

Where the debtor has an establishment in a Member State other than that of the main proceeding, secondary proceedings may be opened there. They are confined to assets in that state and must be coordinated with the main proceeding.³⁴ Because secondary proceedings can fragment the estate, the Recast allows the main practitioner to give an undertaking to treat local creditors as they would have been treated in secondary proceedings, so that none need be opened (article 36). These ‘synthetic’ secondary proceedings first appeared in English practice under the earlier Regulation, in *Re Collins & Aikman Corp Group*, and were later written into the Recast.³⁵ Take-up has been modest, and concern about the liability of practitioners who give such undertakings is often cited as a reason. The Recast also introduced group coordination proceedings, in which a coordinator may recommend a plan across the insolvencies of members of an enterprise group; participation by the individual practitioners is voluntary.³⁶

The Regulation does not govern relations with third states such as India. Its jurisdictional rules apply where the debtor’s COMI is in the Union, but the recognition of an Indian insolvency in a Member State is a matter for national law. For Indian debtors with European subsidiaries, coordination has therefore depended on informal arrangements. The *Amtek Auto* insolvency illustrates the point. Amtek, an Indian auto-component manufacturer, has been in the corporate insolvency resolution process (CIRP) since July 2017, and its group had acquired German businesses including the Küpper and Neumayer Tekfor groups.³⁷ Press reports at the time recorded that the Indian resolution professionals were obtaining information through informal agreements with the professionals handling the group’s Singapore and European entities, that no formal arrangement existed because India had no cross-border insolvency law, and that KKR had separately begun insolvency proceedings against the group’s international subsidiary, Amtek Global Technologies.³⁸ The episode shows what a debtor of this kind can expect from the present Indian framework: cooperation that depends on goodwill and not on law.

V. INDIA BEFORE THE IBC

A. The Companies Act 1956

India’s historical approach to cross-border insolvency was territorial and centred on liquidation. There was no framework for recognising foreign proceedings or for cooperating across borders in the rescue of a business. That approach was set by the Companies Act 1956 and, in substance, kept by the Companies Act 2013.

Under the 1956 Act, Part X dealt with unregistered companies, a category that took in companies incorporated outside India but carrying on business there, and made them liable to be wound up by Indian courts.³⁹ Section 584 went further. It allowed a foreign company that had ceased to carry on business in India to be wound up as an unregistered company even though it had been dissolved in its country of incorporation.⁴⁰ The purpose was local: to secure the assets in India and distribute them to creditors in India, whatever the position of the parent abroad.

B. *Rajah of Vizianagaram*

The Supreme Court considered the position of foreign creditors in *Rajah of Vizianagaram v Official Receiver*, a case decided under the Indian Companies Act 1913.⁴¹ A company incorporated in England had been wound up in India as an unregistered company, and foreign creditors filed claims against the assets collected by the official liquidator. The Rajah, a lessor and creditor of the company, objected that the proceedings existed for the benefit of Indian creditors alone. The Court rejected the objection and held that the foreign creditors could prove their debts, because the Companies Act drew no distinction between Indian and foreign creditors.⁴²

The case is usually cited for the territorial character of the winding up of foreign companies in India. Its holding is more generous to foreign creditors

³⁴ EIR Recast (n 28) arts 3(2) and 34–38.

³⁵ *Re Collins & Aikman Corp Group* [2005] EWHC 1754 (Ch), [2006] BCC 606; EIR Recast (n 28) art 36.

³⁶ EIR Recast (n 28) arts 56–77.

³⁷ ‘Liberty House’s Resolution Plan Approved, All Set to Take Over Amtek Auto’ *Business Today* (13 April 2018) <<https://www.businesstoday.in/auto/story/liberty-house-amtek-auto-resolution-take-over-104944-2018-04-13>> accessed 4 October 2026.

³⁸ Veena Mani and Surajeet Das Gupta, ‘Insolvency: AION, SSG Capital Keen to Invest in Amtek Auto’ *Business Standard* (New Delhi, 30 October 2017) <https://www.business-standard.com/amp/article/companies/aion-ssg-capital-keen-on-investing-in-amtek-auto-117103000980_1.html> accessed 4 October 2026.

³⁹ Companies Act 1956 (India), Part X, s 583.

⁴⁰ Companies Act 1956 (India), s 584.

⁴¹ *Rajah of Vizianagaram v Official Receiver*, *Vizianagaram* AIR 1962 SC 500.

⁴² *ibid*.

than that label suggests, and it anticipates article 13 of the Model Law. But it concerned only the right to prove in an Indian liquidation of assets collected in India. It supplied no route by which an Indian court could recognise a foreign liquidator or defer to a foreign proceeding, and the statute offered none.

C. The Companies Act 2013

The Companies Act 2013 modernised much of Indian company law but left the territorial bias of the insolvency regime largely untouched. Section 375 permits an unregistered company to be wound up under the Act, and section 376, the successor to section 584 of the 1956 Act, again allows a foreign company that has carried on business in India to be wound up as an unregistered company although it has been dissolved abroad.⁴³ Like their predecessors these provisions are about liquidation. They contain nothing on the recognition of foreign rehabilitation proceedings or on cooperation with foreign insolvency practitioners.

Section 234 made a limited move towards cross-border integration by permitting mergers and amalgamations between Indian and foreign companies, subject to the prior approval of the Reserve Bank of India.⁴⁴ That provision concerns solvent restructuring. It offers nothing for the coordination of creditors of a distressed company. Until the IBC, India therefore lacked a predictable regime for cross-border business failure and, as the next Part shows, the IBC supplied only part of one.

VI. THE IBC: SECTIONS 234 AND 235 AND THE GAPS AROUND THEM

The IBC replaced the winding-up-centred approach for companies with a time-bound process directed at resolution, but it said little about cross-border cases. Section 234(1) allows the Central Government to enter into an agreement with the government of another country for enforcing the Code, and section 234(2) allows it to direct, by notification, that the Code applies to assets situated in a country with which reciprocal arrangements have been made, subject to specified conditions. Section 235 then provides that where a resolution professional, liquidator or bankruptcy trustee believes that assets of the debtor are situated in such a country, he may apply to the adjudicating authority, which may issue a letter of request to a competent court or authority there for evidence or action relating to those assets.⁴⁵

Three features limit these provisions. First, they run in one direction. They help an Indian office-holder reach assets abroad, and they say nothing about how an Indian court should treat a foreign representative who arrives in India. Second, they depend on treaties. Each reciprocal arrangement has to be negotiated country by country, and the ILC found little sign that the mechanism had been put to use.⁴⁶ Third, they are confined to evidence and action in relation to assets. That is useful for tracing and recovery, but it does not address the recognition of proceedings, stays, or the coordination of concurrent processes.

The Code leaves other questions open. Section 14 imposes a moratorium on the corporate debtor from the insolvency commencement date, and section 18(1)(f) requires the interim resolution professional to take control and custody of the debtor's assets, expressly including assets over which the debtor has ownership rights that may be located in a foreign country.⁴⁷ The Code does not say how a moratorium declared by an Indian tribunal would bind a creditor enforcing against assets abroad, or how an Indian resolution professional could take control of foreign assets that foreign law treats as part of a local estate. The recognition and enforcement of foreign judgments, meanwhile, is governed by the general rules of the Code of Civil Procedure 1908, in particular sections 13 and 44A, which were not designed for collective insolvency proceedings.⁴⁸

The consequence is that Indian proceedings under the IBC and foreign proceedings against the same debtor run side by side, each claiming authority over overlapping assets and creditors, with no statutory means of reconciling them. A reform process begun in 2017 set out to supply one.

VII. FROM DRAFT PART Z TO SECTION 240C

A. The Insolvency Law Committee and Draft Part Z

The ILC was set up to review the working of the IBC. Its dedicated report on cross-border insolvency, delivered on 16 October 2018, recommended that

⁴³ Companies Act 2013 (India), ss 375–376.

⁴⁴ Companies Act 2013 (India), s 234.

⁴⁵ IBC (n 1) ss 234–235.

⁴⁶ ILC Report (n 3).

⁴⁷ IBC (n 1) ss 14 and 18(1)(f).

⁴⁸ Code of Civil Procedure 1908 (India), ss 13 and 44A.

India adopt the Model Law, with modifications, as a new Part Z of the Code.⁴⁹ Draft Part Z followed the Model Law's four themes of access, recognition, relief and cooperation, took over its COMI test for identifying main proceedings, and was to apply initially to corporate debtors only.⁵⁰ It also departed from the Model Law in places. One departure that has drawn criticism is the omission of interim relief pending the decision on recognition, which leaves assets exposed in the very period when they are most at risk.⁵¹

B. The Rules Committee

In January 2020 the Ministry constituted the Cross Border Insolvency Rules/Regulations Committee (CBIRC), chaired by Dr K P Krishnan, to draft the subordinate legislation that Part Z would need.⁵² Its report of 15 June 2020 recommended some modifications to the draft, proposed a typology of cross-border cases, and suggested that the principal bench of the National Company Law Tribunal (NCLT) should hear matters concerning foreign corporate debtors.⁵³ The report was opened for public comment in November 2021.⁵⁴ Neither Part Z nor the CBIRC's rules was enacted at that stage, and for some time afterwards little happened in public.

C. The 2025–2026 amendment

The Insolvency and Bankruptcy Code (Amendment) Bill 2025 was introduced in the Lok Sabha on 12 August 2025 and referred to a Select Committee, which reported on 17 December 2025.⁵⁵ The Bill contained an enabling provision on cross-border insolvency. The Committee observed that the basic principles of the subject should be included in the Code, so as to give the Central Government clear legislative guidance.⁵⁶ The Lok Sabha passed the Bill as reported on 30 March 2026, the Rajya Sabha on 1 April 2026, and the President gave assent on 6 April 2026.⁵⁷ Most of the Act came into force on 26 May 2026 under a notification of 22 May 2026.⁵⁸

D. What section 240C provides

Section 240C(1) allows the Central Government to prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under the Code, including the process for recognition of proceedings, the grant of relief, and judicial cooperation, assistance and coordination. The rules may be made for such classes of debtors or corporate debtors, involving such countries or territories outside India, as the Central Government notifies. Sub-section (2) allows the rules to apply the Code or the Companies Act 2013 with exceptions, modifications and adaptations, including by designating one or more Benches. Sub-section (3) applies the procedure in section 59A(4) to (6), under which draft rules are laid before Parliament for thirty days and may be disapproved or modified by both Houses. An Explanation extends 'corporate debtor' to any person incorporated with limited liability outside India.⁵⁹

Three features stand out. First, the section is enabling only. It states no principles and makes no reference to the Model Law, to COMI or to Draft Part Z, so everything of substance is left to rules. Second, its operation is selective by design: rules may be made for notified classes of debtors and notified countries, which makes the framework reciprocal or at least discretionary in effect, whatever the rules finally say. Third, the Act provides that different

⁴⁹ ILC Report (n 3).

⁵⁰ *ibid*.

⁵¹ Rajasekhar V K, 'Cross Border Insolvency in India: What Rules Must Say' (LiveLaw, 2026) <<https://www.livelaw.in/articles/cross-border-insolvency-india-537437>> accessed 4 October 2026.

⁵² Varsha Aithala, 'Report of the Cross-Border Insolvency Committee, June 2020: A Primer' (NLSIU Blog) <<https://www.nls.ac.in/blog/report-of-the-cross-border-insolvency-committee-june-2020-a-primer/>> accessed 4 October 2026.

⁵³ Cross Border Insolvency Rules/Regulations Committee, *Report on the Rules and Regulations for Cross-Border Insolvency Resolution* (15 June 2020) <<https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf>> accessed 4 October 2026.

⁵⁴ Aithala (n 52).

⁵⁵ Lok Sabha, *Report of the Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025* (17 December 2025) <<https://ibbi.gov.in/uploads/resources/2ce0f4a4a146d49fb96f4939aa4fbc25.pdf>> accessed 4 October 2026.

⁵⁶ 'Select Committee Report Summary: Insolvency and Bankruptcy Code (Amendment) Bill, 2025' (PRS Legislative Research) <<https://prsindia.org/billtrack/prs-products/select-committee-report-summary>> accessed 4 October 2026.

⁵⁷ Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5), The Gazette of India Extraordinary, Pt II s 1, No 11 (6 April 2026); 'Parliament Passes Insolvency and Bankruptcy Code Bill, 2026' (News On Air, 1 April 2026) <<https://www.newsonair.gov.in/parliament-passes-insolvency-and-bankruptcy-code-bill-2026>> accessed 4 October 2026; Parinam Law Associates, 'The Insolvency and Bankruptcy Code (Amendment) Act, 2026' <<https://parinamlaw.com/articles-updates/the-insolvency-and-bankruptcy-code-amendment-act-2026/>> accessed 4 October 2026.

⁵⁸ 'Reshaping India's Insolvency Landscape: A Practitioner's Guide to the Insolvency and Bankruptcy Code (Amendment) Act, 2026' (IndiaLaw) <<https://www.indialaw.in/blog/insolvency-bankruptcy/insolvency-bankruptcy-code-amendment-act-2026/>> accessed 4 October 2026.

⁵⁹ IBC (n 1) s 240C, inserted by Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5) s 71.

provisions may come into force on different dates.⁶⁰ Section 240C was not among the provisions brought into force on 26 May 2026, and at the time of writing neither it nor any set of rules appears to have been notified.⁶¹

The position is therefore an odd one. India has a statutory provision on cross-border insolvency that has no operative effect, and practice must continue to rely on tribunal discretion. Commentators have also questioned whether Parliament may leave so much to the executive, given the principle that essential legislative functions cannot be delegated.⁶² The objection is not frivolous. Draft Part Z of 2018 was a statute-length text. By moving its substance into rules, the Act leaves the essential choices (who may be recognised, on what conditions, and with what effect on Indian creditors) to the executive, subject only to a negative parliamentary procedure.

VIII. JET AIRWAYS: PRACTICE WITHOUT STATUTE

Without a statute, Indian tribunals have had to improvise, and the insolvency of Jet Airways is the one significant example. On 21 May 2019 the Noord-Holland District Court declared Jet Airways (India) Ltd bankrupt and appointed a trustee. A month later, on 20 June 2019, the NCLT in Mumbai admitted the State Bank of India's application to start the CIRP.⁶³ The Dutch trustee asked the NCLT to take account of the Dutch proceedings. The NCLT declined, holding the Dutch proceedings to be a nullity so far as Indian assets were concerned, and observing that India had no law providing for their recognition.⁶⁴

The trustee appealed to the NCLAT. The Appellate Tribunal did not disturb the admission of the CIRP, but it directed the resolution professional to explore cooperation with the Dutch trustee and, on 26 September 2019, approved a Cross Border Insolvency Protocol that the two office-holders had agreed.⁶⁵ The protocol was to take effect only on approval by both the Indian tribunal and the Dutch court, and it provided that sale proceeds of any assets sold by the Dutch trustee would be held in a bankruptcy account.⁶⁶ The Dutch trustee was to attend meetings of the Committee of Creditors as an observer without a vote, the Appellate Tribunal treating the trustee as the Dutch equivalent of a resolution professional.⁶⁷

The decision is significant for what it shows and for what it leaves open. It shows that Indian tribunals, faced with a foreign office-holder and no statute, will use a court-approved protocol, which is the instrument on which the cooperation provisions of the Model Law also rely, and that they will accept a foreign trustee in a role short of control. It does not decide the basic questions: on what footing the Dutch proceedings were entitled to be heard, what law governed the trustee's powers over Indian assets, or what would have happened if the two office-holders had failed to agree. The protocol was a product of consent, reached after the Appellate Tribunal directed the parties to cooperate. That works where both sides are willing and their interests align. It is a poor foundation for a regime.

Later events reinforce the point. The resolution plan approved by the NCLT in 2021 was not implemented by the successful applicant, the Jalan-Kalrock Consortium, and on 7 November 2024 the Supreme Court, using its powers under Article 142 of the Constitution, ordered the airline's liquidation.⁶⁸ By then the cross-border arrangement had been overtaken by domestic events, and it is hard to tell from the public record what practical difference it made. The Jet Airways episode is better read as evidence of the need for a framework than as a model for one.

IX. CHALLENGES THAT REMAIN

Section 240C settles that India will have a framework. It does not settle what the framework will look like. Several difficulties deserve attention before

⁶⁰ Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5) s 1(2).

⁶¹ 'India's Cross-Border Insolvency Reform: A Distant Dream?' (RFKN Legal) <<https://rfkn.legal/blog/india-cross-border-insolvency-reform/>> accessed 4 October 2026; Rajasekhar (n 51).

⁶² 'Section 240C and the "Blank Cheque" Problem in Cross-Border Insolvency' (IRCCL) <<https://www.irccl.in/post/section-240c-and-the-blank-cheque-problem-in-cross-border-insolvency>> accessed 4 October 2026; see *In re The Delhi Laws Act 1912* AIR 1951 SC 332.

⁶³ Singapore Management University, Centre for Commercial Law in Asia, 'The Jet Airways' Cross Border Insolvency Protocol: A Success Story' (26 January 2021) <<https://ccla.smu.edu.sg/scri/blog/2021/01/26/jet-airways-cross-border-insolvency-protocol-success-story>> accessed 4 October 2026.

⁶⁴ *State Bank of India v Jet Airways (India) Ltd* (NCLT Mumbai, CP (IB) No 2205/MB/2019, 20 June 2019).

⁶⁵ *Jet Airways (India) Ltd v State Bank of India* (NCLAT, Company Appeal (AT) (Insolvency) No 707 of 2019, 26 September 2019) <<https://ibbi.gov.in/uploads/order/b7bbd5ba93be73bb4602dfe25f25cdd4.pdf>> accessed 4 October 2026.

⁶⁶ *Jet Airways* (n 65), protocol cls 4.1.1 and 8.1.4.

⁶⁷ 'NCLAT | Joint CIRP against Jet Airways to Continue, Dutch Trustee Allowed to Attend CoC Meetings as Observer' (SCC Online Blog, 7 October 2019) <<https://www.sconline.com/blog/post/2019/10/07/nclat-joint-cirp-against-jet-airways-to-continue-dutch-trustee-allowed-to-attend-coc-meetings-as-observer/>> accessed 4 October 2026.

⁶⁸ *State Bank of India v Consortium of Murari Lal Jalan and Florian Fritsch* (SC, 7 November 2024).

the rules are drafted.

A. Reciprocity and the choice of jurisdictions

The ILC proposed the Model Law, which does not condition recognition on reciprocal treatment, while section 240C speaks of notified countries and territories. There are arguments on both sides. A selective approach protects Indian creditors in a system that has never yet handled a recognition application, and it lets the government begin with a short list of trusted jurisdictions. Against that, a regime that depends on notification country by country repeats the weakness of sections 234 and 235, which required a treaty before anything could happen. South Africa's experience, noted in Part III, shows how a designation requirement can leave a statute unused for decades. A middle course would be to notify states by reference to a status, such as enactment of the Model Law, instead of requiring a separately negotiated arrangement, while keeping a power to withhold recognition in individual cases.

B. COMI and corporate groups

Indian tribunals will have to decide COMI disputes on evidence, and the cases show that this is rarely easy. Foreign-controlled Indian subsidiaries and Indian holding companies with overseas subsidiaries will test the presumption in both directions. The Model Law treats each debtor separately, which fits poorly with enterprise groups. UNCITRAL responded with a separate Model Law on Enterprise Group Insolvency in 2019, and Mevorach's study of insolvency within multinational groups remains a useful guide to the difficulties.⁶⁹ The 2026 Act itself adds a domestic group insolvency framework, in a new Chapter VA, defining a group by reference to control or ownership of twenty-six per cent or more of the voting rights.⁷⁰ The rules under section 59A and section 240C will need to be drafted together, or an Indian group member will be treated one way at home and another when a foreign sibling is involved.

C. Judgments, discharge and the Indian 'clean slate'

Two further problems arise from the gap, noted in *Rubin*, between recognising a proceeding and enforcing what is decided in it. UNCITRAL addressed the first with its Model Law on Recognition and Enforcement of Insolvency-Related Judgments in 2018, which India should consider alongside the Model Law.⁷¹ The second concerns discharge. The Supreme Court has held that an approved resolution plan binds all stakeholders and extinguishes claims not provided for in it, and the 2026 Act now writes the extinguishment of prior claims into section 31.⁷² A foreign court asked to give effect to that extinguishment may decline, as English courts have long done for English-law debts under the rule in *Gibbs*.⁷³ Foreign creditors holding claims under a foreign governing law could therefore pursue the debtor abroad after an Indian plan has been implemented. Recognition rules that allow Indian courts to grant and to seek relief protecting a resolution plan would reduce that risk, though they cannot remove it.

D. Institutional capacity

A recognition regime is only as quick as the court that operates it. The Select Committee itself identified protracted delay at the admission stage as one of the weaknesses of the IBC in practice.⁷⁴ The 2026 Act responds with a fourteen-day target for admission and a three-month period for appeals to the NCLAT, and the same discipline will be needed for recognition applications, where delay allows assets to move.⁷⁵ Section 240C(2) allows designated Benches, and the CBIRC's suggestion of the principal bench is sensible while experience is thin. Judges and practitioners will also need training in court-to-court communication, for which the Judicial Insolvency Network's guidelines are a ready model.⁷⁶

E. Individuals and personal guarantors

The ILC proposed that Part Z apply at first to corporate debtors only. Section 240C refers to 'debtors or corporate debtors', which is wider. That matters in India, where promoters of large defaulting companies often stand as personal guarantors and may hold assets abroad. Whether the rules extend to individuals, and when, is a decision that should be made openly and not left to follow from the wording.

⁶⁹ UNCITRAL Model Law on Enterprise Group Insolvency (adopted 2 July 2019); Irit Mevorach, *Insolvency within Multinational Enterprise Groups* (OUP 2009).

⁷⁰ Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5) s 42 (inserting s 59A into the IBC).

⁷¹ UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (adopted 2 July 2018).

⁷² *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Co Ltd* (2021) 9 SCC 657; Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5) s 19 (inserting s 31(5)–(6) into the IBC).

⁷³ *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) 25 QBD 399 (CA).

⁷⁴ Select Committee Report (n 55).

⁷⁵ Insolvency and Bankruptcy Code (Amendment) Act 2026 (n 5) ss 4 and 43.

⁷⁶ Judicial Insolvency Network, *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (2016).

X. RECOMMENDATIONS FOR THE RULES

Five recommendations follow from the analysis. First, the Central Government should publish draft rules for consultation and bring section 240C into force together with them. Four years passed between the CBIRC report and the Amendment Act, and an enabling section without rules gives investors nothing to rely on.

Second, the rules should follow the Model Law closely on the points where its design has been tested. That means the registered-office presumption for COMI, the automatic stay on recognition of a foreign main proceeding, and the safeguards for local creditors in article 22. The omission of interim relief in Draft Part Z should be corrected, since a stay that arrives only after the recognition hearing comes too late to protect assets.

Third, the government should notify jurisdictions by status and not by bilateral negotiation, beginning with the major Model Law states, and should state publicly the criteria it will apply. This keeps the selectivity that section 240C permits while avoiding the stalemate that overtook sections 234 and 235.

Fourth, the rules should deal expressly with the matters that the Model Law leaves open: the treatment of insolvency-related judgments, the position of corporate groups, and the effect of a recognised foreign proceeding on an approved Indian resolution plan. Designated Benches and published court-to-court communication guidelines should be set up from the start.

Fifth, Parliament should return to the Select Committee's recommendation and place the basic principles of the regime in the Code itself at the next amendment. Rules can supply procedure. The questions of who may be recognised and with what consequences for Indian creditors are of a kind that a legislature should answer.

XI. CONCLUSION

Cross-border insolvency tests whether a legal system is willing to share control of a failing debtor with a foreign court. The Model Law answers that question with a procedural framework that leaves each state's substantive law intact, and the EU Regulation answers it with binding rules for a union of states that trust one another. India's own history points the other way. The Companies Acts of 1956 and 2013 were territorial and aimed at liquidation, *Rajah of Vizianagaram* admitted foreign creditors but offered no recognition of foreign proceedings, and the IBC's sections 234 and 235 depend on treaties that have not materialised.

The Jet Airways protocol showed that tribunals can improvise when asked, but it also showed the limits of improvisation. The 2026 amendment is a real step, because it ends the position that India has no statutory basis for a cross-border regime. It stops short of providing the regime. Section 240C leaves recognition, relief and cooperation to rules that do not yet exist, and for the time being no machinery for recognition or relief is in operation.

What the rules say will decide whether the reform matters. If they adopt the Model Law's core features in good faith, notify jurisdictions on a principled basis, and provide courts able to act quickly, India will have a regime that foreign lenders and Indian creditors can both rely on. If they are delayed, narrow or too dependent on bilateral deals, India will have repeated, in subordinate legislation, the weakness of sections 234 and 235. The choice is now with the executive, and the cost of delay falls on the creditors, employees and investors for whom the IBC was enacted.