

**RCAP@10**

**The Road Ahead:  
Regional trade, global standards, and the future of legal harmonization**

 **United Nations  
UNCITRAL**  
Regional Centre for Asia and the Pacific

॥ न्यायस्तत्र प्रमाणं स्यात् ॥



# ***LEGAL HARMONISATION AND CROSS-BORDER INSOLVENCY IN INDIA***

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# Asia Pacific Day Events

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organised by the  
Centre for Transnational Commercial Law  
National Law University Delhi India

2016: Towards a Regime of Uniform Transnational Commercial Laws for India: Contracts of International Sale of Goods”

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2017: Symposium on Cross-Border Insolvency

2017, 2018, 2019, 2020, 2022, 2023: Arun Jaitley International Insolvency and Bankruptcy Moot (incorporating issues related to Model Law on Cross-Border Insolvency MLCBI)

2021: Symposium on Transnational Commercial Law, Insolvency, Restructuring, and Entrepreneurship: Promoting Trade and Development post the Pandemic

# What is Cross-Border Insolvency?

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Cross-Border insolvency a necessity to deal with insolvent debtors with assets over several jurisdictions. It shall aid with the insolvency process for several Indian multinational with subsidiaries and assets in foreign jurisdictions and undergoing insolvency process.

Essential to improved credit recovery rate, information exchange without delay, empowering insolvency representatives and remedy in foreign jurisdictions.

# The Legal and Regulatory Regime of Insolvency and Bankruptcy in India

**Substantive Law:**

Insolvency and Bankruptcy Code, 2016

Supported by comprehensive set of Rules, Regulations

**Adjudicatory Authorities:**

National Company Law Tribunal (NCLT)

National Company Law Appellate Tribunal (NCLAT)

**Regulator:**

Insolvency and Bankruptcy Board of India (IBBI)

Insolvency Professionals and Insolvency Professional Agencies

# Model Law on Cross-Border Insolvency (MLCBI) and Adoption by India

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- UNCITRAL Model Law on Cross-Border Insolvency has been issued by UNCITRAL to assist states in relation to the regulation of corporate insolvency and financial distress involving companies which have assets or or creditors in more than one state.
- In 2018, Ministry of Corporate Affairs, Government of India, released Draft chapter 'Part Z' on Cross-border Insolvency based on the UNCITRAL Model Law



# Draft Part Z: THE CROSS-BORDER INSOLVENCY REGIME IN INDIA.

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**General Provisions, Public Policy (Clauses 1-6)**

**Access of Foreign Representatives and Creditors to the Adjudicating Authority  
(Clauses 7- 11)**

**Recognition of A Foreign Proceeding and Relief (Clauses 12- 20)**

**Cooperation with Foreign Courts and Foreign Representatives (Clauses 21- 23)**

**Concurrent Proceedings (Clauses 24- 28)**

**Miscellaneous (Clauses 29- 31)**

INDIA  
Recommendations  
by the Justice Eradi  
Committee and  
N.L. Mitra Advisory  
Group on  
Bankruptcy Laws.  
2001-2002

**The Eradi Committee Report:**

Recommended that the Model Law be implemented in India; Amendment of Part VII of Companies Act, 1956

in-bound and our-bound requests for recognition of foreign proceedings,  
co-ordination of proceedings in two or more States and participation of foreign creditors in insolvency proceedings

**The N. L. Mitra Committee:**

Indian laws on cross border insolvency are outdated and are not comparable to international legal standards

in the event of an international insolvency proceeding involving an Indian company, Indian courts are unlikely to provide any aid or assistance to a foreign liquidator

Proposed a Comprehensive Bankruptcy Code



# UNCITRAL Instruments Relating to Insolvency-adopting

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UNCITRAL Model Law on Cross-Border Insolvency (1997)

UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018)

UNCITRAL Model Law on Enterprise Group Insolvency (2019)

# Legal Harmonisation and Cross-Border Insolvency in India: The way ahead....

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2016: Joint Parliamentary Committee, 'Underlined the need to adopt a Cross-Border Insolvency Law in India'

2018: Draft Part 'Z' released for consultation, seeks to incorporate the MLCBI into the Insolvency and Bankruptcy Code

2019: Report of the Working Group on Group Insolvency

Cross-Border Insolvency Rules/ Regulations Committee (CBIRC)

2020: Insolvency and Bankruptcy (Cross-Border Insolvency) Rules, 2020

# Thank You Questions

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