TRANSNATIONAL INSOLVENCY AND THE LIMITS OF LEGAL CONVERGENCE: GHANA'S ADOPTION OF THE UNCITRAL MODEL LAW

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Abstract

Ghana enacted a new Corporate Insolvency and Restructuring Act in 2020 (Act 1015), in conformity with the UNCITRAL Model Law on cross-border Insolvency. Act 1015, arguably, marks a transformative step towards aligning Ghana's insolvency regime with global standards. We critically examine the implementation of Sections 150–152 of Act 1015 on cross-border insolvency which govern the recognition of foreign insolvency proceedings, judicial cooperation, and the powers of foreign representatives. Drawing on comparative insights from jurisdictions such as the UK, South Africa, Kenya, Uganda, Singapore and India's evolving framework, the study evaluates Ghana's progress in balancing domestic priorities with international obligations. While Act 1015 provides a foundation for cross-border coordination, we argue that the current formulation of the law poses challenges with implementation, including ambiguities in reconciling Ghanaian commercial laws with foreign proceedings, limited judicial familiarity with cross-border mechanisms and gaps in procedural guidelines for foreign representatives. The analysis highlights how Ghana's framework diverges from jurisdictions like Singapore, where tensions between admiralty law and insolvency rehabilitation underscore the need for nuanced statutory clarity. Additionally, we explore risks of forum shopping and the protection of local creditors' rights in transnational cases, issues exacerbated by the absence of bilateral agreements and standardized protocols. The study proposes actionable recommendations to strengthen Ghana's cross-border insolvency system.

1. INTRODUCTION

The phenomenon of cross-border insolvency has emerged as one of the most pressing challenges in contemporary international commercial law, driven by unprecedented levels of economic integration and globalization.[1] As multinational enterprises increasingly operate across jurisdictions, owning assets, conducting business and establishing commercial relationships spanning multiple countries, the complexity of insolvency proceedings has intensified exponentially.[2] When companies with international operations face financial distress, the resulting proceedings inevitably involve assets, creditors and stakeholders distributed across different legal systems, each governed by distinct insolvency regimes.[3]

The traditional territorial approach to insolvency, where each jurisdiction focuses solely on local assets and creditors while ignoring foreign interests, has proven inadequate for addressing modern cross-border commercial realities.[4] This fragmented approach often results in inefficient asset distribution, discriminatory treatment of foreign creditors, and the potential destruction of enterprise value that could benefit all stakeholders.[5] Consequently, there has been growing recognition that a more coordinated, universal approach to cross-border insolvency is essential for promoting fairness, efficiency, and legal certainty in international commerce.[6]

Ghana's enactment of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) represents a transformative step toward modernizing its insolvency regime and aligning with international best practices.[7] The Act replaces the outdated Bodies Corporate (Official Liquidations) Act, 1963 (Act 180),

[1] Horst Eidenmüller, *'Comparative Corporate Insolvency Law'* (2023) ECGI Working Paper No 319/2016.

[2] Victoria Thakur and Siddharth Keswani, 'Examining Cross-Border Insolvency: Global Challenges and Collaborative Solutions' (2024) 6(1) International Journal for Multidisciplinary Research 1.

[3] See, for example, John Armour & Douglas Cumming, *"Bankruptcy Law and Entrepreneurship",* 10 Am. L. & Econ. Rev. 303 (2008); Kenneth M. Ayotte, "Bankruptcy and Entrepreneurship: The Value of a Fresh Start", 23 J. L. & Econ. 161 (2007)

[4] Eidenmülle (n 1).

[5] ibid.

[6] ibid.

[7] Rosemary Anakwa Boadu, *'Why The Corporate Insolvency & Restructuring Act, 2020 (Act 1015) Makes Ghana The Preferred Destination For Investment'* (GARIA, 20 October 2021) https://garia.org/why-the-corporate-insolvency-restructuring-act-2020-act-1015-makes-ghana-the-preferred-destination-for-investment/ accessed 21 June 2025; Bentsi-Enchill, Letsa & Ankomah, 'Key Highlights of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015)- Part 1' (Bentsi-Enchill, Letsa & Ankomah, 10 January 2025) https://bentsienchill.com/key-highlights-of-the-corporate-insolvency-and-restructuring-act-2020-act-1015/

which had become inadequate for addressing the complexities of contemporary business operations.[8] Significantly, Ghana has adopted the UNCITRAL Model Law on Cross-Border Insolvency without amendment through Act 1015, demonstrating its commitment to international harmonization.[9] This legislative reform positions Ghana among the jurisdictions that have embraced the UNCITRAL Model Law as the foundation for their cross-border insolvency framework.[10] The Act introduces novel provisions that facilitate access to timely, efficient and impartial insolvency proceedings, including comprehensive mechanisms for corporate restructuring and administration that were previously absent in the erstwhile Act 180.[11]

While Act 1015 provides a foundational framework for cross-border insolvency coordination in Ghana, its effective implementation is likely hampered by ambiguities in reconciling domestic laws with foreign proceedings, limited judicial familiarity with cross-border mechanisms and procedural gaps affecting foreign representatives.[12] These challenges necessitate targeted reforms to achieve true alignment with international standards and ensure adequate protection of stakeholder interests in transnational insolvency cases.[13]

This paper critically examines the implementation of Sections 150-152 of Act 1015, which govern cross-border insolvency proceedings in Ghana.[14] The analysis focuses specifically on three fundamental aspects: the recognition of foreign insolvency proceedings, mechanisms for judicial cooperation, and the powers accorded to foreign representatives within Ghana's jurisdiction.[15] Through comparative analysis with established jurisdictions including the United Kingdom, South Africa, India, Singapore, Kenya and the Uganda, this study evaluates Ghana's progress in balancing domestic legal priorities with international obligations. The choice of jurisdictions examined in this article is deliberate and reflects both

accessed 21 June 2025; J Silverman *'Advances in cross-border insolvency cooperation: the UNCITRAL Model Law'* (2000) USA Journal of International and Comparative Law 265.

[8] Act 1015, long title.

[9] United Nations Commission on International Trade Law, 'Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)' https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency accessed 21 June 2025.

[10] ibid.

[11] Act 1015, ss 1-168.

[12] Lia Metreveli*, 'Toward Standardized Enforcement of Cross-Border Insolvency Decisions: Encouraging the United States to Adopt UNCITRAL's Recent Amendment to Its Model Law on Cross-Border Insolvency'* (2017) 51 Colum JL & Soc Probs 315.

[13] ibid.

[14] ibid.

[15] ibid.

methodological and substantive considerations central to Ghana's prospective adoption of the UNCITRAL Model Law. Their experiences offer Ghana tested models of implementation, including both the strengths and the structural pitfalls that accompany the Model Law in practice.

2. THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY: A GLOBAL STANDARD

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, represents the most significant achievement in international efforts to harmonize cross-border insolvency procedures.[16] The Model Law was developed to assist states in equipping their insolvency laws with a modern, harmonized framework to address cross-border insolvency situations more effectively.[17] Rather than attempting substantive unification of insolvency law, the Model Law focuses on providing an interface between jurisdictions and facilitating the administration of cross-border cases.[18]

The Model Law is founded on several core principles that guide its application.[19] First, is the principle of access, which requires state parties to grant access to foreign insolvency representatives appointed by the debtor in the local courts.[20] Second, the principle of cooperation. This principle emphasizes the need for courts and insolvency representatives to cooperate across borders to achieve efficient resolution of insolvency cases.[21] The objective of this principle is to maximize returns to creditors (in liquidation and reorganization proceedings) and (in reorganization proceedings) to facilitate protection of investment and the preservation of employment through fair and efficient administration of the insolvency estate.[22] The United Nations Commission on International Trade Law states that the requirement of cooperation is

[16] United Nations Commission on International Trade Law, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (United Nations 2010).

[17] Clinton Ras, 'The Future of the Cross-Border Insolvency Act 42 of 2000 in View of Developments Elsewhere' (LLM mini-dissertation, University of Pretoria 2014) 1, 20.

[18] Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience' (2000) 21 U Pa J Int'l Econ L 679.

[19] United Nations Commission on International Trade Law, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (United Nations 2010).

[20] MLCNI, art 11.

[21] MLCBI, art 25-27.

[22] ibid preamble.

mandatory.[23] Article 27 provides a non-exhaustive list of methods for implementing cooperation, including: appointment of persons or bodies to act under court direction, exchange of information through any appropriate medium (including digital channels), coordination in supervising and administering the debtor's assets and affairs, approval of inter-court protocols or joint frameworks for cooperation, coordination of concurrent proceedings involving the same debtor or enterprise group.[24]

Third, the principle of coordination. This principle seeks to avoid conflicting decisions and duplicated efforts by establishing clear frameworks for managing concurrent proceedings.[25] Article 28, in conjunction with article 29, provides that recognition of a foreign main proceeding will not prevent the commencement of a local insolvency proceeding concerning the same debtor as long as the debtor has assets in the State. Ordinarily, the scope of a local insolvency proceeding is confined to assets situated within the jurisdiction of the enacting State.[26] However, circumstances may arise where an effective administration of such a proceeding necessarily implicates assets located abroad—particularly where no corresponding foreign proceeding exists or can be initiated in the jurisdiction where those assets are held. To accommodate this limited extraterritorial effect, Article 28 of the Model Law permits the domestic court to extend the reach of the proceeding to foreign assets, but only insofar as such an extension is essential for the proper conduct of the insolvency process within the enacting State.

This provision is tempered by two key limitations. First, any extension of the proceeding's effects beyond national borders must be strictly confined to what is 'necessary to implement cooperation and coordination' under Articles 25–27. Second, the foreign property in question must, as a matter of domestic law, be capable of administration under the legal framework of the enacting State.[27] Article 29 affirms that the institution of a local insolvency process does not nullify or impede the recognition of a foreign proceeding.[28]

[23] 'UNCITRAL UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective'.
[24] ibid.
[25] ibid art 28 & 29.
[26] UNCITRAL (n 23) 86 [para 216].
[27] ibid para 217.
[28] ibid para 219-222.

Fourth, the recognition principle provides mechanisms for acknowledging foreign insolvency proceedings and according to them appropriate legal effects.[29] The object of the 'recognition' principle is to avoid lengthy and time-consuming certainty to the process and enables the receiving court, once recognition has been given, to determine questions of relief in a timely fashion process by providing prompt resolution of applications for recognition[30]. The Commission states that:[31]

> *A foreign representative will make an application under the MLCBI in order to seek recognition of the foreign proceeding. Article 15 of the MLCBI establishes the requirements to be met by that application. In deciding whether a foreign proceeding should be recognized, the receiving court is limited to the jurisdictional pre-conditions set out in the definition. The MLCBI makes no provision for the receiving court to embark on a consideration of whether the foreign proceeding was correctly commenced under applicable law; provided the proceeding satisfies the requirements of article 15, recognition should follow in accordance with article 17.*

This principle was necessitated by the fact that traditional insolvency laws have been territorial in nature based on state sovereignty. These laws emphasized state sovereignty hampering enforcement and recognition of cross-border insolvency proceedings. Conflicting national laws often result in uncoordinated, fragmented and inadequate approaches hammering the rescue options of financially distressed companies as well as creditors and debtors.[32]

Olivier and Boarine, argue that without uniform or universal rules, applications to recognize and enforce insolvency proceedings in a foreign court normally leave such applications at the mercy of the foreign court, which may lead to an unpredictable outcome.[33] Thus, when a debtor has assets in multiple countries, a representative may be forced to initiate separate bankruptcy proceedings in each jurisdiction, leading to multiple concurrent insolvency cases inevitably increasing the cost of these proceedings. A notable

[29] MLCBI, 15.

[30] UNCITRAL (n 23) [para 40-41].

[31] ibid 15 [para 41].

[32] Clinton (n 17) 1-17.

[33] Michèle Olivier and André Boraine, 'Some aspects of international law in South African cross-border insolvency law' (2005) 38(3) The Comparative and International Law Journal of Southern Africa 373; Franco 'The Cross-Border Insolvency Act: lifting the barriers or creating new ones?' (2003) 54 Merc LJ 27, 29.

example is the *Maxwell Communication Corp, Societe Generale (In re Maxwell Communication Corp)*,[34] where insolvency proceedings involved assets and entities in the UK, US, and Canada, each subject to different legal regimes. The case demonstrated both the potential for inter-court cooperation and the pressing need for a more structured legal framework to manage cross-border insolvency matters.[35]

In view of this, the Model Law sought to introduce a form of modified universalism in the application of insolvency laws to promote co-operation and promote cross-border trade and investment between and among states.[36] Generally, there are five approaches to cross-border insolvency proceedings. These are:[37]

(a) *Universalism approach which emphasizes a single central proceeding (in the debtor's home jurisdiction) and administers all global assets and claims under one insolvency law.*

(b) *Modified universalism which emphasizes extraterritorial reach of domestic insolvency laws combined with discretionary cooperation with foreign proceedings.*

(c) *Secondary Insolvency. This approach allows* ***multiple proceedings****, with one primary (main) proceeding and other secondary ones in jurisdictions where the debtor has assets.*

(d) *Corporate Charter Contractualism. This is a contract-based approach where cross-border insolvency outcomes depend on agreements between parties. Under this approach, parties pre-select which jurisdiction's law will govern insolvency issues, giving predictability and control.*

(e) *Territorialism. Under this approach, countries treat the insolvency independently and deals only with assets located within their borders.*

The Model Law, as stated above, establishes four fundamental mechanisms for addressing cross-border insolvency challenges.[38] The recognition framework enables courts to acknowledge foreign insolvency proceedings and determine their classification as either main or non-main proceedings based on the

[34] 93 F 3d 1036 (2d cir 1996).

[35] Olivier (n 24).

[36] UNCITRAL Model Law, preamble.

[37] Kent Anderson, *'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience'* (2000) 21 U Pa J Int'l Econ L 679.

[38] United Nations Commission on International Trade Law, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (United Nations 2010).

debtor's Center of Main Interests(COMI).[39] Courts are empowered to grant various forms of reliefs to assist foreign proceedings, ranging from automatic relief upon recognition of main proceedings to discretionary relief tailored to specific circumstances.[40]

The access provisions ensure that foreign representatives can seek direct court access without relying on cumbersome diplomatic channels. This eliminates the need for letters rogatory or consular procedures that would otherwise delay urgent insolvency actions.[41] Additionally, the Model Law facilitates participation of foreign creditors in domestic insolvency proceedings, ensuring they receive treatment equivalent to domestic creditors.[42]

The widespread adoption of the UNCITRAL Model Law reflects its practical utility in addressing real-world cross-border insolvency challenges.[43] States adopting the Model Law benefit from enhanced legal certainty, as businesses and creditors can better predict how cross-border insolvency situations will be handled.[44] The framework promotes efficient asset protection and recovery by enabling coordinated action across jurisdictions, potentially maximizing recoveries for all stakeholders.[45] Furthermore, adoption facilitates international cooperation, as jurisdictions with compatible frameworks can more readily assist each other in insolvency matters.[46]

[39] MLCBI, art 6-30.

[40] MLCBI, art 15; See generally UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (2nd edn, United Nations 2022).

[41] ibid.

[42] ibid, art 13-22.

[43] United Nations Commission on International Trade Law, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (United Nations 2010).

[44] ibid.

[45] Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience' (2000) 21 U Pa J Int'l Econ L 679.

[46] ibid 691-692.

3. ACT 1015 AND THE UNCITRAL MODEL LAW: GHANA'S FRAMEWORK

The promulgation of Act 1015 was motivated, to a large extent, by the recognition that Ghana's previous insolvency legislation was fundamentally inadequate for addressing contemporary commercial realities.[47] The absence of effective legal mechanisms for corporate rescue and cross-border coordination stifled private enterprise growth and economic development.[48] Act 1015 introduces comprehensive provisions for administration, restructuring, and official liquidation, representing a paradigm shift from the purely liquidation-focused approach of the previous regime.[49]

Ghana's adoption of the UNCITRAL Model Law demonstrates her commitment to international best practices and her recognition of the importance of cross-border commercial relationships.[50] This legislative choice positions Ghana as an attractive destination for international investment by providing predictable, internationally recognized procedures for handling insolvency matters involving foreign elements.[51]

3.1. Critical Examination of Sections 150-152

Section 150 of Act 1015 establishes the foundational framework for cross-border insolvency proceedings in Ghana.[52] The provision incorporates the essential elements of the UNCITRAL Model Law's recognition framework, enabling Ghanaian courts to acknowledge foreign insolvency proceedings and accord them appropriate legal effects.[53] The section establishes criteria for distinguishing between foreign main proceedings and foreign non-main proceedings. The former is a foreign proceeding that is taking place in the State where the debtor has its center of main interest, while the latter is a foreign proceeding taking place in a State where the debtor has 'an establishment'. The term 'establishment' means 'any place of operations

[47] Samuel Boadi Adarkwah, 'Making Rescue Choices for Financial Distress in Ghana: Lessons from Chapter 11 of U.S.A. Bankruptcy Code' (J.S.D. dissertation, Cornell University 2017).

[48] ibid; Samuel Boadi Adarkwah, 'The development of insolvency law in Ghana' (2016) 42(4) Commonwealth Law Bulletin 485, DOI: 10.1080/03050718.2017.1301826.

[49] Act 1015, s 1.

[50] Rosemary Anakwa Boadu, 'Why The Corporate Insolvency & Restructuring Act, 2020 (Act 1015) Makes Ghana The Preferred Destination For Investment' (GARIA, 20 October 2021) https://garia.org/why-the-corporate-insolvency-restructuring-act-2020-act-1015-makes-ghana-the-preferred-destination-for-investment/ accessed 21 June 2025.

[51] ibid.

[52] Act 1015, ss 150-152.

[53] ibid.

where the debtor carries out a non-transitory economic activity with human means and goods or services.'[54] Act 1015, following the Model Law, does not provide for other types of insolvency proceedings, for example those commenced in a State where there is only a presence of asset.

Section 151 defines the scope of application for cross-border insolvency proceedings under Act 1015.[55] This provision determines which types of proceedings and entities fall within the framework's coverage, establishing the boundaries of Ghana's cross-border insolvency regime.[56] The section incorporates the Model Law's broad approach to covered proceedings, encompassing various forms of collective insolvency proceedings whether for reorganization or liquidation.

Section 151 of Act 1015 provides that sections 150 and 152 apply in the following situations:

(a) *When a foreign country or foreign representative requests assistance in Ghana concerning a foreign insolvency proceeding.*

(b) *When a Ghanaian court or representative seeks assistance in a foreign country for an insolvency proceeding under Ghanaian law.*

(c) *When parallel insolvency proceedings are ongoing in both Ghana and another country involving the same company.*

(d) *When a foreign creditor or interested party seeks to initiate or participate in insolvency proceedings in Ghana concerning a company under this Act.*

However, these provisions do not apply to banks or financial institutions regulated under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

Section 152 addresses the procedural framework for cross-border insolvency proceedings, empowering the Rules of Court Committee to develop detailed procedural rules. This provision recognizes that the substantive framework established by the Model Law requires comprehensive procedural support to

[54] ibid; Article 17 of the MLCBI is the same as Ghana's section 151. The MLCBI does not provide for other types of insolvency proceedings, for example those commenced in a State where there is only a presence of assets. This was copied verbatim by Act 1015.

[55] ibid.

[56] ibid.

function effectively. The section specifically contemplates rules governing court practice and procedure, application processes, and mechanisms for giving effect to the Schedule provisions.

To be sure, the delegation of rule-making authority to the Rules of Court Committee creates both opportunities and challenges. While this approach enables flexible adaptation of procedures to Ghana's specific legal context, it also creates uncertainty until comprehensive rules are developed and implemented. These rules are yet to be rolled out almost five years after the CIRA was enacted. The absence of detailed procedural guidance, arguably, will hinder foreign representatives' ability to effectively navigate Ghana's cross-border insolvency framework.

3.2. A Thematic Analysis of the Schedule to Act 1015: The Model Law's Core Pillars

While section 152 gestures towards future procedural rules, the Schedule itself provides a robust, self-contained, and comprehensive substantive legal framework. It embodies the core pillars of the UNCITRAL Model Law, representing a radical departure from the pre-existing territorialist approach. This Schedule is, in effect, the operational code for Ghana's cross-border insolvency regime. A thematic analysis of its key provisions reveals a sophisticated structure designed to balance cooperation with sovereignty, providing a statutory answer to the very challenges of fragmentation and inefficiency that plagued the old order.

The Schedule's first revolutionary act is to provide streamlined, non-discriminatory access to Ghanaian courts. This is achieved through a trio of provisions. First, Paragraph 6 states unequivocally: 'A foreign representative may apply directly to the Court.'[57] This simple provision is the antidote to the historically cumbersome, costly, and time-consuming procedures requiring letters rogatory (formal judicial requests through diplomatic or consular channels), which often resulted in critical delays while assets were being dissipated.[58] Second, this is fortified by Paragraph 7, which provides a crucial incentive by guaranteeing limited jurisdiction.[59] This provision is of immense practical importance, as it neutralizes the fear that a foreign representative, by merely applying for recognition, would be deemed to have submitted to the general jurisdiction of the Ghanaian courts. This serves as a shield against exposing the entire global estate to a Ghanaian proceeding. By limiting jurisdiction to the scope of the application, the Schedule encourages

[57] Act 1015, Schedule, Par 6.

[58] This provision draws on the Model Law's principle of cooperation under Article 23-27.

[59] ibid, Para 7.

cooperation. Finally, the pillar establishes the bedrock of fairness and a core UNCITRAL principle of non-discrimination: Paragraph 10 grants foreign creditors the 'same rights as a Ghanaian creditor' to commence and participate in proceedings.[60] This directly strikes at the heart of the territorialist 'grab rule', dismantling the discriminatory 'ring-fencing' of local assets for local creditors that previously defined the landscape.

The Schedule adopts the Model Law's critical, and most debated, recognition mechanism. Paragraph 14 distinguishes between a foreign main proceeding (at the debtors' COMI) and a 'foreign non-main proceeding'.[61] This distinction is paramount, as it dictates the type of relief available. The true flashpoint for litigation, however, is the evidentiary presumption in Paragraph 13(3): 'the registered office of the debtor... is presumed to be the center of the main interests of the debtor.'[62] While this is a rebuttable presumption intended to provide speed and certainty, it is also the very mechanism that can be exploited for forum shopping—a key challenge identified later in this paper. This presumption creates the letterbox company problem, where a debtor's registered office may be in a jurisdiction (like Ghana) with perceived favorable laws, while its true operational and management center is elsewhere. The Ghanaian judiciary will thus be immediately tasked with navigating this complex area, determining when to look behind the registered office to find the true COMI. The Ghanaian courts will have to determine whether to adopt this, or another, line of reasoning to give content to the COMI concept.

Elsewhere, the COMI determination has been problematic giving rise to many differing opinions on the subject.[63] Courts have determined the COMI using various timing reference points[64], such as the date of the recognition application, the date of the recognition hearing, or the date of the foreign proceeding's filing.[65] This inconsistency creates uncertainty, raises litigation costs, and encourages forum shopping and potential manipulation by debtor companies. Some have argued that the COMI determination under the Model Law

[60] ibid, Para 10.

[61] ibid, Para 14.

[62] Act 1015, Schedule, Para 13(3). This provision is also a carbon copy of Article 16 of the MLCBI.

[63] For example, in the Oi group reorganization, the U.S. Bankruptcy Court for the Southern District of New York declined to recognize the Netherlands as the COMI or as the location of the foreign main proceedings under Chapter 15 of the U.S. Bankruptcy Code, despite a prior ruling by the Dutch Supreme Court affirming the Netherlands but not Brazil as the COMI, consistent with EU regulations on COMI determination.

[64] See *Re: Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] SGHC 53.

[65] The US and Singapore adopt the date of recognition application; the UK adopts the date of the recognition hearing whilst Australia adopts the date of the foreign proceeding filing as the determinant factors of the COMI.

is flawed and must be jettisoned in favor of a 'commitment rule' where the debtor company is made to identify its own COMI in its enabling constitution.[66]

The practical power of the Schedule is found in its graduated system of relief, which is often misunderstood and must be clearly differentiated. First, Paragraph 16 provides for 'provisional relief.'[67] This is the firefighting tool, available *after* an application is filed but *before* the court has formally recognized the proceeding. Based on a standard of urgency—to protect assets that are 'perishable, susceptible to devaluation or otherwise in jeopardy'—a court may grant temporary relief, such as staying execution. This allows the court to freeze the frame and prevent asset stripping while the recognition application is properly considered. Second, Paragraph 17 provides for automatic relief.[68] This is the big stick of the Model Law, its most significant concession to universalism. Upon recognition of a foreign main proceeding (and only a main proceeding), a powerful, broad-scoping moratorium is triggered automatically, without the need for a further court order. This stay halts all individual actions, executions against the debtor's assets, and suspends the right to transfer or dispose of any assets. This is the most significant incursion on the rights of local creditors, providing the foreign representative with the immediate, comprehensive breathing room needed to marshal assets and develop a plan. Third, Paragraph 18 provides for discretionary relief.[69] This flexible tool allows the court, upon recognition of any foreign proceeding (main or non-main), to grant 'any appropriate relief' necessary to protect assets or creditor interests. This paragraph allows the court to craft bespoke orders and can even include entrusting the administration and distribution of local assets to the foreign representative—a profound act of cooperation that moves well beyond mere recognition.

Finally, the Schedule provides the machinery for modified universalism and its necessary limits. Paragraph 22 explicitly empowers the Ghanaian Court to co-operate to the maximum extent possible with foreign courts and to communicate directly with them.[70] This, along with Paragraph 24, provides the statutory mandate for judicial comity, designed to prevent a fragmented scramble for assets and to encourage the

[66] See Anthony J. Casey, Aurelio Gurrea-Martínez and Robert K. Rasmussen, A Commitment Rule for Insolvency Forum, (Harvard-Wharton Insolvency and Restructuring Conference, September 2024) available at https://hls.harvard.edu/harvard-wharton-insolvency-and-restructuring-conference/ accessed 15/10/2025.

[67] Ibid, Para 16.

[68] Ibid, Para 17.

[69] Ibid, Para 18.

[70] Act 1015, Schedule, Paras 22, 24.

kind of inter-court coordination seen in the *Maxwell Communication* case. However, this cooperation is not absolute. The Schedule provides two critical safeguards. The first is the public policy exception in Paragraph 4, which permits a court to refuse an action if it is 'contrary to the public policy of Ghana.'[71] The utility of the entire framework will hinge on whether the judiciary interprets this narrowly (as intended by UNCITRAL, limiting it to fundamental breaches of justice, such as lack of due process)[72] or broadly (e.g., to protect local revenue claims or strategic industries), the latter of which could become a new form of territorialism.

The concept of public policy is not easily defined. Be that as it may, a careful review of case law will reveal that Ghanaian courts will refuse an action on grounds of public policy if the action is deemed to undermine the collective interests, moral standards, or institutional integrity of society.[73] In effect, Ghanaian court's will strike down an action if the act in question adversely affects public welfare or the public interest, or it may encourage behavior that is legally or morally unacceptable.[74] However, some judges have doubted the utility of this concept and sees it as an opportunity for judges to manufacture a caricatured conception of what the term really entails. In other words, they consider the term to be very fluid. For instance, in *New Patriotic Party v. Attorney General* (31st December Case),[75] Bamford Addo JSC, citing *Richardson v Mellish* (1824) 2 Bing 229, stated that public policy has been said to be an unruly horse. Earlier in *Egerton v Brownlow* (Earl) Parke B warned:[76]

> *. . . public policy' is a vague and unsatisfactory term, and calculated to lead to uncertainty and error, when applied to the decision of legal rights; it is capable of being understood in different senses; it may, and does, in its ordinary sense, mean 'political expedience,' or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education, habits, talents, and dispositions of each person, who is to decide whether an act is against public policy or not.*

[71] Ibid, Para 4.
[72] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (2nd edn, United Nations 2022) 19-20 [para 49-54].
[73] *Kessie v. Charmant* [1973] 2 GLR 194.
[74] *Ampofo v. Fiorin* [1981] GLR829.
[75] [1993-94] 2 GLR 35.
[76] (1853) 4 HL Cas 1 at 123 HL.

To be sure, as stated above, notwithstanding these sentiments, Ghanaian courts, have in many instances, nullified an action or transactions considered contrary to public policy. However, given the sweeping nature of the term, Ghanaian courts will be well advised to be guided by the interpretation given to the term by the International Trade Law Commission. The Commission insists that in cross-border insolvency, the term should be interpreted narrowly, limited to only fundamental breaches or conducts manifestly contrary to established constitutional guarantees.[77]

4. COMPARATIVE INSIGHTS: LESSONS FROM OTHER JURISDICTIONS

4.1. United Kingdom: Pioneering Implementation

The United Kingdom's implementation of the UNCITRAL Model Law through the Cross-Border Insolvency Regulations 2006, especially, the judicial interpretation of its provisions, provides valuable insights for Ghana's judiciary.[78] The UK adopted a wholesale incorporation strategy, enacting the Model Law through discrete secondary legislation rather than amending existing insolvency statutes.[79] This approach has facilitated the development of a substantial body of case law interpreting and applying the Model Law provisions.[80]

UK courts have adopted a progressive approach to Model Law interpretation, readily extending automatic relief available upon recognition of foreign main proceedings to provide comprehensive protection equivalent to domestic administration proceeding.[81] The English judiciary's willingness to confer investigation powers on foreign representatives equivalent to those available to domestic insolvency

[77] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (2nd edn, United Nations 2022) 19-20 [para 49-54].

[78] Cross-Border Insolvency Regulations 2006 (SI 2006/1030) (UK), s 2.

[79] Mark Craggs, 'The Model Law in Great Britain: Cross-Border Insolvency Regulations 2006' (Norton Rose Fulbright, June 2022) https://www.nortonrosefulbright.com/en/knowledge/publications/1d8e1fb5/the-model-law-in-great-britain-cross-border-insolvency-regulations-2006 accessed 21 June 2025

[80] ibid.

[81] *Cambridge Gas Transport Corporation v The Official Committee of Unsecured Creditors* (of Navigator Holding PLC and others) [2006] UKPC 26: Re *OJSC International Bank of Azerbaijan; Bakhshiyeva v Sberbank of Russia & Ors*. [2018] EWCA Civ 2802.

practitioners demonstrates the potential for expansive implementation.[82] However, the English Court of Appeal in *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux*[83] ruled that that a debt governed by English law cannot be discharged or compromised by a foreign insolvency proceeding without the creditor's consent. This applies regardless of whether the foreign proceeding takes place in Singapore, the United States, or any other jurisdiction. The rule provides that the discharge of a debt may only properly be determined by the governing law of the debt. The *Gibbs* rule creates a fundamental challenge for cross-border restructuring by requiring dual-track proceedings when English law-governed debt is involved. Debtors must conduct both the foreign restructuring in their home jurisdiction and parallel English proceedings, typically a scheme of arrangement or restructuring plan, to bind English law creditors.

The difficulty with the *Gibbs rule* is that it prevents a foreign insolvency proceeding, even one recognized under the UNCITRAL Model Law, from fully compromising or discharging English-law-governed debt unless the creditor consents. This creates the incentive for forum shopping and defensive creditor behavior. Creditors holding English-law debt can strategically rely on *Gibbs* to resist foreign restructurings, knowing they cannot be bound unless they are given a separate English-law process. Consequently, this rule could delay insolvency proceedings, increase litigation cost, and more fundamentally, and encourage opportunistic English actions.

4.2. South Africa: Challenges in Operationalization

South Africa's experience with the Cross-Border Insolvency Act 42 of 2000 illustrates the practical challenges that can impede Model Law implementation.[84] Despite being among the first countries to adopt the UNCITRAL Model Law, South Africa's framework remains largely inoperative due to the inclusion of a reciprocity clause requiring designation of foreign states.[85] This requirement means that the Act's cross-border provisions apply only to proceedings from designated jurisdictions, severely limiting its practical utility.[86]

[82] *Re Singularis Holdings Ltd v PricewaterhouseCoopers* [2019] UKSC 50.

[83] (1890) 25 QBD 399.

[84] Clinton Ras, 'The Future of the Cross-Border Insolvency Act 42 of 2000 in View of Developments Elsewhere' (LLM mini-dissertation, University of Pretoria 2014).

[85] Cross-Border Insolvency Act 42 of 2000, ss 1(i) & 2(2)(a).

[86] Ras (n 7).

Under the Model Law, there is no requirement of reciprocity. It is not envisaged that a foreign proceeding will be denied recognition solely on the grounds that a court in the State in which the foreign proceeding was commenced would not provide equivalent relief to an insolvency representative from the enacting State.[87] To be sure, the Model Law does not, however, prohibit states from making reciprocity a requirement in their laws.[88] Accordingly, while South Africa is well within her rights to impose a reciprocity requirement, her experience demonstrates the importance of avoiding overly restrictive implementation approaches that can undermine the Model Law's effectiveness.[89] The reciprocity requirement has prevented South African courts from providing assistance to foreign proceedings from non-designated jurisdictions, contrary to the Model Law's emphasis on promoting international cooperation.[90] This situation has resulted in continued reliance on common law principles for cross-border recognition, creating uncertainty and inconsistency.[91]

4.3. Kenya: A Model of Non-Reciprocal Adoption and Judicial Sophistication

Within the East African Community, Kenya's enactment of the Insolvency Act, No 18 of 2015, marks a watershed moment in its insolvency law. The Act consolidated and modernized a previously fragmented legal landscape, repealing the outdated Bankruptcy Act and the winding-up provisions of the old Companies Act. Crucially, it provides a powerful counterpoint to the challenges seen in reciprocity-based systems, stating explicitly that '[t]he United Nations Commission on International Trade Law (Model Law on Cross-Border Insolvency) has the force of law in Kenya in the form set out in the Fifth Schedule.'[92] This direct incorporation, without the reservation of reciprocity, represents a clear and unambiguous legislative choice to embrace the cooperative, non-reciprocal philosophy that underpins the Model Law.

This 'plug-and-play' approach involved a near-verbatim transposition of the Model Law, demonstrating remarkable textual fidelity and prioritizing rapid alignment with international standards. Key provisions are replicated directly: Paragraph 11 of the Fifth Schedule, for instance, mirrors Article 9 of the Model Law,

[87] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (2nd edn, United Nations 2022) 19-20 [para 49-54].

[88] Other countries with reciprocity requirements include Mexico, Romania, Mauritius and Uganda.

[89] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (2nd edn, United Nations 2022) 19-20 [para 49-54].

[90] ibid.

[91] ibid.

[92] Kenya Insolvency Act (No 18) 2015, Fifth Schedule.

guaranteeing a foreign representative the right to 'apply directly to the Court' and thus removing cumbersome traditional procedures like letters rogatory. Similarly, Part 3 of the Schedule reproduces the Model Law's recognition regime, while Paragraph 22 adopts the automatic stays stipulated in Article 20. While this method inherently imports any ambiguities from the Model Law (such as the precise definition of COMI), it provided a clear and solid foundation. Furthermore, it placed the onus on the Kenyan judiciary to develop the relevant jurisprudence, albeit with a hindsight from other Model Law jurisdictions.

The practical application of this framework was clarified in the High Court matter of *Zarara Oil and Gas Company Limited*,[93] a Mauritian company with assets in Kenya. The Kenyan High Court affirmed that recognition of the Mauritian liquidation was a straightforward matter, contingent only 'upon the liquidator providing proof of his appointment and the existence of the foreign proceeding, as required by the Fifth Schedule.' The court correctly viewed its role not as a competing jurisdiction but as one of assistance, complementary to the authority of the Supreme Court of Mauritius.[94] Significantly, the High Court held that upon recognition, the foreign liquidator possessed powers similar to those of a liquidator appointed under Kenyan law, a determination that gives practical effect to the principle of access and empowers foreign representatives to act effectively within Kenya.

However, the court did not simply grant recognition and cede all control. Instead, it demonstrated a proactive and pragmatic approach by crafting a 'bespoke set of reliefs'[95] that operationalized the 'modified universalism' principle underpinning the Model Law. These reliefs included mandating virtual access for Kenyan creditors, requiring regular progress reports to be filed in the Kenyan court, and ring-fencing local assets from unilateral removal.[96] This active case management demonstrates a sophisticated understanding that the goal of the Model Law is not the wholesale surrender of jurisdiction, but the creation of a predictable and fair process for all stakeholders. This synthesis of clear legislation and pragmatic, intelligent judicial oversight positions the Kenyan judiciary not as a passive recipient of a model statute, but as a proactive contributor to the evolving international jurisprudence. It makes Kenya's implementation a

[93] *Re Zarara Oil & Gas Company Ltd* [2021] KEHC 191 (KLR).
[94] ibid [25] – [30].
[95] ibid [32].
[96] *Re Zarara Oil* (n 87).

regional benchmark, demonstrating how an active judiciary can fill procedural gaps and build legal certainty—a key lesson for Ghana's challenge of 'limited judicial familiarity.'

4.4. Uganda: A Cautionary Tale of Conflicting Legislative Frameworks

Uganda's journey with the Model Law serves as a powerful cautionary tale regarding the perils of legislative compromise,[97] amplifying the concerns raised by South Africa's experience. Uganda's Insolvency Act of 2011 created a dualistic and internally conflicted legislative structure within Part IX, which is dedicated to cross-border insolvency. This legislative architecture stands as a stark 'legislative fossil record,' capturing two distinct and philosophically opposed eras of legal thought layered together without proper reconciliation.

The Act incorporated two incompatible regimes. First, it established a legacy reciprocity system[98] predicated on the traditional, territorialist principle of reciprocity. This framework empowers the responsible Minister to designate another country as a reciprocating State only after being satisfied that its laws provide for reciprocal treatment. This regime was further entrenched by a provision stipulating that the procedural rules for this entire part of the Act could not come into force until the Chief Justice declared that reciprocating States had enacted similar rules. Second, immediately following this legacy regime, the Act pivoted dramatically and introduced a near-verbatim adoption of the modern UNCITRAL Model Law.[99] This second framework included all the Model Law's progressive tenets: the right of direct access for a foreign representative to the High Court, a detailed process for recognition of foreign main and non-main proceedings, provisions for automatic and discretionary relief, and a clear mandate for cooperation with foreign courts and representatives.

The central flaw in this drafting was the unresolved conflict between these two regimes. The reciprocity requirement articulated in the first part functioned as a stringent precondition[100] that effectively neutralized the modern, non-reciprocal framework contained in the second part. This created a practical impasse: for instance, despite both Uganda and Kenya (its neighbor and key trading partner within the East African

[97] See Chrispas Nyombi, Alexander Kibandama and David James Bakibinga, 'The Motivations behind the Uganda Insolvency Act, 2011' (2014) 8 Journal of Business Law 651–66.

[98] Uganda Insolvency Act (Act No 14) 2011, ss 212–225.

[99] ibid, ss 226–252.

[100] Uganda Insolvency Act (Act No 14) 2011, s 212.

Community) having adopted Model Law provisions, meaningful judicial cooperation between them remained impossible. The necessary ministerial declaration designating Kenya as a reciprocating State under Ugandan law was never forthcoming,[101] rendering the modern provisions of the Act entirely inoperative. This resulted in a decade of legal inoperability for a critical component of the country's commercial law, frustrating the very certainty the Model Law was designed to create.

Recognizing this fundamental deficiency, the Ugandan Parliament finally moved to rectify the issue with the Insolvency (Amendment) Bill of 2022. The most critical provision of this Bill was its proposal to outright repeal the entire reciprocity-based system.[102] The explanatory memorandum accompanying the Bill was explicit in its reasoning, stating the repeal was intended 'to fully incorporate and adopt the UNCITRAL Model Law, an international best practice on cross-border insolvency which does not require reciprocity.' Uganda's experience underscores the critical principle that for international model laws to be effective, their adoption must be holistic. It is not enough to add new text; conflicting legacy provisions must be decisively removed to ensure functionality. This serves as a stark warning for Ghana, illustrating that any ambiguities or gaps in Act 1015 must be addressed decisively to avoid similar legislative paralysis.

4.5. India: Evolving Framework for Developing Economies

India's Insolvency proceedings are governed by the Insolvency and Bankruptcy Code, 2016 (IBC). India has not adopted the provisions of the Model law. However, the IBC contains two modest provisions dealing with cross-border assets and arrangements. Section 234 provides that the Government of India may enter into agreements with other countries for making provisions in the IBC applicable with respect to assets or property of a corporate debtor situated outside India (i.e., for reciprocal arrangements) and may prescribe conditions.[103]

Section 235 allows a resolution professional, liquidator or bankruptcy trustee (in a domestic insolvency proceeding) to apply to the adjudicating authority for a 'letter of request' to a foreign court/authority in a

[101] MMAKS Advocates, 'Cross Border Insolvency: Is East Africa Ready?' (*MMAKS Advocates*, 24 July 2017) https://www.mmaks.co.ug/articles/2017/07/24/cross-border-insolvency-east-africa-ready accessed 14 October 2025.

[102] See Insolvency (Amendment) Bill 2022 (Uganda), Clause 24; Parliament of Uganda, *Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Insolvency (Amendment) Bill, 2022* (August 2022) 2.

[103] Insolvency and Bankruptcy Code, 2016, s 234.

country with which a reciprocal arrangement exists, in relation to evidence or action in respect of assets situated outside India.[104] However, since the Acts's adoption, there have been very little cooperation or reciprocity agreements—a similar problem identified with the Ugandan Act.[105] Absent reciprocity agreements, the Courts have been forced to rely on principles in the Civil Code and comity to fashion out rules for cross-border cases on a case by case basis.[106]

In 2019, the National Company Law Appellate Tribunal (NCLAT) in Mumbai admitted *Jet Airways'*[107] insolvency despite ongoing Dutch proceedings, refusing to recognize the foreign case due to the absence of reciprocal arrangements under the IBC. However, the NCLAT later promoted cooperation between the Indian and Dutch insolvency representatives, leading to the Proposed Cooperation Model—India's first informal instance of cross-border insolvency coordination without a formal treaty.

That same year, the NCLT ordered the consolidation of insolvency proceedings for thirteen Videocon Group companies, invoking the principle of substantial consolidation to treat them as a single entity.[108] This approach, inspired by international practice, eventually extended to the group's foreign subsidiaries, thereby improving asset recovery and resolution prospects.

In contrast, the *Kingfisher Airlines* case exposed the inability of Indian creditors to recover overseas assets due to the lack of cross-border insolvency laws or reciprocal treaties.[109] Similarly, in *Sumikin Bussan v. King Shing Enterprises*,[110] the Bombay High Court refused to halt enforcement of an Indian decree despite the

[104] ibid s 235.

[105] Bahram Vakil, Suharsh Sinha, Amrita Sinha, & Arzan Zarolia, 'Legislating for Cross-Border Insolvency in India' (2021) < https://www.azbpartners.com/bank/legislating-for-cross-border-insolvency-in-india/?utm_source=chatgpt.com>accessed November 4 2025.

[106] Suprava Sahu, Aishani Agarwal, 'India's Cross-Border Insolvency Puzzle: Between Global Integration and Domestic Hesitation' (2021)< https://www.irccl.in/post/india-s-cross-border-insolvency-puzzle-between-global-integration-and-domestic-hesitation?utm_source=chatgpt.com>accessed November 4, 2025.

[107] *Jet Airways (India) Limited vs State Bank Of India & Anr* on 26 September, 2019

[108] *State Bank of India v. Videocon Industries Limited* delivered August 2019.

[109] *State Bank of India and Ors vs Kingfisher Airlines Ltd. And Ors* on 9 May 2017; Despite court orders, Mallya's partial disclosures and offshore transfers like USD 40 million to his children's foreign trusts hindered recovery. Indian authorities lacked access to effective mechanisms such as the UNCITRAL Model Law, leaving them to rely on slow diplomatic efforts.

[110] *Sumkin Bussan International (Hong ... vs King Shing Enterprises Ltd. And Anr. on* 27 June 2005

company's bankruptcy in Singapore, prioritizing Indian law and domestic creditor rights over foreign insolvency proceedings.

Collectively, these cases reveal the deep deficiencies in India's cross-border insolvency framework. Courts have been compelled to rely on discretionary, *ad hoc* solutions because India has neither adopted the UNCITRAL Model Law nor implemented reciprocal agreements under Sections 234–235 of the IBC.[111] The result has been forum shopping, inconsistent decisions, and prolonged uncertainty in cross-border insolvency matters. India's experience, like that of Uganda, highlights the need for developing economies to move beyond bilateral approaches toward comprehensive adoption of international frameworks like the UNCITRAL Model Law. The fragmented nature of India's current approach has resulted in judicial uncertainty and inconsistent outcomes, particularly disadvantaging foreign creditors.[112]

4.6. Singapore: Statutory Clarity and Coordination

Singapore has adopted the **Insolvency, Restructuring and Dissolution Act 2018** (IRDA). Singapore first incorporated the Model Law through amendments to the *Companies Act* (Cap 50) in 2017, and subsequently consolidated it within the IRDA 2018, thereby establishing itself as a 'Model Law jurisdiction' and a regional hub for cross-border restructuring.[113] The regime provides a comprehensive statutory foundation for recognizing foreign insolvency proceedings, granting access to foreign representatives, and fostering judicial cooperation.[114] Singaporean jurisprudence has further clarified key Model Law concepts—particularly the *centre of main interests* (COMI) and the definition of a 'foreign proceeding'—thus ensuring

[111] Suprava Sahu, Aishani Agarwal, 'India's Cross-Border Insolvency Puzzle: Between Global Integration and Domestic Hesitation' (2021)< https://www.ircci.in/post/india-s-cross-border-insolvency-puzzle-between-global-integration-and-domestic-hesitation?utm_source=chatgpt.com>accessed November 4, 2025.

[112] ibid.

[113] Norton Rose Fulbright, 'Singapore – The New Jurisdiction of Choice for Cross-Border Restructuring' (Norton Rose Fulbright, 2024)< https://www.nortonrosefulbright.com/en/knowledge/publications/217d13aa/singapore---the-new-jurisdiction-of-choice-for-cross-border-restructuring >accessed 4 November 2025.

[114] Singapore Academy of Law Journal, 'Developments in Cross-Border Insolvency and Restructuring under the Insolvency, Restructuring and Dissolution Act 2018' (2023) *Singapore Academy of Law Journal (Special Issue)* https://journalsonline.academypublishing.org.sg accessed 4 November 2025.

greater predictability and uniformity in application.[115] I*n re Fullerton Capital Ltd*,[116]for instance, a BVI-incorporated company entered into insolvency proceedings in the British Virgin Islands (BVI). The liquidators sought recognition of the BVI liquidation as a *foreign main proceeding* in Singapore under the UNCITRAL Model Law on Cross-Border Insolvency, as adopted in the IRDA. A former director challenged the application, arguing that the company's center of main interests (COMI) was not in the BVI.

The Singapore Court of Appeal confirmed that the starting point of the analysis is that a debtor's COMI is presumed to be at its registered office and clarified that this presumption can only be rebutted if the party challenging it proves, on a balance of probabilities, that another jurisdiction has a comparatively stronger connection to the debtor. The court also clarified that the relevant time for assessing COMI is the date of the recognition application, and that the actions of foreign representatives' post-commencement may be relevant. The Court of Appeal clarified that this presumption serves as the mandatory starting point for any COMI inquiry, not merely as a secondary or default consideration. The party contending that the COMI lies elsewhere bears the legal burden of disproving the presumption on the balance of probabilities.

However, if the party contending the COMI introduces objective evidence that points to a different or alternative venue, the presumption may be rebutted. The objective evidence must show substantial connection with the alternative venue. Some of the factors considered include, carrying on business in Singapore, having substantial assets in Singapore or having Singapore law-governed finance documents.[117] This increases the options available to foreign companies wishing to restructure their indebtedness and, in light of the relative ease with which foreign companies and their financial creditors will be able to establish a substantial connection with Singapore (for example, by changing the governing law of the relevant financing documents).

Moreover, by introducing the notion of a 'substantial connection', the IRDA permits foreign companies with meaningful economic ties to Singapore—such as assets or Singapore-law-governed finance documents—

[115] A&O Shearman, 'Interpreting the UNCITRAL Model: Singapore Courts Adopt a Uniform, Consistent and Expansive Approach' (A&O Shearman, 2024) https://www.aoshearman.com/insights/interpreting-the-uncitral-model-singapore-courts-adopt-a-uniform-consistent-and-expansive-approach accessed 4 November 2025.

[116] [2025] SGCA 11.

[117] Norton Rose Fulbright (n 113).

to access its restructuring regime.[118] This inclusivity, together with institutional innovations like specialist insolvency benches and participation in the Judicial Insolvency Network (JIN), has strengthened court-to-court cooperation and enhanced Singapore's reputation as an international restructuring hub.[119]

The key lesson for other jurisdictions, including Ghana, is that adoption of the Model Law should occur as part of a broader insolvency and restructuring reform program, encompassing procedural clarity, institutional capacity, and practitioner training.[120] Singapore's experience also demonstrates the importance of balancing international cooperation with domestic creditor protection through carefully drafted public policy exceptions and jurisdictional gateways.[121]

5. CHALLENGES AND GAPS IN GHANA'S IMPLEMENTATION

Ghana's implementation of the UNCITRAL Model Law, while in its nascent stage stands to face significant challenges in reconciling domestic commercial laws with foreign insolvency proceedings. Conflicts in property law are particularly foreseeable, given the fragmented nature of Ghana's land administration system—where multiple registries, overlapping customary interests, and inconsistent record-keeping can complicate the recognition or enforcement of foreign insolvency orders affecting assets situated in Ghana. Many Model Law jurisdictions operate unified, notice-based systems with predictable priority rules. While in Ghana, we do have priority rules, Ghana's framework still grapples with issues such as dual registration requirements, delays in perfecting security interests, and uncertainties surrounding the priority of customary land rights. For instance, security registration, depending on its nature, may be required to be registered under the Companies Act, 2019 (Act 992), the Land Act, 2020 (Act 1036), the Mortgages Act, 1972

[118] ibid.

[119] Foo Maw Shen, 'Cross-Border Insolvency in Singapore' (International Association of Defence Counsel, 2023) https://www.iadclaw.org/assets/1/7/13.1-_Foo_Maw_Shen-_Cross-border_Insolvency_in_Singapore.pdf accessed 4 November 2025.

[120] Dentons Rodyk, 'Singapore's New Insolvency Law: A Status Report on the Progress of the New Regime' (Dentons Rodyk, 23 June 2021) https://dentons.rodyk.com/en/insights/alerts/2021/june/23/singapore-new-insolvency-law-a-status-report-on-the-progress-of-the-new-regime accessed 4 November 2025.

[121] Norton Rose Fulbright, 'Singapore – A Model Law Jurisdiction: The Turnaround Decision in *Re Ascentra Holdings Inc*' (Norton Rose Fulbright, 2024) https://www.nortonrosefulbright.com/en/restructuring-touchpoint/blog/2024/04/singapore---a-model-law-jurisdiction---part-1---the-turnaround-decision-in-re-ascentra-holdings-inc accessed 4 November 2025.

(NRCD 96), and the Borrowers and Lenders Act, 1020 (Act 1052). The challenge here is that it is uncertain whether registration under one Act, without registering under the other, renders the registration void. Thus, the structural divergences may affect the extent to which Ghanaian courts are willing to recognize or give effect to foreign insolvency proceedings, thereby posing practical and doctrinal challenges to achieving the degree of cross-border cooperation envisioned by the Model Law.

Additionally, these legal conflicts create substantial uncertainty for both foreign representatives and domestic stakeholders. Without clear guidance on how conflicts between Ghana's domestic laws and foreign proceeding requirements should be resolved, courts may reach inconsistent decisions that undermine legal predictability. The absence of specific conflict-of-laws rules for cross-border insolvency situations exacerbates these challenges. Perhaps, this is one of the areas the Rules of Court Committee should consider when formulating rules to operationalize the provisions of Act 1015.

Another area of potential conflict is assuming jurisdiction over foreign immovable property. Considering that the long-standing rule of the common law is that jurisdiction over immovable property is territorial, there is a lingering question of whether this rule would be relaxed for the purposes of cross-border insolvency proceedings in Ghana.[122] Act 1015 provides little guidance on this. Judicial decisions continue to emphasize the common law position that Ghanaian courts have no jurisdiction over foreign immovable property save, in cases of fraud.[123]

Further, the specialized nature of cross-border insolvency law requires judges to understand complex concepts such as center of main interests, automatic recognition effects, and international cooperation principles. Without adequate training and experience, judges may struggle to apply these concepts consistently and effectively.

The lack of specialized insolvency courts in Ghana compounds these challenges. Unlike jurisdictions with dedicated commercial or insolvency courts, Ghana's general court system may lack the concentrated expertise necessary for handling complex cross-border insolvency matters. This situation can result in delayed proceedings, inconsistent interpretations, and suboptimal outcomes for stakeholders.

[122] *The British South African Co v. The Companhia De Mozambique* [1893] AC 602.

[123] *Gilbert Anyetei v. Susan Anyetei* (2023) JELR 110978 (SC).

Also, foreign representatives seeking to invoke Ghana's cross-border insolvency framework may face significant procedural challenges due to gaps in implementation guidance. The absence of detailed procedural rules governing recognition applications, evidence requirements, and ongoing obligations creates uncertainty about how to effectively utilize the framework.

These procedural gaps are particularly problematic given the time-sensitive nature of many cross-border insolvency situations. Foreign representatives may require immediate relief to preserve assets or prevent competing proceedings, but unclear procedures can impede swift action. The lack of standardized forms and processes may also increase costs and complexity for foreign representatives.

Ghana's current cross-border insolvency framework may inadvertently create opportunities for forum shopping that could undermine the system's integrity.[124] The absence of clear guidance on COMI's determination may enable debtors to manipulate their apparent center of main interest to access Ghana's insolvency procedures.[125]

Forum shopping poses significant risks to the credibility and effectiveness of Ghana's insolvency system. For instance, if Ghana becomes perceived as offering inappropriately favorable treatment to certain parties, it may attract abusive proceedings that damage stakeholder confidence.[126] Conversely, if Ghana's procedures are seen as unpredictable or disadvantageous, legitimate cases may avoid the jurisdiction, reducing the system's utility.

The framework's approach to protecting local creditors' rights in transnational cases requires careful evaluation. While the UNCITRAL Model Law emphasizes equal treatment of creditors regardless of nationality, local creditors may have legitimate concerns about their ability to participate effectively in foreign-dominated proceedings. Language barriers, unfamiliar procedures, and limited access to information may disadvantage local creditors.

[124] Myriam Mailly, 'Applying the Regulation (EU) 2015/848 on insolvency proceedings (Part 3)' *Eurofenix*.

[125] Ibid.

[126] Louise Webb and Matthew Butter, 'Forum shopping in insolvency proceedings', Practical Law UK Practice Note 6-501-3377, Thomson Reuters (2025).

6. RECOMMENDATIONS FOR STRENGTHENING GHANA'S CROSS-BORDER INSOLVENCY SYSTEM

Ghana should prioritize the development of comprehensive supplementary regulations to clarify procedural ambiguities in its cross-border insolvency framework. These regulations should provide detailed guidance on recognition criteria, evidence requirements, and procedural steps for foreign representatives. Specific attention should be paid to developing clear conflict-of-laws rules for situations, were Ghana's domestic commercial laws conflict with foreign proceeding requirements.

The regulations should establish standardized forms and procedures to reduce uncertainty and administrative burdens. Clear timelines for court decisions on recognition applications would enhance predictability and enable more effective case management.[127] Additionally, the regulations should address coordination mechanisms for cases involving multiple jurisdictions to minimize conflicts and duplicated efforts.

Ghana should implement comprehensive training programs for judges and legal practitioners focusing on cross-border insolvency law and international best practices. These programmes should cover fundamental concepts such as center of main interests' determination, recognition criteria, and cooperation mechanisms. Training should also address comparative approaches from other jurisdictions to provide broader perspective on implementation challenges and solutions.

Ghana should consider establishing specialized insolvency courts or designated commercial court divisions with expertise in insolvency matters. Specialized courts offer numerous advantages, including concentrated expertise, consistent interpretation of legal principles, and enhanced efficiency in case management. These courts could develop specialized procedures tailored to the unique requirements of cross-border insolvency cases.[128] The implementation of specialized courts would require careful consideration of Ghana's judicial structure and resource constraints. A phased approach might involve initially designating specific judges to

[127] A Vanathi, 'Comparative Analysis of Cross Border Insolvency' (2025) 10(4) IJNRD 639; Fancy Chepkemoi Too, *A Comparative Analysis of Corporate Insolvency Laws: Which Is the Best Option for Kenya?* (PhD thesis, Nottingham Trent University 2015) https://ppl-ai-file-upload.s3.amazonaws.com/web/direct-files/attachments/73916035/890d0ebf-ee02-4fd7-ab86-6e94a93a35fa/Thesis-post-viva-FINAL.pdf accessed 21 June 2025.

[128] Ibid.

handle insolvency matters before transitioning to fully specialized courts. Training and capacity building would be essential to ensure that specialized judges possess the necessary expertise.

Finally, Ghana should also actively pursue bilateral agreements and cooperation protocols with key trading partners to enhance cross-border insolvency coordination. These agreements could establish frameworks for judicial cooperation, information sharing, and mutual recognition of proceedings Protocols should address practical issues such as communication procedures, evidence gathering, and asset recovery coordination.[129]

7. CONCLUSION

We have demonstrated that Ghana's adoption of the UNCITRAL Model Law through Act 1015 represents a significant advancement in the country's insolvency regime and demonstrates its commitment to international commercial law harmonization. The framework established by Sections 150-152 provides a foundation for addressing cross-border insolvency challenges and facilitating international cooperation in insolvency matters.

The comparative analysis of implementation experiences in the United Kingdom, South Africa, Kenya, Uganda, India, and Singapore reveal both opportunities and pitfalls that Ghana can learn from. The UK's progressive judicial interpretation demonstrates the potential for expansive Model Law application. This is reinforced by Kenya's experience, where a sophisticated judiciary has pragmatically filled procedural gaps. Conversely, the operationalization challenges in South Africa, amplified by Uganda's cautionary tale of legislative conflict, highlight the critical importance of avoiding restrictive or ambiguous implementation approaches. India's bilateral agreement approach illustrates the limitations of piecemeal solutions, while Singapore's cooperation protocols show the value of supplementary mechanisms.

[129] Lee Shih and Ashok Kumar, 'Cross-Border Restructuring and Insolvency Between Singapore and Malaysia' (Centre for Commercial Law in Asia, 18 July 2024)https://ccla.smu.edu.sg/sgri/blog/2024/07/18/cross-border-restructuring-and-insolvency-between-singapore-and-malaysia accessed 21 June 2025.

The challenges identified in Ghana's implementation, including domestic law reconciliation difficulties, limited judicial familiarity, procedural gaps, forum shopping risks, and local creditor protection concerns, require comprehensive responses. The recommended solutions encompass regulatory development, judicial training, institutional reform and bilateral cooperation.

As global economic integration continues to deepen, the importance of effective cross-border insolvency frameworks will not only increase Ghana's commitment to international best practices through Act 1015, but positions the country to benefit from enhanced investor confidence, improved creditor recovery, and more efficient resolution of financial distress. However, realizing these benefits, as we have argued, require addressing the implementation challenges identified in this analysis through sustained effort and international cooperation.