NAVIGATING THE TERRA INCOGNITA OF CROSS-BORDER INSOLVENCY: CENTRE OF MAIN INTERESTS AND THE GLOBAL ORCHESTRA OF DEBT

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The intricate dance of cross-border insolvencies continues to be a complex choreography, with the Centre of Main Interests ('COMI') acting as the enigmatic conductor directing the global orchestra of debt recovery. As we enter 2024, a fresh wave of legal developments and evolving interpretations by leading jurisdictions necessitates a renewed examination of this pivotal concept. This paper embarks on a journey through the uncharted territory of cross-border insolvency landscapes, focusing on the ever-shifting sands of COMI. Through a comprehensive analysis of the disparate interpretations of COMI of global insolvency powerhouses such as the United States, the United Kingdom, and Singapore, the paper highlights the convergence and divergence in their approaches and their impact on global debt recovery efforts. The analysis illuminates the nuanced dance between national sovereignty and international cooperation, exploring the delicate balance between protecting local creditors and ensuring efficient asset realisation for the global pool of stakeholders. Additionally, it critically examines the emerging trends and challenges the growing digital economy presents and its implications for COMI determination in cross-border insolvency cases. The paper proposes insightful recommendations for navigating this uncertain terrain, advocating for greater harmonisation and predictability in COMI application across jurisdictions. Ultimately, it aims to foster a deeper understanding of COMI's evolving role in the global debt recovery orchestra by dissecting leading jurisdictions' legal manoeuvres and proposing solutions for harmonisation.

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I. INTRODUCTION

The Finance Ministry's optimistic projection of economic growth exceeding 6.5% for the fiscal year ending Mar. 31st, 2024, bolstered by the expansion of multinational corporations,[1] presents a notable juxtaposition against the Centre for Economics and Business Research ('CEBR')'s forecast anticipating a surge in business insolvencies from 28,000 to 33,000 within the same period.[2] As the global economic landscape undergoes continuous transformation, the intricacies associated with cross-border insolvencies correspondingly evolve. Though the historic case of *Rajah of Vizianagaram v Official Receiver, Vizianagaram* (1962)[3] remains a cornerstone of early cross-border insolvency jurisprudence in independent India, the more recent case of J*et Airways (India)*

[1] Prashant Prabhakar Deshpande, 'Indian Economy in 2024: In the eyes of multilateral institutions, rating agencies and global financial majors' *Times of India* (13 January 2024) <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/indian-economy-in-2024-in-the-eyes-of-multilateral-institutions-rating-agencies-and-global-financial-majors/> accessed 2 March 2024.

[2] 'Over 33,000 business insolvencies predicted in 2024' (*Credit-Connect* 6 February 2024) <https://www.credit-connect.co.uk/news/over-33000-business-insolvencies-predicted-in-2024/#:~:text=The%20Centre%20for%20Economics%20and,the%20last%20quarter%20of%202023> accessed 2 March 2024.

[3] *Rajah of Vizianagaram v Official Receiver, Vizianagaram* [1962] 2 SCJ 237, AIR 1962 SC 500.

Limited v State Bank of India & Anr. (2019)[4] has further refined contemporary understandings.

A concept of paramount importance within the framework of modern cross-jurisdiction insolvency proceedings is the determination of the Centre of Main Interests ('COMI'). The seminal case of Daisytek-ISA Ltd (2003)[5] and others exemplifies this, wherein the Hon'ble Court, guided by Article 3(1) of the European Union ('EU') Regulation,[6] established COMI as the nexus of the company's 'registered office' and 'principal place of business operations.' This determination prompts a fundamental inquiry: what constitutes COMI, and what are the broader ramifications of its identification?

COMI, a principle referred to, but not explicitly enshrined, in the UNCITRAL Model Law on Cross-Border Insolvency ('Model Law'),[7] functions as the jurisdictional linchpin for resolving the insolvency of transnational corporate debtors and signifies the primary locus where a company habitually conducts its commercial activities and manages its interests. While COMI lacks a precise statutory definition, it is traditionally presumed to coincide with the company's registered office, barring the presence of substantial contradictory evidence.[8] The meticulous determination of COMI mandates a comprehensive evaluation of factors spanning the geographical distribution of operations, assets, and key management figures. Such an approach facilitates unambiguously identifying the central node of the corporate debtor's operations, thereby promoting the equitable and expeditious determination of cross-border insolvency cases.[9]

Consider a multinational technology conglomerate, Innovatech, specialising in cloud computing solutions with its corporate headquarters in London, United Kingdom, its extensive research and development facilities in Silicon Valley, California, and large-scale manufacturing occurs in Singapore,

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[4] *Jet Airways (India) Ltd v State Bank of India & others* [2019] Company Appeal (AT) (Insolvency) No. 707 of 2019.

[5] *Re Daisytek-ISA Ltd* [2003] BCC 562.

[6] European Union Regulation 1/2003, art 3(1).

[7] UNCITRAL Model Law on Cross-Border Insolvency 1997.

[8] Ignacio Tirado, 'An Evolution of COMI in the European Insolvency Regulation: From 'Insolvenzimperialismus' to the Recast' (2015) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2688169> accessed 2 March 2024.

[9] Sefa M. Franken, 'Cross-Border Insolvency Law: A Comparative Institutional Analysis.' (2014) 34 (1) Oxford Journal of Legal Studies 97 <http://www.jstor.org/stable/24562810> accessed 2 March 2024.

while India housing its massive customer service and back-office operations centre. Owing to a global economic downturn or other unfortunate events, Innovatech faces severe liquidity shortages with substantial debt spread across its various global operations, giving rise to the crucial question: Which country should handle its insolvency proceedings?

Realising the vitality of COMI, this paper embarks on a comprehensive exploration of COMI standards across jurisdictions, unravelling the multifaceted methodologies employed in its determination. By delving into the approaches adopted by key players such as the United Kingdom (UK), United States (US), Singapore, and India, this study elucidates convergences, divergences, and the ensuing global challenges impacting the efficacy of the international debt recovery mechanism. Embracing the dynamic nature of the digital economy, this analysis encapsulates the shifting paradigms in corporate governance and operational structures, providing insights into the evolving complexities of COMI determination.

In traversing the complexities, this paper not only offers a scholarly examination of existing methodologies but also endeavours to provide strategic recommendations aimed at fostering coherence and fairness in international insolvency proceedings. Through this academic inquiry, the paper seeks to contribute to the ongoing discourse surrounding cross-border insolvency, offering insights and guidance amidst the evolving digital landscape and its implications for global commerce. The research seeks to address the challenges of COMI determination in a progressively interrelated and digital world, ensuring the effectiveness and fairness of international insolvency proceedings.

II. OVERTURE: THE CONUNDRUM OF COMI IN A CHOREOGRAPHED CHAOS

Determining the COMI is central in cross-jurisdictional insolvencies as it plays a significant role in determining the competent court to open insolvency proceedings, i.e., which country's courts have primary governance/jurisdiction over the proceedings.[10] Likewise, COMI provides for a single reference point for coordinating proceedings and ensuring cooperation between different jurisdictions. In doing so, it streamlines the course and protects the requirements of all involved entities and provides breathing room for the debtor

[10] Ignacio Tirado (n 8).

to allow insolvency practitioners to assess the situation and develop a restructuring plan without creditors pursuing individual claims.[11]

In order to entirely grasp and effectively address the potential for conflict and complexity in mixed jurisdiction insolvency proceedings, a nuanced understanding of the multifaceted approaches and standards employed in COMI determination is essential:

A. Incorporation Theory

The incorporation theory, a traditional approach to determining the jurisdiction for insolvency proceedings, posits that the court of the place where the corporate debtor was incorporated should have jurisdiction. This principle, entrenched since the genesis of corporate structures, is upheld in cases such as Singularis Holdings Ltd v. Price Water House Coopers.[12] However, its application has revealed shortcomings in multinational group insolvencies.

In instances like Hooley Ltd,[13] where group companies operate globally but are incorporated in a single jurisdiction, courts may face complexities in applying this theory. Despite lacking substantial assets or operations within the incorporating jurisdiction, courts might still exercise jurisdiction, leading to parallel proceedings and challenges to achieving universalism in insolvency resolution.

While the incorporation theory offers pre-existing predictability and aims to deter jurisdictional disputes, its reliance solely on the place of incorporation overlooks economic substance and connectivity. The concept of COMI has emerged as an alternative, acknowledging that the incorporation site may not always reflect the actual economic reality of multinational corporations ('MNCs'). Legislative frameworks like the EU Regulation and UNCITRAL Model Law on Cross-border Insolvency have incorporated COMI principles, presuming the registered office as COMI unless rebutted by evidence of substantial business activity elsewhere.[14]

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[11] Epp Aasaru, 'The Desirability of 'Centre Of Main Interests' as a Mechanism for Allocating Jurisdiction and Applicable Law in Cross-Border Insolvency Law' (2011) 22(3) European Business Law Review 349 <https://kluwerlawonline.com/journalarticle/European+Business+Law+Review/22.3/EULR2011017> accessed 2 March 2024.

[12] *Singularis Holdings Ltd v Price Water House Coopers* [2014] UKPC 36.

[13] *Hooley Ltd v The Victoria Jute Company Ltd and Ors* [2016] CSOH 141.

[14] *Re Ci4net.com Inc* [2004] EWHC 1941 (Ch).

This flexibility is crucial to prevent jurisdictional arbitrage, where corporations flock to favourable insolvency laws without substantial presence, leading to inequitable outcomes for creditors and thwarting the goal of a unified insolvency process. Incorporation as a determinant for jurisdiction may, therefore, be inadequate, prioritising form over substance and hindering the pursuit of a cohesive international insolvency regime.

The Innovatech case challenges the traditional incorporation theory. While incorporated in London with its registered office there, the company's substantial operations span across multiple jurisdictions. Should London's courts have primary jurisdiction merely because of incorporation, when significant assets and operations exist elsewhere?

B. Principal Place of Business Test

In the US, determining a company's COMI often revolves around the 'principal place of business,' which some courts equate with the COMI. Early cases, like *In Re Tri-Continental Exchange Ltd*,[15] established the corporate headquarters as pivotal in identifying the debtor's COMI, even if fraudulent activities primarily occurred elsewhere. Subsequently, the US Supreme Court refined this concept in Hertz v. Friend,[16] defining the 'principal place of business' as the corporate 'nerve centre' where activities are directed, controlled, and coordinated.

This landmark decision influenced bankruptcy courts to equate a company's COMI with its headquarters, as demonstrated in cases like In Re Fairfield Sentry Ltd.,[17] where administrative choices made from the British Virgin Islands determined the debtor's COMI despite ceasing operations in the US. This approach underscores the importance of the headquarters as the locus of a company's direction, control, and coordination in determining its COMI.

C. Theory of Asset/Activity

The asset-based approach for determining jurisdiction in insolvency proceedings focuses on the location of a company's assets/activity rather than its place of incorporation.[18] This method is particularly relevant for companies incorporated in one jurisdiction but with significant operations elsewhere, such as those utilising tax havens like Singapore while primarily operating in

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[15] *Re Tri-Continental Exchange Ltd* 349 BR at 629.
[16] *Hertz Corp v Friend* 559 U.S. [2009] 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029.
[17] *Re Fairfield Sentry Ltd* [2010] 440 BR 60, 64-65 (S.D.N.Y. 2010).
[18] *Re Lightsquared LP* [2012] ONSC 2994.

countries like India. However, challenges arise when multinational enterprises ('MNEs') have assets/activity spread across various jurisdictions, leading to unpredictability and jurisdictional uncertainty for creditors.

The fluid nature of assets/activities, which may change location over time, further complicates this approach, undermining the purpose of achieving global insolvency coherence. In contrast to the test of incorporation, this approach considers the nation's economic status, but it may not apply to 'contract-based' groups lacking a centralised locus of assets/activity, administration, and creditors. Moreover, implementing this approach entails significant time and expense in quantifying the value of assets/activity across the entire group, deterring stakeholders from pursuing costly jurisdictional evaluations, especially when assets are already limited. Thus, while the asset/activity-based approach offers a more realistic assessment of a company's economic presence, logistical challenges and costs may hinder its practicality and effectiveness.

In the present case, Innovatech's asset distribution presents a classic challenge: manufacturing facilities in Singapore generate substantial revenue, while India hosts a massive workforce. The asset-based approach must evaluate whether physical assets (Singapore) carry more weight than human capital and operational infrastructure (India).

D. Objective 'Third-Party' Test

The Hon'ble European Court of Justice ('ECJ')'s ruling in *In Re Eurofood IFSC Ltd.* established the precedence for applying the third-party test, emphasising the need for ascertainability and impartiality by third parties guaranteeing legality and foreseeability in the determination of jurisdiction.[19] Subsequently, in cases like *In Re Stanford Int'l Bank Ltd.*,[20] the ECJ has reinforced this approach, prioritising the perceptions of objective observers over subjective criteria like the 'head office' to provide certainty and foreseeability for creditors. Essentially, UK courts rely on factors apparent to typical third parties conducting business with the company to determine COMI,[21] ensuring transparency and predictability in insolvency proceedings.

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[19] *Re Eurofood IFSC Ltd* [2006] ECR 1-3813.

[20] *Re Stanford Int'l Bank Ltd* [2010] EWCA (Civ) 137.

[21] *Frogmore Real Estate Partners GP 1 Limited et al v Nationwide Building Society et al* [2017] EWHC 25 (Ch).

In the application of this test, difficulties may arise in complex corporate structures such as conglomerates wherein the objective determination of third-party perception may be obscure or even impossible. Furthermore, solely basing the COMI on the interpretation and perspective of third parties may oversimplify the process with an inordinate focus on the apparent features of the corporate entity/debtor, ignoring the underlying intricacies of the entity's operations based on their subjective perspective.

Hence, from a third-party perspective, where is Innovatech truly centred? Customers may globally recognize its London headquarters, yet suppliers mainly deal with Singapore's manufacturing hub, while clients primarily interact with Indian support centres. This illustrates the complexity of determining how external parties perceive a company's main centre of operations.

E. Centre of Administration (COA) or Operational Headquarters Theory

The operational headquarters criterion, a modified interpretation of the COMI concept, emphasises recognition of the actual headquarters of a corporate group. This approach, advocated by scholars like Westbrook (1997),[22] shifts focus from mere incorporation to the location where group control is exercised. By treating subsidiary companies as limbs and the headquarters as the decision-making hub, this criterion aims to reflect the financial and economic position.

Notably, cases like BCCI highlight the importance of determining jurisdiction based on actual operational control rather than the location of incorporation, as seen in Luxemburg's jurisdiction over a group primarily operating from London. Irit Mevorach (2008) also suggests various factors for identifying operational headquarters, such as executive meeting locations and the jurisdiction governing key contracts.[23] Adopting this approach globally would align India with advanced insolvency laws, ensuring fairness and predictability for creditors.

However, challenges persist, especially in cases involving dispersed decision-making due to factors like the COVID-19 pandemic. Nonetheless, the

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[22] JL Westbrook, 'Memorandum to the National Bankruptcy Review Commission' in *Bankruptcy, the Next Twenty Years: National Bankruptcy Review Commission Final Report* (1997).

[23] Irit Mevorach, 'The 'home country' of a multinational enterprise group facing insolvency' (2008) 57(2) International & Comparative Law Quarterly 427 <https://www.jstor.org/stable/20488214> accessed 2 March 2024.

operational headquarters test remains crucial for achieving predictability in COMI determination and providing effective remedies for creditors. Despite some courts favouring incorporation-based jurisdiction, cases like Re Parmalat Hungary/Slovakia[24] demonstrate the validity of operational headquarters criteria in determining jurisdiction. Using protocols, exemplified by Maxwell Communications' Case,[25] showcases successful coordination between jurisdictions in cross-border insolvency matters Therefore, though Innovatech's strategic decisions may emanate from London, the digital nature of its operations allows for dispersed decision-making. Key executives collaborate across all four jurisdictions, challenging traditional notions of a single operational headquarters.

The diversity of aforementioned approaches to COMI determination highlights the ongoing challenges of achieving a harmonised and effective international insolvency framework. While each method has strengths and weaknesses, the emphasis is shifting towards more flexible and nuanced approaches that consider the economic realities of modern corporations, guided by the ultimate goal of ensuring fair and predictable outcomes for creditors.

III. WHERE IN THE WORLD DOES A COMPANY CALL HOME? EXPLORING COMI STANDARDS ACROSS JURISDICTIONS

While the concept of COMI remains consistent in principle, its application varies significantly from one legal framework to another, reflecting the diverse approaches adopted by different countries. This diversity underscores the complexities inherent in harmonising insolvency laws on an international scale and necessitates thorough evaluations tailored to each jurisdiction's legal and economic landscape:

A. UNITED KINGDOM

In the United Kingdom, determining COMI is crucial in cross-border proceedings, governed primarily by the Cross-Border Insolvency Regulations 2006 ('CBIR').[26] While adhering to the elemental principles of the Model Law, the UK introduces modifications within its insolvency framework to accommodate COMI's significance. COMI is the jurisdictional limitation which

[24] *Re Parmalat Hungary/Slovakia* [2004] Municipality Court of Fejer.
[25] *Maxwell Communication Corp* [1994] 170 BR 800 (Bankr. S.D.N.Y.); See also *Maxwell Communication Corp* [1993] 1 WLR 1402 (Ch 1993).
[26] Cross-Border Insolvency Regulations 2006 SI 2006/1030 (Gr. Brit.).

entails the debtor's primary interests, ensuring alignment with international cooperation in insolvency matters.

Recent legal developments, exemplified in the case *of East-West Logistics LLP v Melars Group Ltd* (2022),[27] illustrate the nuanced approach taken by UK courts in determining COMI within the context of the Recast Regulation on Insolvency Proceedings 2015/848.[28] The case underscores the starting point of a statutory presumption, where a debtor's COMI is presumed to be at the location of its registered office, mandating a careful examination to ascertain if this presumption holds or is rebutted by the evidence presented.

In East-West Logistics, the Hon'ble Court of Appeal elucidated the methodology for analysing a COMI, emphasising the statutory presumption and the necessary evidence to displace it. The judgment highlights the intricacies in assessing COMI, including considering factors known only to specific creditors, not just those ascertainable by typical third parties. This nuanced approach ensures a comprehensive evaluation of COMI, encompassing both public and non-public information pertinent to the debtor's operational activities and creditor interactions.[29]

While the Recast Regulation's[30] direct applicability in English law has diminished, the principles elucidated in this case offer valuable guidance for cases where COMI is integrated into English legal frameworks, particularly within the CBIR and specific provisions of the Insolvency Act, 1986.[31] Furthermore, the case serves as a benchmark for instances where a debtor's registered office lacks substantive presence, elucidating the courts' likely approach in such scenarios, and ensuring a robust and principled determination of COMI within the UK jurisdiction.

B. UNITED STATES

In the US, ascertaining the COMI is a crucial aspect governed by Chapter 15 of the US Bankruptcy Code,[32] which integrates the Model Law. This legal framework establishes that a 'foreign main proceeding' occurs in the country

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[27] *East-West Logistics LLP v Melars Group Ltd* [2022] EWCA Civ 1419.
[28] Regulation (EU) 2015/848 OJ L 141.
[29] ibid.
[30] ibid.
[31] Insolvency Act 1986.
[32] U.S. Bankruptcy Code, 11 U.S.C. s 1501(a) H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 105 (2005).

where the COMI of the debtor is situated. Notably, Section 1516(c) of Chapter 15[33] establishes a conjecture that the enlisted office serves as its COMI unless rebutted by contrary evidence. Consequently, US courts offer cooperation to foreign proceedings contingent upon the determination of COMI, thereby facilitating the resolution of such matters.

Since coming into force in 2005, the United States has adopted a COMI approach through Chapter 15, defining 'foreign main proceedings'[34] as those pending in the country where the debtor's COMI resides or as 'foreign non-main proceedings'[35] awaiting in a nation where the insolvent maintains a assets/establishment for non-transitory economic activities. Recognition of foreign main proceedings triggers an automatic stay of proceedings, asset transfer avoidance, and grants additional powers to foreign representatives, with control over the insolvent's assets situated within the US preserved for the foreign entity.

US courts have embraced a flexible approach in determining COMI, considering various factors such as the location of the debtor's headquarters, its 'nerve centre' where activities are directed and controlled, managerial presence, primary assets, creditors, and applicable jurisdictional laws. Notably, cases regarding COMI often arise from offshore insolvency processes, with notable developments following the Madoff Fraud Discovery (2008).[36] COMI shifting, particularly evident in cases involving offshore funds, occurs naturally following liquidation proceedings, with courts scrutinising the period between foreign insolvency commencement and Chapter 15 petition filing to prevent bad-faith COMI manipulation.

For instance, in the Fairfield Sentry Case,[37] the US Bankruptcy Court for the Southern District of New York recognised the fund's COMI in the British Virgin Islands, emphasising the absence of opportunistic COMI establishment, i.e., strategic establishment of COMI to gain a legal advantage instead reflecting the true locus of a debtor's operations. Similarly, in the Ocean Rig Case,[38] despite the recent COMI relocation, the court recognised 'Cayman Islands restructuring proceedings as foreign main proceedings, as the shift served legitimate

[33] U.S. Bankruptcy Code, 11 U.S.C. s 101(24), 1515.
[34] 11 U.S.C. s 101(23), 1502(4).
[35] 11 U.S.C. s 101(23), 1521(c).
[36] *Morning Mist Holdings Ltd v Krys* 714 F3d 127 (2d Cir 2013).
[37] *Re Fairfield Sentry Ltd* 440 BR 60.
[38] *Re Ocean Rig UDW Inc* [2017] 570 BR 687.

restructuring objectives, ensuring optimal creditor outcomes consistent with Chapter 15 objectives.' However, COMI-shifting will be deemed abusive and unsuccessful if contrary to creditors' interests or indicative of bad-faith manipulation, as demonstrated in the Creative Finance Case.[39] Recent developments, such as the swift Chapter 15 recognition of Three Arrows Capital[40] and pending considerations in the FTX Trading collapse,[41] illustrate the evolving landscape of COMI determinations in US bankruptcy jurisprudence.

C. SINGAPORE

In Singapore, incorporating the Model Law on Cross-Border Insolvency into its legal framework underscores the importance of identifying the COMI within its insolvency regime. Designating foreign proceedings as 'foreign main proceedings' when conducted in the state where the debtor's COMI is situated, the Singapore Model Law ('SML')[42] simplifies jurisdictional determinations, facilitating efficient resolution mechanisms for transnational insolvency cases. Developed by the UNCITRAL Secretariat in 1997,[43] the Model Law addresses cross-border insolvency cases effectively, emphasising the identification of the leading insolvency proceeding through COMI. Singapore modified the Model Law in 2017,[44] signalling its commitment to integrating COMI into its insolvency law.

Before adopting the SML, the Singapore Court struggled with international insolvencies due to conventional territorial insolvency laws. However, since its enactment, the Courts of Singapore have had opportunities

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[39] *Re Creative Finance* [2016] BL 8825.

[40] Teodor Teofilov, 'Three Arrows Capital JLs obtain Chapter 15 recognistion in New York' (*Global Restructuring Review,* 29 July 2022) <https://globalrestructuringreview.com/article/three-arrows-capital-jls-obtain-chapter-15-recognition-in-new-york> accessed 2 March 2024.

[41] Kimberly Black and Daniel A. Lowenthal, 'Crypto Company FTX Files Massive Bankruptcy in Delaware' (*Patterson Belknap Webb & Tyler,* 22 November 2022) <https://www.pbwt.com/bankruptcy-update-blog/crypto-company-ftx-files-massive-bankruptcy-in-delaware> accessed 2 March 2024.

[42] Aedit Abdullah, 'Celebrating and Reflecting on 25 years of the Model Law on Cross Border Insolvency: The Newbie's Take-Singapore and the Model Law' (*International Insolvency Institute*) <https://www.iiiglobal.org/file.cfm/46/docs/panel%203.%20abdullah%20singapore%20and%20the%20model%20law.pdf> accessed 2 March 2024.

[43] UNCITRAL (n 7).

[44] Prakash Pillai and Junxiang Koh, 'Singapore: Singapore Implements The UNCITRAL Model Law On Cross-Border Insolvency' (*Mondaq,* 20 June 2017) <https://www.mondaq.com/insolvencybankruptcy/603442/singapore-implements-the-uncitral-model-law-on-cross-border-insolvency> accessed 2 March 2024.

to develop upon the test for COMI determination, notably in the *In Re: Zetta Jet Pte Ltd and others* case.[45] This case exemplifies Singapore's approach to recognition applications under the Model Law, emphasising factors such as the location of control, creditors, and operations.

Moreover, recent cases like *Ascentra Holdings, Inc. v SPGK Pte Ltd*[46] and *Re Genesis Asia Pacific Pte Ltd*[47] demonstrate Singapore's commitment to interpreting the Model Law in a manner consistent with international practices, promoting uniformity and providing a framework for orderly restructuring or liquidation across jurisdictions involved in cross-border insolvencies. Through practical approaches and expansive interpretations, Singapore's legal framework strives to accommodate diverse insolvency proceedings while ensuring fairness and efficiency in the resolution process.

D. India

In India, the Insolvency Law Committee's ('ILC II') Report (2020)[48] on cross-border insolvency underscores a comparable interpretation of COMI akin to the EU's framework, particularly post-incorporation of cross-border insolvencies within S.234[49] and S.235[50] of Insolvency and Bankruptcy Code ('IBC'), post-recommendation of the Insolvency Law Committee's ('ILC I') Report (2018).[51] As articulated in Clause 14(1) of the newly formulated 'Part Z,'[52] the supposition designates COMI as the registered office of the corporate debtor unless relocated within three months of initiating insolvency proceedings. The Adjudicating Authority is entrusted with assessing COMI, drawing upon factors the Central Government prescribes, including the identifiable place of central administration.

This approach underscores India's commitment to facilitating cross-border insolvency resolution while ensuring alignment with global best practices. However, India's experience in cross-border insolvencies, as evidenced

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[45] *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] SGHC 53.
[46] *Ascentra Holdings, Inc v SPGK Pte Ltd* [2023] SGCA 32.
[47] *Re Genesis Asia Pacific Pte Ltd* [2023] SGHC 240.
[48] Ministry of Corporate Affairs, Cross Border Insolvency Rules/Regulations Committee, *Report on the rules and regulations for cross-border insolvency resolution* (2020).
[49] Insolvency and Bankruptcy Code 2016, s 234.
[50] Insolvency and Bankruptcy Code 2016, s 235.
[51] Ministry of Corporate Affairs, Insolvency Law Committee, *Report of Insolvency Law Committee on Cross Border Insolvency* (2018).
[52] Draft Part 'Z' on Cross Border Insolvency for Suggestions, File no. 30/27/2018 cl 14(1).

by cases such as Videocon Industries[53] and Jet Airways,[54] reveals a need for further development. These cases highlighted a lack of preparedness in dealing with transnational insolvency matters, showcasing the challenges both creditors and courts face in navigating complex cross-border proceedings.

To elaborate upon the Jet Airways Case, which has faced financial turbulence since 2018,[55] ultimately leading to insolvency proceedings in India and the Netherlands. The Mumbai Bench of the National Company Law Tribunal ('NCLT') met a parallel insolvency application filed a month after the initiation of proceedings in the Netherlands. Initially, the NCLT declared the 'Dutch Trial' unfounded owing to the absenteeism of cross-border insolvency mechanisms under India's existing IBC.[56]

However, an appeal to the National Company Law Appellant Tribunal ('NCLAT') transformed the trajectory of this case, setting a paragon for judiciously launching cross-border insolvency mechanisms in the Indian scenario by facilitating an arrangement amid the 'Indian Resolution Professional' and 'the Dutch Trustee,' leading to a cross-border insolvency protocol approved by the NCLAT. Given its incorporation and significant operations in India, this protocol recognised India as the COMI for Jet Airways and, resulting in India's first cross-border insolvency case, laying the groundwork for developing more comprehensive laws for evolving India.[57]

IV. INTERLUDE: PROBING THE CONVERGENCES AND DIVERGENCES

After assessing the standards of determination and application of COMI across proliferated jurisdictions like the UK, US, Singapore, and India, several junctions and deviations have been witnessed that further complicate the global debt recovery efforts.

Firstly, concerning the 'presumption' and 'burden of proof,' all jurisdictions have demonstrated a notable similarity. The UK and the US

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[53] *State Bank of India v Videocon Industries Ltd* [2019] MA 2385/2019 in C.P.(I.B.)-02/MB/2018.
[54] *Jet Airways* (n 7).
[55] *State Bank of India & others v Jet Airways (India) Ltd* [2019] NCLT (M), CP 2205 (IB)/MB/2019, CP 1968(IB)/MB/2019, CP 1938(IB)/MB/2019.
[56] Insolvency and Bankruptcy Code 2016.
[57] Andrew Godwin, Risham Garg and Debaranjan Goswami, 'Cross-border insolvency law in India: Are the principles of comity of courts and inherent common law jurisdiction relevant' (2023) 32(2) International Insolvency Review 228 <https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1500> accessed 2 March 2024.

standards presuppose that the debtor's registered/enlisted office should serve as the COMI, placing the burden of proof on parties seeking to develop a different COMI. However, the distinctions lie in the requirements for scrutiny and evidence to rebut this presumption. While a careful examination of evidence is emphasised in the UK, the US adopts a more flexible approach, considering multiple factors beyond the registered office. Conversely, Singapore and India establish a similar presumption, differing in the clarity and stringency of the evidence required to refute it, reflecting variations in legal standards and procedural practices.

Secondly, the jurisdictions also share a common consensus concerning the flexibility in COMI determination, i.e., the exercise of discretion based on various factors such as operational headquarters, control centres, and asset locations. However, discrepancies arise in the weightage assigned to different factors and the extent to which courts consider them. For instance, while US courts substantially consider the location of managerial control, other jurisdictions might prioritise other aspects, such as the location of primary assets or interests of primary creditors.

Furthermore, in adopting the Model Law, Singapore may prefer substantive analysis, as demonstrated in its flexibility in determining COMI beyond just the registered office, much like the model of the US. Thus, Courts in every jurisdiction differ in their consideration of specific factors to assess COMI, including where the debtor's headquarters, properties, resources, creditors, and management functions are primarily located, not forgetting to mention the position of most employees.

Conversely, the jurisdictions vary in their approach to COMI shifting. The US is generally cautious about recognising COMI, which has been relocated to avoid opportunistic manipulation, while Singapore and the UK seem more accepting as long as the evidence demonstrates a legitimate connection. India's proposed legislation includes a timeframe that may limit presumption-based shifts. Also, Singapore and the US have fully incorporated the Model Law, demonstrating a proactive nuance to addressing international insolvency. India continues to integrate these principles into its insolvency code. The UK has modified its framework to align with the Model Law but with its distinct nuances.

Lastly, as evident from Table 4.1, each jurisdiction reflects its traditional inhibitions towards change and development. For instance, the presumption of registered office and the relatively cautious approach adopted by India and the UK, in contrast to the US and Singapore, could stem from their inherent traits as mixed economies and capitalist nations, respectively. Additionally, despite being a highly-developed economy, the UK's hesitation to drastic financial and economy-affecting changes, such as COMI determination, may also result from the deplorable state of their GDP, which merely increased by 0.1% in 2023.[58]

Table 4.1 – Overview of Jurisdictional Comparative Analysis

Jurisdiction	**Presumption of Registered Office**	**Emphasis on Recent COMI Shifts**	**Model Law Adoption**
United Kingdom	Strong Presumption	Cautious	Adapted Model Law with Modifications
United States	Initial Presumption	Open to the Totality of Circumstances (Cautious About Shifts)	Full Adoption of Chapter 15 Incorporating Model Law
Singapore	Flexible (Prioritises Substance)	Open to Legitimate Shifts	Full Adoption (with Modifications)
India	Presumption with Potential Limitations	Leans Towards Caution if the Shift Occurs Within a Specific Timeframe	Process of Adoption and Integration

[58] Hanna Ziady, 'Britain falls into recession, with worst GDP performance in 2023 in years' *CNN* (London, 15 February 2024) <https://edition.cnn.com/2024/02/15/economy/britain-falls-into-recession/index.html> accessed 2 March 2024.

V. DISCORDANT NOTES: GLOBAL CHALLENGES AND IMPACT ON THE GLOBAL DEBT RECOVERY MECHANISM

While parallels in the policies across jurisdictions advocate for a synchronised method, the disparities present a myriad of challenges, as enumerated below, underscoring the pressing need to ensure greater predictability and fairness in proceedings worldwide:

1. Subjectivity in Interpretation

The lack of a precise, legal definition of COMI leaves room for courts to apply subjective factors. Considerations like 'regular administration' and 'ascertainable by third parties' can be interpreted differently. This inconsistency can lead to unpredictable outcomes and make it difficult for businesses to understand where their insolvency proceedings might take place. For instance, the Interedil Case (before the Hon'ble European Court of Justice) (2011) demonstrated the subjectivity in interpreting COMI. Shifting a company's registered office shortly before insolvency was a factor the court considered but was not solely determinative of COMI.[59]

2. Lack of Universal Definition and Standards

In addition to the lacuna of subjectivity, the prevalence of varying jurisdictional approaches to COMI creates uncertainty, especially for multinational companies operating globally. This causes delays in proceedings, as conflicting rulings may require appeals processes or complex negotiations between different courts. Even within the EU, where the Insolvency Regulation provides a framework for COMI, national courts sometimes interpret and apply the regulation differently. *Re China Huiyan Juice Group Ltd* (2020),[60] a case involving an entity from Hong Kong, raises critical questions about handling cross-border enforcement of insolvency decisions without adequate cooperation and communication across jurisdictions.

3. Complexity in Corporate Structures

Modern businesses might compartmentalise operations, making pinpointing the true administrative centre difficult. Additionally, multinational groups may have multiple decision-making centres scattered across jurisdictions. As the case of Yukos Oil Company (involving Russia, the Netherlands, and other

[59] *Interedil Srl v Fallimento Interedil Srl* [2011] ECRI-09915.
[60] *Re China Huiyan Juice Group Ltd* [2020] HKCFI 2940.

jurisdictions)[61] illustrates, the issues arising from a company's complex corporate structure result in different courts reaching conflicting decisions on COMI, leading to prolonged litigation akin to the present hypothetical scenario of Innovatech, whose corporate operations extend across the jurisdictions of India, US, UK and Singapore.

4. Rapid Change and the Digital Economy

The traditional tests of COMI determination are designed for businesses with physical headquarters and are challenged by companies with mainly online operations and distributed workforces. So, where do we locate the administration of a purely digital enterprise? While not a cross-border insolvency case, there are taxation issues around tech giants like Meta and Google that highlight the difficulty of determining where value is created and where administration effectively takes place in the digital economy,[62] possibly based on the location of servers, primary customer base, and where key employees or decision-makers are based. Additionally, a company with a robust online presence might have employees, customers, and vital digital assets scattered across the globe, such as centralised storage and data processing in remote data centres.

5. Determination of 'Control-Company'

Jurisdictions renowned for robust insolvency frameworks protecting creditor rights and assets, efficient disposal of cases, and fairness among stakeholders (like the US, UK, and Singapore) become magnets for forum shopping practices.[63] Companies or creditors may deliberately engineer COMI in these 'Control-Countries' to benefit from favourable insolvency proceedings, even when the company has minimal genuine connections to that jurisdiction, providing convenient access to assets, legal stays, and enforcement measures. Thereby compelling companies to manipulate operations, relocate critical decision-makers, or establish a superficial presence to shift their COMI just before or during insolvency and risk undermining the predictability and

[61] *Yukos Universal Limited (Isle of Man) v The Russian Federation* PCA Case No. 2005-04/AA227.
[62] Ruud A. de Mooij, Alexander D Klemm, and Victoria J Perry, *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed* (International Monetary Fund 2020).
[63] European Commission, *Study on the issue of abusive forum shopping in insolvency proceedings* (2022).

fairness, as possibly in the case of PetroSaudi International, owing to their strategic position in the Cayman Islands.[64]

6. Disparities in Creditor Treatment, Recovery Rates and Asset Realisation

Lastly, differences in COMI determination can lead to disparities in creditor treatment and recovery rates across jurisdictions. For example, a debtor's COMI determination in one jurisdiction might favour local creditors over international ones, affecting overall recovery rates for different creditor groups. Moreover, efficiency in asset realisation and resolution processes is crucial for practical debt recovery efforts. While there is convergence in the shared goal of efficient resolution, divergences in COMI determinations can hinder this objective. Inconsistencies or delays in COMI determinations can impact creditors' ability to recover debts promptly, highlighting the need for more transparent and predictable processes.

Hence, through these issues, the author brings to light the requirement for a more precise and consistent approach to COMI determination, ensuring greater predictability and fairness.

VI. RECOMMENDATIONS ADVOCATING TOWARDS A HARMONIOUS RESOLUTION

In light of the multifaceted challenges inherent, it is imperative to formulate a cohesive and comprehensive approach to achieve harmonisation in determining a debtor's COMI. Drawing upon the insights gleaned from diverse jurisdictions and existing legal frameworks, the following recommendations are proposed to foster international cooperation, fairness, and predictability in such matters:

1. Developing a Global Framework

Recognising the inherent complexities of cross-jurisdictional insolvency and building on the Model Law's strengths, stakeholders should develop a robust global treaty or convention on harmonised COMI standards. This framework would be the cornerstone for international consensus and cooperation, providing clarity and coherence in COMI determinations across jurisdictions.

2. Clarity in Definitions and Presumptions

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[64] *United States of America v Real Property Located in New York, New York* CV 16-05375-DSF-PLA.

The treaty should meticulously define critical terms such as 'COMI' and 'centre of administration' to mitigate ambiguity and ensure uniform interpretation. Furthermore, establishing rebuttable presumptions based on objective criteria, such as the location of headquarters, resources, properties and significant stakeholders, would enhance transparency and predictability in COMI determinations.

3. Guidance on Factors for COMI Determination

Providing courts with comprehensive guidance on the factors to consider in COMI determination is imperative. A non-exhaustive list of factors should be delineated, including managerial control, asset location, creditors' locations, and the company's public perception to facilitate consistent and equitable outcomes across jurisdictions, as clear and consistent standards across jurisdictions can mitigate this risk.

4. Emphasis on Economic Substance

While respecting the administrative and judicial sovereignty of States, the treaty could accentuate economic-activity primacy in COMI determination. By deterring forum shopping and manipulation by prioritising the genuine economic interests of the company over preferential legal advantage, the treaty would bolster confidence in the integrity and legitimacy of cross-border proceedings.

5. Establishment of Dispute Resolution Mechanisms

Through 'Specialised International Insolvency Courts' ('SIIC') or 'Insolvency Arbitration Panels' ('IAP'), in acknowledgement of the propensity for disputes to arise in COMI determinations, contentious issues can be resolved amicably to expedite proceedings and foster trust among stakeholders.

6. Protocols for Cooperation

Cooperative protocols governing asset tracing, information sharing, and recognising cross-border insolvency awards must be formulated to enable seamless cooperation, accountability and efficacy by fostering transparency and communication among stakeholders and adjudicating authorities.

7. Addressing the Digital Economy

Owing to the unique challenges digital economies pose in the 21st Century, the treaty must incorporate principles and guidelines for COMI determination of

digital enterprises specifically by considering pivotal factors that influence the digital service providers, such as the location of servers, primary customer base, and decision-makers.

8. Regular Reviews and Updates

With the ever-evolving international corporate landscape, the requirement for a mechanism for periodic review and revision of the treaty is imminent. Thus, a task force or review committee, established under the provisions of the treaty, could conduct regular assessments of the treaty's effectiveness and relevance, ensuring its responsiveness to the transient requirements and emerging challenges.

However, an integral consideration of the progression of these recommendations remains the integration of political will and stakeholder involvement. In the absence of affirmative commitment by nations to voluntarily pool their sovereignty in pursuit of uniformity and standardisation, the aforementioned suggestions would cease to have the potential meaningful impact. Moreover, input from insolvency practitioners, legal scholars, and business representatives remains indispensable when crafting pragmatic and practical treaty provisions per institutional and administrative requirements and realities.

Thus, the harmonisation of COMI standards represents a seminal endeavour with profound implications for the global economy. By embracing these recommendations and confronting the challenges inherent in cross-border insolvency proceedings, stakeholders can engender cooperation, fairness, and predictability to foster confidence and trust among nations and stakeholders.

VII. CONCLUSION: FORGING SYNERGISTIC ALLIANCES

Amongst the chaos and dread of threading the financial distresses plaguing MNCs from one jurisdiction to another, the Centre of Main Interest determination is foundational to tie together the intricate loose ends of international cross-border insolvency law. Yet, as elucidated through the pages of this paper, there is an exigency and dearth of cooperation amidst the global commercial landscape and the interpretation of COMI across jurisdictions, owing to their distinct legal history and economic priorities.

For instance, the models of India and the United Kingdom have demonstrated formidable adherence to the recognition of registered office as

COMI, unlike the flexibility and inclusion of multiple considerations embraced by Singapore and the United States. Nonetheless, the absenteeism of a universal definition and uniform provisions threatens all jurisdictions in the 21st Century, irrespective of their approach, leaving them vulnerable to unpredictable outcomes, disparities in creditor treatment, and malpractices, like forum shopping, impeding legitimacy and accountability.

Therefore, it is reasonable to decipher that the traditional tests of COMI determination may fail to prove efficacious when resolving the unique disputes posed by the advent of businesses primarily situated in the digital sphere. To comprehend such diversification, it is indispensable to ascertain jurisdictional complications and garner international support through continuous scholarly and policy inquiries to secure a genuinely open dialogue between States, especially when physical assets and location lose relevance, laying the foundation for shared standards and efficient mechanisms.

While the developing technologies constitute potential hazards and ramifications, the foreseeable solution is to work with technology and not against it, such as by employing Machine Learning (ML), Natural Language Processing (NLP), and Artificial Intelligence (AI) models, among others. Judicial and administrative practicality must be focused upon in formulating international COMI standards, thereby falling upon the capable shoulders of researchers, practitioners, and policymakers to collaboratively devise innovative solutions, prioritising transparency, equity and expeditious resolution.

Conclusively, there is not even a shred of doubt as to the vitality of COMI for jurisdictional determination. A global framework enthralled with efficacy, predictability, and equity for all stakeholders is warranted, in sync with the globalised and digital evolution and with a sustainable and multifaceted international approach. One must continue to strive for collective effort driven by harmony and symbiotic benefits to ensure globally acknowledged uniform insolvency proceedings to ease the discordant conflict of interests.