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Transatlantic Tension

THE UNCITRAL MODEL LAW IN ENGLAND & WALES AND THE UNITED STATES

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Introduction

1. The purpose of this paper is to illuminate new areas for international cooperation via a comparison of England & Wales's and the United States' adoption of the UNICITRAL Model Law on Cross-Border Insolvency, highlighting key areas of divergence and convergence.[1] The information is provided using the following framework.

Legal Assessment

2. We begin with an analysis of the core principles and objectives of the UNCITRAL Model Law on Cross-Border Insolvency, focusing on how the law aims to handle insolvency cases involving debtors with assets and creditors in multiple countries.

Jurisdictional Analysis

3. We detail the United States' adoption and interpretation of the Model Law, highlighting significant legal cases and legislative decisions.
4. We explore England & Wales's approach, noting how it aligns with the Model Law and where it diverges from it, spotlighting pivotal cases and legal perspectives that illustrate England & Wales's stance.

Comparative Evaluation

5. By contrasting the legal frameworks and practical applications of the Model Law in the United States and England & Wales, we identify and elaborate on significant deviations, providing context and reasons behind these differences.

Impact Analysis

6. In discussing the practical implications of these differences on cross-border insolvency proceedings, including an examination of how these variances affect international creditors, debtors, and insolvency practitioners, the potential impact of any improvements that can be made to the countries' respective adoptions are laid bare.

Recommendations

7. In fulfilment of this paper's purpose, we suggest practical recommendations for greater harmonization and efficiency in cross-border insolvency cases and propose reforms and adaptations that would benefit not only both jurisdictions, but which would enhance global insolvency practise, leading to better outcomes.

Final Synthesis

8. Ultimately, we extract profound insights from our comparative analysis, synthesizing them into a cohesive, comprehensive conclusion from which our international colleagues may benefit.

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[1] UNCITRAL stands for the United Nations Commission on International Trade Law, formed by the United Nations General Assembly in 1966. Its primary objective is to mitigate or eliminate trade barriers arising from differences in national laws related to international commerce.

Overview of the UNCITRAL Model Law on Cross-Border Insolvency

9. The UNCITRAL Model Law on Cross-Border Insolvency is a suggested law issued in 1997 by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The objective of this legislation is to assist in the regulation of corporate insolvency and financial distress involving companies with assets or creditors in more than one state. It is intended to be disseminated and enacted in multiple independent legislatures.[2]
10. UNCITRAL is a subsidiary of the United Nations General Assembly, the principal policy-making organ of the United Nations, which seeks to enhance opportunities for international trade and investment.[3] UNCITRAL's specific mandate is to prepare and promote the use and adoption of legislative and non-legislative instruments in several key areas of commercial law.[4]
11. The Model Law aims to work as a procedural mechanism through which debtors and creditors can seek redress in various separate national forums.[5] It centres on four critical components deemed essential for the effective management of cross-border insolvency proceedings: access – granting representatives of foreign insolvency proceedings a right of access to the courts of an enacting State; recognition – of orders issued by foreign courts, providing they satisfy specific requirements, namely being recognised either as a main proceeding or non-main proceeding;[6] relief – granted at the discretion of the court, considered necessary for the orderly and fair conduct of cross-border insolvencies;[7] and cooperation and coordination – empowering courts to cooperate and to communicate directly with foreign counterparts, with a view to fostering decisions that would best achieve the objectives of both proceedings, whether local and foreign or multiple foreign proceedings.[8]

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[2] UNCITRAL Model Law on Cross-Border Insolvency (1997), https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency, accessed on 20th February 2024

[3] United Nations: General Assembly of the United Nations, https://www.un.org/en/ga/, accessed on 29th February 2024

[4] United Nations Commission On International Trade Law at https://uncitral.un.org/en/content/homepage, accessed on 24th February 2024

[5] Rochelle, Bryan, *Cross-Border Insolvency in the U.S. and U.K.: Conflicting Approaches to Defining the Locus of a Debtor's Centre of Main Interests*, International Lawyer, Volume 50, Number 2, Article 8, page 392.

[6] A main proceeding occurs where the debtor has its Centre of Main Interests (COMI) in the locale of the proceeding, while a non-main proceeding takes place where the debtor has an establishment, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency, accessed on 20th February 2024.

[7] Key elements of the relief available include interim relief at the discretion of the court between the making of an application for recognition and the decision on that application, an automatic stay upon recognition of main proceedings and relief at the discretion of the court for both main and non-main proceedings following recognition, *ibid.*

[8] *Op cit* note 2.

12. The primary objectives of the Model Law on Cross-Border Insolvency are to:
    a. Facilitate Cooperation: enhance cooperation between insolvency professionals and the courts of different countries involved in cross-border insolvency cases.
    b. Legal Certainty for Trade and Investment: provide legal certainty for businesses and creditors engaged in international trade and investment, ensuring a predictable and transparent framework for cross-border insolvencies.
    c. Fair and Efficient Administration: protect the interests of all creditors and other interested persons, including the debtor.
    d. Protection and Maximization of Assets' Value: protect and maximize the value of the insolvent debtor's assets, ensuring efficient and effective administration of cross-border insolvencies to benefit all stakeholders.
    e. Rescue Financially Troubled Businesses: the Law encourages the rescue of financially troubled businesses, recognizing the importance of protecting investment and preserving employment.[9]
13. Recognition of Foreign Proceedings: a key feature of the Law is the recognition of foreign insolvency proceedings and relief, allowing for foreign insolvency professionals to be recognized and to participate in local proceedings.
14. Coordination of Concurrent Proceedings: the Law provides a framework for coordinating concurrent insolvency proceedings in different countries, aiming for harmony and a reduction in the number of conflicts of law.
15. Flexible Framework: the Model Law is designed to be adaptable to different legal systems, providing a flexible framework that can be incorporated into domestic laws while respecting the differences in national insolvency systems.
16. Direct Access: the Law allows foreign insolvency professionals direct access to courts in the enacting state, facilitating easier communication and coordination.
17. Relief Measures: the Model Law empowers courts to provide provisional relief in cross-border insolvency cases, protecting assets and creditor interests until a decision is made regarding the recognition of foreign proceedings.
18. Cooperation and Communication: the Model Law promotes direct cooperation and communication between courts and insolvency professionals across borders.

[9] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf, accessed 20th February 2024.

The United States' Approach to the UNCITRAL Model Law

19. Here we detail the United States' adoption and interpretation of the Model Law, highlighting significant legal cases and legislative decisions.

Adoption and Integration into United States Law

20. The United States adopted the UNCITRAL Model Law on Cross-Border Insolvency in 2005 through Chapter 15 of the United States Bankruptcy Code. Chapter 15 replaced the former Section 304 of the Bankruptcy Code, which dealt with ancillary and other cross-border cases.[10]

Key Objectives of Chapter 15

21. Chapter 15 of the United States Bankruptcy Code is a section specifically designed to deal with cross-border insolvency cases. It aims to facilitate more effective and efficient management of cross-border insolvencies; to protect and maximize the value of the debtor's assets; and to assist in the rescue of financially troubled businesses.[11]
22. It is part of the U.S. domestic bankruptcy laws that allows for the recognition of foreign insolvency proceedings and provides a legal framework for cooperation between U.S. courts and foreign courts, as well as foreign representatives involved in cross-border insolvency cases. It is a debtor-in-possession model which not only provides a worldwide stay protecting assets against creditor actions, but also the ability not only to cram-down dissenting creditors but also obtain new financing with a super-priority.[12] Key aspects of Chapter 15 include:

Recognition of Foreign Proceedings:

23. Chapter 15 allows a representative of a foreign insolvency proceeding to apply to a U.S. bankruptcy court for recognition of the foreign proceeding. This recognition is crucial because it enables the foreign representative to take actions to protect the assets of the debtor within the United States.
24. Section 109(a) of the US Bankruptcy Code sets out the criteria for debtors seeking to file for bankruptcy in the US. It states that eligibility extends to anyone who has a residence, business, or holds property within the United States, thereby qualifying them for Chapter 11 proceedings. Consequently, a foreign debtor who possesses either business interests or property in the U.S. as of the bankruptcy petition date could

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[10] https://uscode.house.gov/view.xhtml?req=granuleid:USC-2000-title11-section304&num=0&edition=2000, viewed 20th February 2024.
[11] *Op Cit* Note 9.
[12] McCormack, Gerard, *Bankruptcy Forum Shopping: The UK and US as Venues of Choice for Foreign Companies*, 63(4) The International and Comparative Law Quarterly, Volume 63, Issue 4, October 2014, pp 815-842. https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/bankruptcy-forum-shopping-the-uk-and-us-as-venues-of-choice-for-foreign-companies/1631ACE9A8DBCCDD329B9F1B55A80482#

be eligible to file under Chapter 11. Determining what constitutes "property" presence under Section 109(a) is crucial in this context. *In re McTague* the court noted that an enquiry into the quantum of property was not required, remarking that *'having a dollar, a dime, or a peppercorn"* may be sufficient to satisfy the requirements.[13] Therefore the 'umbrella test' may be sufficient,[14] or, as put by the court *In re Aerovias Nacionales de Columbia S.A. Avianca,* quoting Collier on Bankruptcy, *"there is virtually no formal barrier to a foreign entity commencing a case under title 11 in the United States"*.[15]

Cooperation with Foreign Courts:

25. The chapter fosters cooperation between U.S. courts and their foreign counterparts, facilitating more efficient and effective administration of cross-border insolvency cases.

Relief for Foreign Representatives:

26. Upon recognition of a foreign proceeding, Chapter 15 provides certain relief to the foreign representative, such as staying proceedings against the debtor's assets in the U.S., entrusting the distribution of U.S. assets, and providing for the examination of witnesses.

Protecting Creditors and Other Interested Entities:

27. It also ensures fair treatment of U.S. creditors in foreign proceedings and provides mechanisms for U.S. creditors to participate in and raise concerns in foreign insolvency proceedings.

Flexibility and Discretion:

28. U.S. bankruptcy courts have considerable discretion in applying Chapter 15, allowing them to tailor their approach to the specifics of each cross-border insolvency case. This leads to inconsistencies and unpredictability, which we address below.
29. Chapter 15 represents the U.S. adoption of the UNCITRAL Model Law on Cross-Border Insolvency, reflecting an international effort to harmonize and improve the legal framework for cross-border insolvencies. This harmonization aims to protect creditors' rights, reduce legal barriers, and improve the predictability and stability of outcomes in these complex cases.

Provisions and Application

30. Chapter 15 allows foreign representatives to access U.S. courts to seek relief in support of foreign insolvency proceedings. It provides for recognition of foreign

[13] In re McTague, 198 B.R. 428 (Bankr. W.D.N.Y. 1996). https://casetext.com/case/in-re-mctague
[14] The 'umbrella test' is simply to illustrate that any property in the U.S. – even an umbrella left at the airport – may give rise to a bankruptcy filing under Chapter 11.
[15] In re Aerovias Nacionales de Colombia S.A., 303 B.R. 1 (Bankr. S.D.N.Y. 2003) and Collier, William Miller, 1867-1956.; Resnick, Alan N.; Sommer, Henry J., 16th Edition, 2021, KF1524 C652.

proceedings and gives effect to decisions made by foreign courts in those proceedings. The law includes provisions for cooperation and communication between U.S. courts and parties of interest with foreign courts and authorities involved in cross-border insolvency cases.

Significant Judicial Interpretations

31. U.S. courts have developed a substantial body of case law interpreting Chapter 15, particularly regarding the recognition of foreign proceedings and the relief that may be granted to foreign representatives. Notable cases include *in re* ABC Learning Centres Ltd, where the court dealt with the recognition of a foreign main proceeding and the discretionary relief that could be granted.[16]

Impact and Challenges

32. Chapter 15 has been instrumental in managing cross-border insolvency cases involving U.S. assets or creditors. However, challenges remain, particularly in cases where U.S. bankruptcy policy may conflict with the laws of the foreign main proceeding. In particular, Chapter 15 provides for recognition of a foreign proceeding as a "foreign main proceeding" if the proceeding emanates from the entity's "centre of main interests" (COMI). It provides for recognition as a "non-main proceeding" if it emanates from any other place where the entity has an "establishment", defined as a non-transitory economic activity. As Hon. Allan L. Gropper argues in rebuttal of Prof. Jay L. Westbrook of the University of Texas Law School, "COMI in the place of registration should not be rebutted without proof that the COMI is somewhere else".[17]

Notable Chapter 15 Cases in the United States

33. Here we provide an overview of some notable cases that highlight the application of Chapter 15 in the United States Bankruptcy Code, which incorporates the UNCITRAL Model Law:

ABC Learning Centres Ltd

34. ABC Learning was an Australian company that was once the world's largest provider of early childhood education services. Founded in 1988, it became the largest publicly listed child-care operator in the world with a market capitalisation reaching $4.1 billion, prior to collapsing into receivership in November 2008, and being wound up by its creditors in June 2010. While the company was Australian, it had both assets and creditors in the United States. The U.S. Bankruptcy Court recognized the Australian proceeding as a foreign main proceeding under Chapter 15. The court granted various

[16] https://casetext.com/case/in-re-abc-learning-centres-ltd, accessed 25th February 2024
[17] Hon. Allan L. Gropper (Ret.), *Recognition and Relief in Chapter 15,* The International Scene, American Bankruptcy Institute, January 2023, page 100.

types of relief to assist the Australian liquidators, including protection of the debtor's U.S. assets.[18]

Qimonda AG

35. This German insolvency proceeding was recognized as a foreign main proceeding. The case raised significant issues about the application of U.S. intellectual property law in a cross-border insolvency context. The court initially granted, but later limited, the relief typically available under Chapter 15, illustrating the discretion U.S. courts have in cross-border insolvency cases and the uncertainty this brings to foreign practitioners.[19]

Vitro S.A.B. de C.V.

36. This involved a Mexican glass manufacturer with creditors in the United States. The U.S. Bankruptcy Court recognized the Mexican insolvency proceeding but refused to enforce certain orders from the Mexican court that were contrary to U.S. bankruptcy policy. This case is notable for its exploration of the limits of comity in cross-border insolvency under Chapter 15 and highlights complications that may arise through the interplay with State Laws in an international insolvency.[20]

Fairfield Sentry Ltd

37. This was the liquidation of a feeder fund for Bernard Madoff's investment firm, Bernard Madoff Investment Securities LLC. The case involved complex issues of asset recovery across multiple jurisdictions. U.S. and foreign courts had to navigate cooperation and asset distribution under the framework of Chapter 15.[21]

Oi S.A.

38. Oi S.A. is one of the largest bankruptcy cases involving a Brazilian telecommunications company. The case demonstrated the use of Chapter 15 to coordinate parallel

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[18] *Op Cit note 12.*

[19] *In re* Quimonda AG, 433 BR at 570. The intellectual property concerned patent licenses, which German law provided could be rejected like other contracts, while a special provision in the U.S. Bankruptcy Code gave U.S. licensees the right to retain their licenses, provided they continued to pay the licensor. The court found in favour of the U.S. licensees.

[20] *In re* Vitro S.A.B. de C.V. (5th Cir. 2012). The main debtor moved to enforce a provision in a confirmed Mexican *concurso* (reorganisation plan) that not only gave creditors a partial recovery against the parent but also released the holding company's non-debtor operating subsidiaries that had not filed bankruptcy cases. U.S. bondholders were creditors of both the holding company and its subsidiaries, and the court found that enforcement of releases would violate section 1507(b)(4), requiring distribution of debtor's property "substantially" in accordance with U.S. law.

[21] *In re* Fairfield Sentry Ltd (2nd Cir. Ct. Appeals 2013). The Court of Appeals rejected that the date for recognition purposes should be the date of opening of the foreign proceeding and found that EU Regulation was not a useful analogue in construing Chapter 15 (Model Law). The Court also found that BVI proceedings are not "manifestly contrary" to U.S. law, even though the BVI does not allow "unfettered public access to court records".

insolvency proceedings in multiple jurisdictions. The U.S. court granted recognition and relief to support the Brazilian restructuring process.[22]

[22] In re Oi S.A., 587 B.R. 253 (Bankr. S.D.N.Y. 2018)

England & Wales's Approach to the UNCITRAL Model Law

39. Here we explore England & Wales's approach, noting how it aligns with the Model Law and where it diverges from it, spotlighting pivotal cases and legal perspectives that illustrate England & Wales's stance.

Legislative Adoption

40. England & Wales adopted the UNCITRAL Model Law through the Cross-Border Insolvency Regulations 2006.[23] These regulations replicate the provisions of the Model Law and represent the UK's commitment to facilitating effective and efficient handling of international insolvency cases. In many ways the English law is unsatisfactory for it lacks taxonomic order and relies too much on improvisation. However, it offers the widest and most complex range of cross-border insolvency regimes anywhere in the world, and in that respect is hugely valuable.
41. The relevant regimes are:

    1. Regulation (EU) No.2015/848 on insolvency proceedings
    2. Regulation (EU) No.1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters
    3. The Cross-Border Insolvency Regulations 2006 (CBIR)
    4. The Credit Institutions (Reorganisation and Winding Up) Regulations 2004
    5. The Insurers (Reorganisation and Winding Up) Regulations 2004, and
    6. The Insolvency Act 1986

42. The genesis of the Insolvency Regulation was the European Convention of Insolvency Proceedings, which was open for signature between 23rd November 1995 and 23 May 1996, but failed because the UK Government refused to sign the Convention. This failed convention was transformed into Regulation (EC) No.1346/2000, and governs if the following criteria are satisfied:

    1. The firm is not an insurance undertaking, credit institution, collective investment undertaking, or an investment firm or other firm, institution and undertaking covered by Directive 2001/24/EC.
    2. The firm has its COMI in an EU Member State (other than Denmark), and

[23] SI 2006/1030 (the CBIR).

3. The insolvency proceedings in question are collective insolvency proceedings.

43. The Insolvency Regulation prescribes Member States' courts' international jurisdiction as applying only where the debtor has its COMI in that Member State at the date of the opening of the proceedings.
44. CBIR regulates who may seek to commence English insolvency proceedings. Article 11 of Schedule 1 to the CIBR, which implements Article 11 of the UNCITRAL Model Law on Cross-Border Insolvency, provides that a foreign appointed representative is entitled to apply if the conditions are met, meaning only foreign representatives of foreign main or foreign non-main proceedings have the right to apply to commence British insolvency proceedings. The foreign representative's right is not conditional on prior recognition of the foreign proceeding.
45. Because the Model Law is not a treaty and does not create binding international obligations, its operation depends exclusively on how it is enacted locally. UNCITRAL recommends that each country adopt the Model Law as part of its domestic insolvency regime, making only minor adjustments.
46. Article 15 of the British Model Law, implementing Article 15 of the Model Law, provides that a foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
47. Schedule 1 to CIBR contains the Model Law with certain modifications to adapt it for application in Great Britain.
48. Unlike in the US, where there would be an automatic stay on the enforcement of security interests upon the recognition of a foreign main proceeding, the enforcement of security interests in Britain may be stayed only by a court order.[24]
49. The US Congress changed so little of the wording in the Model Law so as to endorse it wholesale and encourage wide adoption by other nations. An example of the US courts enforcing foreign judgements is *In re Mercalfe & Mansfield Alternative Investments*, where the US Bankruptcy Court ordered that the Canadian court orders in relation to a plan of compromise and arrangement under the Canadian Companies' Creditors Arrangement Act be given *"full force and effect in the United States"* pursuant to ss1521(a)(7) and 1507 of the Bankruptcy Code. It is established Chapter 15 jurisprudence that foreign insolvency orders and judgements may be recognised and enforced locally.

[24] Article 21 (1)(g).

50. Similarly, under the British Model Law the English court may recognise a foreign insolvency court's judgement *in rem*.[25]

51. Article 23 of the British Model Law provides a foreign representative with standing to commence actions under English statutory provisions to avoid transactions detrimental to creditors.

Application and Interpretation

52. English courts have applied the Model Law in a way that respects its spirit, aiming to aid the administration of cross-border insolvency proceedings. The courts focus on the main objectives of the Model Law, including cooperation between jurisdictions and protection of creditors and debtors.
53. A foreign debtor aiming to initiate a scheme in the UK must demonstrate a sufficient connection to the UK,[26] ensuring that the scheme will be acknowledged and effectively implemented in pertinent jurisdictions.

Challenges and Criticisms

54. England & Wales's approach has faced challenges, especially in situations where domestic insolvency laws have nuances that differ from the Model Law. Criticisms include debates on the extent of relief that can be granted to foreign representatives and the level of deference to foreign proceedings.

Comparative Analysis with the United States Approach

55. Comparing England & Wales's application with that of the U.S. reveals interesting contrasts, especially given the different legal traditions, namely common law in the United States vs common law with significant statutory overlay in England & Wales. We undertake a detailed comparative analysis in the section headed Comparative Analysis below.

56. Five types of case typically illustrate England & Wales's approach to the Model Law:

a) Recognition of Foreign Proceedings

Cases where the English courts have considered applications for the recognition of insolvency proceedings in other jurisdictions demonstrate how England & Wales

[25] "In rem" is a legal term derived from Latin, meaning "against or about a thing." It refers to a legal action or proceeding that is directed against property or a status, rather than against a specific person. This type of action is aimed at determining the rights of any person with respect to the object of the action, rather than imposing a judgment against a person. For example, a lawsuit to quiet title to real estate is an action in rem, because it concerns the property itself and aims to determine all claims or rights to that property, regardless of who owns it. In contrast, an "in personam" action seeks a judgment against a person.
[26] In re Drax Holdings (2004), 1 WLR 1049.

applies the Model Law's provisions for recognizing foreign proceedings and providing appropriate relief.

b) Cooperation and Communication with Foreign Courts

Instances where English courts have cooperated with foreign courts in cross-border insolvency matters highlight the practical application of the Model Law's cooperative framework.

c) Relief Granted to Foreign Representatives

Examples where foreign insolvency practitioners have sought and been granted relief in England & Wales shed light on the extent and limitations of assistance provided under the Model Law.

d) Challenges to Foreign Proceedings Recognition

Cases that involve challenges to the recognition of foreign proceedings under the Model Law reveal the legal thresholds and considerations English courts use in determining whether to recognize foreign insolvency proceedings.

e) Interplay with Domestic Insolvency Rules

Cases that illustrate how English courts reconcile the Model Law's provisions with domestic insolvency laws provide insights into the integration of international standards with local legal frameworks.

Comparative Analysis: United States vs England & Wales

57. Here we table six core aspects highlighting the variations in how the United States and England & Wales adopt the UNCITRAL Model Law:

Aspect	United States	England & Wales
Legislative Adoption	Adopted as Chapter 15 of the United States Bankruptcy Code in 2005.	Implemented through the Cross-Border Insolvency Regulations 2006.
Recognition of Foreign Proceedings	Courts have a well-established process for recognising foreign insolvency proceedings, focusing on the 'centre of main interests' (COMI).	Similar to the U.S., but the English courts may apply a more stringent test for COMI and have shown a willingness to delve into more detailed analyses.
Relief to Foreign Representatives	Offers a broad range of relief options post-recognition, but the approach can vary depending on the court.	The English courts are known for their pragmatic approach, often granting relief that aligns closely with the relief available in domestic proceedings.
Cooperation and Communication	Emphasizes cooperation but may have more complex procedural requirements.	Generally promotes cooperation and communication, potentially with fewer procedural hurdles.
Judicial Interpretation and Flexibility	U.S. courts have shown a degree of flexibility in interpreting the Model Law, particularly in complex cases involving multinational corporations.	The English courts have also been flexible, often focusing on the practicalities and realities of cross-border insolvency to achieve equitable results.
Challenges and Criticisms	Challenges include balancing the Model Law's objectives with U.S. bankruptcy policy and addressing issues related to COMI.	Criticisms often revolve around the extent of deference given to foreign proceedings and the balancing act between respecting foreign insolvency processes and protecting local creditor interests.
Impact of Jurisprudential Traditions	Influenced by its common law tradition, which allows for significant judicial discretion.	Also a common law country, but its approach is often guided by a significant statutory overlay, which might lead to different applications of similar principles.

Implications and Recommendations

58. Having highlighted the complexities that arise when different national approaches are applied to a common international framework, we propose pathways to improve global insolvency practices. Our recommendations aim to foster a more cohesive, predictable, and efficient international insolvency environment.

Legal and Procedural Harmonization

59. The United States' Chapter 15 and England & Wales's Cross-Border Insolvency Regulations 2006, despite both being based on the UNCITRAL Model Law, have notable differences in application and interpretation. These differences lead to unnecessary complexities which result in unhelpful uncertainties for practitioners dealing with cross-border insolvencies, especially when cases involve both jurisdictions.

International Cooperation and Coordination

60. The degree of cooperation and coordination in cross-border insolvency cases varies not only between the United States and England & Wales, but also between which court of the United States and England & Wales. This is hugely detrimental to the efficiency of cross-border insolvency proceedings and can significantly impact the outcomes for both creditors and debtors.

Recognition of Foreign Proceedings

61. The United States and England & Wales have shown differences in how readily they recognize and provide relief in foreign insolvency proceedings. This impacts the level of assistance foreign insolvency practitioners can expect in cross-border cases.

Recommendations for Improving the Global Insolvency Environment

62. Here we table five strategic recommendations which would improve the environment for cross-border insolvency outcomes, not just between the United States and England & Wales, both throughout the international cross-border insolvency community:

Number	Focus Area	Recommendation	Objective
1	Enhanced Harmonisation	Develop clearer guidelines and frameworks to minimize differences in the application of the UNCITRAL Model Law.	Reduce uncertainties and increase predictability in cross-border insolvency cases.
2	Strengthened International Cooperation	Foster stronger international networks and forums for insolvency practitioners and courts to share best practices.	Enhance mutual understanding and cooperation in cross-border insolvency proceedings.
3	Consistent Recognition of Foreign Proceedings	Encourage jurisdictions to adopt a more uniform approach to recognizing and providing relief in foreign insolvency proceedings.	Facilitate smoother and more predictable cross-border insolvency processes.
4	Education and Training	Implement comprehensive training programs for legal and insolvency professionals on the nuances of the Model Law.	Improve expertise in handling cross-border insolvency cases effectively.
5	Regular Review and Update of Laws	Regularly review and update domestic laws in line with developments in international insolvency practices.	Ensure that national laws stay relevant and effective in addressing the challenges of cross-border insolvency.

Conclusion

63. In this paper we embarked on a comparative journey, dissecting the intricate nuances of how the United States and England & Wales have adopted and applied the UNCITRAL Model Law on Cross-Border Insolvency. Through our analysis we uncovered the subtleties and stark contrasts that define each nation's legal stance on cross-border insolvency proceedings.

United States vs England & Wales: A Tale of Two Approaches

64. The United States, with its Chapter 15 of the Bankruptcy Code, demonstrates a robust framework that emphasizes cooperation and relief for foreign representatives, yet it navigates cautiously, balancing international comity with domestic bankruptcy policies.
65. England & Wales, through its Cross-Border Insolvency Regulations 2006, showcases a commitment to international cooperation, aligning closely with the Model Law's principles. However, it also reveals a unique interplay between these international standards and its ingrained common law principles.

Harmonizing Global Insolvency Practice

66. Our analysis highlights a significant convergence in goals but divergence in methodologies. Both jurisdictions strive for efficiency, fairness, and maximization of debtor assets' value, yet their paths diverge due to differing legal traditions and interpretations. The deviations observed are not just legal nuances; they reflect deeper cultural, economic, and jurisprudential underpinnings unique to each nation.

Recommendations for a Cohesive Future

67. To enhance global practice, we made five strategic recommendations designed to increase dialogue and collaboration between these formidable jurisdictions. Sharing insights and best practices in this manner would pave the way for a more harmonized approach.
68. Further, embracing technology and innovative legal tools can offer new ways to streamline cross-border insolvency processes, making them more efficient and less cumbersome.

The Road Ahead: A Call for Progressive Adaptation

69. As the world becomes increasingly interconnected, the importance of a cohesive approach to cross-border insolvency cannot be overstated. It demands not just adherence to the Model Law but also a willingness to adapt and evolve.
70. We call upon legal scholars, practitioners, and policymakers to consider these findings as a stepping stone towards a more unified and effective global insolvency framework.

71. In conclusion, while the paths of the United States and England & Wales in implementing the UNCITRAL Model Law on Cross-Border Insolvency diverge, they also offer valuable lessons and opportunities for global legal harmonization. By understanding these differences and working towards common goals, we can forge a future where cross-border insolvency is managed with greater efficiency, fairness, and global coherence, resulting in enhanced outcomes for all.

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