

Cross-Border Insolvency in an Era of Global Technology Enterprises: A 2026 Perspective

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Introduction

Global business has become increasingly borderless, while insolvency law remains largely territorial. This tension is nowhere more evident than in insolvencies involving technology companies whose principal assets consist of intellectual property, software, data, digital platforms and other intangible rights capable of existing simultaneously in multiple jurisdictions.

When a multinational enterprise encounters financial distress, insolvency professionals must reconcile competing legal systems, creditor interests, regulatory regimes and judicial processes. Although these challenges are not new, the tools available to address them have evolved significantly over the past two decades.

Today, most major restructuring jurisdictions have embraced the principles promoted by the United Nations Commission on International Trade Law (UNCITRAL), particularly the concept that insolvency proceedings should be coordinated internationally wherever possible. The adoption of Model Law principles by an increasing number of countries has transformed cross-border restructuring from a process often dependent on judicial creativity into one supported by well-developed statutory frameworks.

Perhaps the most significant development from the perspective of Canadian and Israeli insolvency practitioners has been the modernization of Israel's insolvency regime and its adoption of cross-border insolvency provisions based on the UNCITRAL Model Law on Cross-Border Insolvency. Through the enactment of the Insolvency and Economic Rehabilitation Law, 5778-2018, which came into force in 2019, Israel joined the growing community of jurisdictions committed to coordinated international insolvency administration.

The result is a substantially improved environment for the administration of multinational insolvencies involving Canadian, American, British and Israeli stakeholders.

Why Cross-Border Insolvency Matters

Business operations have become global long before legal systems have.

A technology enterprise may be incorporated in one jurisdiction, maintain management in another, own intellectual property in a third, employ personnel in many other countries and derive revenue from customers around the world. The consequences of insolvency therefore rarely respect national boundaries.

Assets may be subject to competing claims in multiple jurisdictions. Creditors may seek strategic advantages by commencing proceedings in courts perceived as more favourable. Different legal systems may produce different outcomes concerning priority rights, avoidance claims, realization processes and creditor recoveries.

Without effective mechanisms for international cooperation, value is frequently destroyed through duplication of effort, inconsistent court orders and costly jurisdictional disputes. The primary objective of modern cross-border insolvency law is to maximize enterprise value by coordinating proceedings rather than permitting a destructive race among stakeholders.

The UNCITRAL Revolution

The development and deployment of the UNCITRAL Model Law on Cross-Border Insolvency in 1997 represented one of the most significant milestones in the history of international insolvency law.

The Model Law was designed to establish a framework enabling courts and insolvency administrators in different countries to cooperate when dealing with the same debtor. Rather than replacing domestic insolvency legislation, the Model Law provides a mechanism through which domestic courts can recognize and assist foreign proceedings.

The principal objectives are:

- Greater cooperation between courts;
- Increased legal certainty for trade and investment;
- Fair and efficient administration of cross-border insolvencies;
- Protection and maximization of asset value; and
- Facilitation of corporate rescue and rehabilitation.

The concept has now become a cornerstone of international restructuring practice.

Canada incorporated Model Law principles through amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act. The United States adopted the framework through Chapter 15 of the U.S. Bankruptcy Code. Similar legislation exists in the United Kingdom, Australia, Singapore and numerous other jurisdictions.

Israel's Evolution from Outlier to Participant

In earlier discussions concerning Israel and cross-border insolvency before 2019, Israel was often viewed as somewhat of an outlier among advanced commercial jurisdictions.

Although Israeli courts frequently demonstrated sophistication and flexibility in insolvency matters, practitioners often relied upon judicial discretion, principles of international comity and ad hoc solutions when seeking recognition of foreign proceedings.

That reality changed dramatically with the enactment of the Insolvency and Economic Rehabilitation Law, 5778-2018. The legislation introduced a comprehensive chapter devoted specifically to international insolvency proceedings and adopted many principles underlying the UNCITRAL Model Law.

Under the current framework:

- Foreign representatives have direct access to Israeli courts.
- Foreign proceedings may be recognized in Israel.
- Foreign main proceedings and foreign non-main proceedings may receive recognition.
- Stays of proceedings can be imposed following recognition.
- Israeli courts may cooperate directly with foreign courts and foreign representatives.
- Foreign creditors are generally afforded treatment comparable to domestic creditors.

These developments have significantly reduced legal uncertainty and enhanced Israel's attractiveness as a jurisdiction for international investment and restructuring activity.

Technology Companies and Intellectual Property

Cross-border insolvency issues are particularly important in the technology sector. Unlike traditional manufacturing enterprises, technology companies often derive much of their value from intellectual property, data and for the time being, human capital.

1. Patents may be registered in multiple countries.
2. Copyrights may be licensed internationally.
3. Software may reside on servers located in several jurisdictions simultaneously.
4. Research and development activities may occur in Israel while commercialization occurs elsewhere.

The challenge for insolvency professionals is preserving the value of these assets while navigating competing legal systems.

Israel's role within the global technology economy makes these issues especially significant. Israeli companies continue to play a prominent role in cybersecurity, software development, life sciences, artificial intelligence and advanced technology industries. Consequently, insolvency proceedings involving Israeli businesses frequently have international dimensions and require coordination among multiple courts and stakeholders.

Lessons from Multinational Group Insolvencies

One of the defining characteristics of modern insolvency practice is the prevalence of multinational corporate groups. Large enterprises rarely operate through a single legal entity. Instead, business operations are commonly distributed among numerous subsidiaries organized in different countries for regulatory, tax, financing and operational purposes.

These structures will complicate insolvency administration significantly. An enterprise may function as an integrated business while remaining fragmented into dozens of separate legal entities.

Creditors may seek recovery from different subsidiaries. Assets may be intertwined operationally even though ownership resides in multiple entities. The challenge is preserving enterprise value while respecting corporate “separateness”.

Recognizing these realities, UNCITRAL has continued expanding its work in the area of enterprise group insolvencies and international coordination. International practice increasingly emphasizes cooperative protocols, coordinated hearings and information-sharing arrangements designed to maximize recoveries and reduce conflict among proceedings.

Emerging Challenges in 2026

Although substantial progress has been achieved, important challenges remain.

Digital Assets

The rise of cryptocurrency, tokenized assets and blockchain-based business models has created entirely new categories of insolvency assets.

Determining ownership, control and jurisdiction over such assets can present complex legal questions, especially where assets exist on decentralized networks with no obvious geographic location. Recovery of such assets is often challenging, at best.

Artificial Intelligence

Increasing numbers of distressed businesses derive value from algorithms, models, datasets and machine learning infrastructure. Valuation, transferability and licensing rights associated with such assets frequently raise issues not contemplated by earlier insolvency regimes.

Data Governance

Privacy legislation, cybersecurity requirements and data localization rules may affect the ability of insolvency professionals to transfer or realize value from customer information and operational datasets.

Centre of Main Interests (COMI)

Determining a debtor's Centre of Main Interests remains critical. While modern communications permit management to function from virtually anywhere, insolvency courts must still identify the jurisdiction with the closest connection to the debtor's operations. COMI disputes continue to be among the most significant issues in international restructuring proceedings.

The Future of Cross-Border Insolvency

The trajectory of international insolvency law is clear. The movement toward cooperation, coordination and recognition continues. The focus has shifted from whether courts should collaborate to how such collaboration can be implemented most effectively.

For insolvency professionals, understanding foreign legal systems is increasingly as important as understanding domestic insolvency legislation. Complex restructurings now routinely involve coordinated proceedings, court-to-court communications, cross-border protocols and multinational stakeholder groups.

As international commerce becomes more integrated, insolvency systems must evolve accordingly.

Conclusion

Cross-border insolvency has become an essential feature of the modern commercial landscape. What was once a specialized area of practice has become a routine component of major restructurings involving technology companies, multinational enterprises and globally integrated supply chains.

The adoption of Model Law principles across major commercial jurisdictions has established a foundation for greater predictability and cooperation. Israel's implementation of the Insolvency and Economic Rehabilitation Law, 5778-2018 represents a particularly important development, aligning Israel with leading international restructuring jurisdictions and facilitating more effective coordination with courts and insolvency professionals around the world.

The modern challenge is no longer the absence of mechanisms for cooperation. Rather, it is the increasing complexity of the businesses entering insolvency proceedings. As value migrates from physical assets to intellectual property, software, data and digital technologies, insolvency professionals must continue adapting their practices to preserve value across legal and national boundaries.

In that respect, the continuing evolution of the UNCITRAL framework, together with the adoption of Model Law principles by jurisdictions such as Israel, provides reason for optimism that international insolvency systems can keep pace with the realities of the global economy.

Disclaimer

The views and opinions expressed in this paper are those of the author alone.

About the Author

Michael Baigel is the Founder and President of Baigel Corp., a Toronto-based insolvency and restructuring boutique established in 2017. Originally from Manchester, England, Michael moved to Canada in 2000 and brings decades of experience in corporate recovery and insolvency, having advised hundreds of distressed businesses across both Canada and the UK since 1989.

He works closely with business owners, lenders, and stakeholders to develop tailored solutions focused on recovery, restructuring, and value preservation.

Michael is a federally Licensed Insolvency Trustee in Canada and a Chartered Insolvency and Restructuring Professional (CIRP). He is also a Fellow of the Institute of Chartered Accountants in England & Wales (FCA) and a Fellow of the Insolvency Practitioners Association (UK) (FIPA). He holds a BA (Honours) degree in Economics. He sits on the Council of the Institute of Chartered Accountants in England & Wales as its representative for members in Canada and on the INSOL Small Practice Group Committee.

Outside of his professional life, Michael's passions are ski patrolling and football—still playing the game and always supporting Manchester United.

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