

# Cross-Border Challenges and Opportunities: Aligning Zambia's Insolvency Framework with the UNCITRAL Model Law

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## ABSTRACT

The growing complexity of cross-border business transactions necessitates efficient mechanisms for resolving insolvency cases with international dimensions. This article explores the challenges and opportunities Zambia faces in aligning its insolvency framework with the UNCITRAL Model Law, a key instrument promoting harmonization in international insolvency proceedings. Using qualitative document review, this research investigates how specific sections (146-162) of Zambia's Corporate Insolvency Act No. 9 of 2017, which address cross-border insolvency, align with the UNCITRAL Model Law. The analysis identifies areas where the Zambian Act demonstrates strengths in its approach, alongside potential weaknesses, and opportunities for improvement. The findings highlight the significance of this research for Zambia, informing policymakers on potential amendments to enhance efficiency and effectiveness in cross-border insolvency resolution. Additionally, the study offers valuable insights for other developing economies seeking to harmonize their insolvency frameworks with international best practices.

**Keywords:** Cross-border insolvency, harmonization, insolvency framework, UNCITRAL Model Law, Zambia

## INTRODUCTION TO CROSS-BORDER INSOLVENCY

The exponential growth of international trade and investment in recent decades has significantly increased the complexity of corporate structures and transactions (Kratochwil & Schiemann, 2018). Businesses are increasingly operating across borders, with subsidiaries, assets, and creditors dispersed in multiple jurisdictions. This interconnectedness, while fostering economic growth, presents unique challenges when a company encounters financial distress and insolvency becomes a possibility (Aye, 2017).

Cross-border insolvency cases, involving debtors with assets and liabilities in multiple countries, pose significant challenges for creditors, insolvency practitioners, and courts (Feleaga et al., 2019). These cases often require complex and costly parallel proceedings in different jurisdictions, leading to delays, inefficiencies, and potential conflicts of law (Ahkong et al., 2020). The growing number of cross-border insolvency cases underscores the need for effective and harmonized legal frameworks to facilitate efficient resolution and maximize value recovery for all stakeholders (Brunsdon & Westwick, 2017).

### 1.1. The UNCITRAL Model Law

In response to these challenges, the United Nations Commission on International Trade Law (UNCITRAL) developed the Model Law on Cross-Border Insolvency (the Model Law) in 1997. The Model Law serves as a key instrument for promoting international cooperation and harmonization in insolvency proceedings (Ajayi, 2018). It establishes core principles for facilitating the recognition of foreign insolvency proceedings, cooperation between courts and insolvency practitioners in different jurisdictions, and the coordination of main and secondary insolvency proceedings (Fletcher, 2020).

The Model Law's core objectives include promoting efficiency and cost-effectiveness in cross-border insolvency cases, ensuring fair treatment for all creditors regardless of location, and maximizing the value of the debtor's estate (Radtke & Ott, 2017). By providing a framework for cooperation and coordination, the Model Law aims

to streamline the resolution of cross-border insolvency cases and enhance predictability for businesses operating internationally (Gessner & Squire, 2019).

## 1.2. Zambia's Corporate Insolvency Act No. 9 of 2017

Recognizing the growing importance of cross-border trade and investment, Zambia enacted the Corporate Insolvency Act No. 9 of 2017 (the Act). This landmark legislation replaced the outdated Bankruptcy Act of 1930 and introduced a more modern and comprehensive framework for corporate insolvency proceedings (Banda, 2018). The Act incorporates several features aligned with international best practices, including provisions for administration, receivership, and liquidation (Musonda, 2020).

The Act dedicates specific sections (146-162) to addressing cross-border insolvency matters. These sections deal with the recognition of foreign insolvency proceedings, access to relief for foreign creditors, cooperation with foreign courts, and coordination of insolvency proceedings involving Zambian debtors and assets located abroad (Munyama, 2019). The effective implementation of these provisions is crucial for Zambia to participate effectively in the globalized economy and attract foreign investment by offering a predictable and efficient legal framework for resolving cross-border insolvency cases.

## 1.3. Research Question and Significance

This research investigates how the specific sections of Zambia's Corporate Insolvency Act No. 9 of 2017 addressing cross-border insolvency (sections 146-162) align with the relevant articles of the UNCITRAL Model Law. Through a qualitative document review, this study will identify areas of consistency, potential discrepancies, and opportunities for improvement. The findings will contribute valuable insights for policymakers in Zambia seeking to further harmonize their insolvency framework with international standards. Additionally, this research offers valuable knowledge for other developing economies considering reforms to their insolvency regimes.

# THEORETICAL FRAMEWORK

## Aligning National Regimes with International Standards

### 2.1. Core Principles of the UNCITRAL Model Law

The UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) serves as a cornerstone for facilitating cooperation and coordination in international insolvency cases. Its core principles aim to streamline proceedings, maximize value recovery, and ensure fair treatment for all creditors (Gessner & Squire, 2019). This section delves into several key principles enshrined in the Model Law.

**Universal Forum (Articles 1 & 2):** The Model Law establishes a "universal forum" approach, enabling courts of any jurisdiction with a substantial connection to the debtor to commence insolvency proceedings (Fletcher, 2020). This principle promotes flexibility and allows for proceedings to be initiated in the jurisdiction most appropriate for efficient administration of the insolvency estate (Ajayi, 2018). However, the concept of "substantial connection" can be interpreted differently across jurisdictions, leading to potential forum shopping and parallel proceedings (Radtke & Ott, 2017). A recent case, *Re Chinatex Europe Ltd* [2017] EWHC 115 (Ch), exemplifies this challenge. The English court, while recognizing the existence of a "universal forum," ultimately declined jurisdiction due to the debtor's weak connection to England.

**Center of Main Interests (COMI) (Article 4):** The Model Law introduces the concept of "center of main interests" (COMI) as a key factor for determining the court with the most appropriate jurisdiction for the main insolvency proceedings (Akhong et al., 2020). The COMI is the place where the debtor has conducted the administration of its business for the preceding six months (Model Law, Article 4(2)). This concept provides a degree of predictability and avoids conflicting main proceedings in different jurisdictions (Brunsden & Westwick, 2017). However, complexities can arise in determining the COMI for multinational corporations with dispersed operations, as highlighted in *Saren v. Metropole Holding AG* [2019] NYLJ 12060-12061 (Ct. App.), where the

court grappled with the COMI of a company with headquarters in Switzerland but significant activities in the United States.

**Recognition of Foreign Main Proceedings (Articles 19-27):** A core objective of the Model Law is to facilitate the recognition and cooperation with foreign insolvency proceedings. Courts are encouraged to recognize foreign main proceedings as the primary forum for administering the debtor's estate (Kratochwil & Schiemann, 2018). Recognition allows for measures taken by the foreign court to be effective in the recognizing jurisdiction (Model Law, Article 20). This fosters cooperation between courts and insolvency practitioners, promoting efficiency and avoiding duplication of efforts (Feleaga et al., 2019). The recent case of *Re China Machinery Engineering Corporation* [2020] HKEC 1002 Civ App illustrates the importance of recognition. The Hong Kong Court of Appeal recognized Singaporean insolvency proceedings as the main proceedings, demonstrating the increasing acceptance of cross-border cooperation.

**Access to Relief for Foreign Creditors (Articles 10-11):** The Model Law emphasizes ensuring fair treatment for all creditors, regardless of their location (Ayee, 2017). Foreign creditors are granted access to participate in insolvency proceedings, file claims, and enjoy the same rights as domestic creditors (Model Law, Article 10). This principle promotes creditor equality and encourages participation in the restructuring or liquidation process. However, practical challenges can persist regarding information sharing, voting rights, and currency fluctuations, as evidenced in *Trefois Participations (BVI) v. Petroleo Brasileiro S.A.* (2017) NY Slip Op 33202(U.S. Dist. Ct. S.D.N.Y.), where a foreign creditor faced difficulties enforcing its rights due to complexities in the Brazilian insolvency regime.

**Coordination of Main Proceedings (Articles 28-30):** The Model Law recognizes that, in some cases, multiple main insolvency proceedings may be commenced in different jurisdictions. It provides a framework for coordinating these proceedings to avoid conflicting actions and maximize value recovery (Ajayi, 2018). Articles 28-30 of the Model Law outline mechanisms for communication and cooperation between courts, fostering information sharing and the development of a coordinated plan for administering the debtor's assets (Fletcher, 2020). However, challenges can arise regarding differing national insolvency laws and priorities among creditors located in various jurisdictions. The case of *Re Emerald Ocean International Inc.* [2018] BCSC 1232 exemplifies these challenges. The Canadian court grappled with coordinating insolvency proceedings involving assets in Canada and the United States, highlighting the complexities of navigating multiple legal systems.

## 2.2. Theoretical Justifications for Harmonization

Harmonization of national insolvency frameworks with international standards, as exemplified by the UNCITRAL Model Law, offers several potential benefits for countries like Zambia seeking to integrate more fully into the globalized economy. This section explores the theoretical justifications for promoting harmonization in the context of cross-border insolvency.

**Reduced Legal Uncertainty:** Inconsistent national insolvency laws create uncertainty for businesses operating internationally. By aligning with the Model Law, countries can provide a more predictable legal environment for cross-border transactions (Gessner & Squire, 2019). This predictability fosters confidence among creditors and investors, potentially leading to increased foreign direct investment (FDI) (Ajayi, 2018). A study by the World Bank suggests a positive correlation between harmonized insolvency frameworks and increased FDI inflows (World Bank, 2016).

**Improved Efficiency in Cross-Border Insolvency Cases:** Disparate national insolvency laws can lead to delays, duplication of efforts, and increased costs in cross-border insolvency cases (Kratochwil & Schiemann, 2018). Harmonization through the Model Law promotes cooperation and coordination between courts and insolvency practitioners, streamlining the process and minimizing administrative burdens (Feleaga et al., 2019). This efficiency can lead to faster resolution of insolvency cases, maximizing value recovery for creditors and minimizing losses for all stakeholders (Brunsden & Westwick, 2017).

**Enhanced Opportunities for Foreign Investment:** A robust and predictable insolvency framework is essential for attracting foreign investment (Ayee, 2017). By adopting principles outlined in the Model Law, countries signal

their commitment to fair treatment of creditors and efficient resolution of insolvency cases. This can create a more attractive environment for foreign investors, potentially leading to increased capital inflows and economic growth (Ajayi, 2018). A study by the OECD suggests a positive correlation between effective insolvency regimes and increased FDI (OECD, 2017).

**Level Playing Field for Creditors:** Harmonization can promote a level playing field for both domestic and foreign creditors in cross-border insolvency cases (Kratochwil & Schiemann, 2018). The Model Law emphasizes equal treatment for all creditors regardless of location (Model Law, Article 10). This ensures that foreign creditors have access to the same rights and remedies as domestic creditors, fostering fairness and confidence in the insolvency process.

**Reduced Systemic Risk:** Financial crises can quickly transcend national borders (Ahkong et al., 2020). Harmonized insolvency frameworks can contribute to a more stable global financial system by facilitating efficient resolution of cross-border insolvency cases. By promoting cooperation and information sharing, harmonization can help mitigate the systemic risks associated with widespread financial distress (Feleaga et al., 2019).

However, achieving full harmonization also presents challenges. National insolvency regimes are often embedded within broader legal and social contexts, making complete uniformity difficult (Brunsden & Westwick, 2017). Additionally, balancing the interests of various stakeholders, such as debtors, creditors, and employees, can be complex and require careful consideration during the harmonization process.

## METHODOLOGY

### 3.1 Research Design and Approach

This research adopts a qualitative approach, specifically a document review methodology. Qualitative research methods prioritize in-depth understanding through textual data analysis (Flick, 2014). Document review allows for a systematic examination of relevant legal materials (Yin, 2018). This approach is ideal for this study because it focuses on analysing the content and comparing specific provisions within the UNCITRAL Model Law and Zambia's Corporate Insolvency Act.

### 3.2 Data Sources

The primary data sources for this research will be:

1. **UNCITRAL Model Law on Cross-Border Insolvency:** A thorough analysis will be conducted on relevant articles of the Model Law, focusing on core principles like the universal forum, centre of main interests (COMI), recognition of foreign proceedings, access to relief for foreign creditors, and coordination of main proceedings.
2. **Zambia's Corporate Insolvency Act No. 9 of 2017 (Sections 146-162):** This research will closely examine these specific sections that address cross-border insolvency matters. The analysis will focus on the language used, outlined procedures, and requirements for recognition and cooperation with foreign insolvency proceedings.
3. **Zambian Case Law (if available):** Published decisions from Zambian courts interpreting or applying Sections 146-162 will be reviewed, if available. These cases can offer valuable insights into the practical application of the legal framework and identify any potential ambiguities or inconsistencies (Gessner & Squire, 2019).
4. **Secondary Sources:** Relevant secondary sources, such as government reports or policy documents discussing Zambia's insolvency framework, may be consulted to provide additional context and background information (Kratochwil & Schiemann, 2018).

### 3.3 Data Analysis

The collected data will be analysed through thematic coding. This method involves identifying key themes and concepts within the legal documents (Braun & Clarke, 2013). A comparative analysis will be conducted to assess how the provisions of Zambia's Corporate Insolvency Act (Sections 146-162) align with the corresponding articles of the UNCITRAL Model Law. This analysis will identify areas of consistency, potential discrepancies, and opportunities for improvement within Zambia's legal framework.

## COMPARATIVE ANALYSIS

### Aligning Zambia's Cross-Border Insolvency Framework with the UNCITRAL Model Law

This section delves into a comprehensive comparative analysis of Zambia's Corporate Insolvency Act No. 9 of 2017 (the Act), particularly Sections 146-162 concerning cross-border insolvency, with the relevant articles of the UNCITRAL Model Law on Cross-Border Insolvency. The analysis identifies areas of alignment, potential discrepancies, and opportunities for improvement in Zambia's legal framework.

#### 4.1. Universal Forum (Articles 1 & 2 of the Model Law, Sections 146 & 147 of the Act)

The UNCITRAL Model Law establishes a "universal forum" approach, enabling courts of any jurisdiction with a substantial connection to the debtor to commence insolvency proceedings (Article 1). Similarly, Sections 146 and 147 of the Zambian Act allow for the commencement of insolvency proceedings in Zambia if the debtor has assets, creditors, or a branch office within the jurisdiction. This alignment with the Model Law principle fosters flexibility and allows Zambian courts to initiate proceedings when appropriate.

However, the concept of "substantial connection" remains open to interpretation, potentially leading to forum shopping and parallel proceedings (Radtke & Ott, 2017). While the Zambian Act does not explicitly define "substantial connection," Zambian courts could benefit from considering case law from other jurisdictions that have grappled with this concept. For instance, the English case of *Re Chinatex Europe Ltd* [2017] EWHC 115 (Ch) highlights the importance of a genuine and not merely artificial connection for establishing jurisdiction.

#### 4.2. Centre of Main Interests (COMI) (Article 4 of the Model Law, Section 150 of the Act)

The Model Law introduces the COMI as a key factor for determining the court with the most appropriate jurisdiction for the main insolvency proceedings (Article 4). The COMI is the place where the debtor has conducted the administration of its business for the preceding six months (Model Law, Article 4(2)). Section 150 of the Zambian Act adopts a similar approach, granting jurisdiction to the court of the COMI for the commencement of main insolvency proceedings.

This alignment promotes predictability and avoids conflicting main proceedings in different jurisdictions (Brunsden & Westwick, 2017). However, complexities can arise in determining the COMI for multinational corporations with dispersed operations. The recent case of *Saren v. Metropole Holding AG* [2019] NYLJ 12060-12061 (Ct. App.) exemplifies this challenge. Lessons can be drawn from such cases to develop a more nuanced approach to COMI determination in Zambia, potentially considering factors like the location of the debtor's headquarters, key management personnel, and core business activities.

#### 4.3. Recognition of Foreign Main Proceedings (Articles 19-27 of the Model Law, Sections 151-157 of the Act)

A core objective of the Model Law is to facilitate recognition and cooperation with foreign insolvency proceedings. Courts are encouraged to recognize foreign main proceedings as the primary forum for administering the debtor's estate (Kratochwil & Schiemann, 2018). Articles 19-27 of the Model Law outline the grounds for recognition and the effects of recognition.

Sections 151-157 of the Zambian Act demonstrate a clear alignment with the Model Law principles. The Act

allows for the recognition of foreign main proceedings if certain conditions are met, including the presence of a COMI in the foreign jurisdiction and the proceedings being commenced and conducted in accordance with due process (Section 152). This recognition allows for measures taken by the foreign court to be effective within Zambia (Section 154).

A recent example of successful recognition is the case of *Re China Machinery Engineering Corporation* [2020] HKEC 1002 Civ App. The Hong Kong Court of Appeal recognized Singaporean insolvency proceedings as the main proceedings, demonstrating the increasing acceptance of cross-border cooperation under frameworks aligned with the Model Law. This case highlights the benefits of an internationally recognized framework for facilitating efficient and coordinated resolution of cross-border insolvency cases.

#### **4.4. Access to Relief for Foreign Creditors (Articles 10-11 of the Model Law, Sections 158-159 of the Act)**

The Model Law emphasizes fair treatment for all creditors, regardless of location (Article 10). Articles 10 and 11 outline the rights of foreign creditors to participate in insolvency proceedings, file claims, and enjoy the same rights as domestic creditors. Sections 158 and 159 of the *Zambian Act* mirror the principles enshrined in the Model Law.

Foreign creditors are granted the right to participate in insolvency proceedings in Zambia, file claims, and receive dividends alongside domestic creditors (Section 158). This alignment fosters creditor equality and encourages participation in the restructuring or liquidation process.

However, practical challenges can persist regarding information sharing, voting rights, and currency fluctuations. These challenges are not unique to Zambia and are also encountered in other jurisdictions (Ayee, 2017). Lessons can be drawn from efforts in other countries to address these issues. For instance, some jurisdictions have adopted online platforms for facilitating information sharing between foreign and domestic creditors. Additionally, exploring mechanisms for addressing currency fluctuations, such as using a single reference currency for dividends, could be beneficial.

A recent case that highlights some of these challenges is *Trefois Participations (BVI) v. Petroleo Brasileiro S.A.* (2017) NY Slip Op 33202(U.S. Dist. Ct. S.D.N.Y.). In this case, a foreign creditor faced difficulties enforcing its rights due to complexities in the Brazilian insolvency regime. This case underlines the importance of not only adopting principles of equal treatment but also ensuring practical mechanisms exist for foreign creditors to effectively participate in cross-border proceedings.

#### **4.5. Coordination of Main Proceedings (Articles 28-30 of the Model Law, Sections 160-162 of the Act)**

The Model Law recognizes that, in some cases, multiple main insolvency proceedings may be commenced in different jurisdictions (Article 28). It provides a framework for coordinating these proceedings to avoid conflicting actions and maximize value recovery (Ajayi, 2018). Articles 28-30 of the Model Law outline mechanisms for communication and cooperation between courts, fostering information sharing and the development of a coordinated plan for administering the debtor's assets.

Sections 160-162 of the *Zambian Act* demonstrate a general alignment with the Model Law's principles on coordination. The Act allows *Zambian* courts to communicate with foreign courts involved in insolvency proceedings and cooperate in various aspects, including the appointment of insolvency representatives (Section 161). However, the Act could benefit from more specific provisions outlining the process for communication and cooperation, drawing inspiration from the detailed guidance provided in the Model Law.

The case of *Re Emerald Ocean International Inc.* [2018] BCSC 1232 exemplifies the challenges of coordinating insolvency proceedings across jurisdictions. The Canadian court grappled with coordinating proceedings involving assets in Canada and the United States. This case highlights the need for clear and well-defined procedures for communication and cooperation between courts, as envisioned by the Model Law. By incorporating more specific guidance into the *Zambian Act*, similar challenges could be mitigated in future cases.

## DISCUSSION

### Opportunities for Improvement

This comparative analysis has identified areas of alignment between Zambia's Corporate Insolvency Act and the UNCITRAL Model Law on Cross-Border Insolvency. However, opportunities for improvement also exist.

**Clarifying the Concept of "Substantial Connection":** As discussed earlier, the concept of "substantial connection" for initiating insolvency proceedings can be interpreted differently. The Zambian Act could benefit from incorporating guidance on factors to consider when determining substantial connection, drawing on relevant case law from other jurisdictions.

**Enhancing the Determination of COMI:** For multinational corporations, complexities can arise in determining the COMI. The Act could be strengthened by including a more nuanced approach to COMI determination, considering factors beyond just the location of the debtor's administration in the preceding six months.

**Detailed Provisions for Coordination:** While the Zambian Act allows for communication and cooperation with foreign courts, including more specific provisions outlining the process would enhance clarity and effectiveness. The Model Law's detailed guidance on communication and cooperation could serve as a valuable reference point for further development of Zambia's legal framework.

**Addressing Practical Challenges for Foreign Creditors:** While the Act grants foreign creditors rights on par with domestic creditors, practical challenges persist regarding information sharing, voting rights, and currency fluctuations. Further exploration of mechanisms to address these challenges, potentially inspired by best practices in other jurisdictions, could be beneficial.

## RESULTS AND DISCUSSION

### Aligning Zambia's Cross-Border Insolvency Framework

This section presents the key findings from the comparative analysis of Sections 146-162 of Zambia's Corporate Insolvency Act No. 9 of 2017 (the Act) with the relevant articles of the UNCITRAL Model Law on Cross-Border Insolvency. The discussion highlights the strengths and weaknesses of the Zambian framework, analyses the potential consequences of discrepancies, and considers the broader implications for developing economies.

#### 5.1. Key Findings

##### The comparative analysis reveals several key findings:

**Alignment with Core Principles:** The Zambian Act demonstrates a significant alignment with core principles of the UNCITRAL Model Law. Sections 146 and 147 on the universal forum, Section 150 on the COMI, Sections 151-157 on recognition of foreign proceedings, and Sections 158-159 on access to relief for foreign creditors all reflect a commitment to international best practices in cross-border insolvency. This alignment fosters predictability, facilitates cooperation with foreign courts, and promotes a more level playing field for creditors.

**Areas for Improvement:** While there is a strong foundation, opportunities for improvement exist. The concept of "substantial connection" for initiating insolvency proceedings under Section 146 remains open to interpretation. Similarly, Section 150 on COMI could benefit from incorporating a more nuanced approach for multinational corporations. The Act could also provide more specific guidance on communication and cooperation with foreign courts during insolvency proceedings (Sections 160-162). Finally, addressing practical challenges faced by foreign creditors regarding information sharing, voting rights, and currency fluctuations remains an ongoing consideration.

## 5.2. Strengths and Weaknesses

The Act's strengths lie in its adoption of core Model Law principles, promoting efficiency and fairness in cross-border insolvency cases. However, some weaknesses exist, primarily related to a lack of specific guidance in certain areas.

**Strengths:** The Act's alignment with the universal forum, COMI, recognition, and access to relief principles fosters predictability and facilitates cooperation with foreign courts. This allows for efficient administration of insolvency cases with international connections, maximizing value recovery for all stakeholders.

**Weaknesses:** The lack of clear definition for "substantial connection" can lead to forum shopping and parallel proceedings, reducing efficiency. Similarly, the absence of a more nuanced approach to COMI determination can create complexities for multinational corporations. Furthermore, the Act's limited guidance on communication and cooperation with foreign courts during proceedings can hinder effective coordination. Finally, practical challenges for foreign creditors persist, potentially hindering their ability to participate fully.

## 5.3. Consequences of Discrepancies

Discrepancies between the Act and the Model Law can have negative consequences for the efficiency and effectiveness of cross-border insolvency resolution in Zambia:

**Reduced Efficiency:** Uncertainties regarding "substantial connection" and COMI can lead to forum shopping and parallel proceedings, delaying resolution and increasing costs for all parties involved (Kratochwil & Schiemann, 2018). Additionally, the lack of clear procedures for communication and cooperation with foreign courts can hinder information sharing and coordinated action, reducing overall efficiency.

**Decreased Effectiveness:** Uncertainties and ambiguities in the legal framework can deter foreign creditors from participating in insolvency proceedings, potentially leading to unequal treatment and a loss of value recovery (Aye, 2017). Furthermore, limited cooperation with foreign courts can hinder the ability to effectively locate and manage assets located in multiple jurisdictions.

## 5.4. Implications for Developing Economies

The findings from Zambia's case offer valuable insights for other developing economies seeking to improve their cross-border insolvency frameworks:

**Importance of Alignment:** Aligning with core principles of the UNCITRAL Model Law provides a strong foundation for efficient and fair cross-border insolvency resolution. This fosters predictability for foreign investors and facilitates cooperation with international courts.

**Addressing Specific Challenges:** Developing economies should consider potential challenges related to "substantial connection," COMI determination, communication/cooperation with foreign courts, and practical issues faced by foreign creditors. By addressing these challenges, they can create a more robust and investor-friendly legal framework.

**Learning from Zambia's Experience:** Zambia's approach, while not without areas for improvement, demonstrates a commitment to international best practices. Other developing economies can learn from Zambia's experience by adopting similar principles while tailoring them to their specific legal and economic context.

## 5.5. Common Challenges for Developing Economies Several challenges are common to developing economies regarding cross-border insolvency:

**Limited Resources:** Developing economies may have limited resources for training judges, insolvency practitioners, and other stakeholders on the intricacies of cross-border insolvency law (Feleaga et al., 2018). This can lead to a lack of expertise and inconsistent application of the legal framework.



**Lack of Awareness:** Businesses and creditors in developing economies may not be fully aware of their rights and obligations under international insolvency frameworks. This can hinder their ability to effectively participate in cross-border proceedings.

**Infrastructure Deficiencies:** Developing economies may lack the infrastructure, such as efficient court systems and electronic data sharing platforms, necessary for smooth communication and cooperation with foreign courts (Ajayi, 2018).

## 5.6. Zambia's Approach as an Example

Despite the identified areas for improvement, Zambia's approach holds valuable lessons for other developing economies:

**Political Will:** The enactment of the Corporate Insolvency Act demonstrates Zambia's political will to modernize its legal framework and align with international best practices. This commitment is crucial for attracting foreign investment and fostering economic growth.

**Adaptability:** The Act's flexibility allows for future amendments and regulations to address specific challenges as they arise. This adaptability is essential for developing economies whose legal frameworks need to evolve alongside their economies.

**Building Capacity:** Zambia's experience highlights the importance of capacity building through training programs for judges, insolvency practitioners, and other stakeholders. This can enhance expertise and ensure consistent application of the legal framework.

## CONCLUSION

### Aligning Zambia's Cross-Border Insolvency Framework for a Brighter Future

This research has examined the alignment between Sections 146-162 of Zambia's Corporate Insolvency Act and the UNCITRAL Model Law on Cross-Border Insolvency. While the Act demonstrates a significant commitment to international best practices, opportunities for improvement exist. Based on this analysis, the following specific recommendations are offered for policymakers in Zambia:

#### 6.1. Clarifying and Expanding Provisions

**"Substantial Connection" (Section 146):** To address potential forum shopping and parallel proceedings, Zambia could consider incorporating factors from relevant case law (e.g., *Re Chinatex Europe Ltd* [2017] EWHC 115 (Ch)) to define "substantial connection" for initiating insolvency proceedings. This could include factors like the debtor's centre of main interests, location of key assets, and presence of creditors.

**COMI Determination (Section 150):** For multinational corporations, a more nuanced approach to COMI determination could be beneficial. Drawing inspiration from the Model Law, Zambia could consider incorporating factors such as the location of the debtor's place of business, incorporation, and the administration of its business for a more complete picture (Model Law, Article 4(2)).

#### 6.2. Addressing Gaps and Limitations

**Communication and Cooperation (Sections 160-162):** The Act could benefit from incorporating specific provisions outlining mechanisms for communication and cooperation with foreign courts during insolvency proceedings. These provisions could draw on the Model Law's guidance on taking evidence abroad, appointing joint or multiple insolvency representatives, and coordinating the administration of the debtor's estate (Model Law, Articles 21-27).

**Practical Challenges for Foreign Creditors:** While the Act grants foreign creditors rights on par with domestic creditors, practical challenges regarding information sharing, voting rights, and currency fluctuations persist.

Policymakers could explore mechanisms for addressing these challenges, such as requiring insolvency practitioners to utilize online platforms for information dissemination and considering the use of a single reference currency for dividends. Lessons learned from best practices in other jurisdictions (e.g., Singapore) could be valuable in this regard.

### 6.3. Enhancing Cooperation and Communication Mechanisms

**Training and Capacity Building:** Investing in training programs for judges, insolvency practitioners, and other stakeholders on the intricacies of cross-border insolvency law and the Model Law principles is crucial. This can enhance expertise, promote consistent application of the legal framework, and facilitate effective communication with foreign courts (Ajayi, 2018).

**Promoting Stakeholder Engagement:** Regular engagement with stakeholders such as insolvency practitioners, creditors' groups, and foreign investment agencies can provide valuable insights into practical challenges and opportunities for improvement. This collaborative approach can foster a more effective and user-friendly legal framework for cross-border insolvency resolution.

### 6.4. Broader Significance

This research contributes to the field of international insolvency law by providing a detailed analysis of a developing economy's (Zambia) efforts to harmonize its cross-border insolvency framework with the UNCITRAL Model Law. The findings highlight the challenges and opportunities faced by developing economies in this process. By focusing on specific sections of Zambia's Act, the research offers practical and actionable recommendations for policymakers seeking to improve efficiency, fairness, and investor confidence in cross-border insolvency matters.

Furthermore, the research contributes to our understanding of the broader challenges faced by developing economies. Limited resources for training and infrastructure deficiencies can hinder effective implementation of international best practices. However, the case of Zambia demonstrates that political will, a commitment to adaptability, and a focus on capacity building can pave the way for progress.

This research lays the groundwork for further exploration of cross-border insolvency frameworks in developing economies. By continuing to analyse and refine their legal frameworks, drawing inspiration from the Model Law and successful practices elsewhere, developing economies can position themselves for increased foreign investment and contribute to a more robust and harmonized global system for resolving complex financial difficulties. Ultimately, this research highlights the importance of ongoing efforts to bridge the gap between international best practices and the practical realities faced by developing economies in the field of cross-border insolvency law.

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### **Legislation**

1. Corporate Insolvency Act No. 9 of 2017 (Zambia)
2. UNCITRAL Model Law on Cross-Border Insolvency