# Beyond the UNCITRAL Model Law: Assessing the Statutory Scope and Practical Realities of Malaysia's Cross-Border Insolvency Act 2026 [Act 877]

**Nuramalina Azman[1]*, Ilyani Noor Khuszairy[2], Wan Liza Md. Amin @ Fahmy[3], Farah Adibah Zulkifli[4], Norsyazwani Mohamad Nazri[5], Amelia Masran[6], Fahmi Abd Moin[7]**

**[1,2,3,4,5,6]Faculty of Law, Universiti Teknologi MARA (UiTM), Shah Alam, Selangor, Malaysia**

**[7]Messrs Fahmi Abd Moin, Subang Pelangi, 40150 Shah Alam, Selangor, Malaysia**

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## ABSTRACT

The operationalisation of Malaysia's Cross-Border Insolvency Act 2026 [Act 877] on 28 August 2026 marks a historic transition in Southeast Asian commercial law, replacing century-old territorialism with a codified modified universalist framework. Adopting the 1997 UNCITRAL Model Law on Cross-Border Insolvency almost wholesale, Act 877 grants foreign representatives direct court access, recognition pathways, automatic and discretionary stays, and statutory judicial cooperation. Nevertheless, the framework incorporates critical localised divergences to protect domestic financial stability. Firstly, Section 3(2) and the Schedule establish a two-tier exclusion: Section 3(2)(a)–(c) carves out individual bankruptcies, non-corporate businesses, and limited liability partnerships, while Part I of the Schedule removes regulated financial institutions supervised by Bank Negara Malaysia, the Securities Commission, and PIDM; meanwhile, Part II preserves regulatory supremacy under the International Interests in Mobile Equipment (Aircraft) Act 2006 [Act 659] (Corporate INTL, 2026; Skrine, 2026). Secondly, Section 21(3) and P.U. (A) 299/2026 prescribe an RM200,000 threshold under which domestic claims must be satisfied or secured before extraterritorial asset remittances, displacing Companies Act 2016 Section 578 ring-fencing for Act 877 applicants under P.U. (A) 305/2026 (Lee, 2026). Thirdly, Section 20(3)(a) expressly exempts secured creditors from the automatic stay, maintaining charge enforcement. At the procedural level, this study evaluates the roadmap under Order 88A of the Rules of Court 2012 [P.U. (A) 313/2026], analyses Centre of Main Interests (COMI) determination between the US/Singapore approach (recognition application date: In re Fairfield Sentry Ltd; Re Zetta Jet Pte Ltd) and the English approach (foreign commencement date: Re Stanford International Bank Ltd), and scrutinises the interaction between procedural recognition and substantive private international law, particularly the rule in Gibbs (Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux). Strategic recommendations are proposed for judges, liquidators, and lenders navigating Malaysia's modern regime.

**Keywords:** Cross-Border Insolvency, UNCITRAL Model Law, Act 877, Centre of Main Interests (COMI), Order 88A.

## INTRODUCTION

### Background of the Study & Statutory Context

The rapid globalisation of trade, digital commerce, and multinational corporate structures in Southeast Asia has created a deeply integrated business landscape where corporations routinely hold assets, establish operating subsidiaries, and incur liabilities across multiple sovereign jurisdictions. When a transnational enterprise experiences financial distress, the absence of a unified cross-border insolvency mechanism often leads to fragmented legal proceedings, duplicative administrative costs, uncoordinated asset grabs, and competing court judgments across borders (McCormack & Wan, 2019; Rosli et al., 2026).

Previously, Malaysia's approach to cross-border corporate distress was characterised by a century-old regime embedded in territorialism, common law comity, and disconnected statutory mechanics. Following the early precedent of Wan Weng v Too Boon Chiar [1916] 1 FMSLR 279, Malaysian courts relied principally on their inherent jurisdiction and private international law comity to grant discretionary assistance to foreign insolvency officeholders (Kho, 2023; Raslan Loong, Shen & Eow [RLSE], 2026). Prior to 2026, Malaysia lacked a comprehensive, standalone statutory framework governing cross-border corporate insolvency. Statutory governance remained strictly bifurcated: individual bankruptcy was regulated under the Insolvency Act 1967 [Act 360], while corporate insolvency and debt restructurings were governed by the Companies Act 2016 [Act 777] (CA 2016).

Under the CA 2016, cross-border corporate insolvency was addressed through limited statutory mechanisms. Section 578 of the CA 2016 regulated the winding-up of registered foreign companies, but Section 578(4)(c)(ii) imposed mandatory ring-fencing requirements that required local assets to be applied exclusively toward satisfying domestic debts before any net surplus could be remitted to a foreign liquidator (Lee, 2026; Skrine, 2026). Foreign corporate debtors also frequently utilized corporate scheme of arrangement provisions under Sections 365 to 369 of the CA 2016 by establishing a 'sufficient nexus' to Malaysia, as demonstrated in cases such as Re Nam Cheong Ltd [2021] MLJU 2341 and Re Sapura Energy Bhd [2022] MLJU 1204. However, domestic restraining orders issued under Section 368 of the CA 2016 lacked automatic extraterritorial recognition, exposing corporate assets in neighbouring jurisdictions like Singapore to creditor enforcement (Lee & Kumar, 2024).

A landmark transformation occurred when the Malaysian Parliament enacted the Cross-Border Insolvency Act 2026 [Act 877]. Act 877 received Royal Assent on 20 January 2026, was published in the Federal Gazette on 30 January 2026, and officially came into operation on 28 August 2026 pursuant to Ministerial Notification P.U. (B) 311/2026 (Skrine, 2026; Zaid Ibrahim & Co., 2026). Act 877 adopts the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (1997) almost in its entirety, marking Malaysia's formal transition from territorialism to modified universalism (Global Advisory Experts, 2026; RLSE, 2026).

To operationalise Act 877, the Malaysian Government introduced an integrated regulatory and procedural suite. This comprised the Prescription of Authoritative Text Order 2026 [P.U. (B) 312/2026], establishing the English text of Act 877 as authoritative; the Companies (Exemption) Order 2026 [P.U. (A) 305/2026], which disapplies Section 578 ring-fencing under the CA 2016 for foreign representatives recognised under Act 877; and the Cross-Border Insolvency (Prescription of Threshold) Order 2026 [P.U. (A) 299/2026], prescribing the RM200,000 domestic creditor protection threshold (Lee, 2026; Skrine, 2026). The procedural machinery was completed by the Rules of Court (Amendment) 2026 [P.U. (A) 313/2026], which inserted a dedicated Order 88A into the Rules of Court 2012 to govern recognition applications and interim relief (Christopher & Lee Ong, 2025). Alongside this insolvency-specific architecture, Malaysian courts maintain parallel pathways for cross-border monetary judgments under the Reciprocal Enforcement of Judgments Act 1958 [Act 99] (REJA 1958) and Order 67 of the Rules of Court 2012 (Allen & Gledhill, 2026).

**Problem Statement & Research Gaps**

Although the enactment of Act 877 provides a long-awaited statutory framework for cross-border recognition and judicial cooperation, the transition from ad hoc common law comity to a codified Model Law regime introduces complex doctrinal and practical challenges.

First, the statutory scope and carve-out boundaries present potential jurisdictional friction points. Act 877 strictly applies to commercial corporate entities under the Companies Act 2016 and the Labuan Companies Act 1990 [Act 441]. It explicitly excludes individual bankruptcies, sole proprietorships/partnerships, and Limited Liability Partnerships (LLPs) under Section 3(2)(a)–(c), alongside regulated financial institutions supervised by Bank Negara Malaysia (BNM), the Securities Commission (SC), and PIDM under Part I of the Schedule. Concurrently, Part II maintains specialised enforcement priorities under the International

Interests in Mobile Equipment (Aircraft) Act 2006 [Act 659] (Corporate INTL, 2026; Skrine, 2026). The practical interaction between these statutory carve-outs and multi-jurisdictional corporate insolvencies remains unexamined in domestic jurisprudence.

In parallel with scope boundaries, a critical doctrinal tension exists between procedural Model Law mechanisms and substantive private international law rules. In AirAsia X Berhad v BOC Aviation Limited & 14 Ors [2021] 10 MLJ 942, the Malaysian High Court held that it had the jurisdiction to entertain and convene a scheme meeting under Section 366 of the CA 2016 even where the scheme proposed to modify foreign-law governed aircraft leases and that such a scheme constituted an 'insolvency-related event' under the Cape Town Convention (UNIDROIT, 2001; Abdullah Chan & Co., 2021; Kwan & Lim, 2021; Skrine, 2021a, 2021b). However, because the UNCITRAL Model Law is fundamentally procedural, questions linger as to whether a Malaysian recognising court enforcing a foreign insolvency discharge can override dissenting domestic creditors holding local law contracts under the rule in Gibbs (Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux (1890) 25 QBD 399; Re OJSC International Bank of Azerbaijan [2018] EWCA Civ 2802; but compare the domestic forum scheme exception in Re Bulong Nickel Pty Ltd [2002] WASC 226; Jones Day, 2019).

Furthermore, an operational 'proactivity gap' persists between Malaysia and established regional restructuring hubs such as Singapore (Rosli et al., 2026). While Singapore incorporated the UNCITRAL Model Law in 2017 (subsequently consolidated into the Insolvency, Restructuring and Dissolution Act 2018 [IRDA 2018]) and has developed extensive jurisprudence concerning Centre of Main Interests (COMI) determinations and ex parte provisional relief under Article 19, the Malaysian High Court has yet to amass judicial experience under Act 877 and Order 88A. In addition, legal commentaries highlight transitional ambiguities under Section 35(1) of Act 877, which confines the statutory regime to proceedings 'commenced on or after 28 August 2026'. This creates uncertainty as to whether 'proceedings' refers to the substantive insolvency proceedings initiated in the foreign originating jurisdiction or the domestic recognition application brought before the Malaysian court, potentially stranding pre-existing foreign proceedings in the pre-Act 877 common law regime (Lee, 2026).

**Research Questions & Objectives**

In addressing these doctrinal ambiguities and operational challenges, this study formulates four core research questions examining: (1) the statutory scope, architecture, and regulatory boundaries of Act 877; (2) the legal mechanics of foreign main versus non-main proceedings, COMI presumptions, and local creditor protections under Section 21(3) and P.U. (A) 299/2026; (3) the interaction between procedural recognition and substantive choice-of-law doctrines such as the rule in Gibbs; and (4) the practical execution of provisional relief under Section 19 and Order 88A alongside court-to-court cooperation under Part IV.

Correspondingly, the research objectives are to systematically analyse the statutory provisions and financial sector exclusions, evaluate COMI determination mechanics, critically examine judicial shifts in Malaysian corporate jurisprudence regarding debt discharge, and provide strategic recommendations for judges, liquidators, and commercial creditors.

**Significance & Scope of the Study**

This research holds substantial theoretical and practical significance for the evolution of ASEAN cross-border commercial law. Theoretically, the study contributes to insolvency literature by analysing how a common law jurisdiction transitions from legacy territorialism to modified universalism while embedding localised statutory safeguards (Kho, 2023; Wijayanta et al., 2024).

Practically, the study serves as a timely guide for general counsel, foreign liquidators, restructuring professionals, and commercial lenders navigating Act 877 and Order 88A. The scope focuses primarily on corporate cross-border insolvency governed by Act 877, the Companies Act 2016, and the Labuan

Companies Act 1990, encompassing key comparative frameworks from Singapore (IRDA 2018), the United Kingdom's Cross-Border Insolvency Regulations 2006 (CBIR 2006), and the United States (Chapter 15).

## LITERATURE REVIEW AND THEORETICAL FRAMEWORK

### Theoretical Foundations of Cross-Border Insolvency: Universalism, Territorialism, and Modified Universalism

The governance of transnational corporate default operates at the intersection of private international law, national sovereignty, and economic policy. To reconcile competing jurisdictional claims over a debtor's global assets and liabilities, international insolvency jurisprudence has evolved around three primary theoretical models: Universalism, Territorialism, and Modified Universalism (Rochelle, 2017; Rosli et al., 2026).

Universalism posits that a single insolvency proceeding initiated in the debtor's primary home forum should administer all global assets and liabilities under a single governing law. While pure universalism maximizes economic efficiency and eliminates erratic forum shopping, its full implementation is constrained by national sovereignty, as sovereign states are reluctant to surrender authority over local assets without local creditor safeguards (McCormack & Wan, 2019).

In sharp contrast, territorialism ('the grab rule') asserts that every sovereign state possesses exclusive jurisdiction over property and creditors within its borders. Foreign insolvency rulings carry no automatic legal force unless recognized under local statutes or bilateral treaties. While territorialism protects local creditors, it fragments the corporate enterprise, destroys going-concern value, and generates conflicting judicial outcomes across borders (Dewi, 2021; Pratama & Putri, 2023).

Bridging the divide between these two extremes, modified universalism serves as the modern pragmatic consensus. Coined as the 'golden thread' running through cross-border insolvency law, modified universalism establishes that insolvency proceedings should be centrally coordinated by the court of the debtor's Centre of Main Interests (COMI), while empowering local courts to grant assistance, issue stays, and protect domestic stakeholders under local public policy safeguards (Kho, 2023; Nadirah & Devano, 2026).

### Evolution and Core Architecture of the UNCITRAL Model Law (1997)

Promulgated by the United Nations Commission on International Trade Law in May 1997, the UNCITRAL Model Law on Cross-Border Insolvency translates modified universalism into a practical legislative framework (UNCITRAL, 1997, 2014). Rather than unifying substantive national laws, the Model Law establishes procedural mechanics resting on Four Structural Pillars: Access (Pillar I; Part II, Sections 9–14 of Act 877); Recognition (Pillar II; Part III, Sections 15–18); Relief (Pillar III; Part III, Sections 19–24); and Cooperation and Coordination (Pillar IV; Part IV, Sections 25–27), supplemented by rules governing concurrent proceedings in Part V (Sections 28–32) (RLSE, 2026).

### Comparative Evaluation: Pre-2026 Malaysian Framework vs. Regional Benchmarks

Prior to the enactment of Act 877, Malaysia's approach to cross-border insolvency was heavily territorial, fragmented, and reliant on common law comity following Wan Weng v Too Boon Chiar [1916] 1 FMSLR 279. Section 578 of the CA 2016 governed foreign corporate liquidations but contained strict statutory ring-fencing under Section 578(4)(c)(ii). While foreign corporate groups utilized corporate schemes of arrangement under Sections 365–369 of the CA 2016 by establishing a 'sufficient nexus' in Re Nam Cheong Ltd [2021] MLJU 2341 and Re Sapura Energy Bhd [2022] MLJU 1204, domestic restraining orders lacked automatic extraterritorial effect (Lee & Kumar, 2024).

In contrast, Singapore adopted the UNCITRAL Model Law in 2017 (now housed in the Third Schedule of

IRDA 2018), transforming the city-state into an Asian restructuring hub with automatic stays, emergency provisional relief, and extensive SICC jurisprudence (Rosli et al., 2026). This divergence created a notable 'proactivity gap' across the causeway, which Act 877 was enacted to seal.

### Substantive vs. Procedural Dichotomy and Legal Friction Points

A central analytical issue is the distinction between procedural Model Law mechanics and substantive private international law doctrines. Under the English common law rule in Gibbs (1890) 25 QBD 399, a debt governed by English law (or, in this context, the domestic contract law of the forum) cannot be compromised by a foreign insolvency proceeding unless the creditor submits to that jurisdiction (Re OJSC International Bank of Azerbaijan [2018] EWCA Civ 2802; Jones Day, 2019). While the Singapore High Court in Pacific Andes Resources Development Ltd [2018] 5 SLR 125 rejected the rule in Gibbs in favour of modified universalism, and Australian courts in Re Bulong Nickel Pty Ltd [2002] WASC 226 confirmed that Gibbs does not restrict a forum court's jurisdiction to sanction its own domestic scheme affecting foreign-law contracts—an approach echoed domestically in AirAsia X Berhad v BOC Aviation Limited [2021] 10 MLJ 942 (Abdullah Chan & Co., 2021; Kwan & Lim, 2021; Skrine, 2021a, 2021b)—a Malaysian recognising court enforcing a foreign insolvency discharge over domestic-law contracts under Act 877 must still navigate substantive choice-of-law constraints.

**Table 1: Comparative Legal Frameworks in Selected ASEAN Jurisdictions**

| Jurisdiction | Governing Legislation | Model Law Adoption | Key Operational Features |
|---|---|---|---|
| Singapore | Insolvency, Restructuring and Dissolution Act 2018 (IRDA 2018) | Adopted 2017 (formerly Tenth Schedule, CA; now Third Schedule, IRDA 2018) | Automatic stays, COMI jurisprudence, Article 19 provisional relief, no 'manifestly' in public policy. |
| Malaysia | Cross-Border Insolvency Act 2026 [Act 877] | Enacted 2026 (In force 28 Aug 2026) | Modified universalism, RM200,000 protection threshold, secured credit immunity, Order 88A roadmap. |
| Indonesia | Law No. 37/2004 on Bankruptcy and PKPU | Non-Model Law | Strict territorialism, local asset priority, no statutory recognition of foreign insolvency orders. |
| Philippines | Financial Rehabilitation and Insolvency Act 2010 (FRIA) | Adopted 2010 (Chapter VIII, FRIA) | Model Law principles, court-supervised rehabilitation, cross-border court assistance. |

## RESEARCH METHODOLOGY

### Doctrinal Legal Approach & Normative-Juridical Design

To critically evaluate Act 877, this study adopts a doctrinal legal research methodology grounded in a normative-juridical design. It systematically evaluates codified legal norms, statutory instruments, and

judicial precedents to examine the structural shift in Malaysian corporate law from the territorialism era to modified universalism.

### Primary Legal Materials & Statutory Analysis Framework

Act 877 and its subsidiary instruments (P.U. (B) 311/2026, P.U. (B) 312/2026, P.U. (A) 299/2026, P.U. (A) 305/2026, and P.U. (A) 313/2026); the Companies Act 2016 and Labuan Companies Act 1990; international instruments including the 1997 UNCITRAL Model Law, Singapore IRDA 2018, UK CBIR 2006, and US Bankruptcy Code Chapter 15; and judicial precedents including Wan Weng [1916] 1 FMSLR 279, AirAsia X [2021] 10 MLJ 942, Re Nam Cheong Ltd [2021] MLJU 2341, Re Sapura Energy Bhd [2022] MLJU 1204, Lau Yean Liang v Jason Aleksander Kardachi (Re Fullerton Capital Ltd) [2025] SGCA 11, and Ascentra Holdings, Inc v SPGK Pte Ltd [2023] SGCA 32 are the primary legal materials analysed in this study.

### Comparative Legal Inquiry Framework & Qualitative Analytical Criteria

The comparative inquiry evaluates Act 877 against regional benchmarks across three vectors: scope and accessibility of relief, local creditor safeguards, and court-to-court cooperation. The analysis applies qualitative content analysis against the five standard UNCITRAL policy objectives: cooperation, legal certainty, fairness and efficiency, value maximization, and business rescue.

## FINDINGS AND DISCUSSION

### Statutory Scope, Architecture, and Regulatory Carve-Outs of Act 877

Act 877 came into force on 28 August 2026 (P.U. (B) 311/2026), supported by P.U. (B) 312/2026 (authoritative English text), P.U. (A) 299/2026 (RM200,000 threshold), P.U. (A) 305/2026 (CA 2016 Section 578 exemption), and P.U. (A) 313/2026 (Order 88A) (Lee, 2026; Skrine, 2026). Notably, Section 2(2) of Act 877 statutorily instructs Malaysian courts to interpret Act 877 with explicit regard to its international origin (RLSE, 2026).

Under Section 2(1) of Act 877, a ‘debtor’ is defined strictly as a corporation incorporated or registered under the Companies Act 2016 or Labuan Companies Act 1990. Pursuant to Section 3(2) and the Schedule, statutory carve-outs operate on two levels: Section 3(2)(a)–(c) excludes individual bankruptcies under Act 360, sole proprietorships/partnerships, and LLPs under the Limited Liability Partnerships Act 2012 [Act 743], while Part I of the Schedule removes regulated financial institutions supervised by BNM, the SC, and PIDM under the Financial Services Act 2013 [Act 758] (FSA 2013), Islamic Financial Services Act 2013 [Act 759] (IFSA 2013), Development Financial Institutions Act 2002 [Act 618] (DFIA 2002), and Malaysia Deposit Insurance Corporation Act 2011 [Act 720] (MDICA 2011). Concurrently, Part II of the Schedule preserves specialised statutory enforcement priorities under the International Interests in Mobile Equipment (Aircraft) Act 2006 [Act 659], the Netting of Financial Agreements Act 2015 [Act 766], and central depositories under the Capital Markets and Services Act 2007 [Act 671] (CMSA 2007) (Corporate INTL, 2026; Skrine, 2026; Zaid Ibrahim & Co., 2026).

### Divergences Between Act 877 and the UNCITRAL Model Law

While adopting most of the Model Law, Act 877 also incorporates localised modifications. Under Section 21(3) of Act 877 and P.U. (A) 299/2026, a foreign representative seeking to transfer local debtor property overseas must satisfy or guarantee domestic claims not exceeding the amount of RM200,000 (Lee, 2026; Skrine, 2026). This quantitative statutory mechanism serves as Malaysia’s objective solution to the discretionary protection dilemma illustrated in the Australian Federal Court decision of Akers v Deputy Commissioner of Taxation (2014) 228 FCR 534. Notably, P.U. (A) 305/2026 provides a targeted statutory exemption from Section 578 CA 2016 ring-fencing for foreign liquidators who apply for recognition under Section 15 of Act 877, while leaving Section 578 CA 2016 active for non-Act 877 foreign liquidations (Lee, 2026).

In addition, Section 20(3)(a) explicitly exempts secured creditors from the automatic stay triggered by foreign main recognition, granting debenture holders and mortgagees statutory immunity to enforce charges without court leave. This contrasts with US Chapter 15 (where 11 U.S.C. § 1520(a)(1) applies the § 362 automatic stay to halt secured enforcement unless stay relief is granted) and Singapore IRDA 2018 (where the stay operates under domestic IRDA qualifications), while mirroring Article 20 of UK CBIR 2006 (Morris et al., 2018; Corporate INTL, 2026).

Furthermore, Section 7 of Act 877 omits the word 'manifestly' from the public policy exception ('contrary to the public policy of Malaysia'). Notably, Singapore also omitted 'manifestly' from Article 6 of the Third Schedule to IRDA 2018. Despite this textual omission, the Singapore High Court in Re Zetta Jet Pte Ltd [2019] SGHC 53 and the Singapore Court of Appeal in Lau Yean Liang v Jason Aleksander Kardachi (Re Fullerton Capital Ltd) [2025] SGCA 11 affirmed that the public policy exception must still be construed narrowly and restricted to core notions of morality and justice, providing direct support for a restrictive construction in Malaysia under Section 2(2).

**Table 2: Key Statutory Divergences Between Act 877 and Comparative Model Law Regimes**

| Regime / Act | Secured Creditor Stay Effect | Local Creditor Protection Threshold | Public Policy Statutory Formula |
|---|---|---|---|
| Malaysia [Act 877] | Exempted: Section 20(3)(a) preserves charge enforcement without court leave. | Prescribed: RM200,000 statutory limit under Section 21(3) & P.U. (A) 299/2026. | Modified: Omits 'manifestly' (Section 7); restrictive interpretation supported under Section 2(2). |
| Singapore [IRDA 2018] | Qualified: Subject to domestic IRDA 2018 stay qualifications. | Discretionary: Court evaluates adequate protection on facts. | Modified: Omits 'manifestly' (Article 6); construed narrowly in Zetta Jet. |
| United Kingdom [CBIR 2006] | Exempted: Article 20 CBIR preserves security enforcement. | Discretionary: Court evaluates adequate protection. | Restrictive: 'manifestly contrary to public policy' (Article 6). |
| United States [Chapter 15] | Stayed: 11 U.S.C. § 362 stay applies; stay relief required. | Discretionary: Court requires adequate protection (§ 1522). | Restrictive: 'manifestly contrary to public policy' (§ 1506). |

**Practical Realities, COMI Determination, and Jurisdictional Bottlenecks**

Order 88A of the Rules of Court 2012 [P.U. (A) 313/2026] provides the procedural roadmap for recognition applications, requiring an ex parte originating summons supported by an affidavit detailing certified foreign orders, certified English translations under P.U. (B) 312/2026, full disclosure statements, and COMI evidence. Service must be effected within 14 days on liquidators, receivers, and active litigants, alongside publication on the Malaysian Department of Insolvency (MDI) official portal (Lee, 2026; Skrine, 2026).

Regarding COMI determination under Section 16(3), the Singapore Court of Appeal decision in Lau Yean Liang v Jason Aleksander Kardachi (Re Fullerton Capital Ltd) [2025] SGCA 11 (decided 13 March 2025) provides crucial guidance. The SGCA specifically rejected describing the Article 16(3) registered office

presumption as an 'initial proxy' or 'starting point'. Applying Section 3(3) of the Singapore Evidence Act, the Court of Appeal ruled that Article 16(3) creates a formal rebuttable presumption of law, placing the legal burden of proof squarely on the challenger to prove on a balance of probabilities that the debtor's COMI is located elsewhere.

Crucially, international jurisprudence exhibits a clear split regarding the temporal reference point for evaluating COMI. In the United Kingdom, the Court of Appeal in Re Stanford International Bank Ltd [2010] EWCA Civ 137 evaluated COMI as of the date of commencement of the foreign insolvency proceeding to prevent opportunistic debtor relocation and bad-faith forum shopping. Conversely, under US Chapter 15 (In re Fairfield Sentry Ltd, 714 F.3d 127) and Singapore jurisprudence (Re Zetta Jet Pte Ltd [2019] SGHC 53; British Steamship Protection and Indemnity Association Ltd v Charles Thresh [2024] SGCA 43), courts evaluate COMI as of the date of filing the recognition application (Rochelle, 2017). While Zetta Jet established the application date as the operative temporal benchmark, the Singapore Court of Appeal in British Steamship further clarified that only legitimate commercial conduct objectively ascertainable by third parties as of that date can be taken into account. This can be distinguished from the case of Ascentra Holdings, Inc v SPGK Pte Ltd [2023] SGCA 32, which addressed the qualification of solvent liquidations under Article 2(h) rather than the temporal reference date for COMI. In Australia, the Federal Court evaluated COMI as of the recognition hearing date in Kapila, in the matter of Edelsten [2014] FCA 1112. Guided by Section 2(2) of Act 877, the Malaysian High Court must decide between the UK foreign commencement approach and the US/Singapore recognition filing date approach.

In addition, practical bottlenecks include transitional ambiguities under Section 35(1) of Act 877, which states that the Act applies to cross-border proceedings 'commenced on or after 28 August 2026', leaving an open question whether it covers foreign proceedings initiated prior to 28 August 2026 where the Malaysian recognition petition is filed after that date (Lee, 2026). Part IV (Sections 25–27) provides statutory authority for direct court-to-court communication and joint hearings, complementing the 2021 Malaysia-Singapore Court Protocols (Supreme Court of Singapore & High Court of Malaya, 2021).

## CONCLUSION AND RECOMMENDATIONS

### Summary of Core Findings

Act 877 successfully modernises Malaysia's corporate restructuring framework, replacing century-old territorialism with modified universalism. The Act establishes a clear procedural roadmap under Order 88A, embeds targeted local creditor safeguards (RM200,000 threshold under P.U. (A) 299/2026), preserves secured creditor charge enforcement under Section 20(3)(a), and seals the regional proactivity gap across the causeway.

### Strategic Recommendations

- **Level I (Legislative & Policy):** Parliament should consider enacting a statutory clarification to Section 35(1), or the Chief Justice / Chief Judge should issue a Practice Direction confirming that Section 35(1) applies whenever a Malaysian recognition application is filed on or after 28 August 2026, regardless of the foreign opening date. Additionally**,** Parliament should consider enacting the 2018 UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments to complement Act 877.
- **Level II (Judicial & Administrative):** The High Court Bench should formally adopt the Judicial Insolvency Network (JIN) Guidelines and construe Section 7 public policy restrictively under Section 2(2).
- **Level III (Practitioner & Commercial):** Foreign representatives should assemble robust COMI evidence bundles and set up local escrow accounts for claims up to RM200,000 under Section 21(3). Restructuring advisers seeking to modify Malaysian-law debt should consider parallel Section 366 schemes to navigate choice-of-law rules.

### Concluding Remarks

The Cross-Border Insolvency Act 2026 represents a historic milestone in Malaysian commercial law. Through consistent judicial application, adherence to international Model Law jurisprudence, and proactive cross-border cooperation, Malaysia is well-positioned to serve as a transparent, predictable, and globally competitive commercial restructuring hub.

### Declaration

The authors declare no conflict of interest regarding the publication of this manuscript. All statutory materials, judicial precedents, and legal commentaries analysed in this study are derived from publicly accessible legal records and academic publications.

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