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Cross-Border Insolvency and the Proactivity Gap: A Comparative Study of Provisional Relief in Malaysia and Singapore

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ABSTRACT

An effective cross-border insolvency framework is highly important to address the legal issues and challenges caused by cross-border insolvency that involve multiple jurisdictions due to the wide nature of business operations that can involve multiple assets and creditors around the world. A well developed cross-border insolvency framework that is able to facilitate judicial cooperation of courts of multiple jurisdictions is crucial in order to preserve the debtor's assets and safeguard the various parties' interest pending the determination of the insolvency proceedings. The United Nations Commission of International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency provides a great reference for Malaysia and Singapore in enacting their own cross-border insolvency framework. Singapore has earlier reformed its cross-border insolvency law through the enactment of the Insolvency, Restructuring and Dissolution Act 2018 while Malaysia just recently in January 2026 enacted its Cross-Border Insolvency Act 2026 in order to address the limitation in cross-border insolvency cases. This article examines the mechanism of provisional relief in cross-border insolvency Malaysia and Singapore by assessing the creativity gap between these two countries in responding to urgent cross-border insolvency proceedings. In conclusion, a comprehensive cross-border insolvency framework is necessary to address the cross-border insolvency challenges in Malaysia and the Cross-Border Insolvency Act 2026 was enacted to tackle these challenges.

Keywords: Cross-Border Insolvency, Provisional Relief, United Nations Commission on International Trade Law (UNCITRAL), Model Law on Cross-Border Insolvency

Themes: Company Law and Insolvency Law

INTRODUCTION

In the event of corporate solvency, the proceedings may involve insolvency laws of different jurisdictions due to the nature of the business that expand operations in different countries, with multiple assets and creditors that can be located in different parts of the world. Such situations pose significant legal challenges in which the framework of a cross-border insolvency is necessary in harmonising the different applications of laws of multiple jurisdictions.

In discussing the fragmented nature of cross-border insolvency, Gopalan & Guihot (2015) had highlighted that in the absence of an effective cross-border insolvency mechanism, the proceedings may be inefficient resulting in conflicting judicial decisions thus causing delays in asset recovery or asset and unfair treatment to creditors. The fragmented proceedings also lead to duplicated costs and parallel insolvency actions contributing to the ineffectiveness of enforcement actions in the solvency proceedings.

Judicial cooperation plays an important role in addressing these challenges of cross-border insolvency. Through the recognition of foreign insolvency proceedings and coordination between courts of different jurisdictions, judicial cooperation promotes efficient administration of debtors' assets and facilitates restructuring or liquidation measures transcending borders (Wang, 2023).

One of the principal mechanisms through which judicial cooperation is implemented in practice of cross-border insolvency is provisional relief on application for recognition of foreign proceedings. In the interval between the commencement of foreign insolvency proceedings and the domestic court's determination of a recognition application, the debtor assets are vulnerable to dissipation or subjected to enforcement of local proceedings. Provisional relief enables courts to grant urgent protective measures that includes stays of proceedings and the entrustment of assets to foreign insolvency representatives until the application for recognition of a foreign proceeding is determined (United Nations Commission on International Trade Law ("UNCITRAL"), 2014).

Malaysia and Singapore share the same common law origins for insolvency laws but have adopted different approaches to cross-border insolvency. In Malaysia, the corporate insolvency framework is principally governed by the Companies Act 2016. Domestic laws are primarily relied upon when addressing cross-border insolvency cases, alongside common law principles showing the lack of attitude in addressing the foreign proceedings (Kho, 2023). However, with the enactment of the Cross-Border Insolvency Act 2026 ("CBIA 2026 ") Malaysia has taken a step forward to address the legal challenges in respect of cross-border insolvency proceedings in Malaysia.

In contrast, Singapore which has adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency ("UNCITRAL Model Law") earlier in 2017 and further strengthened its legal framework through the enactment of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA 2018") aligning its insolvency mechanism with international developments (Foo, 2023).

The differing implementation of cross-border insolvency law between Malaysia and Singapore provide a useful basis in examining the proactivity gap between these two countries particularly regarding provisional relief in cross-border insolvency cases.

LITERATURE REVIEW

Theoretical Foundations of Cross-Border Insolvency

Cross-border insolvency law seeks to address the challenge posed to the domestic insolvency laws in dealing with insolvency cases that transcends boundaries of states. It seeks to reconcile competing jurisdictional challenges and claims in the cross-border insolvency proceedings based on two competing theories namely universalism and territorialism.

Universalism advocates the administration of insolvency proceedings through a single legal system of one primary jurisdiction. Under this approach, one jurisdiction assumes primary responsibility for conducting the insolvency proceedings while foreign courts recognise and give effect to its decision. By singularly administering the insolvency proceedings, universalism improves efficiency in the treatment of insolvency proceedings across different jurisdictions.

Theoretically, universalism ideally works to minimise duplication of proceedings and prevent delay of actions concerning multiple jurisdictions, However, differences in local law of each jurisdiction that is involved in cross-border insolvency cases make the full implementation of this approach difficult in practice. In the absence of binding international agreement, states are often unwilling to relinquish administration over assets situated within their jurisdiction or permit the application of foreign insolvency laws within their territories on the principle of national sovereignty and conflict with domestic laws (Wang, 2023).

Territorialism by contrast maintains that each state possesses exclusive authority over insolvency matters within its own territory. Territorialism emphasises the authority of local jurisdictions and safeguards the application of domestic insolvency laws by limiting a unified foreign insolvency decisions from taking within its local jurisdiction. Accordingly, foreign insolvency proceedings and judgments are not automatically recognised or enforced unless permitted by the insolvency law of the domestic country (Wang, 2023).

At present the theories of universalism and territorialism have evolved to achieve a balanced middleground in the enforcement and effectiveness of cross-border proceedings. On the international level, the UNCITRAL Model Law that provides an internationally recognised framework on cross-border insolvency can be said to be a good reference for countries in order to enact their cross-border regime. The Model Law provides the framework for insolvency cooperation between different jurisdictions by providing the framework for efficient coordination between courts in different jurisdictions and thus facilitates the effective administration of cross-border insolvency (Gopalan & Guihot, 2015).

Cross-Border Insolvency Framework in Singapore

The UNCITRAL has adopted the UNCITRAL Model Law, which is a framework for international bankruptcy on January 30, 1998. Singapore became the 42nd state in the world that adopts the UNCITRAL's Law on Cross-Border Insolvency Model (Trisna Dewi, 2021). Singapore incorporated the UNCITRAL Model Law on Cross-Border Insolvency within their Companies (Amendment) Act 2017, strengthening their cross-border insolvency regime. Due to this, Singapore now became one of the countries that acknowledge and even encourage international bankruptcy procedures collaboration. As long as the application is accompanied by relevant court orders and details about other known insolvency proceedings involving the debtor, the UNCITRAL Model Law permits a foreign representative to apply to the Singapore High Court for recognition of foreign insolvency proceedings.

Prior to the adoption, Singapore mostly used a case-by-case basis in foreign insolvency proceedings. However, foreign proceedings are often not recognized by Singapore unless there exist particular agreements or well-established legal principles derived from the proceedings. Therefore, Singapore's adoption of UNCITRAL Model Law into its legislation has made Singapore a country that has a much more organized framework in managing international bankruptcy proceedings. The 2017 amendments and adoption of the UNCITRAL Model Law into Singapore's Companies Act has undoubtedly laid down the groundwork for a cross-border insolvency regime in Singapore. However, Singapore's cross-border and corporate rescue framework underwent its final legislative changes with the establishment of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) which comes into effect back in 2020. The UNCITRAL Model Law is currently housed in the Third Schedule of IRDA.

Singapore's adoption of the UNCITRAL Model Law clearly shows Singapore's commitment to improve their judicial system, by incorporating rules with regards to cross-border insolvency in its legislative framework. Consequently, the 2017 reforms and also their consolidation under the IRDA had positively strengthened Singapore's position as one of Asia's leading restructuring and insolvency hubs.

Cross-Border Insolvency Framework in Malaysia

The main law of Malaysia's insolvency regime is the Insolvency Act 1967. Before the passing of our very own Cross-Border Insolvency Act 2026 (CBIA), Malaysia never ratified the UNCITRAL Model Law despite our law being heavily influenced by the English bankruptcy law.

Many scholars have noted the absence of Malaysia's cross-border insolvency framework before the passing of CBIA. Even with a dual insolvency regime where the Insolvency Act 1967 governs individual bankruptcy and company legislation governs corporate insolvency, neither of both laws offers a cross-border insolvency framework. One of the only international insolvency cooperation in Malaysia pre CBIA 2016 was only restricted to Singapore, in which Section 105 of the Insolvency Act 1967 acknowledges insolvency proceedings in Singapore. To elaborate this Section, in an instance where insolvency proceedings are currently ongoing in Singapore and if it is collaboratively decided that it would be more appropriate to distribute the debtor's estate in Singapore, Malaysian court is authorized to annul a bankruptcy order. Malaysia and Singapore have tons of similarities in both insolvency laws, hence it is easier to develop such bilateral cooperation.

Due to this, it is difficult for Malaysia to coordinate and acknowledge proceedings from countries other than Singapore as Malaysian courts generally lack a general framework to acknowledge or support foreign insolvency proceedings from other jurisdictions in the world. Thus, there is limited recognition of foreign insolvency proceedings as the Malaysian courts are heavily reliant on the statutory provisions during that time. Those who have adopted the UNCITRAL Model Law on the other hand, do not have the same problem as Malaysian courts.

Finally, after years of difficulties in coordinating and acknowledging proceedings from other jurisdictions, in 2026, Malaysia has fundamentally changed its legal landscape with the establishment of our very own Cross-Border Insolvency Act 2026. This legislation formally adopts the UNCITRAL Model Law. Thus, it closes Malaysia’s proactivity gap that has long been there, compared to Singapore. The Act enables foreign representatives with direct access to the Malaysian High Courts to commence foreign proceedings. Not only it did that, the Act also empowers the judges in Malaysia with power to grant immediate provisional relief. For example, interim stays on asset executions in order to preserve corporate value and protect the interest of international creditors.

Provisional Relief in Comparative Perspective

The UNCITRAL Model Law has the concept of provisional relief that emerged precisely to address this concern by empowering courts to preserve value during the procedural interval between application and recognition. The UNCITRAL Model Law has adopted a procedural rather than recognised substantive harmonisation approach. Hence, by referring into Article 19 of the UNCITRAL Model Law, courts may grant provisional relief upon filing of an application for recognition and before recognition is determined. The typical measures consist of staying execution against the debtor’s assets, entrusting administration or preservation of assets to a foreign representative, suspending rights of disposition, and implementing urgent measures necessary to protect creditors and preserve estate value. One of the examples is the relief is considered as discretionary and temporary, designed to prevent irreversible prejudice during judicial delay. When the recognition is granted, broader relief may become available under the Articles 20 and 21. Contemporary and modern scholars have reached consensus by explaining provisional relief through the theory of modified universalism.

Moreover, Malaysia historically had fully depending on the traditional common law principles, domestic insolvency legislation, and selective mechanisms of international cooperation compared to the comprehensive implementation or adaptation of the UNCITRAL Model Law. Even though the Malaysian courts have jurisdiction on certain powers to issue preservation orders and cooperate in insolvency-related matters, the scholars believe that the absence of a dedicated cross-border insolvency framework creates uncertainty and ambiguity in regards to the recognition procedures and emergency assistance to foreign representatives.

In comparative to the other perspective, Singapore can be considered as one of the in advance examples of the comprehensive through the implementation or adaptation of the UNCITRAL Model Law. With the advancement of the reforms to its insolvency legislation, Singapore has fully adopted a judicial approach that encourages the enhancement of the cooperation and coordination in international insolvency proceedings.

Concisely, the concept and implementation of the provisional relief had noted the difference between the both countries Malaysia and Singapore's approaches and framework that regards the cross-border insolvency. Singapore's framework enables timely restructuring and asset preservation through interim measures, while Malaysia still in continuous circumstances faces challenges due to the limited availability of urgent cross-border assistance mechanisms.

Research Gap

The existing literature on cross-border insolvency has mainly focused on broad theory such as universalism and territorialism and also on the adoption of the UNCITRAL in major jurisdiction. As a result, the provisional relief has received relatively little attention and is often discussed only as part of the wider insolvency framework. This is particularly evident in studies on Malaysia and Singapore, which have mainly examined insolvency reforms and the adoption of the UNCITRAL law separately, without specifically considering how provisional relief is made available and applied to foreign representatives.

Despite the shared common law heritage, close commercial relationship, and growing cooperation in cross-border insolvency between Malaysia and Singapore, there is still no comparative study that focuses specifically on provisional relief. In addition the existing literature has not developed a conceptual framework to explain the proactivity which refers to the different approaches and willingness of courts to grant interim protective measures in support of foreign in solvency proceedings. Therefore, this article addresses these doctrinal, comparative and conceptual gaps by examining the scope, accessibility, and the effectiveness of provisional relief in both jurisdictions particularly following the post enactment of Malaysia's CBIA 2026.

RESEARCH METHODOLOGY

We adopt a doctrinal research methodology, examining the legal framework that governs the remedies and relief in cross-border insolvency proceedings. We analyse the statutory provisions, legal principles, and regulatory frameworks to identify the mechanisms available to foreign countries seeking relief in insolvency matters. Malaysia relief on cross-border insolvency can be found in PART III of the CBIA 2026, specifically Section 19 and Section 20. Section 19 of CBIA 2026 is basically about granting provisional relief when filing the application; meanwhile, Section 20 is about the automatic effects of formal recognition. For Singapore, the relief can be found in Part 11, Section 252, and the Third Schedule of the IRDA 2018.

We also conduct a comparative legal analysis to identify differences and potential gaps in relief between Malaysia and Singapore within their respective cross-border insolvency frameworks. Firstly, we compared the scope of relief by paying attention to the distinction between automatic statutory relief and discretionary court-ordered remedies. Then we also evaluated the procedural aspects, including the requirements, thresholds, timelines, and the effect of access to relief. Lastly, we examined how the legal systems in Malaysia and Singapore are structured and compared them to how much they adopt the UNCITRAL Model Law to deal with cross-border business financial troubles.

A qualitative approach is used to analyze statutory provisions beyond their literal interpretation, including evaluating operational gaps, judicial discretion, procedural, and underlying policy that influence the availability and effectiveness of relief in cross-border insolvency.

FINDINGS AND DISCUSSION

Legal Framework Governing Provisional Relief in Cross-Border Insolvency

In 1997 the UNCITRAL Model Law was introduced and developed for the purpose to navigate the challenges while providing a harmonized framework for recognition, relief, cooperation, and standardization among courts dealing with transnational insolvency issues.

Singapore Framework

First and foremost, Singapore is only one country that considered in South East Asia as one of the leading jurisdictions for cross-border insolvency cooperation through its adoption of the UNCITRAL Model Law on Cross-Border Insolvency. The Singapore law through IRDA 2018 was fully incorporated and adapt with the The UNCITRAL Model Law. The Singapore law adopted the UNCITRAL Model Law to reform their previous law from a genuinely considered as territorial approach to transform into a modified universalist framework that focusing more on cooperation and coordinated administration of multinational insolvencies on a global level and standard.

Furthermore, another development is Singapore has applied and enacted a statutory provision that governing recognition of foreign insolvency proceedings to objectively focus within the UNCITRAL Model Law to consolidated with the IRDA 2018. For foreign representative the Singapore High Court allowed to apply for recognition of a foreign process and proceeding. The recognition framework successfully standardizes the process of obtaining judicial assistance compared to unupdated process which is conservative or orthodox common law methods, which in objective to enhance assurance, and certitude and practicality in the process of cross-border insolvency administration.

Other than that, Singapore has fully recognised and practice a legal framework which is the leniency and non-rigidity of provisional relief in both circumstances which are before and after recognition of foreign process and proceedings. Previously for the recognition, the interim relief could be granted by the court grant if in the circumstances when it is necessary to protect the debtor's assets or the interests of creditors itself. The relief which are among of staying execution against assets, entrusting the administration or realization of assets to a foreign representative, or imposing restrictions on the transfer or disposal of property.

Hence, the Singaporean courts had take an aggressively initiative to continuously espoused a practical and expediting a method for cross-border insolvency integration and consolidation proceeding. The Judicial decisions objective is more stress on emphasise on the the principles of modified universalism, which seek to administer insolvency proceedings on a standardised on the issue of global basis compared to the through the issue regards to fragmented territorial procedure and processes.

Malaysia Framework

By comparison to Singapore, predominantly the Malaysian insolvency framework still maintain their position to be governed by the law of Companies Act 2016 and conventionally fully depending on common law principles, meanwhile Malaysia has not for the moment to officially recognised the UNCITRAL Model Law on the matter of Cross-Border Insolvency. Despite in the situation, the cross-border insolvency matters are basically in general are settled through the platform of domestic insolvency provisions, judicial discretion, and common law doctrines relating to recognition and assistance. Lately, the Malaysia recently has recognised the pivotal medium which is known as corporate rescue mechanisms, including judicial management and corporate voluntary arrangements, these kind of mechanism reforms do not holistically regulate recognition and settled the issue in cross-border insolvency cases.

After that, there is an important impediment that need to improve by the Malaysian framework in regards to the ability of foreign representatives to obtain provisional relief prior to formal recognition. The reason to highlight is because there is no comparable to the statutory below Article 19 of the UNCITRAL Model Law, foreign representatives do not have a clearly defined right to seek urgent interim measures solely on the basis of their appointment in a foreign proceeding and the issue of non existence of express legislative authority creates uncertainty related closely to the scope and availability of the relief itself.

More than that, Malaysia had made a rigorous recent development which related to the latest Malaysian insolvency framework, to be known as Malaysia's Cross-Border Insolvency Act 2026 (CBIA 2026). Back to before 2026, there is non-existence, which is that Malaysia had no particular or exact on the issue of cross-border insolvency legislation, while Malaysia had depended on the concept of conventional common law that created Incertitude circumstances. Ensuring that Malaysia had wholly acknowledged a more contemporary statutory framework which followed the UNCITRAL Model Law with recognition of foreign proceedings and enhanced court integration. At the same time, the Singapore with had fully applied the Insolvency, Restructuring and Dissolution Act 2018 (IRDA 2018) had earlier adopted the UNCITRAL Model Law with a more grounded and holistically systematic related to the issue of cross-border insolvency regime which can be seen as a regional benchmark.

To conclude, there is a huge improvement and progress generally shown by the Malaysian courts in regards to support international integration and collaboration to settle insolvency issues. The Malaysia has currently implement which is known as the Cross-Border Insolvency Act 2026 (CBIA 2026) to standardise with the UNCITRAL Model Law, in objective to the recognition that tend to be increasingly systematic and methodical framework is required in order to enhance legal certitude, increasing in the matter of efficiency, and to standardise the international unification in issue of related to cross-border insolvency process and proceedings.

Comparative Analysis of Provisional Relief in Malaysia and Singapore

Scope of Available Relief

Malaysia and Singapore have established legal mechanisms enabling courts to grant provisional relief prior to the formal determination of a recognition application, specifically where the preservation of debtor assets or the protection of creditor interest is urgently required. As per Section 19 and Section 20 of the CBIA 2026, it explicitly empowers the judiciary to order stays of execution, entrust asset administration to foreign or local insolvency representatives and implement protective measures, integrated into the post-recognition relief framework. These statutory mandates assign Malaysian courts a proactive functions in asset preservation during the interim period proceeding reformer recognition.

Conversely, Singapore adopts a comparable substantive approach under Article 19 of the UNCITRAL incorporated into the IRDA 2018. However, the Singapore framework is more intrinsically linked to the recognition process. While recognition of a foreign proceeding triggers automatic protections under article 20 relief for foreign non-proceeding remain subject to judicial description under Article 21. Consequently, the Singaporean framework is highly systemized with availability of relief contingent upon the recognition status of the proceeding and that Centre of Main Interest (COMI). Malaysia CBIA 2026 expressly provides for an automatic state that suspend the rise of secure credits to realize security unless leave is granted, whereas Singapore code for automatic space is aligned with the domestic qualifications under the IRDA 2018.

Accessibility of Relief

The accessibility of provisional relief is defined by the equilibrium between formal legal standing and practical attainability. Although both jurisdiction provide foreign representative with former avenues for relief the procedural hurdles are differs. In Malaysia, a foreign representative must initiate an application for recognition and such provisional relief is granted only if the court is satisfied that it is urgently needed to protect the debtor's estate or creditors interest (Section 19(1) of CBIA 2026). This necessitates that the applicant demonstrate that immediate judicial intervention is both justified and equitable to local stakeholder, thereby establishing a significant gatekeeping role for the Malaysian judiciary.

Meanwhile, Singapore utilizes a similar formal entry point under Article 19(1). However, accessibility is more distinguished by the classification of the proceedings. Recognition, as in foreign main proceeding is strategically significant as it triggers the automatic stay under Article 20(1) alleviating the need for the applicant to pursue piecemeal discretionary protection. Conversely classification as a foreign non-main proceeding shifts the focus to judicial description under the Article 21 governed by the mandatory creditor protection standards of Article 22. Hence, while both nations facilitate access, the Singapore framework present a more tiered and hierarchical structure for obtaining relief, compared to the Malaysian framework.

In regards to the procedural barriers, Singapore has a more developed legal framework supported by established judicial commentary. Although foreign representative has direct access to the Court, procedural issues relating to the statutory basis of application and a scope of remedies may still arise (Rajah, Tann Asia, 2024). In contrast, Malaysia's primary challenge lies in the novelty of its cross-border insolvency regime. Although the legislation clearly grants foreign representative access to seek recognition and relief the interpretation of key issues, including urgent relief, creditor, protections, and coordination with domestic insolvency proceeding, will likely be shaped by future case law.

Judicial Cooperation and Recognition

The legal frameworks in Malaysia and Singapore, recognize foreign insolvency proceedings as either foreign main or foreign non-main proceeding and provide mechanisms for judicial cooperation with foreign cost and representative. In Malaysia recognition under Section 16 forms the basis for judicial corporation while sections 25 to 27 allow courts and insolvency office-holders to communicate and coordinate directly with their foreign counterparts. This framework aims to facilitate the efficient administration of cross-border insolvency proceeding.

Singapore adopts a similar framework under Articles 17 and 25 to 27 of the UNCITRALS incorporated into the IRDA 2018. However, Singapore framework is supported by a well developed body of insolvency case law making judicial corporation are more established in practice (UNCITRAL 2022; Rajah & Tann Asia, 2024; Jones day, 2024). With the introduction of the CBIA 2026, Malaysia has moved from relying on the uncertain common law approach to a clear statutory framework, by bringing its legal position closer to Singapore. Nevertheless, the key difference is that Singapore's framework is supported by an extensive judicial decision, whereas Malaysia will depend on the future judicial interpretation and application.

The Proactivity Gap

This section examines whether there is a proactive gap in cross-border insolvency, namely a delay or failure by a jurisdiction to implement legal mechanisms before a corporate crisis worsens. A gap can exist when a company is in financial trouble but not yet officially recognized, or if one country tries to save the company while another country sells its assets to protect local creditors.

Singapore has taken a more proactive approach by adopting the UNCITRAL Model at an early stage, which has resulted in foreign courts being more likely to recognize Singapore insolvency proceedings under familiar frameworks, which promotes faster and more coordinated cross-border cooperation. Before the CBIA 2026, Malaysia had limited recognition, and heavily applied old laws and judges' decisions often caused delays and put assets at risk. The new Act can now let the courts quickly protect assets and automatically stop actions against them once a case is recognized, making cross-border insolvency cases more efficient.

We have the Re Sapura Energy Bhd Case, which is a catalyst exposing the judicial gap. Sapura is an oil and gas company operating in Malaysia, but its actual operations, vessels, contracts, and heavy creditors' liabilities are across the causeway in Singapore and globally. So, when the Malaysian Court granted domestic restraining orders (moratorium) under Section 368 of the Companies Act 2016, Singaporean courts could not automatically recognize those Malaysian restraining orders. Thus, this unrecognized law can allow creditors to exploit the gap as it does not bind them. This has led to the realization that common-law rules have failed to protect cross-border corporate value. In this regard, in July 2021, Chief Justice Tun Tengku Maimun of Malaysia and Chief Justice Sundaresh Menon of Singapore formally signed the Protocols for Court-to-Court Cooperation to narrow the judicial gap. The reason is to coordinate the hearing dates. However, this protocol is not statutorily bound. Thus, the gap is still widely open. Malaysia finally has the CBIA 2026 and officially adopted the UNCITRAL Model Law. This CBIA 2026 permanently seals the judicial gap. So, other countries can have direct statutory access to Malaysia's High Court and can speak the same legislative language.

While Singapore closed the gap earlier, Malaysia has progressively phased and has finally aligned to meet international standards. Malaysia's evolution of cross-border insolvency has become no longer a passive participant, able to keep up with Singapore and equally partner in handling and managing international proceedings.

Practical Implications of the Remaining Proactivity Gap (Post CBIA 2026)

Although the CBIA 2026 establishes a comprehensive framework that brings Malaysia's cros-border insolvency regime into closer alignment with internationally recognised standards, the effectiveness of the framework will largely depend on its implementation in practice, the accumulation of judicial experience and the strengthening of cross-border institutional cooperation. In light of that, this section discusses practical implications of these remaining proactivity gaps with emphasis on asset preservation, creditor protection and the efficiency of cross-border insolvency proceedings.

Asset Preservation

The proactivity gap has significant implications for asset preservation, particularly where provisional relief is unavailable or cannot be obtained promptly. In cross-border insolvency proceedings, provisional relief serves the essential function of safeguarding the debtor's assets pending recognition of foreign insolvency proceedings, thereby ensuring that the insolvency estate remains intact for equitable distribution among creditors (UNCITRAL, 2014). Prompt judicial intervention helps to preserve the value of the estate by preventing the concealment, transfer or dissipation of assets before the court reaches a decision. Conversely, delays in granting provisional relief or the absence of an effective legal mechanism may create opportunities for assets to be dissipated or removed beyond the reach of creditors, ultimately diminishing the value of the insolvency estate (Wiley, 2023; Azhar & Wong Associates, 2025).

Singapore minimises these risks through Article 19 of the UNCITRAL Model Law, which empowers its courts to grant interim relief before recognising foreign insolvency proceedings including freezing assets, restricting transfers and staying enforcement actions, thereby preserving the status quo while recognition applications are pending (UNCITRAL, 2014). Similarly, Malaysia has established a statutory framework under CBIA 2026 that enables courts to grant provisional relief where urgent intervention is required to preserve the debtor's assets or protect creditor's interests pending the determination of a recognition application. Pursuant to Section 19 and 20 of the CBIA 2026, Malaysia courts may order a stay of execution against the debtor's assets, entrust the administration of realisation of assets to a foreign representative or another suitable person and implement other protective measures to safeguard the insolvency estate during the interim period.

While these provisions represent a significant legislative enhancement, Malaysia's cross-border insolvency regime remains relatively new and has yet to develop a substantial body of judicial practice concerning the exercise of these powers. In contrast, Singapore's longer experience with the UNCITRAL Model Law has fostered a more established and proactivity gap and now lies not in the existence of statutory powers but in their practical implementation and judicial application which may influence the consistency, timeliness and the overall effectiveness of asset preservation in cross-border insolvency proceedings.

Protection of Creditors

The second implication of the proactivity gap concerns the protection of creditors. In cross-border insolvency proceedings, provisional relief plays a vital role in safeguarding creditors' interest by preventing individual creditors from obtaining an unfair advantage through premature enforcement actions before insolvency proceedings are coordinated across multiple jurisdictions (UNCITRAL, 2014). Prompt judicial intervention preserves the debtor's assets and prevents the dissipation of the insolvency estate, thereby facilitating the orderly administration of proceedings and ensuring that assets remain available for distribution in accordance with the principle of *parri passu*, under which creditors of the same class are treated equally and receive proportionate distributions from the debtor's estate. Consequently, the provisional relief promotes fairness, discourages fragmented enforcement and reinforces collective insolvency proceedings.

Although both Singapore and Malaysia have statutory provisions for granting provisional relief, differences in judicial experience and the application of these powers may affect the level of protection available to creditors. Singapore has a more established practice of granting interim relief as compared to Malaysia since in Malaysia, such a regime under CBIA 2026 is still relatively new. As a result, delays or inconsistent application of these powers may lead to fragmented enforcement and unequal treatment of creditors particularly where local creditors are able to enforce their claims before foreign insolvency proceedings are effectively coordinated.

Efficiency of Cross-Border Insolvency Proceedings

The proactivity gap also has important implications for the efficiency of cross-border insolvency proceedings. As these proceedings involve multiple jurisdictions, courts, insolvency practitioners and other stakeholders, their successful administration depends on effective coordination, timely communication and judicial cooperation.

A proactive approach to provisional relief enhances the efficiency of cross-border insolvency by enabling courts to preserve assets and maintain the status quo at an early stage of the proceedings. This allows foreign representatives, domestic courts and insolvency practitioners to coordinate their actions while recognition applications are still pending, thereby promoting a more organised and efficient insolvency process (UNCITRAL, n.d). Early intervention also reduces the uncertainty and supports the orderly administration of the debtor's estate.

Thus, since CBIA is still relatively new, the application of its provisional relief provisions is continuing to develop. Delays or inconsistent use of these powers may result in fragmented proceedings, duplicated legal actions, increased costs and uncertainty in the management of the debtor's assets. Consequently, cross-border insolvency proceedings may become less efficient and take longer to resolve.

RECOMMENDATIONS

The comparative analysis demonstrates that although Malaysia has its cross-border insolvency framework, differences remain in the practical implementation of provisional relief, judicial experience and cross-border cooperation when compared with Singapore. Thus, in order to improve the efficiency of insolvency proceedings, such recommendations are an impediment to enhance the efficiency of cross-border insolvency proceedings.

Strengthening the Implementation of CBIA 2026

Malaysia should focus on the effective implementation of the CBIA to ensure that its objectives are achieved in practice. Although the Act provides a comprehensive framework for the recognition of foreign insolvency proceedings, provisional relief, judicial cooperation and assistance to foreign representatives, its effectiveness depends on consistent judicial application and strong institutional support. This can be achieved by strengthening judicial expertise, providing training for judges and insolvency practitioners and promoting closer cooperation between Malaysian courts and foreign insolvency authorities.

Singapore's experience shows that the success of the UNCITRAL Model Law depends not only on having a legal framework but also on its effective implementation. Therefore, Malaysia should continue to strengthen the implementation of CBIA 2026 to ensure that the provisional relief is granted promptly and consistently. This would improve cross-border cooperation thus also help in reducing the remaining proactivity gap and reinforce Malaysia's ability to manage cross-border insolvency cases which is in line with international best practices.

Strengthening Judicial Powers to Grant Provisional Relief

The introduction of CBIA 2026, particularly Sections 19 and 20, marks a significant step in empowering Malaysian courts to grant provisional relief before the formal determination of a recognition application. These provisions allow the courts to order interim relief measures where urgent intervention is required.

Nevertheless, because the CBIA 2026 is newly enacted, Malaysian courts will initially have limited judicial experience in applying these provisions. Although the courts may continue to be guided by established equitable principles, such as the balance of convenience, the statutory powers conferred by the said sections should

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encourage a more proactive approach where urgent judicial intervention is required. This differs from Singapore, where courts have accumulated considerable experience in granting provisional relief under their Model Law and have developed a consistent approach to balancing the interests of debtors, creditors and foreign representatives.

Furthermore, while Malaysia may draw guidance from Singapore's jurisprudence and international best practices, Malaysia should develop its own body of case law that reflects the objectives of the CBIA 2026 and Malaysia's domestic legal framework. Building judicial expertise through consistent application of Sections 19 and 20, together with greater cooperation between Malaysian courts and foreign insolvency courts, will strengthen the practical implementation of provisional relief in Malaysia. In the long term, this will promote greater legal certainty, facilitate effective cross-border judicial cooperation and enhance confidence among foreign investors, creditors and insolvency practitioners in Malaysia's cross-border insolvency regime.

Enhancing Cross-Border Judicial Cooperation and Institutional Capacity

Although the CBIA 2026 has established a comprehensive statutory framework for cross-border insolvency in Malaysia, differences remain when compared with Singapore in terms of judicial experience, institutional capacity and the practical implementation of cross-border judicial cooperation. Singapore has developed extensive experience through its adoption of the UNCITRAL Model Law and consistent judicial practice, Malaysia should complement its legislative reforms by strengthening institutional mechanisms that support effective cooperation between Malaysian courts, foreign courts and insolvency practitioners. This may include adopting internationally recognised best practices such as the Judicial Insolvency Network (JIN) Guidelines to facilitate court-to-court communication and coordination in multinational insolvency proceedings.

In addition, specialised training and continuous professional development should be provided for judges, insolvency practitioners and legal professionals to enhance their expertise in applying the CBIA 2026 and managing complex cross-border insolvency cases. Strengthening judicial expertise and institutional cooperation will improve the practical implementation of the new statutory framework, reduce procedural delays and the risk of inconsistent decisions and promote greater legal certainty for foreign representatives and creditors.

CONCLUSION

Due to the interconnectedness of the financial markets of all continents in the world, cross-border insolvency has tremendously become important for countries, including Malaysia. Therefore, it is very crucial for a lot of countries to pick up and implement cross-border insolvency in order to preserve debtor assets, protect creditors' interests and ensure orderly administration of insolvency proceedings across jurisdictions.

Historically, Singapore was very far ahead compared to Malaysia in facilitating cross-border insolvency proceedings. Despite that, in 2026, Malaysia has finally officially closed the gap by adopting the UNCITRAL Model Law just like Singapore. Not only that, Malaysia also enacted our very own Cross-Border Insolvency Act 2026 in an effort to modernize its cross-border insolvency framework.

Now, it is not wrong to say that Malaysia has successfully placed itself to an equal level as Singapore in terms of acknowledging cross-border insolvency proceedings after years of having a "proactivity gap" as compared to Singapore.

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