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The UNCITRAL Model Law on Cross-Border Insolvency: A View from Greece

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ABSTRACT

In the realm of cross-border insolvency law, the UNCITRAL Model Law on Cross-Border Insolvency stands out as a pivotal framework enabling the recognition of foreign insolvency proceedings across national jurisdictions. Although the Model Law has benefitted from wide adoption by many prominent insolvency jurisdictions, its enactment and application in Greece are less frequently highlighted. Nevertheless, Greece's distinctive application provides insightful perspectives, particularly in highlighting the interplay between the EU and Model Law frameworks. More conceptually, the Greek approach underscores a pragmatic stance on cross-border insolvency, prioritising openness over safeguarding domestic interests. This paper delves into the treatment of cross-border insolvencies in Greece before and after the Model Law's adoption, showcasing the Model Law's influence in the formalisation of the traditionally universalist approach of Greek courts. By examining Greece's experiences in embracing the Model Law framework, the analysis offers valuable lessons for countries like India, contemplating the Model Law's adoption. The paper concludes that while the Model Law is not a cure-all, it has significantly bolstered legal certainty and predictability, promoted

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international cooperation in insolvency matters and aided in the evolution of universalist norms within Greece's legal system.

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I. INTRODUCTION

The UNCITRAL Model Law on Cross-Border Insolvency (Model Law) constitutes one of the main international instruments for dealing with the intricacies of cross-border insolvencies. Developed by UNCITRAL in 1997,[1] the Model Law is widely considered to reflect the principle of 'modified universalism',[2] enabling the recognition of foreign insolvency

[1] For some background on the development of the Model Law: see André J Berends, 'The UNCITRAL Model Law on Cross-Border Insolvency: A Comprehensive Overview' (1998) 6 Tul J of Int'l & Comp L 309.
[2] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* (1st edn, OUP 2018) 46.

proceedings and the provision of relief to foreign insolvency representatives while at the same time providing local courts with the discretion to withhold or condition their assistance to the foreign proceeding.[3] In that sense, it establishes a comprehensive framework promoting the efficient resolution of financial distress in cases where a debtor has assets and/or creditors in multiple jurisdictions. Though not a directly binding instrument but rather a uniform text that can be freely implemented, as domestic legislation, in any enacting state, the Model Law has nevertheless been adopted in a considerable number of jurisdictions, including prominent insolvency fora such as the United Kingdom and the United States.[4] As a result of its widespread adoption and its practical application in some of the largest and most consequential cross-border cases,[5] the Model Law is largely viewed as a successful and effective initiative in fostering a uniform and efficient approach to cross-border insolvencies.

Among the many jurisdictions that have enacted the Model Law, Greece does not normally stand out. This is not only the result of Greece being a small jurisdiction but also a consequence of the fact that, compared to the case law of other more prominent jurisdictions, there are significantly fewer court judgments that have been issued in the context of the Greek enactment of the Model Law. As a matter of fact, whereas

[3] Edward S Adams & Jason K Finche, 'Coordinating Cross-Border Bankruptcy: How Territorialism Saves Universalism' (2008) 15 Colum J Eur L 43.
[4] According to UNCITRAL's website, the Model Law has been enacted in 60 states and a total of 63 jurisdictions: 'Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)' (*uncitral.un.org*) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> accessed 29 January 2025.
[5] See for example: *In re Stanford International Bank Ltd and another* [2010] EWCA Civ 137, [2010] Bus LR 1270.

the US and UK appear to have produced over 60% of the judgments on the Model Law, Greece has only reported a handful of cases.[6] However, a closer view reveals that Greece, as a Model Law jurisdiction, is characterised by certain unique and interesting features. For one thing, Greece is one of the very few EU Member States that has enacted the Model Law.[7] This parallel application of a regional framework regulating cross-border insolvencies raises broader issues of potential overlap and cross-fertilisation between the EU and the Model Law regimes, which, while generally aligned in their overall orientation and approach, serve different functions within their respective institutional frameworks. In addition, despite the comparative dearth of decided cases on the Model Law, the Greek case law that has been produced in that context exhibits a high degree of openness and tolerance coupled with an appreciation of the practical issues and concerns that are often at stake in cross-border cases. From that perspective, the Greek experience with introducing and applying the Model Law can provide significant guidance and insights to other jurisdictions wishing to reform their cross-border insolvency rules and considering the introduction of the Model Law.

One of the most prominent and consequential jurisdictions that is presently grappling with this question is India. In fact, the legislative process in India has crystallised in a draft law envisaging the introduction of the Model Law within India's existing and modern

[6] This stems from data published on the UNCITRAL CLOUT database, which gathers all reported case law that has been produced under the UNCITRAL texts: see 'Case Law on UNCITRAL Texts (CLOUT)' *(uncitral.un.org)* <https://www.uncitral.org/clout/index.jspx)> accessed 27 February 2025.
[7] The others being Poland, Slovenia and Romania: UNCITRAL (n 4).

insolvency law architecture.[8] Against this background, this article will seek to make a contribution to the current policy debate, by offering a perspective from a jurisdiction that, while not directly related to India in terms of legal culture, has enacted and applied the Model Law consistently for almost fifteen years and has therefore previously encountered many of the issues, with which the Indian community is currently preoccupied. In doing so, the analysis will seek to illustrate the broader policy concerns that informed the enactment of the Model Law in Greece and determined the timing, method and manner of its adoption as well as the many diverse issues that have preoccupied the Greek courts in the application of the Model Law provisions. It is hoped that these insights can assist the Indian legal community in addressing the issues and policy decisions associated with the Model Law's introduction and enhance cooperation between Greece and India in matters of cross-border insolvency.

II. THE MODEL LAW AT A GLANCE

In very broad terms, the Model Law is structured around four fundamental principles: access of foreign insolvency representatives, recognition of foreign insolvency orders, relief to foreign proceedings and finally cooperation between different courts and coordination of parallel proceedings.[9] In particular, access refers to the conditions, under which a foreign insolvency representative is provided with standing and is entitled to apply to the courts of the adopting state (referred to as the

[8] Debaranjan Goswami & Andrew Godwin, 'India's Journey towards Cross-Border Insolvency Law Reform' (2024) 19 AsJCL 197.
[9] UNCITRAL, 'UNCITRAL Model Law on Cross-Border Insolvency' (30 May 1997) 26–27 (Model Law).

'receiving court') to seek recognition or protection.[10] Recognition relates to the authority of the receiving court to recognise, subject to certain requirements, a foreign insolvency proceeding, as either a 'main' or a 'non-main' proceeding, depending on the nature of the jurisdiction exercised by the foreign court.[11] Relief, which is closely connected to recognition, refers to the provision of automatic or discretionary assistance or relief to the foreign proceeding, usually in the form of measures protecting the assets of the debtor against creditor enforcement.[12] Finally, the concepts of cooperation and coordination mandate the receiving court to communicate and cooperate with foreign courts and insolvency representatives,[13] as well as coordinate in cases where there are parallel proceedings in multiple jurisdictions.[14] These principles provide a general conception of the Model Law's approach in dealing with cross-border insolvency cases.

Of the above principles, the most fundamental rule, not only in conceptual terms but also in practice, relates to the recognition of foreign insolvency proceedings and the provision of relief to foreign insolvency representatives. In particular, one of the Model Law's main contributions is that it provides standing to a foreign insolvency representative to request the recognition of a foreign insolvency proceeding, in the context of which he has been appointed. These terms are novel and, therefore, both of them are explicitly defined in the Model Law. More specifically, a foreign representative is "a person or body, including one appointed on

[10] Model Law (n 9), arts 9-14.
[11] Model Law (n 9), arts 15-17.
[12] Model Law (n 9), arts 19-21.
[13] Model Law (n 9), arts 25-27.
[14] Model Law (n 9), arts 28-32.

an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding",[15] whereas a foreign proceeding is "a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation".[16] These definitions thus sketch out two of the main requirements for recognition of a foreign insolvency; first, that the application be submitted by an individual that has been appointed in a foreign proceeding and that such foreign proceeding meets the requirements of collectivity and formality and serves the purpose of insolvency or reorganisation.

One of the advantages of the Model Law is that it keeps the procedural requirements of recognition limited to the furnishing of a copy of the foreign judgment commencing proceedings as well as a certificate from the originating court, affirming the existence of a foreign proceeding.[17] At the same time, the legalisation of documents is not required, which significantly reduces both the costs as well as the timeframe of recognition.[18] In that sense, recognition is a rather mechanical exercise that does not involve any substantive determinations about the nature of the rules applicable to the foreign proceeding. The only impediment to recognition is public policy, which, in theory, would permit a receiving court to refuse to recognise a foreign proceeding, if this is manifestly

[15] Model Law (n 9), art 2(d).
[16] Model Law (n 9), art 2(a).
[17] Model Law (n 9), art 15.
[18] Model Law (n 9), art 16(2).

contrary to the public policy of the adopting state.[19] Nevertheless, the public policy defence is envisaged as a narrow concept that would only be triggered in rare circumstances, which would not include instances where the foreign proceeding merely follows different rules than an equivalent proceeding in the adopting state.[20] As a result, the Model Law creates a simplified and straightforward procedure, which favours the recognition of foreign insolvency proceedings upon the application of a foreign insolvency representative.

An important feature of the framework introduced by the Model Law, which determines the nature as well as the consequences of recognition relates to the jurisdiction of the foreign court. In particular, the Model Law stipulates that the receiving court will recognise the foreign proceeding either as a 'foreign main proceeding', if it takes place, where the debtor has its centre of main interests (COMI), or as a 'foreign non-main proceeding' if it takes place where the debtor has an establishment.[21] These terms once again raise definitional issues, which are exasperated by the fact that, whereas establishment, is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services",[22] the concept of COMI is not directly defined in the Model Law. There is however some guidance in that respect. In fact, the term first originated in the context of the original version of the European Insolvency Regulation (EIR), which, though not directly including a definition, provided, in its introductory recitals, that COMI is "the place, where the

[19] Model Law (n 9), art 6.
[20] Model Law (n 9) 28.
[21] Model Law (n 9) arts 2(b), (c).
[22] Model Law (n 9), art 2(f).

debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties".[23] The Model Law appears to align with this definition and, importantly, also adopts a presumption (which is also included in the EIR), that, in the absence of proof to the contrary, the debtor's registered office, in the case of a legal person, or its habitual residence, in the case of an individual, is presumed to be the centre of the debtor's main interests.[24] This provides the receiving courts with useful guidance in locating COMI and thus simplifies the characterisation of the foreign proceedings as either 'main' or 'non-main'.

The determination of the nature of the foreign proceeding is particularly important in determining the effects of recognition in the jurisdiction of the receiving court. In particular, if the foreign proceeding is classified as 'main', meaning as taking place in the debtor's COMI, a basic bundle of automatic consequences follow recognition.[25] The most important of these consequences is a stay on creditor enforcement actions and the suspension of the debtor's right to transfer or encumber its assets (although the scope of these measures is limited by any exceptions or limitations that apply under domestic law).[26] This ensures that the main issue of cross-border insolvency cases, namely maintaining the collectivity of proceedings across national borders and avoiding a

[23] Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [2000] OJ L160 recital 13 (EIR). The recast version of the EIR includes a definition of COMI in article 3: see infra.
[24] Model Law (n 9), art 16(3).
[25] In the case of a foreign non-main proceeding, the provision of any relief, such as a stay on creditor enforcement actions is discretionary: see Model Law (n 9), art 21. It is also possible for the court to order interim relief until a decision on recognition is issued: see Model Law (n 9), art 19.
[26] Model Law (n 9), arts 20(1), 20 (2).

situation where local creditors receive preference by freely enforcing against local assets,[27] is addressed. In addition to this basic relief, however, the foreign representative is also empowered to request additional discretionary relief following recognition, where necessary to protect the assets of the debtor or the interests of creditors.[28] This relief can include additional stays on creditor enforcement actions,[29] the taking of evidence within the jurisdiction,[30] the assignment of the administration or realisation of assets[31] to the foreign representative, as well as any other 'additional relief' that may be provided to such a representative under the laws of the receiving court.[32] This broad mandate enables the foreign representative to request and obtain such relief that is tailored to the needs of the foreign proceeding. One important condition for the provision of such discretionary relief however is that the interests of creditors and other interested persons, including the debtor, are adequately protected.[33] This requirement ensures that the interests of the foreign insolvency representative in maintaining the collectivity of the foreign proceeding are balanced against the interests of other affected parties. Conceptually, therefore, the receiving court has the final say and ultimate control over the terms and extent of relief provided to the foreign representative.

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[27] Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 Mich L Rev 2276.
[28] Model Law (n 9), art 21.
[29] Model Law (n 9), art 21(1)(a). These stays can be broader than those that come into effect automatically.
[30] Model Law (n 9), art 21(1)(d).
[31] Model Law (n 9), art 21(1)(e), as well as possibly the distribution of such assets: see Art. 21 (2) Model of the enacting jurisdiction.
[32] Model Law (n 9), art 21(1)(g).
[33] Model Law (n 9), art 22.

As is evident, the Model Law provides a comprehensive framework that enables the recognition of the effects of a foreign insolvency proceeding and thereby facilitates the protection of a debtor's assets following the commencement of insolvency and the centralised and collective administration of the insolvency estate across national borders. The process of recognition that is instituted by the Model Law is relatively straightforward; as long as the foreign insolvency representative furnishes the necessary documents and manages to prove that the foreign proceeding takes place in the debtor's COMI (which often involves merely relying on the registered seat presumption), they can obtain an order that offers a minimum, yet crucial, level of protection for the debtor's assets. The provision of additional relief, including the administration and realisation of those assets, is subject to the discretion of the court and the satisfaction of certain minimum standards of protection for affected parties. The effectiveness of relief thus depends greatly on how the receiving court exercises its discretion. An important aid in that regard is the Model Law's internationalist principle of interpretation, which requires courts to take into consideration the Model Law's international origin and the need to promote uniformity.[34] Such an approach can promote a universalist approach to cross-border insolvencies and facilitate outcomes that favour the provision of assistance to the foreign representative.[35]

III. THE MODEL LAW IN GREECE

[34] Model Law (n 9), art 16.
[35] Jay Lawrence Westbrook, 'Interpretation Internationale' (2015) 87 Temp L Rev 739.

A. Legal framework prior to the enactment of the Model Law

Traditionally, the Greek legal framework had been characterised by the absence of a specialised set of rules for managing cross-border insolvency cases. This state of affairs can be attributed to the obsolete and outdated state of insolvency legislation in the country for the better part of its modern history. In fact, until the introduction of the Greek Insolvency Code (GIC)[36] in 2007, the Greek insolvency framework comprised a patchwork of various provisions, the most important of which dated back to the 19th century and was, to a large extent a reflection of the Napoleonic Code de Commerce of 1807.[37] Rather predictably, this framework did not include specific rules for the recognition of foreign insolvencies nor the right of foreign insolvency practitioners to request assistance in order to take control of assets located in Greece. Even after the introduction of the GIC however, this state of affairs did not change radically since the new framework, though constituting a significant improvement over the pre-existing regime, similarly did not include any provisions on cross-border matters. As a matter of fact, the only reference to international aspects of insolvency was the stipulation that the insolvent estate comprises the debtor's assets wherever they may be located,[38] which however only dealt with the outbound effect of Greek proceedings and not the inbound effect of foreign proceedings. In fact, the same approach has been maintained under the newly introduced framework. In that sense, for a very long

[36] Greek Insolvency Code, Law 3588/2007 State Gazette A 153/10.7.2007 (GIC).
[37] George Bazinas and Yiannis Bazinas, 'Greece' in Jeniffer Marshall (ed) European Cross Border Insolvency (Sweet & Maxwell 2024).
[38] GIC (n 35), art 16.

time, Greek law had not adopted a coherent or principled approach to cross-border insolvencies.

This indeterminate state of affairs was however ameliorated, to a certain extent, by the application of the EIR.[39] The EIR, introduced in 2000 and later amended in 2015,[40] instituted a framework providing uniform rules across EU Member States on international jurisdiction, applicable law as well as a regime for the recognition and enforcement of the judgment commencing insolvency proceedings as well as related judgments.[41] In particular, the EIR provides that the courts of the Member State, in which the debtor has its COMI have jurisdiction to open insolvency proceedings in respect of that debtor.[42] As a result, it designates a single court as having international jurisdiction over a particular debtor and avoids any conflicts of jurisdiction between the courts of different Member States.[43] In addition, the EIR enumerates the issues that are governed by the law of the insolvency proceeding (*lex fori concursus)* as well as the exceptions

[39] References to the EIR's provisions will refer to the provision of the Recast EIR that is currently in force: see Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) [2015] OJ L141.

[40] On the background to the adoption of the EIR: see 'An introduction to the European Insolvency Regulation, as made and as recast' in Reinhard Bork and Kristin van Zwieten (eds), *Commentary on the European Insolvency Regulation* (2nd edn, OUP 2022).

[41] Antonio Leandro, 'Introduction to the European Insolvency Regulation' in Gilles Cuniberti and Antonio Leandro (eds), *The European Insolvency Regulation and Implementing Legislations: A Commentary* (Edward Elgar Publishing 2024).

[42] EIR (n 22), art 3(1). The Recast EIR also includes a number of provisions aimed at combating abusive forum shopping: see Reinhard Bork and Renato Mangano, 'International Jurisdiction' in *European Cross-Border Insolvency Law* (2nd edn, OUP 2022).

[43] However, insolvency proceedings may also be opened, in a Member State where the debtor has an establishment; the effect of such proceedings is however restricted to the assets situated in that Member State: see EIR (n 22), art 3(2).

to this rule.[44] Finally, and perhaps more importantly, the EIR introduces the principle of automatic recognition of foreign insolvency proceedings, providing that a judgment commencing insolvency proceedings and issued by the courts of the debtor's COMI shall be recognised automatically and without further formalities in all other Member States.[45] Automatic recognition, which is the hallmark of the EIR's approach, is justified on the basis of the principle of mutual trust that underpins the EU regulatory framework and prohibits any Member State from reviewing the jurisdiction of the courts of another Member State.[46] In practical terms, this regime enables the foreign insolvency practitioner to exercise all the powers conferred to it under the *lex fori concursus* in any other Member State, where the debtor may have assets or where recognition may be necessary for other purposes.[47]

As is evident from the above analysis, the EIR aligns, in conceptual terms, with the universalist orientation that also characterises the Model Law. At the same time however, it introduces a much more extensive and complete set of rules, which not only cover aspects of cross-border insolvencies that are not touched by the Model Law, such as jurisdiction and choice of law but also provide a much more straightforward and permissive avenue for the recognition of foreign proceedings.[48] This is

[44] Reinhard Bork and Renato Mangano, 'Law Applicable' in *European Cross-Border Insolvency Law* (2nd edn, OUP 2022).
[45] EIR (n 22), arts 19-20. For more details on the principle of recognition: see Reinhard Bork and Renato Mangano, 'Recognition and Enforcement' in *European Cross-Border Insolvency Law* (2nd edn, OUP 2022).
[46] Christoph Thole, 'Article 19. Principle' in Moritz Brinkmann (ed), *European Insolvency Regulation: A Commentary* (Beck-Hart-Nomos 2019).
[47] EIR (n 22), art 21.
[48] For a comparison between the EIR and the Model Law: see Reinhard Bork, 'The European Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency' (2017) 26 Int'l Insolvency Rev 246.

understandable since the EIR serves a potentially more systemic function; it seeks to ensure the proper functioning of the internal market by facilitating the effectiveness of insolvency proceedings across Member States and thus removing incentives for abusive forum shopping.[49] Given the level of economic and commercial interdependence between EU Member States within the framework of the internal market, the introduction of the EIR provided Greek courts with a framework that enabled the automatic recognition of the majority of foreign insolvency proceedings that had links or connections with Greece. In practical terms, the provisions of the EIR enabled the recognition of the effects of insolvency proceedings originating in EU jurisdictions to be recognised in Greece without any procedural formalities, which, in the majority of cases, led to the staying of pending court or enforcement actions brought by creditors against the debtor before the Greek courts.[50]

As far as non-EU insolvencies were concerned, however, the Greek legal framework lacked any particular direction as to how to approach the question of their recognition. In the absence of specific provisions, the only avenue to recognise the effects of foreign insolvency proceedings in Greece was to resort to the general provisions of judgment recognition that formed part of the Greek Code of Civil Procedure (CCP).[51] This however raised a number of preliminary issues. The first is related to the question of classification. Whereas the Model Law defines what qualifies as a 'foreign insolvency proceeding', Greek law does not contain a similar

[49] EIR (n 22), recitals 1-5.
[50] Rhodes Court of First Instance 83/2007, EpiskED 2007/580; Thessaloniki Court of Peace 3007/2014 Armenopoulos 2017/248.
[51] This had been the default approach for centuries in many jurisdictions around the world. For an overview see: Kurt H Nadelmann, 'International Bankruptcy Law Its Present Status' (1944) 5 U Toronto LJ 324.

specific definition. This means that in considering the effect of a foreign insolvency judgment, a Greek court would need to consider such judgment, by reference to its nature, objective and features, to ascertain whether it could be characterised as an 'insolvency judgment' under the meaning of Greek law. If the foreign judgment could be characterised as an insolvency judgment, the next step was to consider whether recognition should be sought under the rules that apply to adversarial judgments (such as money judgments) or judgments relating to status. Although certain earlier judgments had relied on the rules enabling the recognition and enforcement of adversarial judgments,[52] the approach ultimately adopted by the courts was that since insolvency judgments do not resolve a dispute but rather concern the status of the debtor, making pronouncements with an *erga omnes* effect, recognition should be sought under the rules that apply to judgments concerning status.[53] Under the operation of these rules,[54] the recognition of the foreign insolvency judgment was automatic, in the sense that no procedure (such as exequatur) or other formality was required to recognise its effect, although it was possible to bring an action to recognise such judgment if that was necessary to achieve its effectiveness in Greece, such as in cases that require the judgment to be furnished to public authorities.[55] Nevertheless, the foreign judgment had to meet certain requirements;

[52] Piraeus Court of First Instance 865/1975, Maritime Law Review 1/47; Piraeus Court of Appeal 795/1979, Maritime Law Review, 8/58.
[53] Alexandros Metallinos, 'Cross-Border Insolvencies' in Haris Pamboukis (ed), *Law on International Transactions* (Nomiki Bibliothiki 2010) 187 (in Greek).
[54] Greek Code of Civil Procedure, Law 503/1985 Official Gazette A 182/24.10.1985 art 780.
[55] Pavlos Arvanitakis, 'Article 780' in Konstantinos Kerameus, Dimitris Kondilis and Nikolaos Nikas (eds), *Interpretation of Code of Civil Procedure* (2nd edn, Sakkoulas 2020) 1538.

first, the substantive law applied by the foreign judgment had to comply with the rules of Greek private international law, and the judgment had to have been issued by a court that had international jurisdiction under the law of the state whose substantive law was applied in the case and finally not be contrary to Greek public policy.

As is evident from the above exposition, the pre-existing framework was clearly not tailored to the needs of cross-border insolvencies. That being said, the judiciary managed to rely on these provisions and develop a practical and liberal approach to recognising the effects of foreign proceedings. In particular, Greek case law on the matter frequently emphasised that a foreign insolvency judgment produces its effects in Greece without any further procedure and formality and reiterated the court's authority to examine its own motion whether the conditions of recognition were fulfilled.[56] In the majority of cases, where the requirements for recognition were met, courts did not hesitate to order that, as a result of the foreign declaration of insolvency, claims or other enforcement actions brought by local creditors against the debtor be stayed.[57] The effectiveness of this approach was further strengthened by the courts' strict interpretation of the public policy defence; in particular, courts ruled that the mere fact that a foreign insolvency proceeding was subject to different substantive rules would not render recognition contrary to Greek public policy unless a constitutional principle was violated or fundamental procedural requirements were infringed.[58] In that sense, Greek courts managed to develop a practical approach that

[56] Piraeus Court of Appeal 1111/1989, NOMOS.
[57] Athens Court of First Instance 3569/2003, NOMOS.
[58] Mesolongi Court of First Instance 11/2001, NOMOS.

proved to be generally amenable to the recognition of foreign insolvency proceedings even prior to the introduction of the Model Law.

B. Law 3858/2010 and the enactment of the Model Law

Despite this favourable judicial approach, the general provisions of the CCP were deemed inadequate to address the increasingly intricate problems presented by cross-border cases. These issues were specifically flagged by the legislative committee that was formed to consider the implementation of the Model Law in Greece. In particular, the committee underlined the growing prevalence of insolvency proceedings with cross-border implications and the increasing risk of asset concealment by fraudulent debtors, who seek to put their assets beyond the reach of foreign creditors.[59] In this context, the committee noted the unpredictability stemming from the application of ordinary rules of judgment recognition to the recognition of foreign insolvency proceedings and their inability to provide a clear roadmap to foreign insolvency practitioners to request assistance in support of such foreign proceedings. Considering the absence of appropriate legal mechanisms to deal with these issues, the committee thus concluded that the introduction of a targeted framework, comprising specific rules, was necessary to enhance the predictability of the Greek cross-border insolvency framework.

Against this background, the committee highlighted several benefits to the enactment of the Model Law. First of all, the Model Law included very few novel legal terms and even those that were not already provided

[59] Explanatory Memorandum to Law 3858/2010, 1.

under Greek insolvency law, such as 'foreign insolvency representative' or 'foreign insolvency proceeding' were clearly defined and did not clash with existing terms.[60] In that sense, the introduction of the Model Law would not give rise to any inconsistencies with other provisions of domestic law. In addition, the Model Law envisaged a form of relief, especially the relief that is provided as an automatic consequence of recognition, that was aligned with the protections that are generally afforded to debtors under Greek insolvency proceedings. At the same time, the recognition of foreign insolvency proceedings would not, in any way, preclude the ability of domestic creditors to commence insolvency proceedings in Greece against the same debtor, since in those cases the Model Law included provisions on the coordination between parallel proceedings. Even more importantly, any discretionary relief would only be provided, on the condition of adequate protection of the interests of creditors and conformity with domestic procedural requirements, thus ensuring the protection of local interests and constituencies. Finally, the existence of the 'public policy' escape clause, even if narrowly interpreted, was viewed as ensuring a residual measure of control by the receiving court in the conduct of the cross-border proceedings.

For all the above reasons, Greece enacted the Model Law by virtue of Law 3858/2010.[61] In general, the introduction of the Model Law did not involve any conceptual or high-level debate about its overarching principles but was viewed as a step in improving, from a practical perspective, the predictability in the treatment of cross-border cases. This approach is reflected in the fact that, as is the case with most

[60] ibid 2.
[61] State Gazette A 102/01.07.2010.

enacting jurisdictions, the enacting legislation tracks, almost verbatim, the text of the original Model Law.[62] In fact, although the legislative committee appreciated the flexibility of the Model Law as a non-binding instrument that could be freely modified before being adopted, it also highlighted the need to maintain uniformity with other adopting jurisdictions in order to enhance cooperation in cross-border insolvency matters. As a result, the Greek Model Law opted to stay as loyal as possible to the text of the original Model Law, which therefore now constitutes an indispensable and integral part of the Greek insolvency framework. Even subsequent changes in substantive insolvency legislation, such as the recent replacement of the GIC with the Debt Settlement Law (DSL) in 2020,[63] have not challenged the status of the Model Law, since the new framework, much like the GIC, has not included provisions on cross-border matters, thereby relying on the provisions of the Model Law to govern the recognition of foreign (non-EU) insolvency proceedings.[64]

C. Application of the Model Law in Greece

i. Recognition of foreign insolvency proceedings

It is a common feature of many Model Law jurisdictions that the question of recognition of foreign insolvency proceedings has not encountered

[62] On the enactment of the Model Law in other prominent jurisdictions: see Neil Francis Hannan, *Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (1st edn, Springer 2017).
[63] Law 4738/2020 (State Gazette A 207/27.10.2020)
[64] For an overview of the DSL: see Alexandros Metallinos and others, 'The new Greek Insolvency Framework' [2021] European Insolvency and Restructuring Journal 1 <https://eirjournal.com/article/view/15091/16542> accessed 30 January 2025.

significant obstacles nor led to major controversies.[65] Similarly, the introduction of the Model Law in Greece did not result in any material change in the hitherto favourable approach of Greek courts in recognising foreign proceedings. More specifically, virtually all recognition applications concern the recognition of foreign proceedings as main proceedings, as there has not been a case to date, where foreign proceedings have been recognized as 'non-main'. In that context, although the nebulous nature of COMI could have led to uncertainty, courts and practitioners were already familiar with the questions surrounding its determination in the context of the EIR and had already encountered the task of its identification, when called upon to consider the effect of insolvency proceedings in another EU Member State over suits filed against the debtor by creditors located in Greece. Even more importantly, the GIC had also adopted COMI as the applicable jurisdictional standard for the determination of insolvency jurisdiction in the domestic context.[66] As a result, Greek courts had also wrestled with the question of locating a debtor's COMI, in the context of establishing their own insolvency jurisdiction, prior to the introduction of the Model Law.[67] This prior experience has thus led to the majority of recognition applications being mostly uncontested and straightforward.[68]

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[65] Irit Mevorach, 'On the Road to Universalism: A Comparative and Empirical Study of the UNCITRAL Model Law on Cross-Border Insolvency' (2011) 12 Eur Bus Org L Rev 517.
[66] GIC (n 35), art 4. This rule continues to apply under the current framework of the DSL: see DSL (n 65), arts 78 and 33. For an overview of the jurisdictional requirements for commencing insolvency proceedings in Greece: see Bazinas and Bazinas (n 36).
[67] Piraeus Court of Appeal 670/2009 NOMOS.
[68] Athens Court of First Instance 437/2013 (unreported).

That being said, there is often an additional layer of complexity in cases involving companies that are engaged in the shipping sector. Such companies, which either own or manage ships under a Greek or a foreign flag, are usually registered offshore but are managed and administered through an office or a branch located in Greece. This structure is motivated by certain important tax benefits that are available to foreign companies that establish an office and operate out of Greece, under a specific legal framework.[69] When such companies encounter financial distress however, there is a question of whether insolvency proceedings should commence in the place of their registered seat (which is often an offshore jurisdiction) or whether such presumption should be rebutted in favour of Greece, which is the place where the business is actually administered. In the majority of cases, Greek courts have shown a willingness to look beyond the place of the registered seat, provided however that the interested parties furnish sufficient evidence to rebut the presumption.[70]

Still, such cases can often cause significant consternation. The ensuing complexities were at full display, in a major case involving the restructuring of a physical supplier of marine bunkers. The group comprised a number of companies, including the main operational company, which was registered in Liberia but managed out of an office in Greece, and a company operating as the group's financing arm, which

[69] Such legal framework has a quasi-constitutional status, as it is guaranteed by the Greek constitution: Lia I Athanassiou, 'Shipping Introduction' (*Greek Law Digest*, 28 January 2019) <https://www.greeklawdigest.gr/topics/shipping/item/270-shipping-introduction> accessed 31 January 2025.

[70] Multi-Member First Instance Court of Piraeus 1798/2020 Armenopoulos 2021/1387.

was registered in the Marshall Islands and listed on the New York Stock Exchange. After activist investors uncovered major transgressions in the group's bookkeeping and accounting practices, the group companies filed a joint Chapter 11 petition in the Southern District of New York.[71] As a result of the restructuring, the group's assets were transferred to a new reorganised entity, owned by another major player in the marine bunkering sector.[72] After the confirmation of the Chapter 11 plan, the operating company, which was managed out of a Greek office, filed an application before the Greek courts seeking to recognise the US bankruptcy proceeding, including the provisions of the plan, as a foreign main proceeding, in order to stifle any attempts by creditors to seize the group's assets in Greece.

The court of first instance dismissed the application on two grounds.[73] First, it ruled that the application was not submitted by a 'foreign insolvency representative' but rather by the company itself, contrary to the terms of the Model Law. Secondly, and perhaps more notably, it noted that the fact that the application for recognition was submitted in respect of a group of companies was problematic; given that, under Greek law, a group of companies does not have a separate legal personality from its constituent members, the recognition would violate the principle of corporate personality and would thus be manifestly

[71] 'Aegean Marine Petroleum Files for Chapter 11 Restructuring' *Lloyd's List* (London, 6 November 2018) <https://www.lloydslist.com/LL1124957/Aegean-Marine-Petroleum-files-for-Chapter-11-restructuring> accessed 31 January 2025.
[72] The Editorial Team, 'Aegean Marine Becomes Minerva Bunkering' (*safety4sea.com*, 5 April 2019) <https://safety4sea.com/aegean-marine-becomes-minerva-bunkering/> accessed 31 January 2025.
[73] Multi-Member First Instance Court of Piraeus 3821/2020 Armenopoulos 2021/1385.

contrary to Greek public policy. On appeal, the court of appeal also dismissed the application, albeit on somewhat different grounds.[74] While noting that the application did not violate the principle of corporate personality and thus did not implicate notions of public policy, it concluded, as did the first instance court, that the application should have been submitted by the trustee that was entrusted with the administration of the reorganised entity's assets, (and who would qualify as a 'foreign insolvency representative') as opposed to the company itself. In addition, however, the appellate court pointed out that the company had neither its COMI nor an establishment in the US since it was registered in Liberia and operated out of Greece. As a matter of fact, the choice of New York as the restructuring forum was primarily motivated by the listing of its affiliate on the New York Stock Exchange as opposed to any tangible jurisdictional connection, that could have been recognised by the Model Law. As a result, it dismissed the application on the additional ground that its COMI was not located in the US.

This case illustrates the difficulties and complexities that are associated with many cross-border cases, especially those involving the commencement of proceedings in a jurisdiction other than the place of the debtor's COMI. These cases frequently involve companies seeking to restructure in the US or the UK, as opposed to their home jurisdictions, in order to take advantage of the more developed and reliable restructuring frameworks in these jurisdictions. In those cases, and unless the debtor has an establishment in the place where the proceedings are opened, recognition in the debtor's COMI will generally be unavailable under the provisions of the Model Law. One solution to

[74] Piraeus Court of Appeal 429/2022 NOMOS.

this problem is the concept of COMI shifting, where the debtor moves its COMI to another jurisdiction, either directly (by moving operations, especially management functions) or indirectly (by establishing a foreign subsidiary, which thereafter assumes all of the debtor's obligations), in order to commence insolvency proceedings in that jurisdiction.[75] Still, although these cases illustrate the limits of the Model Law framework, they should not obscure the fact that the Model Law's provisions on recognition can sufficiently deal with the majority of cross-border cases, as demonstrated by the case law of the Greek courts on the matter.

ii. The provision of post-recognition relief

As has been pointed out, the main reason why a foreign insolvency representative would opt to file a recognition application under the Greek Model Law would be to take advantage of the automatic relief that takes effect post-recognition. The most important elements of such relief are the stay on creditor enforcement actions and the suspension of the debtor's right to transfer or encumber assets. To the extent that the foreign proceeding is recognised as a foreign main proceeding, such automatic relief is normally considered sufficient for the purposes of protecting the debtor's assets in Greece and staying any pending creditor enforcement actions. As a matter of fact, this is the main motivation for the vast majority of recognition applications that are filed by foreign insolvency representatives before the Greek courts. As far as additional discretionary relief is concerned, there have been very few cases that have considered the issue directly. That being said, there are grounds to

[75] Susan Block-Lieb, 'Reaching to Restructure Across Borders (without over-Reaching), Even After Brexit' (2018) 92 Am Bankr LJ 1.

believe that Greek courts can take a practical approach in dealing with such requests as well.

One case that provides some guidance in that respect is a recent decision of the First Instance Court of Athens.[76] In the context of the Florida bankruptcy of an individual debtor, the US bankruptcy court had issued a series of US judgments that avoided certain antecedent transactions, whereby the debtor had transferred real estate in Greece to some of its family members. Upon recognition of the US proceeding in Greece as a foreign main proceeding, the US trustee applied to the Greek court to request that the judgments be recognised and enforced in Greece against the beneficiaries of the unlawful dispositions, as additional relief under the Greek enactment of the Model Law or alternatively under the Greek rules of judgment recognition. However, as has been established in other Model Law jurisdictions, the question of whether the recognition of insolvency-related judgments can be pursued under the Model Law's provisions on relief is a highly controversial one, as highlighted by the UK Supreme Court's judgment in *Rubin v Eurofinance*,[77] which prompted the UNCITRAL to introduce an additional Model Law to deal specifically with that issue.[78] Nevertheless, the Greek court concluded, that whereas the Model Law does not include specific provisions on judgment recognition, it could grant the requested relief, provided however that the foreign judgments met the requirements for recognition envisaged by traditional judgment recognition rules, as

[76] Bazinas Y. in Multi-Member First Instance Court of Athens 183/2021 EEmpD 3/2021.
[77] *Rubin v Eurofinance SA* [2012] UKSC 46.
[78] Irit Mevorach, 'Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?' (2021) 22 Eur Bus Org L Rev 283.

mentioned above. Considering that, under Greek choice of law provisions, the US bankruptcy court had correctly applied US bankruptcy law to the avoidance dispute and had jurisdiction, under such applicable law, the court ruled that the US avoidance judgments were capable of recognition in Greece. This case thus demonstrates that, despite the relative dearth of case law, Greek courts have generally tried to find a practical way to address the problems that are presented in the cross-border insolvency context and interpret the Model Law in a way that is consonant with the overall legal framework.

IV. CONCLUSION

Although the Model Law is a uniform legal framework it would be wrong to assume that its application in the different national contexts would always lead to the same or even similar results. In fact, even though most enactments have remained loyal to the text of the Model Law and most courts have interpreted its provisions, having in mind international origins and the need to maintain uniformity, divergent outcomes still emerge. The main reason for such a state of affairs is the reality that the Model Law is not a complete framework. In fact, the Model Law establishes a procedural framework for recognising foreign insolvency proceedings, which nonetheless operates on a sub-stratum of domestic rules of private international law, which come to the forefront when gaps are presented.[79] This is especially evident as regards questions of discretionary relief, where the Model Law provides no guidance as to whether the court is entitled to provide relief that would not be available

[79] Adrian Walters, 'Modified Universalisms & The Role of Local Legal Culture in the Making of Cross-Border Insolvency Law' (2019) 93 *Am Bankr LJ* 47.

under the law of the receiving court. In that sense, divergences in national outcomes are an inevitable consequence of the nature and structure of the Model Law framework.

That being said, this feature should not obscure the undisputed fact that the Model Law can provide efficient and principled solutions for the vast majority of cross-border cases. The Greek experience with the Model Law is a testament to this reality. Though Greek courts had already adopted a recognition-friendly stance against foreign insolvency proceedings under the pre-existing framework that relied on ordinary principles of judgment recognition, the Model Law managed to formalise this approach. In fact, after the introduction of the Model Law, the amenability of Greek courts vis-à-vis foreign insolvency proceedings has benefited from a more comprehensive and predictable legal regime that also provides a fair system for the protection of domestic interests and constituencies. This has increased legal certainty for foreign parties, especially foreign insolvency practitioners, and by extension also reduced the risk of asset concealment by recalcitrant parties. Naturally, there are, and always will be, hard cases, raising particular concerns and difficulties in their effective resolution. The Model Law should therefore not be viewed as a panacea. That being said, its framework has so far proven, in the vast majority of cases, to be well adapted to domestic needs and has managed to provide foreign creditors and insolvency practitioners with a basic modicum of predictability and certainty in the administration of cross-border cases. In that sense, though not marking a sharp break with pre-existing practice, the Model Law has contributed significantly to the development of universalist norms in the Greek legal framework.