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## Cross Border Insolvency Resolution

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A panel led by Ministry of Corporate Affairs had suggested adopting the **United Nations Commission on International Trade Laws on cross-border insolvency**.

- **UNCITRAL** Model Law on Cross-Border Insolvency, 1997 (Model Law) provides legal framework to deal with cross-border insolvency issues while ensuring the least intrusion into the country's domestic insolvency law.
- The Insolvency and Bankruptcy Code, at present, does not effectively deal with cases involving cross-border insolvency.
- The government is expected to amend **Section 234 and Section 235** of the IBC and introduce provisions for:
  - **Individual insolvency**: new framework divides individuals into three categories: **personal guarantors, proprietors** and **common individuals**.
  - **Cross border insolvency**: provisions will apply to **corporate debtors** and not in personal cases.

**UNCITRAL Model Law- The model law deals with four major principles of cross-border insolvency:**

- **Direct access to foreign insolvency** professionals and foreign creditors to participate in or commence domestic insolvency proceedings against a defaulting debtor.
- Recognition of **foreign proceedings** & provision of remedies.
- Cooperation between domestic and foreign courts & domestic and foreign insolvency practitioners.
- Coordination between two or more concurrent insolvency proceedings in different countries. The main proceeding is determined by the concept of **centre of main interest (COMI)**.

## Significance

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- The changes will enable initiation of resolution process in case of personal guarantors

to corporate debtors, proprietorship and partnerships.

- **Provisions for cross border insolvency** would enable Indian firms to claim their dues from foreign companies, while allowing foreign creditors to recover loans from Indian companies.

Will also help foreign branches of Indian banks to recover their dues in India.

- Cross border insolvency provision will bring overseas asset of a domestic corporate debtor into consideration of insolvency resolution in India and will avoid delays in resolution of stressed assets.

## UNCITRAL

- The United Nations Commission on International Trade Law is the core **legal body of the United Nations system** in the field of international trade law.
- UNCITRAL was established in 1966 with a recognition that international trade cooperation among States is an important factor in the promotion of friendly relations and, consequently, in the maintenance of peace and security.
- Through its several model laws, conventions, legislative guides and robust debates in working groups, UNCITRAL has provided a valuable platform for countries to compare, examine, debate and adopt principles of international commercial and trade law appropriate to their circumstances.
- Since its inception, India is only one of eight countries that has been a member of UNCITRAL.