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Deconstructing The Cross-Border Insolvency Bill 2025

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The Cross-Border Insolvency Bill 2025 (Bill), which was passed recently by the Dewan Rakyat on 29.7.2025, marks a long-awaited development in aligning the country's insolvency framework with international standards. Based on the UNCITRAL Model Law on Cross-Border Insolvency 1997 (UNCITRAL Model Law), the Bill introduces a legal mechanism for cooperation between Malaysian and foreign courts in insolvency matters.

Prior to the introduction of this Bill, Malaysia had no formal statutory framework for recognising or assisting foreign insolvency proceedings. The absence of codified guidance created uncertainty for foreign investors, creditors and insolvency professionals dealing with Malaysian entities. As the country's involvement in international trade and investment expanded, this gap became increasingly untenable.

The Bill introduces a clear and modern mechanism that has gained international acceptance in over 60 jurisdictions. Its adoption is expected to bolster investor confidence and further Malaysia's ambition to attract foreign direct investment, enhancing the country's reputation as a reliable and business-friendly jurisdiction.

The Scope & Key Principles

The Bill is designed to apply exclusively to corporate debtors. Clause 3(1) of the Bill states that its framework is triggered only in four scenarios:

(a) when foreign insolvency assistance is being sought in Malaysia;

(b) when reciprocal assistance is sought abroad in relation to domestic insolvency matters;

(c) when concurrent insolvency proceedings in Malaysia and another jurisdiction involve the same debtor; or

(d) when foreign creditors are interested in commencing or participating in Malaysian insolvency proceedings.

Importantly, the Bill does not apply to the insolvency of individuals, persons engaged in registered or licensed business under the Registration of Businesses Act 1956, Trades Licensing Ordinance, Businesses, Professions & Trades Licensing Ordinance and Business Names Ordinance, limited liability partnerships and foreign limited liability partnerships regulated by the Limited Liability Partnerships Act 2012 and any person as specified in Part I of the Schedule.

These provisions ensure that the Bill's mechanisms come into play only in appropriate cross-border contexts and safeguard against unintended overreach. Clause 4 echoes this approach, confirming that the Bill is meant to function in tandem with existing legislation, not to supersede or replace them.

Clause 2 of the Bill introduces definitions that frame its cross-border application. A *'foreign proceeding'* refers to a collective judicial or administrative proceeding in a foreign State under insolvency law, where the debtor's assets and affairs are subject to control or supervision by a foreign court for purposes such as reorganisation or liquidation.

Crucially, the Bill distinguishes between foreign *'main'* and *'non-main'* proceedings. A *'foreign main proceeding'* is one taking place in a country where the debtor has its centre of main interests (COMI), whereas *'foreign non-main proceedings'* are those in a country where the debtor has an establishment, *i.e.* a place of operations or assets with non-transitory economic activity. Although COMI is not explicitly defined in the Bill, Clause 16 includes a rebuttable presumption that the debtor's registered office is its COMI, a presumption that can be overcome with evidence to the contrary.

Features Of The Bill

One of the Bill's fundamental features is that it grants foreign insolvency players a direct line into Malaysian courts without lengthy procedural hurdles. Under Clause 9, a foreign representative, *i.e.* a person or body appointed and authorised in foreign proceedings to administer the reorganisation or liquidation of a debtor's assets or affairs, or to act as a representative of the foreign proceedings has the right of direct access to apply to the High Court for recognition of the foreign insolvency proceeding or for other relief under the Bill.

Clause 10 clarifies that simply filing such an application does not submit the foreign representative or the debtor's foreign assets to the general jurisdiction of Malaysian courts for other purposes. This 'safe harbour' encourages foreign representatives to seek help in Malaysia when needed, without fear that doing so would unintentionally open the door to unrelated lawsuits or taxation, for example.

The Bill also allows a foreign representative to commence local insolvency proceedings if necessary. If the debtor has assets or business in Malaysia that warrant a local winding-up or restructuring, clause 11 entitles a foreign representative (from either main or non-main proceedings) to apply to initiate insolvency proceedings under Malaysian law, provided the usual criteria for commencing such proceedings are met. This ensures that foreign officeholders can integrate the debtor's Malaysian assets into a coordinated global resolution. Once a foreign proceeding is recognised in Malaysia, clause 12 entitles the foreign representative to participate in ongoing domestic insolvency proceedings regarding the debtor.

From the creditors' standpoint, clause 13 upholds the principle of non-discrimination and forbids subordinating a foreign creditor's claim in priority just because of its foreign origin. To further level the playing field, clause 14 requires that foreign creditors be notified of Malaysian insolvency proceedings just as local creditors would be. If Malaysian insolvency law calls for notices to creditors, such notice must also be given to known foreign creditors who have no Malaysian address. These provisions ensure that foreign stakeholders are not left in the dark when a Malaysian insolvency case might affect their interests.

Recognition Of Foreign Insolvency Proceedings In Malaysia

Under clause 15, a foreign representative may apply to the court for recognition of the foreign proceeding in which they were appointed. The application must be accompanied by supporting evidence of the foreign proceeding's existence and the applicant's authority. Clause 16 expedites this process with helpful presumptions to speed up recognition. For instance, the Malaysian court is entitled to presume the authenticity and validity of documents from the foreign proceeding and the applicant's appointment, and even the debtor's COMI, in the absence of contrary proof.

Clause 17 requires the court to deal with recognition applications promptly, reflecting the urgency often present in cross-border cases. In fact, clause 17(2) mandates that the court must recognise the foreign proceeding by order if the case qualifies as a foreign proceeding, the applicant is a legitimate representative, the evidence is in order and the court has jurisdiction. Upon issuing a recognition order, the court will classify the foreign proceeding as either a *'main'* or *'non-main'* in accordance with clause 17(3). Recognition may only be refused under the public policy exception in clause 7.

What Happens After Recognition?

Once a foreign main proceeding is recognised, the Bill immediately triggers a suite of protective measures similar to those found in domestic insolvency cases. Under Clause 20(1), when a foreign proceeding is recognised as a main proceeding, three immediate effects occur by operation of law, akin to a statutory moratorium: a stay of proceedings, a stay of execution and a suspension of transfers of the debtor's assets.

Clause 20(2) specifies that these stays and suspensions are as far-reaching as those in a Malaysian winding up. Likewise, any powers of the court or exceptions that would apply in a domestic winding-up context also apply here.

However, the Bill carefully carves out certain exceptions to avoid unduly harming particular parties or conflicting with certain Malaysian legal provisions. Clause 20(3) provides that the automatic stay does not affect a number of important rights, including the right of secured creditors to enforce their security over the debtor's property, the right of any person to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement, the right exercisable under the written laws specified in Part II of the Schedule, and the right of a creditor to set off mutual debts with the debtor.

Similarly, the moratorium on legal proceedings does not bar the commencement of individual legal actions to the extent necessary to preserve a claim and the commencement or continuation of criminal proceedings or regulatory enforcement actions by government agencies. This prevents the stay from impeding law enforcement or regulatory oversight functions. Clause 20(5) explicitly states that the automatic stay does not prevent anyone from initiating a Malaysian insolvency proceeding regarding the debtor or from filing claims in such a proceeding.

Clause 19 empowers the courts to grant relief even before a recognition decision is made. From the moment a foreign representative files for recognition, they may seek interim measures if needed to protect the debtor's assets or creditors' interests. For instance, the court can stay any execution against the debtor's assets, entrust all or part of the debtor's assets to the foreign representative for safekeeping or grant any relief that would be available post-recognition. These interim orders are provisional and lapse once the court decides on the recognition application, unless extended as post-recognition relief under clause 21.

The court is also able to grant further relief under clause 21 beyond those automatically in effect under clause 20. This post-recognition relief is discretionary, allowing the court to tailor its assistance to the needs of the case. For example, the court might extend any interim order made under clause 19, facilitate fact-finding and administration by ordering the examination of witnesses, the taking of evidence, or the entrusting of Malaysian assets to the foreign representative or another designated person for the purposes of reorganisation or liquidation. Essentially, clause 21 empowers the Malaysian court to grant similar remedies to those that would be available in a domestic insolvency in aid of the foreign proceeding.

Concurrent Proceedings, Cross-Border Cooperation And Communication

Beyond recognition and relief, the Bill tackles how overlapping insolvency proceedings and creditor remedies are coordinated. Clause 23 empowers recognised foreign representatives to invoke Malaysian insolvency provisions such as those under the Companies Act 2016 to unwind transactions and recover assets, even if no local liquidation or judicial management is ongoing. This closes a potential loophole that might otherwise allow Malaysian assets or suspect transactions to escape scrutiny simply because the main insolvency is abroad. To ensure balance, clause 23 imposes limits, where the relief sought must align with the scope of the recognised foreign proceeding and leave of court is required if a Malaysian proceeding is already underway.

Complementing this, clause 26 introduces a duty for Malaysian liquidators and judicial managers to cooperate with foreign courts and representatives, including direct communication when appropriate. Clause 25 similarly empowers Malaysian courts to engage directly with their foreign counterparts. Clause 27 illustrates the forms this cooperation may take – from joint administration and strategy coordination to information sharing and implementation of agreed resolutions.

Why This Bill Matters

This Bill introduces clarity, predictability and confidence into an area that was previously uncertain. For Malaysian insolvency practitioners and legal advisors, it provides a structured roadmap for engaging with the courts in cross-border scenarios. Defined processes now exist for seeking recognition, obtaining relief and cooperating with foreign counterparts, rather than navigating uncharted procedural terrain. Foreign representatives can approach the Malaysian courts with far greater confidence, knowing their role and requests are grounded in statute and not *ad hoc* discretion. This reduces legal risk and delays in protecting or realising Malaysian assets. At the same time, practitioners will need to acquaint themselves with the new mechanisms such as the recognition process, interim relief applications, and cooperation duties to fully leverage these tools in practice.

For cross-border lenders and creditors, the new regime ensures a more level playing field and more predictable outcomes when dealing with an insolvent debtor who has assets in Malaysia. Foreign creditors can take comfort that their claims will not be demoted in priority simply because they are from overseas, thanks to the Bill's non-discrimination principle. Secured creditors, in particular, enjoy clearer protections. Even if a foreign main proceeding is recognised in Malaysia, their right to enforce security over Malaysian assets is preserved (the automatic stay explicitly carves out secured creditor enforcement). Meanwhile, the availability of an automatic moratorium and coordinated administration upon recognition of a foreign proceeding offers a valuable breathing space. It prevents a chaotic scramble by creditors in multiple jurisdictions and instead buys time for a more orderly restructuring or liquidation plan to be negotiated. For financial institutions, this more systematic cross-border process reduces risk. They can structure loans or security interests with the confidence that Malaysian assets will be administered under a predictable UNCITRAL-based regime.

For multinational corporations with operations or subsidiaries in Malaysia, the Bill facilitates the execution of unified cross-border restructuring and insolvency strategies. A distressed company operating in multiple countries can now have its foreign main proceeding swiftly recognised in Malaysia, bringing local assets and stakeholders under the umbrella of the main proceeding's plan. If needed, a Malaysian insolvency proceeding such as a scheme of arrangement or judicial management can still be initiated to assist in the overall resolution, but it will proceed in coordination with the foreign case rather than in isolation.

The presumption that a debtor's COMI is its registered office provides some predictability as companies can anticipate which jurisdiction is likely to be treated as the centre of gravity in an insolvency and plan accordingly. In practical terms, corporate groups should be mindful of where their COMI and significant establishments are, since those will determine how and where any cross-border insolvency is administered. With this new law, a group of companies has a far better chance of pursuing one coherent insolvency or turnaround plan across all affected jurisdictions, reducing duplicated efforts and conflicting orders.

Commentary

The Bill represents a pivotal reform that brings Malaysia's insolvency landscape into the modern era of globalisation. By establishing a framework for recognition of foreign insolvency proceedings, co-operative resolution of multinational cases and protection of stakeholder interests across borders, Malaysia signals a readiness to engage with the world in insolvency matters on its own terms. With Malaysian courts firmly in control and public interest safeguards in place, the regime lends both predictability and credibility to the system. Once fully in force, this legislation is expected to strengthen Malaysia's position as a preferred destination for investment and business, knowing that the country can effectively handle the challenges of cross-border financial distress.

For practitioners, creditors and companies, the new law offers both opportunities and responsibilities; opportunities in the form of clearer avenues to resolve complex cases and recover value, and responsibilities, including mastering the new procedures and cooperating in good faith across jurisdictions. As this regime is implemented with accompanying rules and possibly judicial guidelines, stakeholders would be well-advised to stay updated and seek expert advice on traversing cross-border insolvency under Malaysian law. Ultimately, Malaysia's adoption of the UNCITRAL Model Law principles is more than just a legal update – it is a strategic move to enhance economic resilience and credibility in a world where business knows no borders, or rather, where business crosses borders.

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